

STAFF REPORT



ITEM NO. 11

CITY OF OCEANSIDE

DATE: October 10, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **APPROVAL OF A PROPERTY USE AGREEMENT WITH CALIFORNIA CAREER SCHOOL FOR THE NON-EXCLUSIVE USE OF SPACE IN THE AIRPORT ADMINISTRATIVE BUILDING**

SYNOPSIS

Staff recommends that the City Council approve a one-year property use agreement with California Career School of Anaheim in the amount of \$12,000 for the non-exclusive use of the airport administrative building conference room and rear office space, and authorize the City Manager to execute the agreement.

BACKGROUND

California Career School is a for-profit California Corporation that has schools near most military installations in Southern California. The school operates truck-driving schools whose primary emphasis is providing transitional job training through a federally funded program for military personnel leaving the service.

The airport administrative building conference room is used once per month for the Airport Sub-Committee meeting and two-to-three additional hours per month, primarily on weekends, by other groups. The rear office space houses the weather station computer.

ANALYSIS

The use agreement limits the use of the airport facilities to classroom-appropriate instruction only. No trucks will be allowed on airport property. The school leases space from a private party in an industrial area to store their trucks. All truck-driving instruction and practice is done on the highway. No instruction takes place on any surface streets here or in any of their other locations. Additionally, the use agreement prohibits any aircraft-or airport-related instruction or other related or incidental aircraft or airport uses by the school.

The agreement is for a term of one year commencing November 1, 2007, and ending October 31, 2008. Either party may terminate the agreement with a thirty-day written notice for any reason. The City may renew the agreement with the same terms and conditions, except compensation, for two additional one-year terms. The yearly compensation would be adjusted to reflect the change in the semi-annual Consumer Price Index for "All Urban Consumers" for San Diego.

FISCAL IMPACT

The monthly rent is \$1,000 and would be used to offset airport operational expenses.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

The Airport Sub-Committee unanimously recommended approval of the property use agreement.

CITY ATTORNEY ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

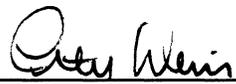
Staff recommends that the City Council approve a one-year property use agreement with California Career School of Anaheim in the amount of \$12,000 for the non-exclusive use of the airport administrative building conference room and rear office space, and authorize the City Manager to execute the agreement.

PREPARED BY:

SUBMITTED BY:



Gary R. Gurley
Acting General Services Manager



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Joseph Arranaga, Acting Deputy Public Works Director



**CITY OF OCEANSIDE PROPERTY USE AGREEMENT
WITH CALIFORNIA CAREER SCHOOL
FOR USE OF CITY OWNED PROPERTY AT
OCEANSIDE MUNICIPAL AIRPORT**

THIS PROPERTY USE AGREEMENT, hereinafter called "Agreement", dated as of _____, 200__, is executed between the CITY OF OCEANSIDE, a municipal corporation, hereinafter called "CITY", and California Career School, a California corporation, hereinafter called "PERMITTEE".

A G R E E M E N T

NOW THEREFORE, the parties in consideration of the terms, covenants and conditions contained herein, mutually agree as follows:

SECTION 1: USES

1.01 PREMISES. CITY hereby authorizes PERMITTEE, in accordance with the terms, covenants, conditions and provisions of this Agreement, the non-exclusive use of the Airport Administrative Building Conference Room and rear office space located at 480 Airport Road Oceanside, CA 92054 hereinafter called "PREMISES". In return for this permission, PERMITTEE hereby agrees to act in accordance with and abide by the terms, covenants, conditions and provisions of this Agreement. Notwithstanding anything else contained herein to the contrary, PERMITTEE accepts the PREMISES in an "AS IS" condition.

1.02 Uses. It is expressly agreed that the PREMISES shall be used by PERMITTEE solely and exclusively for the purpose of **classroom appropriate instruction only** and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

PERMITTEE covenants and agrees that no aircraft or airport related instruction or other related or incidental aircraft or airport uses whatsoever shall be conducted on the PREMISES, and such use of the PREMISES by PERMITTEE is expressly prohibited.

PERMITTEE covenants and agrees to use the PREMISES for the above - specified purposes and to diligently pursue said purposes throughout the term hereof. In the event that PERMITTEE fails to continuously use the PREMISES for said purposes, or uses the PREMISES for purposes not expressly authorized herein, the PERMITTEE shall be deemed in default under this Agreement.

CITY OF OCEANSIDE PROPERTY USE AGREEMENT
WITH CALIFORNIA CAREER SCHOOL
FOR USE OF CITY OWNED PROPERTY AT
OCEANSIDE MUNICIPAL AIRPORT

SECTION 2: TERM

2.01 Commencement. The term of this Agreement shall be for approximately one (1) year commencing upon City Council approval and terminating October 31st, 2008.

2.02 Renewal Options. The PERMITTEE may request extensions of the term of this Agreement for TWO (2) additional consecutive one (1) year terms under the terms and conditions of this Agreement provided that the PERMITTEE is not in default of this Agreement.

PERMITTEE may request extensions provided that written notice from the PERMITTEE is received by the City Manager no sooner than **180 days and not later than 90 days** prior to the expiration of the term of this Agreement. No later than **60 days** from the receipt of PERMITTEE 's written request to extend the term of this Agreement the City Manager shall, in writing provide PERMITTEE with the CITY's determination to either accept or reject PERMITTEE's request for extension. The acceptance of one Agreement extension does not obligate the CITY to accept a subsequent PERMITTEE requested extension.

2.02 Termination Provisions. Notwithstanding any other provisions contained in this Agreement, either party may terminate this Agreement by giving the other party at least **ninety (90) days** prior written notice of such termination.

2.03 Business License. PERMITTEE agrees to obtain and maintain, at its sole cost and expense, a current Business License issued from the City of Oceanside during the term of this Agreement, provided such a license is required for PERMITTEE'S operations under this Agreement.

SECTION 3: PROPERTY USE PAYMENT

3.01 Time and Place of Payment. The PERMITTEE shall make all payments **monthly** in advance on or before the **first day** of each **new month**. Checks should be made payable to the City of Oceanside and delivered to the CITY at the address set forth in Section 6.04 of this Agreement. The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to PERMITTEE. PERMITTEE assumes all risk of loss and responsibility for late payment charges.

**CITY OF OCEANSIDE PROPERTY USE AGREEMENT
WITH CALIFORNIA CAREER SCHOOL
FOR USE OF CITY OWNED PROPERTY AT
OCEANSIDE MUNICIPAL AIRPORT**

3.02 Property Use Payment. PERMITTEE agrees to pay CITY, on or before the first day of each month, the sum of **\$1,000.00 per month** for its use and occupation of the PREMISES in accordance with the terms, covenants, conditions and provisions of this Property Use Agreement. Conference Room use is limited to four hour per day and sixty hour per month.

In the event the Conference Room is used in excess of four hours per day PERMITTEE agrees to pay CITY an additional \$10.00 per hour charge. Charge shall be due beginning with the 16th minute of the first additional hour and any part thereof and the first minute and any part thereof for any subsequent hour(s).

3.03 Delinquent Payment. If PERMITTEE fails to pay any payment when due, PERMITTEE shall pay in addition to the unpaid payments, five percent (5%) of the delinquent payment. If the payment is still unpaid at the end of fifteen (15) days, PERMITTEE shall pay an additional five percent (5%) [for a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from payment delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

3.04 Utilities. Utilities are included in the property use payment total. PERMITTEE does not require additional utilities at the PREMISES and agrees that CITY has no obligation to order, obtain, and provide for any additional utilities and service in connection with the use, occupation and operation of the PREMISES by PERMITTEE.

SECTION 4: RECORDS

4.01 Inspection of Records. PERMITTEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times, so that CITY can determine PERMITTEE'S compliance with this Agreement. These records and accounts shall be made available by PERMITTEE at the PREMISES and shall be complete and accurate showing all income and receipts from use of the PREMISES. PERMITTEE'S failure to keep and maintain such records and make them available for inspection by CITY shall be deemed a default of this Agreement. PERMITTEE shall maintain all such records and accounts for a minimum period of five (5) years.

CITY OF OCEANSIDE PROPERTY USE AGREEMENT
WITH CALIFORNIA CAREER SCHOOL
FOR USE OF CITY OWNED PROPERTY AT
OCEANSIDE MUNICIPAL AIRPORT

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. PERMITTEE shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the PERMITTEE or its employees, agents, or others in connection with its use and occupation of the PREMISES under this Agreement, except only for those claims arising from the sole negligence or sole willful misconduct of the CITY, its officers, agents, or employees. PERMITTEE'S indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the CITY, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, PERMITTEE at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees.

5.02 Insurance. PERMITTEE shall take out and maintain at all times during the term of this Agreement the following insurance at its sole expense:

- a. PERMITTEE shall maintain the following minimum limits:

<u>General Liability</u>	
Combined Single Limit Per Occurrence	\$1,000,000
General Aggregate	\$1,500,000

b. All insurance companies affording coverage to the PERMITTEE shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Agreement.

c. All insurance companies affording coverage to the PERMITTEE shall be insurance organizations acceptable to the CITY, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide **thirty (30) days** written notice to the City of Oceanside should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

CITY OF OCEANSIDE PROPERTY USE AGREEMENT
WITH CALIFORNIA CAREER SCHOOL
FOR USE OF CITY OWNED PROPERTY AT
OCEANSIDE MUNICIPAL AIRPORT

e. PERMITTEE shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

f. PERMITTEE shall provide a substitute certificate of insurance no later than **thirty (30) days** prior to the policy expiration date. Failure by the PERMITTEE to provide such a substitution and extend the policy expiration date shall be considered a default by PERMITTEE and may subject the PERMITTEE to a termination of this Agreement.

g. Maintenance of insurance by the PERMITTEE as specified in this Agreement shall in no way be interpreted as relieving the PERMITTEE of any responsibility whatever and the PERMITTEE may carry, at its own expense, such additional insurance as it deems necessary.

h. If PERMITTEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. PERMITTEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within **thirty (30) days** of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by PERMITTEE on the **first (1st) day** of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by PERMITTEE to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement.

i. CITY, at its discretion, may require the revision of amounts and coverage at any time during the term of this Agreement by giving PERMITTEE **sixty (60) days** prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the PREMISES. PERMITTEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Agreement.

CITY OF OCEANSIDE PROPERTY USE AGREEMENT
WITH CALIFORNIA CAREER SCHOOL
FOR USE OF CITY OWNED PROPERTY AT
OCEANSIDE MUNICIPAL AIRPORT

5.03 Accident Reports. PERMITTEE shall, within **seventy-two (72) hours** after occurrence, report to CITY any accident causing property damage or any serious injury to persons on the PREMISES. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

SECTION 6: GENERAL PROVISIONS

6.01 Maintenance. With respects to PERMITTEE'S operations at or on the PREMISES, each day the PERMITTEE shall leave the PREMISES in a decent, safe, healthy, and sanitary condition equal to or better than the condition PERMITTEE receives the PREMISES in each day. PERMITTEE shall make all repairs and replacements necessary to maintain and preserve the PREMISES in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws.

In the event that the PREMISES are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, upon verbal notice to PERMITTEE, to have any necessary maintenance work done at the expense of PERMITTEE, and PERMITTEE shall promptly pay any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said PREMISES in a decent, safe, healthy, and sanitary condition. PERMITTEE shall make payment no later than **thirty (30) days** after written notice from the CITY. Further, if at any time CITY determines that said PREMISES are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, upon written notice, require PERMITTEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. PERMITTEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Agreement imposed on CITY.

6.02 Sign. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the PREMISES, PERMITTEE shall remove the item at its expense within **twenty-four (24)** hours of written notice thereof by CITY, or CITY may thereupon remove the item at PERMITTEE'S cost.

**CITY OF OCEANSIDE PROPERTY USE AGREEMENT
WITH CALIFORNIA CAREER SCHOOL
FOR USE OF CITY OWNED PROPERTY AT
OCEANSIDE MUNICIPAL AIRPORT**

6.03 Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the PREMISES, including, any structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE or levied by reason of the business or other PERMITTEE activities related to the PREMISES, including any licenses or permits.

PERMITTEE recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on such interest, and that PERMITTEE shall pay all such possessory interest taxes.

6.04 Notices. All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To CITY:

**City of Oceanside
Oceanside Municipal Airport
480 Airport Road
Oceanside, CA 92054**

To PERMITTEE:

**California Career School
1100 Technology Circle
Anaheim, CA 92805-6329
(714) 635-6585**

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

CITY OF OCEANSIDE PROPERTY USE AGREEMENT
WITH CALIFORNIA CAREER SCHOOL
FOR USE OF CITY OWNED PROPERTY AT
OCEANSIDE MUNICIPAL AIRPORT

6.05 City Approval. The City Manager shall be the CITY'S authorized representative in the interpretation and enforcement of all services performed in connection with this Agreement. The City Manager may delegate authority in connection with this Agreement to the City Manager's designee(s). For the purposes of directing PERMITTEE in accordance with this Agreement, which does not result in a change to this Agreement, the City Manager delegates authority to the General Services Manager of the Public Works Department.

6.06 Entire Agreement. This Agreement comprises the entire integrated understanding between CITY and PERMITTEE concerning the use of the PREMISES and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the PREMISES, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself.

The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The PERMITTEE shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein, including, but not limited to, all Federal Aviation Agency rules and regulations.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

6.07 Agreement Modification. This Agreement may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

6.08 Assignment and Subletting-No Encumbrance. This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the PERMITTEE'S duties be delegated, without the express written consent of CITY. Any attempt to assign or delegate this Agreement without the express written consent of

CITY OF OCEANSIDE PROPERTY USE AGREEMENT
WITH CALIFORNIA CAREER SCHOOL
FOR USE OF CITY OWNED PROPERTY AT
OCEANSIDE MUNICIPAL AIRPORT

CITY shall be void and of no force or effect. The consent by CITY to one assignment, transfer, sublease, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, sublease, or delegation.

6.09 Defaults and Termination. If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within **ten (10) days** of the notice.

If the defaulting party is actually in default of this Agreement and fails to cure the default within **ten (10) days** of the notice, or, if more than **ten (10) days** are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within **ten (10) days** of the notice, the demanding party may terminate this Agreement upon written notice to the defaulting party.

CITY may also terminate this Agreement upon written notice to PERMITTEE in the event that:

- PERMITTEE has previously been notified by CITY of PERMITTEE'S default under this Agreement and PERMITTEE, after beginning to cure the default, fails to diligently pursue the cure of the default to completion, or
- PERMITTEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or
- PERMITTEE shall be adjudicated a bankruptcy, or
- PERMITTEE shall make a general assignment for the benefit of creditors.

Upon termination, CITY may immediately enter and take possession of the PREMISES.

6.10 Other Regulations. All use of the PREMISES under this Agreement shall be in accordance with the laws of the United States of America, the State of California and in accordance with all applicable rules and regulations and ordinances of the City of Oceanside now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by State or Federal law.

**CITY OF OCEANSIDE PROPERTY USE AGREEMENT
WITH CALIFORNIA CAREER SCHOOL
FOR USE OF CITY OWNED PROPERTY AT
OCEANSIDE MUNICIPAL AIRPORT**

SECTION 7: SPECIAL PROVISIONS

7.01 Ancillary Uses and Services. No additional uses or services, other than those provided for under Section 1.02 of this Agreement shall be provided by PERMITTEE from or at the PREMISES. No retail food service operations shall be provided on or from the PREMISES.

7.02 Standards of Operation. PERMITTEE agrees that it shall operate and manage the services and facilities offered upon or from the PREMISES in a first class manner and comparable to other similar facilities within the San Diego County and Southern California areas which provide like products and services.

7.03 PERMITTEE'S Employees. PERMITTEE shall provide an experienced and qualified "on-site" supervisor to oversee all operations conducted by PERMITTEE on the PREMISES. PERMITTEE shall ensure that its employees shall at all times conduct themselves in a creditable manner, and they shall conform to all rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the CITY, provided that such rules, regulations and requirements are not in conflict with the terms of this Agreement. PERMITTEE shall maintain a staff in adequate size and number, to CITY'S reasonable satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the PREMISES.

7.04 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the PREMISES which are in any way explosive or hazardous, except that business materials used in the course of similar businesses that may be classified as hazardous may be kept in or on the PREMISES if such materials are stored and disposed of in accordance with all applicable laws; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said PREMISES, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon the demised PREMISES or other PREMISES and the improvements thereon; provided, however, that if anything done by PERMITTEE causes an increase in the rate of insurance on the PREMISES, PERMITTEE may, at its option, pay such increase and PERMITTEE shall not thereafter be considered in default under this Agreement.

CITY OF OCEANSIDE PROPERTY USE AGREEMENT
WITH CALIFORNIA CAREER SCHOOL
FOR USE OF CITY OWNED PROPERTY AT
OCEANSIDE MUNICIPAL AIRPORT

No machinery or apparatus shall be used or operated on or about the PREMISES which will in any way injure the PREMISES or improvements thereon, or adjacent or other PREMISES, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude PERMITTEE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame welding or burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the CITY.

7.05 Merchandise and Equipment. CITY retains the right to require the PERMITTEE to discontinue the sale or use of those items that are of a quality unacceptable to the CITY.

7.06 Use and Occupancy Limitations. PERMITTEE shall be permitted to use the Conference room for up to sixty hours a month and have unlimited joint use of the rear office space. Any additional Conference Room use must be scheduled through the CITY and paid for on a hourly basis per paragraph **3.02 Property Use Payment.** Further, PERMITTEE **shall not be allowed to stage and/or operate trucks on the PREMISES at any time.** PERMITTEE covenants and agrees to, and it is the intent of this Agreement that the PERMITTEE shall, continuously and uninterruptedly during the term of the Agreement, use the PREMISES for the purposes hereinabove specified, except while PREMISES are untenable by reason of fire, flood, or other unavoidable casualty, and, in that event, CITY shall be promptly notified by PERMITTEE.

7.07 Community Use of the PREMISES. PERMITTEE acknowledges that the paramount use of PREMISES is for public services and civic activities. The CITY reserves the right to schedule and use the PREMISES for community events and other CITY sponsored activities. CITY agrees to coordinate such use of the PREMISES with PERMITTEE so as not to conflict with PERMITTEE'S activities.

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CITY OF OCEANSIDE PROPERTY USE AGREEMENT
WITH CALIFORNIA CAREER SCHOOL
FOR USE OF CITY OWNED PROPERTY AT
OCEANSIDE MUNICIPAL AIRPORT

SECTION 8: SIGNATURES

8.01 Signature Page. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the PERMITTEE and the CITY.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Use Agreement to be executed by setting hereunto their signatures on the day and year respectively written above.

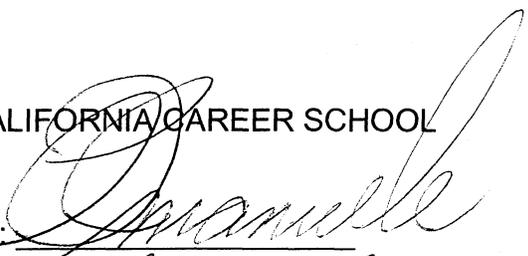
THE CITY OF OCEANSIDE

APPROVED AS TO FORM:

By _____
City Manager

By: 
City Attorney

CALIFORNIA CAREER SCHOOL

By: 
Name: A. CHARLES EMANUEL
Title: PRESIDENT

NOTARY ACKNOWLEDGMENTS OF PERMITTEE'S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

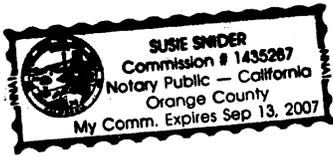
County of Orange } ss.

On 9-12-2007, before me, Susie Snider
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Chuck (A. Charles) Emanuele
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Susie Snider

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement / city of Oceanside

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here