

Council/Agency Meeting Held: _____	City Clerk's Signature _____
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: December 6, 2004	Department ID Number: ED 04-32

**CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL ACTION**

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBMITTED BY: *Penelope Culbreth Graft*
PENELOPE CULBRETH-GRAFT, City Administrator

PREPARED BY: DAVID BIGGS, Director of Economic Development
JIM B. ENGLE, Director of Community Services *JBE*

SUBJECT: APPROVE LICENSE RENEWAL AGREEMENT WITH SOUTHERN CALIFORNIA EDISON FOR GISLER PARK

2004 NOV 18 PM 12:11
 CITY CLERK
 HUNTINGTON BEACH, CA

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

Statement of Issue: The proposed renewal of a five-year site License Agreement with Southern California Edison (SCE) for parks and recreation purposes. The License Agreement for the subject property known as Gisler Park formally expired on June 30, 2004. SCE has prepared a new five-year License Agreement for the City's use of this property.

Funding Source: The annual payment of \$2,100 is budgeted in the Park Acquisition and Development Fund Account No. 20945101.70300.

Recommended Action: Motion to:

1. Approve the License Agreement with SCE for the use of the property known as Gisler Park, and authorize the Mayor and the City Clerk to execute any and all documents necessary to conclude this transaction.

Alternative Action(s): Do not approve the License Agreement with SCE and discontinue the use of this property as parkland.

Analysis: The City of Huntington Beach entered into a License Agreement with SCE in July 6, 1999, for the use of their property located on the east side of Bushard and north of Hamilton. The original License Agreement was for a five-year term. It has been renewed for successive five-year terms since that time. The most recent agreement expired on June 30, 2004.

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REQUEST FOR ACTION

MEETING DATE: December 6, 2004

DEPARTMENT ID NUMBER: ED 04-32

The proposed License Agreement would commence July 1, 2004 and expire June 30, 2009. In exchange for the use of the property, the City would pay an annual license fee of \$2,100 to SCE. All other terms of the proposed License Agreement remain virtually unchanged from previous agreements.

Environmental Status: N/A

Attachment(s):

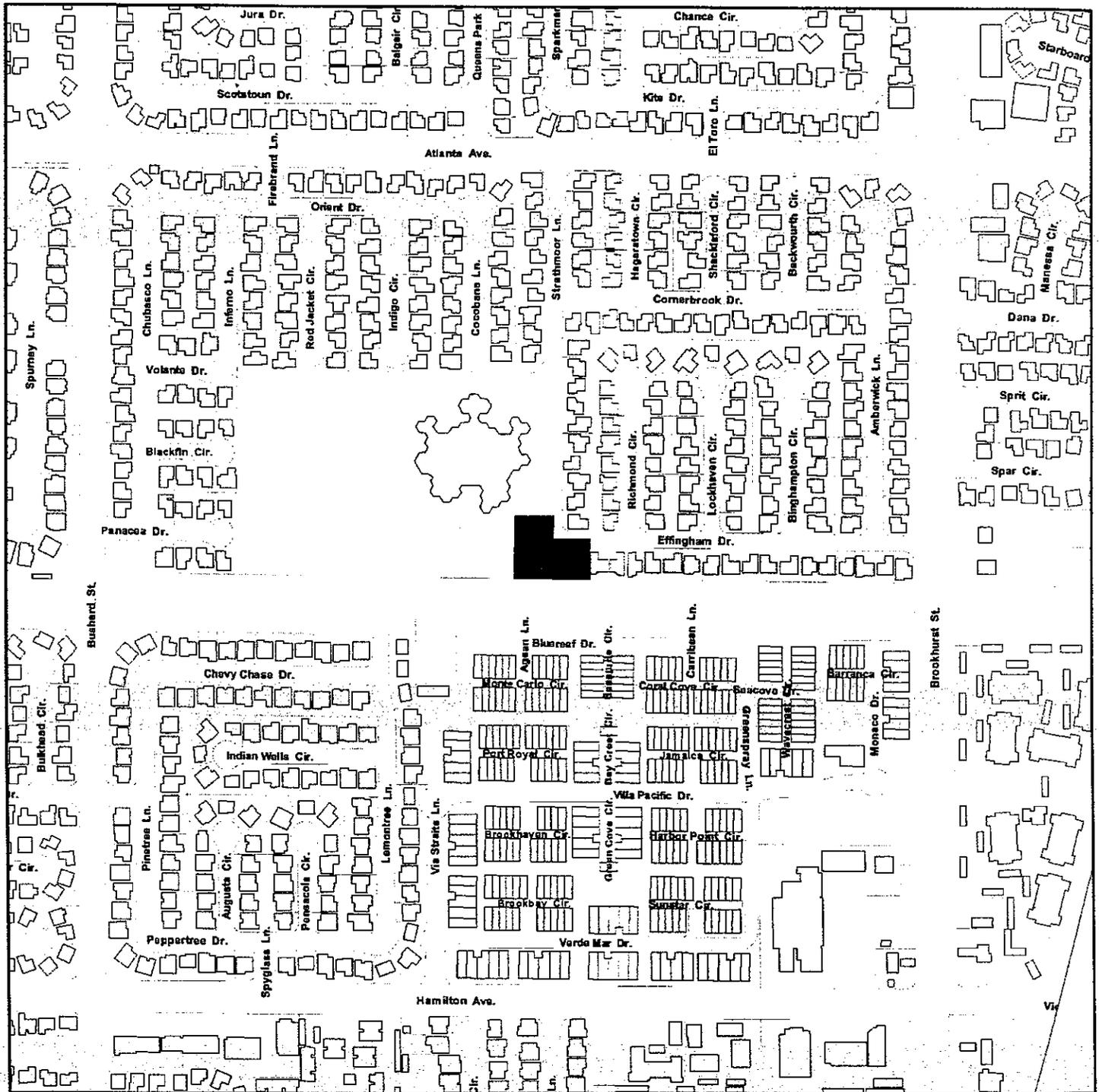
City Clerk's Page Number	No.	Description
3	1	Map of Gisler Park.
5	2	Proposed License Agreement with Southern California Edison.

RCA Author: Mike Hennessey x 5445

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ATTACHMENT #1

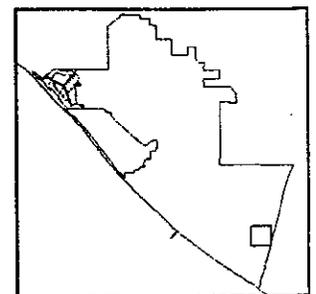


GISLER PARK

City of Huntington Beach

 Scale: 1" = 473'

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Location Map

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ATTACHMENT #2

CITY OF HUNTINGTON BEACH

Property No. POHBE888D22
Account No. 2152

L I C E N S E A G R E E M E N T

I N D E X

1. USE
2. TERM
3. CONSIDERATION
4. INSURANCE
5. LICENSOR'S USE OF THE PROPERTY
6. LICENSEE'S IMPROVEMENTS
7. LICENSEE'S PERSONAL PROPERTY
8. HEIGHT LIMITATIONS
9. ACCESS AND CLEARANCES
10. PARKING
11. FLAMMABLES, WASTE AND NUISANCES
12. PESTICIDES AND HERBICIDES
13. HAZARDOUS WASTE
14. SIGNS
15. FENCING
16. PARKWAYS AND LANDSCAPING
17. IRRIGATION EQUIPMENT
18. UNDERGROUND TANKS
19. UNDERGROUND FACILITIES
20. UTILITIES
21. TAXES, ASSESSMENTS AND LIENS
22. EXPENSE
23. ASSIGNMENTS
24. COMPLIANCE WITH LAW
25. GOVERNING LAW
26. INDEMNIFICATION
27. TERMINATION
28. EVENTS OF DEFAULT
29. REMEDIES
30. NON-POSSESSORY INTEREST
31. WAIVER
32. AUTHORITY
33. ATTORNEY FEES
34. ELECTRIC AND MAGNETIC FIELDS
35. NOTICES
36. RECORDING
37. COMPLETE AGREEMENT

ADDENDUM

PARK USE

File Copy

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LICENSE AGREEMENT

THIS AGREEMENT, made as of the _____ day of _____, 2004, between SOUTHERN CALIFORNIA EDISON COMPANY (SCE), a corporation organized under the laws of the State of California, hereinafter called "Licensor"; and CITY OF HUNTINGTON BEACH hereinafter called "Licensee";

WITNESSETH: That Licensor, for and in consideration of the faithful performance by Licensee of the terms, covenants and agreements hereinafter set forth to be kept and performed by Licensee, does hereby give to Licensee the license to use that certain real property described below and depicted on Exhibit "A" attached hereto and made a part hereof the ("Property") solely for the purpose hereinafter specified, upon and subject to the terms, reservations, covenants and conditions hereinafter set forth.

The subject Property is located in the City of Huntington Beach, County of Orange, State of California.

SUBJECT TO:

Covenants, conditions, restrictions, reservations, exceptions, rights and easements, whether or not of record.

1. Use: Licensee will use the Property for parks and/or public recreation purposes only. Licensor makes no representation, covenant, warranty or promise that the Property is fit for any particular use, including the use for which this Agreement is made and Licensee is not relying on any such representation, covenant, warranty or promise. Licensee's failure to make such use of the Property as determined by the Licensor in its sole discretion, will be grounds for immediate termination of this Agreement in accordance with Article 28.

2. Term: Unless otherwise terminated as provided herein, this Agreement will be in effect for a term of five (5) years commencing on the first day of July, 2004 and ending on the last day of July, 2009. Licensee acknowledges that this Agreement does not entitle Licensee to any subsequent agreement, for any reason whatsoever, regardless of the use Licensee makes of the Property, the improvements Licensee places on or makes to the Property, or for any other reason.

3. Consideration: Licensee will pay to Licensor the sum of Two Thousand One Hundred and 00/100 Dollars (\$2,100.00) upon the execution and delivery of this Agreement for the first year;

Term	Year Due	Yearly Amount	Payment Due First Day Of
First Year	2004	2,100.00	July
Second Year	2005	2,100.00	July
Third Year	2006	2,100.00	July
Fourth Year	2007	2,100.00	July
Fifth Year	2008	2,100.00	July

All payments subsequent to the initial payment will be paid to the Southern California Edison Company, Post Office Box 800, Rosemead, California, 91770, Attention: Corporate Accounting Department - Accounts Receivable.

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All accounts not paid within 30 days of the agreed upon due date will be charged a late fee on all amounts outstanding.

4. Liability Insurance: During the term of this Agreement Licensee will insure its liabilities which may result from its activities hereunder by the purchase of a liability insurance policy with a Combined Single Limit of not less than Two Million and 00/100 Dollars (\$2,000,000.00) and will include Licensor as an additional insured, or Licensee will provide Licensor a certificate of self insurance.

5. Licensor's Use of the Property: Licensee agrees that Licensor, its successors and assigns, have the right to enter upon the Property, at any time, for any purpose, and the right to conduct any activity on the Property. Exercise of these rights by Licensor, its successors and assigns, will not result in compensation to Licensee for any damages whatsoever to personal property and/or crops located on the Property.

6. Licensee's Improvements: Licensee must submit, for Licensor's prior written approval, complete improvement plans, including grading plans, identifying all existing and proposed improvements, a minimum of sixty (60) days prior to making any use of the Property. Licensee must submit, for Licensor's prior written approval plans for any modifications to such improvements. Written approval may be modified and/or rescinded by Licensor for any reason whatsoever. At any time, Licensee may be required to modify and/or remove any or all such previously approved improvements at Licensee's risk and expense and without any compensation from Licensor. Licensor is not required, at any time, to make any improvements, alterations, changes or additions of any nature whatsoever to the Property. Licensee expressly acknowledges that any expenditures or improvements will in no way alter Licensor's right to terminate in accordance with Article 27.

7. Licensee's Personal Property: All approved equipment and other property brought, placed or erected on the Property by Licensee shall be and remain the Property of Licensee, except as otherwise set forth herein. If Licensee is not in default hereunder, Licensee shall have the right to remove the same from the Property at any time prior to the expiration or earlier termination of this Agreement; provided, however, that Licensee shall promptly restore any damage to the Property caused by the removal. If Licensee is in default, however, such equipment or other property shall not be removed by Licensee without Licensor's written consent until Licensee has cured such default, and Licensor shall have a lien thereon to the extent thereof.

8. Height Limitations: Any equipment used by Licensee or its agents, employees or contractors, on and/or adjacent to the Property, will be used and operated so as to maintain a minimum clearance of twenty-five (25) feet from all overhead electrical conductors.

All trees and plants on the Property will be maintained by Licensee at a maximum height of fifteen (15) feet. If requested by Licensor, Licensee will remove any tree and/or other planting.

9. Access and Clearances: Licensee will provide Licensor with adequate access to all of Licensor's facilities on the Property and at no time will there be any interference with the free movement of Licensor's equipment and materials over the Property. Licensor may require Licensee to provide and maintain access roads within the Property, at a minimum usable width of sixteen (16) feet, together with commercial driveway aprons and curb depressions capable of supporting a gross load of forty (40) tons on a three-axle vehicle. The minimum width of all roads shall be increased on curves by a distance equal to 400/inside radius of curvature. All curves shall have a radius of not less than 50 feet measured at the inside edge of the usable road surface. Unless otherwise specified in writing by Licensor, Licensee will make no use of the area directly underneath Licensor's towers and will maintain the following minimum clearances at all times:

- a. A 25-foot-radius around all tower legs.

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- b. A 10-foot-radius around all steel and wood poles.

NOTE: Additional clearance shall be required for structures and other material improvements.

10. Parking: Licensee will not park, store, repair or refuel any motor vehicles or allow parking, storage, repairing or refueling of any motor vehicles on the Property unless specifically approved in writing by Licensor.

11. Flammables, Waste and Nuisances: Licensee will not, nor allow others to, place or store any flammable or waste materials on the Property or commit any waste or damage to the Property or allow any to be done. Licensee will keep the Property clean, free from weeds, rubbish and debris, and in a condition satisfactory to Licensor. Licensee will be responsible for the control of and will be liable for any damage or disturbance, caused by dust, odor, flammable or waste materials, noise or other nuisance disturbances. Licensee will not permit dogs on the Property.

12. Pesticides and Herbicides: Any pesticide or herbicide applications and disposals will be made in accordance with all federal, state, county and local laws. All horticulture Licensees are required to provide a copy of the annual License for Pest Exclusion/Nursery Program from the State of California, Department of Food and Agriculture. Licensee will dispose of all pesticides, herbicides and any other toxic substances declared to be either a health or environmental hazard as well as all materials contaminated by such substances, including but not limited to, containers, clothing and equipment in the manner prescribed by law.

13. Hazardous Waste: Licensee will not engage in, or permit any other party to engage in, any activity on the Property that violates federal, state or local laws, rules or regulations pertaining to hazardous, toxic or infectious materials and/or waste. Licensee will indemnify and hold Licensor, its directors, officers, agents and employees, and its successors and assigns, harmless from any and all claims, loss, damage, actions, causes of action, expenses and/or liability arising from leaks of, spills of, and/or contamination by or from hazardous materials as defined by applicable laws or regulations, which may occur during and after the Agreement term, and are attributable to the actions of, or failure to act by, Licensee or any person claiming under Licensee.

14. Signs: Licensee must obtain written approval from Licensor prior to the construction or placement of any sign, signboard or other form of outdoor advertising.

15. Fencing: Licensee may install fencing on the Property with prior written approval from Licensor. Such fencing will include double drive gates, a minimum of sixteen (16) feet in width, designed to accommodate Licensor's locks, in locations specified by Licensor. Licensee will ground and maintain all fencing.

16. Parkways and Landscaping: Licensee will keep parkway and sidewalk areas adjacent to the Property free of weeds and trash. Licensee will maintain parkways and provide landscaping that is compatible with adjoining properties and that is satisfactory to Licensor.

17. Irrigation Equipment: Any irrigation equipment located on the Property prior to the commencement of this Agreement, including but not limited to pipelines, well pumping equipment and other structures, is the property of Licensor and will remain on and be surrendered with the Property upon termination of this Agreement. Licensee will maintain, operate, repair and replace, if necessary, all irrigation equipment at its own expense.

18. Underground Tanks: Licensee will not install underground or above-ground storage tanks, as defined by any and all applicable laws or regulations, without Licensor's prior written approval.

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19. Underground Facilities: Any underground facilities installed or maintained by Licensee on the Property must have a minimum cover of three feet from the top of the facility and be capable of withstanding a gross load of forty (40) tons on a three-axle vehicle. Licensee will compact any earth to a compaction of ninety percent (90%). Licensee will relocate its facilities at its own expense so as not to interfere with Licensor's proposed facilities.

20. Utilities: Licensee will pay all charges and assessments for, or in connection with, water, electric current or other utilities which may be furnished to or used on the Property.

21. Taxes, Assessments and Liens: Licensee will pay all taxes and assessments which may be levied upon any crops, personal property, and improvements, including but not limited to, buildings, structures, and fixtures on the Property. Licensee will keep the Property free from all liens, including but not limited to, mechanics liens and encumbrances by reason of use or occupancy by Licensee, or any person claiming under Licensee. If Licensee fails to pay the above-mentioned taxes, assessments or liens when due, Licensor will have the right to pay the same and charge the amount to the Licensee. All accounts not paid within 30 days of the agreed upon due date will be charged a "late fee" on all amounts outstanding up to the maximum rate allowed by law.

22. Expense: Licensee will perform and pay all obligations of Licensee under this Agreement. All matters or things herein required on the part of Licensee will be performed and paid for at the sole cost and expense of Licensee, without obligation on the part of Licensor to make payment or incur cost or expense for any such matters or things.

23. Assignments: This Agreement is personal to Licensee, and Licensee will not assign, transfer or sell this Agreement or any privilege hereunder in whole or in part, and any attempt to do so will be void and confer no right on any third party.

24. Compliance with Law: Licensee will comply with all applicable federal, state, county and local laws, all covenants, conditions and restrictions of record and all applicable ordinances, zoning restrictions, rules, regulations, orders and any requirements of any duly constituted public authorities now or hereafter in any manner affecting the Property or the streets and ways adjacent thereto. Licensee will obtain all permits and other governmental approvals required in connection with Licensee's activities hereunder.

25. Governing Law: The existence, validity, construction, operation and effect of this Agreement and all of its terms and provisions will be determined in accordance with the laws of the State of California.

26. Indemnification - City of Huntington Beach - Park Use: City hereby agrees to protect, defend, indemnify and hold harmless SCE, its officers and employees, against any and all liability, claims, judgment costs and demands, including those resulting from death or injury to persons and damage to SCE's property, arising directly or indirectly out of the use of the Property by the City and the public. This indemnification does not include any liability, claims, judgment, costs and demands which 1) arise out of the negligence or willful misconduct of SCE or 2) which does not arise out of the City's or the public's use of the property as a park.

27. Termination: This Agreement may be canceled and terminated by either Licensor or Licensee, at any time, upon thirty (30) days notice in writing. Licensee will peaceably quit, surrender and, prior to termination date, restore the Property to a condition satisfactory to the Licensor. Termination, cancellation or expiration does not release Licensee from any liability or obligation (indemnity or otherwise) which Licensee may have incurred. Licensee's continued presence after termination shall be deemed a trespass.

28. Events of Default: The occurrence of any of the following shall constitute a material default and breach of this Agreement by Licensee:

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- (a) Any failure by Licensee to pay the consideration due in accordance with Article 3, or to make any other payment required to be made by Licensee hereunder when due.
- (b) The abandonment or vacating of the Property by Licensee.
- (c) Any attempted assignment or subletting of this Agreement by Licensee in violation of Article 23.
- (d) The violation by Licensee of any resolution, ordinance, statute, code, regulation or other rule of any governmental agency in connection with Licensee's activities pursuant to this Agreement.
- (e) A failure by Licensee to observe and perform any other provision of this Agreement to be observed or performed by Licensee, where such failure continues for the time period specified in a written notice thereof by Licensor to Licensee.
- (f) Any attempt to exclude Licensor from the licensed premises.
- (g) The making by Licensee of any general assignment for the benefit of creditors; the appointment of a receiver to take possession of substantially all of Licensee's assets located on the Property or of Licensee's privileges hereunder where possession is not restored to Licensee within five (5) days; the attachment, execution or other judicial seizure of substantially all of Licensee's assets located on the Property or of Licensee's privileges hereunder, where such seizure is not discharged within five (5) days.
- (h) Any case, proceeding or other action brought against Licensee seeking any of the relief mentioned in "clause g" of this Article which has not been stayed or dismissed within thirty (30) days after the commencement thereof.

29. Remedies: In the event of any default by Licensee, then in addition to any other remedies available to Licensor at law or in equity, Licensor shall have the immediate option to terminate this Agreement and all rights of Licensee hereunder by giving written notice of termination to Licensee. Upon termination, Licensor will have the right to remove Licensee's personal property from the Property, including but not limited to, buildings, structures and fixtures. In addition, Licensor may immediately recover from Licensee all amounts due and owing hereunder, plus interest at the maximum rate permitted by law on such amounts until paid, as well as any other amount necessary to compensate Licensor for all the detriment proximately caused by Licensee's failure to perform its obligations under this Agreement.

30. Non-Possessory Interest: Licensor retains full possession of the Property and Licensee will not acquire any interest temporary, permanent, irrevocable, possessory or otherwise by reason of this Agreement, or by the exercise of the permission given herein. Licensee will make no claim to any such interest. Any violation of this provision will immediately void and terminate this Agreement.

31. Waiver: No waiver by Licensor of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Licensee of the same or any other provision. Licensor's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Licensor's consent to or approval of any subsequent act by Licensee.

32. Authority: This Agreement is pursuant to the authority of and upon, and is subject to the conditions prescribed by General Order No. 69-C of the Public Utilities Commission of the State of California dated and effective July 10, 1985, which General Order No. 69-C, by this reference, is hereby incorporated herein and made a part hereof.

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33. Attorneys' Fees: In the event of any action, suit or proceeding against the other, related to this Agreement, or any of the matters contained herein, the successful party in such action, suit or proceeding shall be entitled to recover from the other party reasonable attorney fees incurred.

34. Electric and Magnetic Fields ("EMF"): There are numerous sources of power frequency electric and magnetic field ("EMF"), including household or building wiring, electrical appliances and electric power transmission and distribution facilities. There have been numerous scientific studies about the potential health effects of EMF. Interest in a potential link between long-term exposures to EMF and certain diseases is based on the combination of this scientific research and public concerns.

While some 30 years of research have not established EMF as a health hazard, some health authorities have identified magnetic field exposures as a possible human carcinogen. Many of the questions about specific diseases have been successfully resolved due to an aggressive international research program. However, potentially important public health questions remain about whether there is a link between EMF exposures in homes or work and some diseases including childhood leukemia and a variety of other adult diseases (e.g. adult cancers and miscarriages). While scientific research is continuing on a wide range of questions relating to exposures at both work and in our communities, a quick resolution of the remaining scientific uncertainties is not expected.

Since Licensee plans to license or otherwise enter SCE's property that is in close proximity to SCE's electric facilities, SCE wants to share with Licensee and those who may enter the property under this agreement, the information available about EMF. Accordingly, SCE has attached to this document, a brochure that explains some basic facts about EMF and that describes SCE's policy on EMF. SCE also encourages you to obtain other information as needed to assist you in understanding the EMF respect to your planned use of this property.

35. Notices: All notices required to be given by either party will be made in writing and deposited in the United States mail, first class, postage prepaid, addressed as follows:

To Licensor: Southern California Edison Company
Corporate Real Estate Department
Real Estate Operations Division
14799 Chestnut Street
Westminster, CA 92683

To Licensee: City of Huntington Beach
P.O. Box 190
Huntington Beach, CA 92648

Business Telephone No. (714) 536-6551

Licensee will immediately notify Licensor of any address change.

36. Recording: Licensee will not record this Agreement.

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37. Complete Agreement: Licensor and Licensee acknowledge that the foregoing provisions and any addenda and exhibits attached hereto constitute the entire Agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year herein first above written.

SOUTHERN CALIFORNIA EDISON COMPANY

By *Alice Likely* LICENSOR

ALICE LIKELY
Right of Way Agent
Real Estate Operations
Corporate Real Estate Department

CITY OF HUNTINGTON BEACH

By _____
Mayor LICENSEE

City Clerk

Print Name: _____

REVIEWED AND APPROVED:

bs *Linda Cullinetti*
City Administrator

APPROVED AS TO FORM
JENNIFER McGRATH, City Attorney

Leonie Mulvihill
By Leonie Mulvihill 8/9/04
Deputy City Attorney

INITIATED AND APPROVED:

David C. ...
Director of Economic Development

E-3.13

ADDENDUM

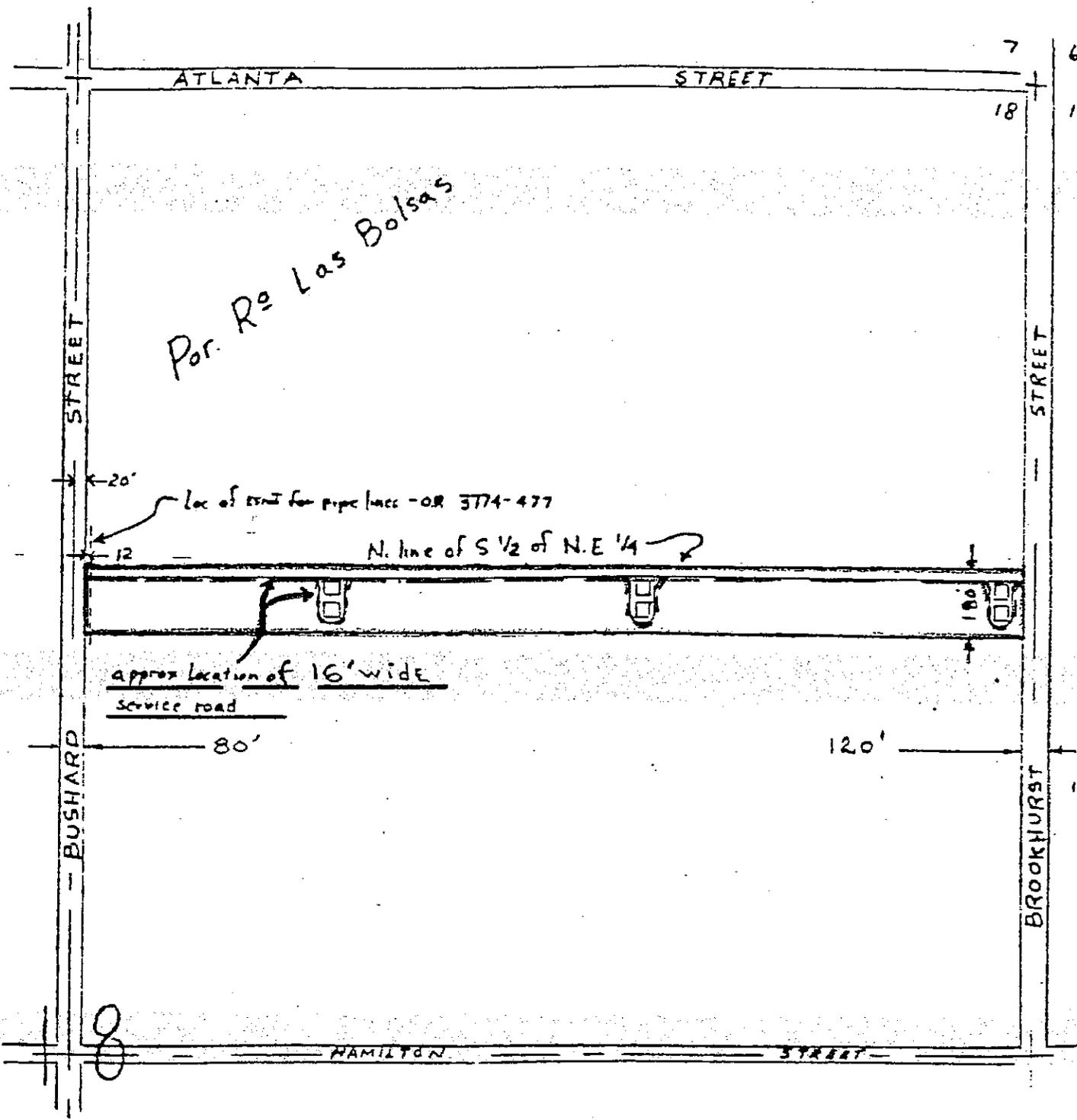
PARK USE

- A. Licensee must obtain the prior written approval from Licensor for the installation of any facilities, including any subsequent modifications. Licensee will maintain all facilities in a safe condition satisfactory to Licensor.
- B. At any time, Licensor may require the relocation of any portion of the facilities. Licensee will relocate same, at its expense, to a location satisfactory to Licensor within sixty (60) days after receiving notice to relocate from Licensor.
- C. At Licensee's expense, Licensee will post signs at all access points to the Property that read: "No Kite Flying, Model Airplanes or Metallic Balloons Permitted, High Voltage Wires Overhead."
- D. At Licensee's expense, Licensee will post signs at all access points of the Property that read: "No Motorcycles, Motorbikes, Horseback Riding or Hunting Permitted."
- E. Licensee must close the park at any time Licensor deems it necessary for the safety of the general public. If it is necessary to close the park for a period of more than three days, Licensee will notify the general public of the closure by posting at all access points to the property.
- F. At Licensee's expense, Licensee will install removable post-type barriers designed to accommodate Licensor's locks, to prevent unauthorized vehicular use or parking, including but not limited to, motorcycles, off-road vehicles, and "all-terrain" vehicles.
- G. At Licensee's expense, Licensee will provide fencing or trespass discouragers on Licensor's towers.
- H. Licensee must design and construct all walkways, underground sprinkler systems, lighting facilities, and drains to be capable of withstanding a gross load of forty (40) tons on a three-axle vehicle.

Licensee's Initials



E-3.14



T 6 S. R 10 W.
S B B & M.

□ - S.C.E. Co towers

Acct. 2152
Prop. No. POHBES88D2

HUNTINGTON BEACH-ELLIS T/L R/W

LICENSE SHOWING LAND DESCRIBED AS A PARK LICENSE TO THE CITY OF HUNTINGTON BEACH, ORANGE CO

-SER. 33751A-

E-3.15

T-33751A

