

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:                      2/7/05	Department ID Number:              CS05-001

**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:** JIM B. ENGLE, DIRECTOR, COMMUNITY SERVICES  
**SUBJECT:** APPROVE MOU WITH FRIENDS OF JUNIOR LIFEGUARDS

RECEIVED  
CITY CLERK  
CITY OF  
HUNTINGTON BEACH, CA  
2005 JAN 26 A 9:03 AM

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

**Statement of Issue:** The Friends of Junior Lifeguards (FJL) have been working to raise funds and solicit donations to provide interior furnishings and equipment for the new Junior Lifeguard building. City has drafted a Memorandum of Understanding (MOU) to formalize the responsibilities of the FJL and city, which needs Council approval.

**Funding Source:** NA; FJL is seeking to furnish the new Junior Lifeguard building

**Recommended Action: Motion to:**

Approve the Memorandum of Understanding between the City of Huntington Beach and Friends of the Junior Lifeguards, and authorize the Mayor and City Clerk to execute the MOU.

**Alternative Action(s):**

1. Do not approve the Memorandum of Understanding with the Friends of Junior Lifeguards; or
2. Recommend changes in the terms of the MOU and direct staff to take back to the FJL.

*(Continued on next page)*

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## REQUEST FOR ACTION

MEETING DATE: 2/7/05

DEPARTMENT ID NUMBER:CS05-001

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**Analysis:** In May 2001, community supporters of the city's Junior Guard Program formed to establish themselves as an official, nonprofit organization known as the Friends of Junior Lifeguards (FJL), whose sole purpose is to support the Junior Guard Program for the benefit of the youth of Huntington Beach and surrounding communities. The Junior Guard Program is specifically designed to provide participants with the opportunity to learn ocean safety, surf lifesaving techniques, first aid, marine ecology, and oceanography in a context that is both physical and disciplined fostering self-confidence and respect for others. The FJL has been raising funds through donations and fundraisers to equip the new building. This includes office furniture for staff, lockers for instructors and participants, educational audio/visual equipment, office equipment, educational marine safety equipment, general use furniture, and surf equipment. The value of this furniture and equipment is at least \$150,000. The FJL is providing this furniture and equipment at no cost to the city. The city and the FJL wish to enter into a Memorandum of Understanding (MOU) to define the responsibilities of both parties.

The obligations of the city are as follows:

- ❖ Use furnishings and equipment provided by the FJL exclusively in the Junior Guard building or in conjunction with the Junior Guard Program, and not use or store in any other location; however, furnishings and equipment may be used by the city for any function sanctioned by the city and conducted within the Junior Guard building;
- ❖ All furnishings and equipment shall be owned by the city unless the FJL, by exception, specifically reserves ownership of a specific piece of equipment;
- ❖ Maintain and insure furnishings and equipment given to program in the same manner and to the same extent as similar city-owned property;
- ❖ Place labels, tags or similar markings on furniture and equipment to indicate they were donated by the FJL;
- ❖ Allow the FJL to use the Junior Guard building for monthly meetings and twice annual fundraising events without charge subject to the city's calendar or use.

The obligations of the FJL are as follows:

- ❖ Provide at no cost to city a substantial portion of the required furnishings necessary to make the Junior Guard building operational as home of the Junior Guard Program and for other intended educational purposes as part of the FJL support to the program;
- ❖ Select donated furniture and equipment subject to approval of the city's Community Services Director or his designee.

The term of the MOU will be for a period of five years. Upon mutual, written consent, the MOU can be extended for an additional five years. Community Services staff and Junior Guard Program participants appreciate the support of the FJL for the betterment of the program. City Attorney and Risk Manager have reviewed the workers comp and general liability issues and have approved a waiver of same due to nature of the MOU which is only to provide donations to the city. In addition, the FJL has no employees. Staff recommends approval of this MOU.

E-7.2

# REQUEST FOR ACTION

MEETING DATE: 2/7/05

DEPARTMENT ID NUMBER: CS05-001

Environmental Status: NA

Attachment(s):

City Clerk's Page Number	No.	Description
4 12	1.	Memorandum of Understanding with Friends of the Junior Lifeguards
	2.	Waiver of Insurance and Indemnification Modification Request

YALB...  
1/21  
2005

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**ATTACHMENT #1**

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF HUNTINGTON BEACH AND FRIENDS OF THE JUNIOR LIFEGUARDS**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California (hereinafter referred to as "CITY") and FRIENDS OF THE JUNIOR LIFEGUARDS, a California non-profit public benefit corporation (hereinafter referred to as "FRIENDS").

WHEREAS, FRIENDS, was organized for the sole purpose of supporting the Huntington Beach Junior Lifeguard Program (the "PROGRAM"), a summer youth program operated by the CITY for the benefit of the youth of Huntington Beach and surrounding communities designed to provide participants with the opportunity to learn ocean safety, surf lifesaving techniques, first aid, marine ecology and oceanography in a context that is both physical and disciplined fostering self-confidence and respect for others; and

CITY is completing construction of a building which has been officially designated by CITY as the "Marine Safety Educational Center - Home of the Junior Guards" (the "BUILDING") and which will serve as the operating home of the PROGRAM; and

The BUILDING will be equipped with, among other things, office furniture for staff, lockers for instructors and PROGRAM participants, educational audio/visual equipment, office equipment, educational marine safety equipment, general use furniture and surf equipment as more particularly described on the attached Exhibit A; and

FRIENDS is prepared to provide at no cost to CITY a substantial portion of the required furniture, fixtures and equipment necessary to make the BUILDING operational as the home of the PROGRAM and for other intended educational purposes as part of FRIENDS support of the PROGRAM;

FRIENDS and CITY desire to enter into an agreement to clarify the respective obligations of the CITY and FRIENDS,

NOW, THEREFORE, for and in consideration of the promises and covenants hereinafter contained and intending to be legally bound, the parties covenant and agree as follows:

1. TERM.

This MOU will become effective on the date it is approved by the City Council of the CITY and shall terminate five (5) years thereafter, except with respect to any obligations hereunder which are to be performed thereafter. Upon mutual written consent of the parties, this Agreement may be extended for additional five (5) year term.

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2. FURNITURE, FIXTURES AND EQUIPMENT

The furniture, fixtures and equipment being provided by FRIENDS (the "FF&E") shall be selected by FRIENDS subject to the approval of the CITY's Community Services Director or his designee. FRIENDS shall provide the FF&E free and clear of all liens and encumbrances. FRIENDS may acquire the FF&E from vendors chosen by FRIENDS wherever located. All of the FF&E shall be owned by CITY, except where FRIENDS may specifically reserve ownership. FRIENDS shall be allowed to place tags, labels or similar markings on the FF&E indicating that it was donated by, or is the property of, FRIENDS, as applicable. Except with respect to the FF&E owned by FRIENDS, CITY will insure the FF&E in the same manner and to the same extent as CITY insures similar property owned by CITY.

Except as may be approved by FRIENDS, the FF&E shall be used exclusively in the BUILDING or in connection with the PROGRAM and will not be used or permanently stored in any other location. However, the FF&E may be used for by CITY for any function sanctioned by the CITY and being conducted within the BUILDING. Further, FRIENDS shall be allowed to use the BUILDING monthly for its Board meetings and twice annually for fund raising events without charge subject to the CITY's calendar of use.

3. ACCESS TO CITY MARKS AND LOGOS

Upon the prior written approval of CITY, which approval shall be at the sole discretion of CITY'S Director of Community Services, FRIENDS shall have the right to use the official Huntington Beach City logo and CITY's "Surf City Huntington Beach" trademark.

4. HOLD HARMLESS

FRIENDS shall protect, defend, indemnify and hold harmless City, its officers, officials, employees, and agents from and against any and all liability, loss, damage, expenses, costs (including without limitation, costs and fees of litigation of every nature) arising out of or in connection with performance of this MOU or its failure to comply with any of its obligations contained in this MOU except such loss or damage which was caused by the sole negligence or willful misconduct of City.

5. WORKERS' COMPENSATION INSURANCE

Pursuant to *California Labor Code* Section 1861, FRIEND acknowledges awareness of Section 3700 *et seq.* of said Code, which requires every employer to be insured against liability for workers' compensation; FRIENDS covenants that it will comply with such provisions prior to commencing performance of the work hereunder.

~~FRIENDS shall maintain workers' compensation insurance in an amount of not less than One Hundred Thousand Dollars (\$100,000) bodily injury by accident, each occurrence, One Hundred Thousand Dollars (\$100,000) bodily injury by disease, each employee, Two Hundred Fifty Thousand Dollars (\$250,000) bodily injury by disease, policy limit.~~

ok per waiver 1/2/05 te

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FRIENDS shall require all subcontractors to provide such workers' compensation insurance for all of the subcontractors' employees. FRIENDS shall furnish to City a certificate of waiver of subrogation under the terms of the workers' compensation insurance and FSNC shall similarly require all subcontractors to waive subrogation.

6. GENERAL LIABILITY INSURANCE

~~In addition to the workers' compensation insurance and FRIENDS' covenant to indemnify City, FRIENDS shall obtain and furnish to City, a policy of general public liability insurance, including motor vehicle coverage. Said policy shall indemnify FRIENDS, its officers, agents and employees, while acting within the scope of their duties, against any and all claims arising out of or in connection with this Agreement, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of \$1,000,000 per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than \$1,000,000. Said policy shall name City, its agents, its officers, employees and volunteers as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable shall be deemed excess coverage and that FRIENDS' insurance shall be primary.~~

*OK  
per  
waiver  
1/20/05  
Re*

~~Under no circumstances shall the above-mentioned insurance contain a self-insured retention, or a "deductible" or any other similar form of limitation on the required coverage.~~

7. ASSIGNING AS BREACH

Neither party shall encumber, assign, or otherwise transfer this MOU, or any right or interest in this MOU, without the express written consent of the other party. A consent by a party to one assignment or transfer to another person shall not be deemed to be a consent to any subsequent assignment or transfer to another person. Any encumbrance, assignment or transfer, without the prior written consent of the other party, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of the other party, terminate this MOU.

8. TERMS BINDING ON SUCCESSORS

All the terms, covenants and conditions of this MOU shall inure to the benefit of and be binding upon the parties and their successors and assigns. The provisions of this Section shall not be deemed as a waiver of any of the conditions against assignment hereinbefore set forth.

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9. CONFLICT OF INTEREST

FRIENDS shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this MOU. No officer or employee of CITY shall have any financial interest in this MOU in violation of the applicable provisions of the California Government Code.

10. PHOTOGRAPHY

CITY may grant permits to persons engaged in the production of still and motion pictures, television programs, advertising and related activities, to take photographs and/or motion pictures of Junior Lifeguard program and building activities.

11. NONDISCLOSURES/PRESS RELEASES

FRIENDS shall consult with CITY prior to issuing any press releases or otherwise making any public statements with respect to this MOU, the transactions contemplated herein, or matters arising here from.

12. CUMULATIVE REMEDIES

The remedies given to the parties in this MOU shall not be exclusive but shall be cumulative and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this MOU.

13. WAIVER OF BREACH

The waiver by CITY of any breach by FRIENDS of any of the provisions of this MOU, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such breach or a waiver of any subsequent breach by FRIENDS either of the same or another provision of this MOU.

14. FORCE MAJEURE - UNAVOIDABLE DELAYS

Should the performance of any act required by this MOU to be performed by either CITY or FRIENDS be prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused.

15. NOTICE

Any written notice, given under the terms of this MOU, shall be either delivered

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personally or mailed, certified mail, postage prepaid, addressed to the party concerned, as follows:

CITY:

Director of Community Services  
City of Huntington Beach  
2000 Main Street  
P.O. Box 190  
Huntington Beach, CA 92648

FRIENDS:

Friends of the Junior Lifeguards  
15902 Mills Circle  
Westminster, CA 92683

If a party desires to change the address for notices set forth herein, said party will provide 30 days advance written notice to the other party of any such change.

16. ATTORNEY'S FEES

In the event of any litigation to enforce the terms and provisions of this MOU, each party shall bear its own costs and attorney's fees. The prevailing party shall not be entitled to recover its attorneys' fees from the non-prevailing party.

17. CONTROLLING LAW AND VENUE

The rights and liabilities of the parties, and the interpretation and construction of this MOU, shall be determined in accordance with the laws of the State of California. Any controversy arising out of or under this MOU, if litigated, shall be adjudicated in a court of competent jurisdiction in Orange County, California.

18. SECTION TITLES

The section titles in this MOU are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of intent of this MOU or in any way affect this MOU.

19. TIME OF ESSENCE

Time is of the essence with respect to all provisions of this MOU in which a definite time for performance is specified including, but not limited to, the expiration of this MOU.

20. SURVIVAL OF INDEMNITIES

Termination of this MOU shall not affect the right of CITY to enforce any and all indemnities given or made by FRIENDS under this MOU, nor shall it affect any provision of this MOU that expressly states that the provision shall survive termination thereof.

E-7.9

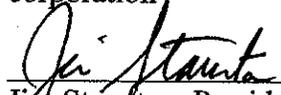
26. ENTIRETY

The foregoing sets forth the entire agreement between the parties.

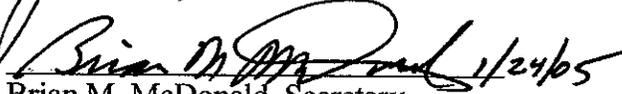
IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed by and through their authorized officers on \_\_\_\_\_, 2005.

FRIENDS OF THE JUNIOR LIFEGUARDS  
a California non-profit public benefit  
corporation

CITY OF HUNTINGTON BEACH  
a California municipal corporation

 01-24-05  
Jim Staunton, President

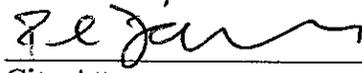
\_\_\_\_\_  
Mayor

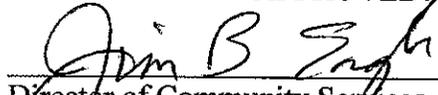
 1/24/05  
Brian M. McDonald, Secretary

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

INITIATED AND APPROVED:

 1/24/05  
City Attorney

  
Director of Community Services

  
1/6/05

  
1-6-05

E-7.10

## EXHIBIT A

### FURNITURE, FIXTURES AND EQUIPMENT

It is contemplated the FF&E will consist of the following:

Office furniture consisting of desks, desk chairs, side chairs, and tables (the "OFFICE FURNITURE").

Office equipment which may consist of facsimile machines, copy machines, computers, printers, and similar items (the "OFFICE EQUIPMENT")

Educational furniture consisting of lecture hall chairs and tables (the "EDUCATIONAL FURNITURE")

Educational equipment consisting of audio/visual equipment including projectors, amplifiers, TV's and TV screens, microphones, (the "AUDIO/VISUAL EQUIPMENT").

PROGRAM related equipment consisting of surf boards, boogie boards, training dummies, buoys, two-way radios and similar items (the "PROGRAM EQUIPMENT").

E-7.11

E-7.12

**ATTACHMENT #2**



# INSURANCE AND INDEMNIFICATION WAIVER MODIFICATION REQUEST

RECEIVED

JAN 11 2005

City of Huntington Beach  
City Attorney's Office

- Requested by: Jim B. Engle
- Date: January 10, 2005
- Name of contractor/permittee: Friends of Junior Lifeguards
- Description of work to be performed: Donation of furniture/equipment
- Value and length of contract: 5 years with 5-year extension option
- Waiver/modification request: Waive requirement for workers' compensation and general liabil
- Reason for request and why it should be granted: No work is being done; only a donation being made to the city.
- Identify the risks to the City in approving this waiver/modification: none at all

Jim B Engle  
Department Head Signature

1/10/05  
Date:

### APPROVALS

Approvals must be obtained in the order listed on this form. Two approvals are required for a request to be granted. Approval from the City Administrator's Office is only required if Risk Management and the City Attorney's Office disagree.

1. Risk Management	<input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied	<u>Patt Williams</u>	<u>1/11/05</u>
		Signature	Date
2. City Attorney's Office	<input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied	<u>James McG...</u>	<u>1/20/05</u>
		Signature	Date
3. City Administrator's Office	<input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied	<u>T. B. Bradley</u>	<u>1/25/05</u>
		Signature	Date

If approved, the completed waiver/modification request is to be submitted to the City Attorney's Office along with the contract for approval. Once the contract has been approved, this form is to be filed with the Risk Management Division of Administrative Services

E-7.13



2000 Main Street

California 92648

DECLARATION of NON-EMPLOYER STATUS

In order to comply with City Council Resolution No. 97-20, you are required to provide proof of Workers' Compensation insurance. If you have no employees, this form must be signed and returned to:

City of Huntington Beach
Risk Management Division
2000 Main Street
Huntington Beach, CA 92648

I certify that in the performance of the activity or work for which this permit is issued, I shall not employ any person in any manner so as to become subject to California Workers' Compensation insurance requirements.

I authorize the City of Huntington Beach to immediately and retroactively revoke the license or permit issued under this declaration if I hire any employee(s) or become subject to the provisions of the laws requiring Workers' Compensation Insurance.

Applicant/Company Name: FRIENDS OF THE JUNIOR LIFEGUARDS

Address: 15902 MILLS CIRCLE, WESTMINSTER, CA 92683

Applicant's Signature: [Signature] Date: 1/24/05

Title: SECRETARY

Location Signed: FOUNTAIN VALLEY, CA

Telephone Number: 714-593-2319

APPROVED AS TO FORM
JENNIFER McGRATH, City Attorney

[Signature] 1/24/05
By Paul D'Alessandro
Assistant City Attorney

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