

CITY OF SANTA CLARA

AGENDA MATERIAL ROUTE SHEET

Council Date: January 27, 2004

SUBJECT: Amendment 1 to the PAL/BMX Ground Lease.

CERTIFICATION

The proposed Amendment #1 to the existing Ground Lease between the City and the Police Activities League (PAL), executed in August 1998, modifies Exhibit A, which defines the 12 acre boundaries of the site and speaks to the requirement for a Special Permit from the City to have overnight vehicle camping on the closed landfill site. Additionally, the Amendment adds language that clarifies Pal's need to seek all necessary approvals for constructing on the closed landfill.

PUBLICATION REQUIRED:

The attached Notice/Resolution/Ordinance is to be published \_\_\_\_\_ time(s) at least \_\_\_\_\_ days before the scheduled meeting/public hearing/bid opening/etc., which is scheduled for \_\_\_\_\_, 200\_\_.

AUTHORITY SOURCE FOR PUBLICATION REQUIREMENT:

Federal Codes:

Title \_\_\_\_\_ U.S.C. § \_\_\_\_\_  
(Titles run 1 through 50)

California Codes:

Code \_\_\_\_\_ § \_\_\_\_\_  
(i.e., Government, Street and Highway, Public Resources)

Federal Regulations:

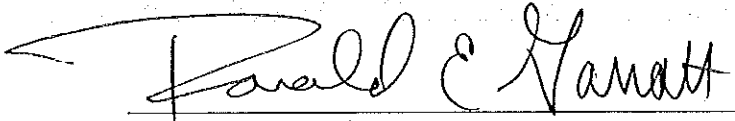
Title \_\_\_\_\_ C.F.R. § \_\_\_\_\_  
(Titles run 1 through 50)

California Regulations:

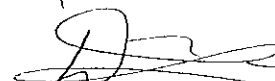
Title \_\_\_\_\_ California Code of Regulations § \_\_\_\_\_  
(Titles run 1 through 28)

City Charter § \_\_\_\_\_ (i.e., 1310. Public Works Contracts. Notice published at least once at least ten days before bid opening)  
City Code § \_\_\_\_\_

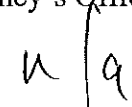
1. As to City Functions, by

  
\_\_\_\_\_  
Department Head

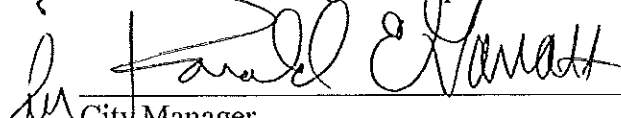
2. As to Legality, by

  
\_\_\_\_\_  
City Attorney's Office

3. As to Environmental Impact Requirements, by

  
\_\_\_\_\_  
Director of Planning and Inspection

4. As to Substance, by

  
\_\_\_\_\_  
City Manager

**AMENDMENT NO. 1  
TO THE GROUND LEASE AGREEMENT  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA  
AND THE  
SANTA CLARA POLICE ACTIVITY LEAGUE**

**PREAMBLE**

This agreement ("Amendment No. 1") is made and entered into on this 27<sup>th</sup> day of January, 2004, ("Effective Date") by and between the City of Santa Clara, California, a chartered California municipal corporation, ("City") and Santa Clara Police Activity League Incorporated, a California non-profit public benefit corporation ("PAL"). PAL and City may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Amendment No. 1."

**RECITALS**

- A. The Parties previously entered into an agreement entitled "*GROUND LEASE*," dated August 25, 1998 (the "Original Agreement"), for the purpose of having PAL construct and maintain a bicycle motocross facility for youth activities; and
- B. The Parties now wish to amend the Original Agreement to provide for a revised definition of the lease and other related issues.

In consideration of the above Recitals and the following mutual covenants and obligations, the Parties agree as follows:

**AGREEMENT PROVISIONS**

- 1. The parties agree to the following definitions.
  - A.) Property. ("Property") The Property shall consist of all of the real property situated in the County of Santa Clara, State of California, as more particularly described in Exhibit "A", attached and incorporated by this reference. The use of the Property by PAL is limited to the Permitted Use and activities in the Property recited in Section 4 of this Amended Lease. PAL acknowledges that the Property is a closed landfill, with landfill gas collection system appurtenances, and that activities on the Property are governed and permitted by state, county and local regulations. PAL promises and covenants that the landfill cover and subsurface materials shall not be disturbed by PAL's development and construction.
  - B.) All references to Pacific Energy in the Original Agreement are and is replaced with Covanta Energy. Covanta Energy is the successor in interest to Pacific Energy.

2. That paragraph number 4.1, entitled "Permitted Use," of Section 4 of the Original Agreement, is hereby amended to read as follows:

Pal shall use the Property solely for the purposes of development of a bicycle motocross dirt track, (hereafter referred to as "BMX Track") at no cost to the City. PAL shall make the BMX track available for Santa Clara community use, and shall offer the BMX track as an enhancement of youth sports in the City. The Property shall not be used for any other purpose than specified in the terms of this Amended Lease Agreement.

3. That paragraph 4.4, entitled "Responsibility for Compliance with Laws," of Section 4 of the Original Agreement, is amended to add the following:

The scope of this agreement is a controlled expansion of the original lease agreement. PAL shall be allowed to have a range of structures on the Property that are conducive to BMX racing. The structures on the property must be in compliance with postclosure plans as well as state, county and local rules and regulations. The Property is located on the surface of a closed landfill. PAL shall only place on the Property approved utilities to support the various structures on the site. Placard warnings shall be posted on the structures as appropriate.

3. That paragraph number 4.3, entitled "Security Responsibilities," of Section 4 of the Original Agreement, is hereby amended to read as follows:

PAL shall provide, at PAL's sole cost and expense, security sufficient to provide for the safe use of the Property. The security shall be sufficient to address safety issues raised by the permitted uses recited in Section 4.1. PAL shall, to the best of their ability, protect the fence with gates around the perimeter of the Property. This fence shall not be removed at any time without written permission granted by the City.

A fence will be installed by the City to define the perimeter of the Property. Gates shall be provided at specified locations as defined by City along the fence to be used for ingress and egress by Covanta Power and City employees to allow for maintenance of the site and facilities.

4. That paragraph number 4.6, entitled "Responsibility for use of Motor Vehicles," of Section 4 of the Original Agreement, is hereby amended to add the following:

4.6.3 Overnight stays on the property will follow all Santa Clara City Code Sections, including Section 18.60.060. Overnight stays on the property shall be governed by a Special Permit as approved by the City Council.

Since the Property is located on a closed landfill, at no time shall a recreational campsite be established. Therefore, no temporary or permanent tents, campfires, use of barbecues, or other types of flammable materials shall be allowed on the Property.

5. That paragraph number 4.7, entitled "Responsibility for Site Development," of Section 4 of the Original Agreement, is hereby amended to read as follows:

PAL shall develop the Property and perform construction activities related to the approved improvements in a manner which does not disturb the existing landfill cover and/or site drainage. No construction, excavation, movement of soil or use of machinery activities to construct any of the approved improvements listed in paragraph 4.1 shall be permitted without prior approval of the City. Final detailed construction and development plans shall be submitted to the City for review and approval prior to submission to required regulatory agencies, including the California Integrated Waste Management Board, Regional Water Quality Control Board-San Francisco Bay Region, Bay Area Air Quality Management District, County of Santa Clara Environmental Health Department (Local Enforcement Agent for Site), for approvals, as stated in Title 27 of the California Code of Regulations

The cost of planning, design, permit approvals, construction and maintenance activities associated with this Lease shall be borne solely by PAL. PAL shall ensure that City receives copies of all submitted permit applications, correspondence, notices and approvals.

PAL shall ensure for itself, its agents and its contractors that all of the environmental control facilities and appurtenances located on the Property have been inspected and confirmed by State, County and/or local rules and regulations, whichever is applicable. PAL shall take appropriate measures to protect these facilities, as stated in Title 27 of the California Code of Regulations. Any damages to such facilities shall be reported immediately to the City Street Department at (408) 984-3080, or (408) 984-5131 after work hours.

PAL shall conduct all activities on the Property in such a manner as to not impact the underlying landfill. PAL acknowledges that the Property is a former landfill and that uses of, activities and operations on, the landfill are limited by law, regulating agencies, and by the site closure plan. PAL agrees to petition the City for new or amended site closure plans before commencing with any developments on the Property, as stated in the original lease agreement and in compliance with the primary lessee of the property, Covanta Energy, or its successor(s) in interest. After City Approval, City will then forward the detailed plans for any proposed development to the appropriate local, state and federal agencies in order to obtain a new closure plan. PAL shall allow City and Covanta Energy access to the site at any time if access is necessary to facilitate landfill closure or maintenance requirements.

The allowed improvements on the Property as described in paragraph 4.1 must comply with all applicable state, county and local regulations. Smoke detectors (electric with battery backup) and methane detectors (electric with battery backup) must be installed and maintained in required *buildings as stated in Title 27 of the California Code of Regulations.*

7. Section 9 of the Original Agreement, entitled "Assignment and Subletting" is hereby amended to read as follows:

PAL may not sublet, or assign, or subordinate its leasehold interests in the Property or otherwise sell, transfer or convey any right, title or interest which PAL may have in the Property, without first obtaining the written consent of City, which consent may be given or

withheld at City's sole and absolute discretion. Any change in PAL's status as a non-profit corporation or in the rights of its members or any merger or consolidation of PAL with any other entity, (whether in one transaction or as a result of a series of transactions) shall constitute an assignment by PAL of this Lease for the Purposes of this Section 9.

Notwithstanding the terms of this paragraph 9, PAL may contract with the national BMX organization for competitions. However, terms and conditions of any such contracts must meet City standards including all City mandated insurance requirements. All such contracts must include compliance with the policy limits and endorsements as set forth in the "Standard City Insurance Requirements" set forth in Exhibit C attached and incorporated by this reference. Additional Insurance requirements may be asked for by the City to ensure the City is indemnified and held harmless for any activities that occur on the Property by PAL or its subleasees.

Separate contracts must be entered into for every individual event with others.

8. All other terms of the Original Agreement which are not in conflict with the provisions of this Amendment No. 1 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

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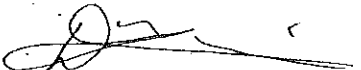
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The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Amendment No.1 shall become operative on the Effective Date first set forth above.

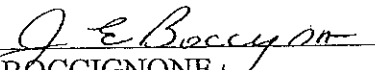
**CITY OF SANTA CLARA, CALIFORNIA,  
a chartered California municipal corporation**

APPROVED AS TO FORM:

  
MICHAEL R. DOWNEY  
City Attorney

  
JENNIFER SPARACINO  
City Manager

ATTEST:

  
J.E. BOCCIGNONE  
City Clerk

1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408)615-2210  
Facsimile: (408)241-6771

"City"

**SANTA CLARA POLICE ACTIVITIES LEAGUE, INC.,  
a California non-profit public benefit corporation**

By: 

Type or Print Name: Vern Deto  
Title: President  
Address: 601 El Camino Real, Santa Clara, CA  
Telephone: (408) 615-4880  
Facsimile: (408) 296-1346

"PAL"

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**CITY OF SANTA CLARA, CALIFORNIA  
STANDARD INSURANCE REQUIREMENTS**

**EXHIBIT " C "**

PAL, and its subcontractor(s), if any, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement at its/their sole cost and expense. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable). For purposes of the insurance policies required under this Agreement, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees, and volunteers of the City of Santa Clara, California, individually or collectively.

**1. MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.**

The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the City:

**a. COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL").**

Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage (Occurrence Form CG 0001) with policy limits not less than the following:

\$1,000,000 each occurrence (combined single limit);  
\$1,000,000 for personal injury liability;  
\$1,000,000 aggregate for products-completed operations; and,  
\$1,000,000 general aggregate applying separately to this project.

**b. BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL").**

Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability coverage, Symbol 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than one million (\$1,000,000) dollars for each accident, for bodily injury and/or property damage.

**c. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY ("WC/EL"). (A Workers' Compensation Policy is required to cover PAL employees and volunteers.)**

These policies shall include at least the following coverages and policy limits:

1. Workers' Compensation insurance as required by the laws of the State of California; and

2. Employer's Liability insurance with coverage amounts not less than one million (\$1,000,000) dollars each accident/Bodily Injury (herein "BI"); one million (\$1,000,000) dollars policy limit BI by disease; and, one million (\$1,000,000) dollars each employee BI by disease.

2. **DEDUCTIBLES AND SELF-INSURANCE RETENTIONS.**

Any deductibles and/or self insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by PAL and approved by the City before work is begun pursuant to this Agreement. At the option of the City, PAL shall either reduce or eliminate such deductibles or self-insured retentions or provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

3. **ENDORSEMENTS.**

All of the following clauses and endorsements, or similar provisions, are required to be made a part of the required insurance policies indicated in parentheses below:

- a. Additional Insureds The City of Santa Clara, its City Council, commissions, officers and employees are hereby added as additional insureds in respect to liability arising out of the PAL's work for the City, providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2010, 1985 Edition, or insurer's equivalent (CGL);
- b. General Aggregate The general aggregate limits shall apply separately to PAL's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
- c. Primary Insurance This policy shall be considered primary insurance with respect to any other valid and collectible insurance City may possess, including any self-insured retention City may have, and any other insurance City does possess shall be considered excess insurance only and shall not be called upon to contribute with this insurance (CGL & BAL); and
- d. Notice of Cancellation No cancellation shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such cancellation to City at the address set forth below, except the insurer may give ten (10) days notice for non-payment of premium (CGL, CAL & WC/EL & PL).

4. **DEDUCTIBLES AND SELF-INSURED RETENTIONS (SIR)**

Deductibles and self-insured retentions (SIR) must be declared (all Policies).

5. **ABSENCE OF INSURANCE COVERAGE.**



City may direct PAL to immediately cease all activities with respect to this Agreement if the City determines that PAL fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered PAL's delay and expense. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to PAL.

6. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.**

A Certificate of Insurance, on an Accord form, and implementing endorsements shall be provided to City by each of PAL's insurance companies as evidence of the stipulated coverages prior to commencement of work under this Agreement, and annually thereafter at least ten (10) days prior to termination of existing coverage for the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement at any time. All of the insurance companies providing insurance for PAL shall have, and provide evidence of, a Best Rating Service rate of "A VI" or above.

The Certificate of Insurance and coverage verification and all other notices related to cancellation shall be mailed to:

City of Santa Clara [City Manager's Office]  
c/o Insurance Data Services – Insurance Compliance  
P.O. 12010-S2 or 151 North Lyon Avenue  
Hemet, CA 92546-8010 Hemet, CA 92543  
Telephone: (909) 766-2280  
FAX: (909) 766-2299

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