

**AGENDA ITEM 1(b)**

**TOWN OF SAN ANSELMO  
STAFF REPORT  
September 3, 2003**

For the Meeting of September 9, 2003

TO: Town Council

FROM: Janet Pendoley, Finance & Administrative Services Director

SUBJECT: Report of Warrants Issued, August 2003

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**RECOMMENDATION**

That Council acknowledge and file warrant numbers 46467 to 46720 issued during the month of August 2003 in the amount of \$1,252,974.56. The following warrant numbers were voided or cancelled: 46159, 46614, and 46471.

**BACKGROUND**

This report is an itemization of payments made to vendors during the month just ended. It also includes warrants written to Bank of America for the month's two regular payrolls as well as reimbursements to employees for work-related approved expenditures.

Respectfully submitted,

Janet Pendoley  
Finance and Administrative Services Director

**Attachment 1:** Warrant Registers, August 2003  
**AGENDA ITEM 1(c)**

## San Anselmo Police Department

### Staff Report

#### *For the Meeting of September 9, 2003*

To: Town Council

From: Charles L. Maynard, Chief of Police

Subject: Temporary Closure of Traffic Lane for Special Event

Date: September 3, 2003

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### RECOMMENDATION

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That Council approve the attached application for the temporary closure of the right hand lane of eastbound Sir Francis Drake Blvd., between Ash Ave. and San Francisco Blvd, to allow additional parking for the Sir Francis Drake High School's "Back to School Night" on Thursday evening, September 25<sup>th</sup>, 2003.

### BACKGROUND

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Sir Francis Drake Blvd., in the area of Sir Francis Drake High School, does not allow for any parking, as it is now a posted tow-away zone. In previous years, the high school has depended on this portion of roadway for attendees of this event to park their vehicles in order to reduce the impact on the surrounding neighborhood streets. As the parking at the high school continues to change due to the ongoing renovation, this matter is being presented to Council for approval.

### DISCUSSION

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Throughout the year the Town permits and/or sponsors events in Town, such as the Art Festival, Community Fair, Antique Fairs as well as local block parties and commercial filming. During each of these events the Town permits the closing of streets or portions of streets and other Town areas such as Town owned parking lots to accommodate these events.

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The Police Department and the Department of Public Works intend to work with school officials to insure the lanes are adequately marked and the smooth flow of traffic is maintained.

### CONCLUSION

The temporary closure of the right lane of eastbound Sir Francis Drake Blvd. between Ash Ave. and San Francisco Blvd. should have minimal effect on evening non-commute traffic flow and will help reduce the impact of parking in the residential areas surrounding the school during the event. This item was heard at the meeting of August 23, 2003 and the vote on the motion to approve was tied at two in favor/two against, with

Councilmember Kroot absent. As there was no action taken, the item is on the agenda for a vote of the full Council.

CHARLES L. MAYNARD  
Chief of Police

Commander James Providenza

**AGENDA ITEM 1(d)**

**TOWN OF SAN ANSELMO  
STAFF REPORT**

**September 3, 2003**

For the Meeting of September 9, 2003

TO: Town Council

FROM: Lisa Wight, Senior Planner

SUBJECT: Adopt an Ordinance amending the Sign Ordinance in SAMC Section 10-9.303 to reinstate language (inadvertently omitted during the 1999 ordinance revisions) pertaining to regulations for temporary signs related to construction, sale, holiday, political, Christmas tree lots, fairs, carnivals, and other special events.

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**RECOMMENDATION**

That the Town Council adopt an Ordinance amending the Sign Ordinance.

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**Background**

August 26, 2003: Town Council introduced an ordinance to amend Ordinance No. 1010 of the Municipal Code to add Sections 10-3.903 (c)(d)(e)(f)(g)(h) for the regulation of temporary signs related to construction, sale, holiday, political, Christmas tree lots, fairs, carnivals, and other special events, and noted that the Town Council is scheduled to adopt this ordinance on September 9, 2003.

Also refer to Town Council staff report dated August 26, 2003.

Attachments: Proposed Ordinance  
Town Council staff report and minutes dated August 26, 2003  
Old Ordinance excerpt

**AGENDA ITEM 1(e)**

**TOWN OF SAN ANSELMO  
STAFF REPORT  
September 3, 2003**

**For the meeting of September 9, 2003**

TO: Town Council

FROM: Debra Stutsman, Town Administrator

SUBJECT: Marin County Civil Grand Jury Reports

**RECOMMENDATION**

That Council approve the attached responses to the Marin County Civil Grand Jury reports on Local in-Lieu Fees and Set Asides and Housing for Public Health and Safety Employees.

**BACKGROUND**

The Town has been asked by the Grand Jury to respond to the subject reports, in the specific format identified. The Planning Director (Local in-Lieu Fees) and the Police Chief (Housing for Public Health and Safety Employees) provided direct input into the attached responses. The deadline for response is September 30, 2003.

Respectfully submitted,

Debra Stutsman  
Town Administrator

**RESPONSE TO GRAND JURY REPORT FORM ATTACHMENT**

**Report Title: A Crisis Brewing Housing and Safety Employees**

***Response Date: August 12, 2003***

**Response by: Debra Stutsman**

**Title: Town Administrator**

**Recommendations numbered 1 through 4 require further analysis:**

The Town of San Anselmo agrees with the initial findings and recommendations of the Grand Jury, but believes further data collection and analysis is required. The following represents our views in relation to additional research and analysis for each of the three recommendations listed in the report:

1. Before a list of first responders can be defined and placed in order of importance in relation to response time, all the stakeholders need to be identified and interviewed. It is the Town's opinion that there are several factors involved in an employee's decision to live within or outside the county. The cost of housing is clearly only one factor. Additional data collection and analysis is required before an effective solution can be implemented.
2. The analysis mentioned in the above paragraph would provide a true needs assessment in relation to the number of employees who would be willing and financially able to live within the county.
3. Our recommendation would be to include stakeholders, staff and elected officials (who have the authority to make decisions) in the committee responsible for reviewing the analysis and charged with developing a solution.

Due to budgetary constraints and limited resources, outside contractors should be considered when deciding who will be responsible for collecting and analyzing the data. The fiscal impact of this project should be the first order of business in determining how the project will be funded.

The Town agrees that the county should be the lead agency on this project and can depend on our participation in the process.

*Report Title: Financing Affordable Housing:  
Local In-Lieu Fees and Set-Aside Funds*

**Response Date: August 12, 2003**

**Response by: Debra Stutsman Title: Town Adminsitrator**

***Recommendation 5 has been implemented:***

1. The Town of San Anselmo provides full access to citizens wishing to review Housing Element policies/actions and provides information access via the Town web site.
2. Currently no funding is available for Town housing programs. All program funding is disclosed to the public through an annual budget hearing and adoption process.
3. The Town participates in various housing programs through County housing programs. Citizens are referred to the Housing Authority.
4. Any information pamphlets received from the County and/or nonprofit housing agencies are displayed at the information counter.

**Recommendations numbered 1 through 4 require further analysis:**

1. While the Town of San Anselmo agrees that separating Marin County as a single housing market will provide better information, this recommendation requires the concurrence and action by the Board of Supervisors. Implementation would require further analysis.
2. The Town agrees that an appropriate mechanism for the coordination of all affordable housing activities in the county should be established. However, further analysis is needed to determine resources, funding, interagency responsibilities and specific implementation mechanisms.
3. The Town generally agrees that the Marin Housing Workbook recommendations should be used as a foundation for ongoing implementation. However, other agency consent and further analysis is needed to define responsibilities and commitments of each agency through future interagency agreements.
4. This recommendation affects the Board of Supervisors, not the Town. However, the Town supports integrated efforts to achieve maximum benefit to countywide housing programs.

**AGENDA ITEM 1(f) – Continued to September 23, 2003**

**AGENDA ITEM 2 – oral report**

**AGENDA ITEM 3**

**TOWN OF SAN ANSELMO  
STAFF REPORT**

September 3, 2003

For the meeting of September 9, 2003

TO: Mayor and Members of the Town Council

FROM: Debra Stutsman, Town Administrator

SUBJECT: 2003-04 Budget and Workplan

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RECOMMENDATION

That Council approve the attached resolution adopting the 2003-04 Budget and Workplan.

BACKGROUND

At its meeting of July 22, 2003, Council reviewed and conducted a public hearing on the proposed 2003-04 Budget presented by staff.

ANALYSIS

Staff was directed to make the following addition to the Police Department's 2003-04 Goals and Workplan (page 46):

**Community Policing Project/Sir Francis Drake High School neighborhood --**  
Work with neighbors to reduce impact on the neighborhood from the school, including monitoring student parking, providing traffic enforcement and facilitating any communications with the school.

The Appropriations Limit Worksheet was revised per section (b) of this agenda item.

CONCLUSION

The final budget document will be published with the above-mentioned changes.

Respectfully submitted,

Debra Stutsman  
Town Administrator

**Attachment #1:** Resolution # \_\_\_\_\_, A Resolution of the San Anselmo Town Council Adopting the 2003-04 Budget and Workplan.

**OWN OF SAN ANSELMO**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE SAN ANSELMO TOWN COUNCIL ADOPTING THE  
2003-04 BUDGET AND WORKPLAN**

**WHEREAS**, the San Anselmo Town Council held a public hearing on the Proposed 2003-04 Budget and Workplan on July 22, 2003; and

**WHEREAS**, the Council has determined that the 2003-04 Proposed Budget and Workplan, with the change directed at the meeting of July 22, 2003, will allow for the continuation of municipal services and the construction of capital improvements;

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the San Anselmo Town Council adopts the 2003-04 Budget and Workplan as allocated below:

Capital Reconstruction Fund	\$ 138,340
Citizens Option for Public Safety (COPS)	145,641
Downtown Revitalization	19,590
Emergency Projects	100,000
Equipment	347,598
General Fund	11,681,946
Insurance	588,124
Isabel Cook Complex	(34,685)
Measure G Capital Projects	2,160,150
Measure G Debt Service – 1995, 1997, 2000, 2003	1,097,759
Recreation	966,895
Road Maintenance	1,080,844
Special Events	23,601
State Gasoline Tax	241,190
Traffic Congestion Relief	356,455

I hereby certify that the foregoing resolution was passed and adopted by the San Anselmo Town Council at a regular meeting thereof, held on the 9th day of September, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Peter Kilkus, Mayor

ATTEST:

\_\_\_\_\_  
Debra Stutsman, Town Clerk

**TOWN OF SAN ANSELMO  
STAFF REPORT  
September 3, 2003**

**For the Meeting of September 9, 2003**

TO: Town Council

FROM: Janet Pendoley, Finance & Administrative Services Director

SUBJECT: RESOLUTION ESTABLISHING THE 2003 – 04 APPROPRIATIONS  
LIMIT AND REVISING THE 2002-03 AND 2001-02 APPROPRIATIONS  
LIMITS

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**RECOMMENDATION**

That Council approve the attached resolution establishing the appropriations limit for Fiscal Year 2003-04 and revising the appropriations limits for Fiscal Years 2002-03 and 2001-02.

**BACKGROUND**

Under Proposition 4 of the State of California, municipalities are limited in the amount of revenue that they may spend each fiscal year. The limit is calculated using a formula that includes change in population and inflation, as defined by the State.

Also known as the Gann Limit, the limit is set each year by resolution of the Town Council. Attached is a worksheet prepared by staff, showing the Gann Limit calculation for fiscal year 2003-04. The calculation shows that the amount of revenue that the Town estimates it will collect is \$87,841 below the limit it is allowed to spend.

**DISCUSSION AND ANALYSIS**

The Gann Limit worksheet has been revised since the Council's review of the Proposed Budget on July 22, 2003 to include ERAF tax revenue in the section entitled Estimated Tax Proceeds Subject to the Limit as well as certain allowable exclusions in the section entitled Expenditures Exempt from the Limit. The financial information provided in the Proposed Budget was used for these revisions. Gann Limit worksheets for 2001-02 and 2002-03 have also been revised to include these items. The financial information provided in the Adoption Budget for those fiscal years was used for the revisions.

In addition, the calculations in the section entitled Appropriation Limit for 2003-04 as well as for 2002-03 were revised to take advantage of the option to use the annual change in Non-residential Assessed Valuation rather than the Per Capita Personal Income. In calculating the 2002-03 appropriations limit, selection of this option benefited the Town by increasing the limit a total of \$136,585 from \$5,709,393 to \$5,845,978. This increase has been carried forward and also impacts the 2003-04 calculation.

CONCLUSION

In approving the attached resolution, the Council establishes the Gann Appropriations Limit for 2003-04 with an estimated leeway of \$87,841 and revises the 2002-03 and 2001-02 Limits to more accurately record the leeway of \$230,779 and \$382,064 respectively.

Respectfully submitted,

Janet Pendoley  
Finance and Administrative Services Director

**Attachment #1:** Resolution # \_\_\_\_\_, A Resolution of the Town Council of the Town of San Anselmo Establishing the Appropriations Limit for Fiscal Year 2003-04 and Revising the Appropriations Limits for Fiscal Years 2002-03 and 2001-02

**Exhibit A:** Appropriations Limit Data, 2003-04 Summary, *revised 8/14/03*

**Exhibit B:** Appropriations Limit Data, 2002-03 Summary, *revised 8/14/03*

**Exhibit C:** Appropriations Limit Data, 2001-02 Summary, *revised 8/14/03*  
**TOWN OF SAN ANSELMO**

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO ESTABLISHING THE APPROPRIATIONS LIMIT FOR FISCAL YEAR 2003-04 AND REVISING THE APPROPRIATIONS LIMITS FOR FISCAL YEARS 2002-03 AND 2001-02

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**PURSUANT TO** Government code Section 7910, and based on documentation submitted by the Town Administrator, and acknowledging that the documentation has been available to the public for the required period of time;

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Town Council of the Town of San Anselmo establishes the appropriations limit for the Town of San Anselmo

for fiscal year 2003-04 under Article XIII-B of the State constitution, as shown on Exhibit "A", in the amount of \$6,027,074; and

**BE IT FURTHER RESOLVED** that the Town Council of the Town of San Anselmo revises the appropriations limits for the Town of San Anselmo for fiscal years 2002-03 and 2001-02 under Article XIII-B of the State constitution, as shown on Exhibits "B" and "C", in the amount of \$5,845,978 and \$5,736,370 respectively.

I hereby certify that the foregoing resolution was duly passed and adopted at a regular meeting of the San Anselmo Town council held on the 9th day of September, 2003, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_

Peter Kilkus, Mayor

Attest:

\_\_\_\_\_

Debra Stutsman, Town Clerk

#### **AGENDA ITEM 4**

### **TOWN OF SAN ANSELMO STAFF REPORT**

**September 2, 2003**

*For the Meeting of September 9, 2003*

**TO:** Town Council

**FROM:** Barbara Chambers, Assistant Planner

**SUBJECT:** Review of Planning Commission decision of conditional approval of a variance to permit a 71.25 square foot play structure to be placed within 3'-4" of the rear property line (Code: 20') and 2'-4" of the side property

line (Code: 8'), located at 15 Morningside Drive, in the R-1 zoning district.

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### RECOMMENDATION

That the Town Council uphold the Planning Commission's conditional approval.

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**APPLICANT** Mayor Peter Kilkus and Councilmember Barbara Thorton

**BACKGROUND:** August 4, 2003 Planning Commission conditionally approved project (3:2 Ayes: House/Wittenkeller/Sisich Noes: Fernandez/Harris)

In order to make the findings of non-detriment the Commission required the structure to be reduced in height by 4'-2", allowing a 12" crawl space under the platform. Special circumstance findings were that the walls of the structure would not exceed 6' in height and would be below the fence line, and would thereby meet the intent of the Code and that the underground utilities restrict the location of the structure. Condition of approval was that if it becomes necessary in the future to reconstruct or perform maintenance on the 24" pipe storm drain, the owner shall remove the structure, at the owners expense, within thirty days.

Commissioner Fernandez voted no because he felt the structure should remain as proposed by the applicant. Commissioner Harris voted no because he felt the variance findings could not be made even with the height reduction.

## *REASON FOR REVIEW*

1. This is a children's play structure and not a permanent structure. It is only a 4'x6' enclosed structure and has no electricity or plumbing facilities.

This play structure has an enclosed area of 45 square feet with a 26.25' square foot open deck. The structure sits on a platform that is 5'-2", for a total height of 13'-8". The structure is within 3'-4" of the rear and 2'-4" of the side property line.

San Anselmo Municipal Code defines structure as "any improvement constructed or erected so as to project 30" or more above grade". Consequently, structures of this size and height require findings of special circumstances and no detriment. Staff was unable to make the findings necessary to approve the variance request. (see staff report dated August 4, 2003)

2. We know San Anselmo to be child friendly and this play structure is no different from a hundred others in San Anselmo.

All accessory structures greater than 6' in height and greater than 60 square feet in area are subject to San Anselmo Municipal Code requirements.

3. The immediate neighbors are in support of the play structure.

This was brought to staff's attention by a neighbor who was concerned about the construction. Upon investigation, staff determined that no planning approval had been granted for the structure.

## **RECOMMENDATION**

To uphold the Planning Commission decision of conditional approval.

Attachments: Notice of Review  
August 4, 2003 Staff Report  
Plans date stamped Received 6/30/03  
Minutes of August 4, 2003  
Letters of Support  
Photograph of play structure  
SAMC 10-3.1701 Definition "Accessory building"  
Development Standards Table 4B

## **AGENDA ITEM 5**

### **TOWN OF SAN ANSELMO**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SAN  
ANSELMO ESTABLISHING THE TOWN'S COMMITMENT TO AN IPM  
(INTEGRATED PEST MANAGEMENT) PROGRAM.**

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**WHEREAS**, the Town Council has heard testimony from Town Staff, concerned citizens, and pesticide education groups regarding the establishment of an IPM program.

**WHEREAS**, the Town Council, with the knowledge and understanding that we are all the stewards of this earth, the Town of San Anselmo, the entire Town Staff, and committed community individuals dedicate ourselves to providing an IPM (Integrated Pest Management) approach.

**WHEREAS**, the Town Council is committed to the Least Toxic IPM Policy.

**WHEREAS**, the Town brings this policy to the community, with the clear intent of reducing the dependence of chemical products to control pests, utilizing an Integrated Pest Management approach.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of San Anselmo that to facilitate and enhance the protection of the public's health, safety, and welfare, the Town shall immediately adopt the attached commitment to IPM Program.

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

**APPROVED**

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Peter Kilkus, Mayor

**ATTEST:**

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Debra Stutsman, Town Clerk

**DRAFT**

**TOWN OF SAN ANSELMO'S  
COMMITMENT TO IPM**

**INTEGRATED PEST MANAGEMENT**

With the knowledge and understanding that we are all the stewards of this earth, the Town of San Anselmo, the entire Town staff and committed community individuals dedicate ourselves to providing an IPM (Integrated Pest Management) approach. The Town of San Anselmo has committed to the Least Toxic IPM Policy. The Town brings this policy to the community, with the clear intent of reducing the dependence of chemical products to control pests, utilizing an Integrated Pest Management approach.

It is the policy of the Town of San Anselmo to focus on long-term pest prevention and give non-chemical methods first consideration when selecting treatment strategies. The full range of alternatives, including no action, will be considered first. If chemicals are needed to initially control a pest, first, the least toxic material will be chosen and second, non-pesticide techniques will be established to mitigate the pests, if the pest should re-occur.

**COMPONENTS OF AN IPM, LEAST TOXIC PROGRAM:**

Monitoring  
Determining Injury Levels  
Timing  
Spot Treatment  
Selection of Least Disruptive Tactics  
Evaluation  
Education

**DESIGNATION OF INTEGRATED PEST MANAGEMENT COORDINATOR:**

The Town Council will designate the Parks Director as the Integrated Pest Management Coordinator. The IPM coordinator will be primarily responsible for implementing the IPM policy and coordinating efforts to adopt IPM techniques. The IPM coordinator will communicate goals and guidelines to the Town Council, staff, and personnel. The IPM coordinator will provide staff training, track pesticide use and ensure that related information is available to the public. The IPM coordinator, will, at the discretion of the Town Council, present an annual report to the Town Council evaluating the progress of the IPM program.

## **EDUCATION AND TRAINING OF IPM COORDINATOR AND PESTICIDE APPLICATORS:**

Everyone who works with or is potentially exposed to hazardous materials will receive training in Integrated Pest Management, Hazard Communication Standards and the safe use of those hazardous materials in their workplace by their administrator/supervisor or designee. Whenever a new pesticide is introduced, additional training will be provided, prior to the first initial use. In addition, regular safety meetings will be used to review the information presented in the initial training.

## **EDUCATION AND TRAINING OF STAFF, ADMINISTRATIVE PERSONNEL:**

Education and training of appointed personnel is critical to the success of the IPM program. Staff, custodial staff and pest managers, will be educated in the least toxic, IPM policies and procedures. Understanding of the objectives of the program will be updated periodically and reviewed. Education will include formal classroom training, on-site; and informal meeting for those employees responsible for providing pest control, At least once a year. Training will be verbal and in person. No pesticides may be used at Town sites, except in accordance with the Town's printed IPM policy.

## **EDUCATION AND TRAINING OF OUTSIDE CONTRACTORS:**

Outside contractors hired by the Town of San Anselmo must demonstrate that the business and the business' employees are trained in IPM. Any contractor that does business with the Town must read and review the printed IPM policy of the Town of San Anselmo. The authorized representative of the outside business must sign off that she/he have read the conditions the Town's IPM requires and that she/he agree to follow, to the letter, the written directions and the intent of the IPM policy.

## **IPM APPLICATIONS / APPLICATIONS AND GUIDELINES:**

Only persons specifically authorized by the IPM Coordinator as Pesticide Applicators, will be permitted to bring or use pesticides on Town property. Use of pesticides by pesticide applicators is limited to those products on the Approved Use or Limited Use Product list. Pesticide applicators must follow regulations and label precautions. Applicators will have training in IPM and must comply with the Town's "Components of an IPM, Least Toxic Program".

## **METHODS AND PRODUCT SELECTION AND PRODUCT USE APPROVAL**

It is the policy of the Town to use least-toxic IPM principles to manage pest populations. Except for pesticides granted an emergency exemption, the Town will not use any products on the banned use product list below. If it is determined that an EPA registered pesticide must be used, then the least-hazardous material will be chosen.

Products will be divided into three classifications: Approved Use List, Limited Use List, and Banned use List. If the use of a material not on either the Approved Use List or the Limited Use List is deemed necessary, the IPM Coordinator may apply for an emergency exemption.

**Approved Use Products List:**

The IPM Coordinator shall maintain a list of all pesticides that have been approved for use by the Town Council, along with any restrictions for such use. This list shall be referred to as the Approved Use Products List.

The Approved List shall include, but not be limited to:

- Insecticides, rodenticide baits and traps;
- Caulking agents and crack sealants;
- Borates, silicates and diatomaceous earth;
- Soap based products;
- Natural products on the FIFRA's 25 (b) list (40 CFR part 152.25 (g) (1));
- Natural products on the California Certified Organic Farmers organic list;
- EPA GRAS-generally recognized as safe products pursuant to federal EPA
- Cryogenics, electronic products, heat and lights;
- Biological controls, such as parasites and predators;
- Microbial pesticides;
- Insect growth regulators;
- Physical barriers

**Limited Use Products:**

The IPM Coordinator may submit a written recommendation to the Town Council or its designee for approval, that a particular pesticide(s) not on the Approved List be approved for use for a specific and limited purpose. The request must be reviewed by the Town Council or its designee and signed by the IPM Coordinator. The Town Council or its designee may grant a limited use exemption upon a finding that the Town Department or pesticide applicator has:

1. Identified a compelling need to use the pesticide;
2. Made a good-faith effort to find alternatives to the particular pesticide;
3. Demonstrated that effective, economic alternatives to the particular pesticide do not exist for the particular use; and
4. Developed a reasonable plan for investigation alternatives to the banned pesticide during the exemption period.

The limited-use product will be allowed to be used for a short and defined exemption period, not to exceed one year.

### Banned Use Products List:

The following high health-risk pest management products are completely banned from use on Town property:

- Pesticides linked to cancer (U.S.E.P.A. Class A, B, and C carcinogens known to the State of California to cause cancer under Proposition 65).
- Pesticides that cause birth defects, reproductive or developmental harm (identified by the U.S.E.P.A. or known to the State of California under Prop. 65 as reproductive or developmental toxins).
- Pesticides classified as Toxicity Category I and Category II by the U.S.E.P.A., Carbamate and organophosphate pesticides.
- Foggers, bombs, fumigants or sprays that contain pesticides identified by the State of California as potentially hazardous to human health (DFR 6198.5).

### Banned Use Areas:

Except in the case of an emergency, no pesticides will be applied in the following parks where small children play:

Millennium Playground  
Elders Garden  
Lansdale Station Playground

### **NOTIFICATION OF PESTICIDE APPLICATIONS:**

The general public will be notified via posted signs. Signs will be posted at entryways\* accessed by people and/or cars at every 100 linear feet. The signs will go up 24 hours prior to the application and will remain posted for no less than 24 hours after the application. Town staff or the pesticide applicator will use their best effort to post signs at all usual public and employee entry points where the pesticide is applied.

### Field Postings:

The Town of San Anselmo will assure that signs are posted at treated fields in the following land use areas:

- Parks and large open spaces including pedestrian and bicycle pathways.
- Medians and Street Islands are exempt.

### Building Postings:

Town staff or the pesticide applicator will post signs at all usual public and employee entry points where pesticides are applied in enclosed areas.

\*driveways and gates

## **PEST CONTROL AND RECORD KEEPING OF PESTICIDE APPLICATIONS**

The Town shall maintain records of all pesticide applications to Town Property at the Parks Department Office for a period of four (4) years, and shall make the information available to the public, upon request.

Each application record shall include the following information:

All the information listed below will be documented on an official Pest Control Recommendation and be supplied by either a PCA or the licensed Qualified Applicator prior to any pest control operation. The form will include:

- Name of the entity responsible.
- Specific site of the application.
- The target pest.
- The date the pesticide was used and re-entry period if applicable.
- Date of expiration of the PCA recommendation.
- Schedule, timing, and conditions.
- The name and active ingredient of the pesticide to be applied and EPA registration number.
- The pesticide signal word.

The IPM Coordinator or Pest Control Applicator will prepare a follow up record to include:

- The effectiveness of the pesticide or management action;
- Prevention and other non-chemical methods of control used;
- If application was undertaken in a pest control emergency, provide explanation of circumstances of the emergency.

### **EMERGENCY EXEMPTION PROCESS:**

The IPM Coordinator will make a recommendation to the Town Council or its designee to allow staff, or an outside landscape contractor to apply a pesticide not on the Approved Use List or Limited Use List based upon a finding that the protection of public health requires the use of that pesticide due to an emergency. The Town Council intends that such exemptions shall be granted on a per-case basis and shall apply to a specific pest problem for a limited time, with selection of pesticides conforming to the spirit and intent of this policy as is deemed practicable. The IPM Coordinator may grant emergency exemptions if action is required before the next meeting of the Town Council or its designee. The IPM Coordinator shall report all such emergency exemptions to the Town Council and its designee for review. To the greatest extent practicable, the notification requirements apply in an emergency situation.

 **DINANCE NO.** \_\_\_\_\_

**AN ORDINANCE OF THE TOWN OF SAN ANSELMO AMENDING TITLE 5 (SANITATION AND PUBLIC HEALTH) OF THE SAN ANSELMO MUNICIPAL CODE BY ADDING CHAPTER 9 (NOTIFICATION OF COMMERCIAL PESTICIDE APPLICATIONS).**

THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO DOES ORDAIN AS FOLLOWS:

Chapter 9 of Title 5 is hereby added to the San Anselmo Municipal Code to read as follows:

**Chapter 9**

**PESTICIDE NOTIFICATION**

**Sections:**

**5-9.01 Purpose and Intent**

**5-9.02 Definitions**

**5-9.03 Licensing of Commercial Applicators**

**5-9.04 Maintenance of Records**

**5-9.05 Emergency Suspension**

**5-9.06 Pre-application Notification of Airborne Application**

**5-9.07 Exceptions**

**5-9.01 Purpose and Intent**

- (a) It is the intent of the Town Council in enacting this chapter to prescribe requirements concerning pesticide notifications in order to preserve the health, safety, and welfare of the inhabitants of the Town. The Council finds that there are federal and state laws that regulate pesticides, but that those laws do not exclude local government regulation not inconsistent therewith. The Council finds that this chapter is not inconsistent with federal and state laws, and is not preempted by any such laws. The Town Council finds that the provisions of this chapter address the Town's local and municipal concerns of notification of pesticide applications by commercial applicators not addressed by federal or state law.
- (b) The Town Council finds that wind conditions in the town cause drift to occur during airborne applications of pesticides and that absent pre-application notification, airborne applications of pesticides constitute a nuisance. It is the intent of the Town Council in enacting this chapter to prescribe requirements concerning the notification of the public of the outdoor use of pesticides. The Town Council finds that this objective is not inconsistent with federal and state laws, and is not pre-empted by any such laws. The Town Council further finds that notification of outdoor use is a matter of local and municipal concern.

**5-9.02 Definitions**

(a) As used in this chapter, the following terms shall have the following meanings unless the context clearly indicates that a different meaning is intended:

1. **“Airborne Application”** means the application of pesticides by misting or spraying plant materials greater than five feet in height, or by use of a fogger.
2. **“Contracting party”** means a person which hires a commercial applicator or other person to apply pesticides.
3. **“Commercial property”** means property owned or leased by a business, industry, church, school, or government on which goods or services are provided to the public.
4. **“Commercial applicator”** means a person which owns or manages any business activity in which pesticides are applied upon the lands of another for hire or which receives, directly or indirectly, any compensation for such activity. This definition does not include maintenance personnel hired by commercial establishments, if such personnel have a variety of maintenance duties.
5. **“Defoliant”** means any substance or mixture of substances intended to cause leaves or foliage to drop from a plant, with or without causing abscission.
6. **“Desiccant”** means any substance or mixture of substances intended to accelerate artificially the drying of plant tissue.
7. **“FIFRA”** means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., as amended.
8. **“Fogger”** means a piece of equipment that breaks some pesticides into very fine droplets (aerosols or smokes) and blows or drifts the fog onto the target area.
9. **“Mist blower”** means spray equipment in which hydraulic atomization of the liquid at the nozzle is aided by an air blast past the source of spray.
10. **“Misting”** means the production of a cloud-like mass or layer of minute globules of pesticide in the air through use of a mist blower or similar device.
11. **“Pest”** means any insect, snail, slug, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacterium, or other microorganism which is declared by the California State Department of Pesticide Regulation.
12. **“Pesticide”** means any substance or mixture of substances intended for destroying or repelling any pest. This includes without limitation fungicides, insecticides, nematocides, herbicides, and rodenticides and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. The following products are not pesticides:
  - (a) Deodorizers, bleaching agents, disinfectants, and cleaning agents for which no pesticide claims are made in the sale, or distribution thereof; and
  - (b) Fertilizers and plant nutrients.
13. **“Plant Regulator”** means any substance or mixture of substances intended to accelerate or retard, through physiological action, the rate of growth or maturation or otherwise to alter the behavior of plants or their produce, but does not include a

plant nutrient, trace element, nutritional chemical, plant inoculants or soil amendment.

**14. “Spray”** means a mixture of a pesticide with water or other liquid applied in fine droplets.

**15. “User of pesticides”** means any person which applies or causes the emission of a pesticide into the environment, whether by spraying, misting, fogging, dusting, dragging, or other means. Users of pesticide include, without limitation, commercial applicators, contracting parties, property owners, and governmental entities.

### **5-9.03 Licensing of Commercial Applicators**

No commercial applicator shall engage in the use or application of pesticides without a valid current state license as required by the California State Department of Pesticide Regulation.

### **5-9.04 Maintenance of Records**

- (a) Each commercial applicator shall maintain a record of information concerning each pesticide application. The record shall be consistent with state record keeping requirements.
- (b) Immediately following any pesticide application, each commercial applicator shall provide a full copy of the record set forth in subsection (a) above to the contracting party.

### **5-9.04 Emergency Suspension**

The Town Administrator or the Administrator’s designee may suspend any portion of this chapter in the event of an emergency situation which threatens irreparable harm to the health, safety or welfare of the inhabitants of the Town or to the Town’s environment.

### **5-9.05 Pre-application Notification of Airborne Application**

(a) Prior to airborne application of any pesticide, no contracting party or other user of pesticides, shall fail to give notice to all occupants of all adjacent properties. For purposes of this section, properties located diagonally from the affected property and touching only on a property corner or other point shall be considered to be adjacent, and rights-of-way shall be disregarded in such determinations.

(b) The notice shall be given at least twenty-four hours prior to application.

(c) The notice shall be valid for seven days after it is given.

(d) The notice may be given by posting signs on the property to be treated or by giving verbal or written notice.

(e) The notice shall contain at a minimum the following information:

- (1) Date notice given;
- (2) Indication that pesticides will be applied and the approximate date of application;
- (3) The name and telephone number of the contracting party or other user of pesticides; and
- (4) Date notice expires.

(f) If notice is given by posting signs on the property to be treated, such signs shall conform to the following criteria:

- (1) There shall be a minimum of one water resistant sign along the principal street frontage of the property.
- (2) Signs shall be placed so that the warning is conspicuous from the public right of way. All required information shall be on one face of the sign.
- (3) For property surrounding commercial buildings or attached dwelling units, signs shall be posted at common access points.
- (4) For town park or open space property, signs shall be posted at each trailhead, street access, or sidewalk entry point, and any additional common access points.
- (5) Signs shall be a minimum of 8 ½ inches by 11 inches in area, and a maximum of 2 square feet in area per face.
- (6) Signs shall be placed at a maximum height of six feet.
- (7) There shall be no greater size of letters for identification of the applicator than for any other information on the sign.
- (8) Signs shall be dark lettering on a bright yellow background.

(g) If a commercial property or an attached (i.e. multi-family) residential dwelling is located adjacent to property on which an airborne application of any pesticide is to occur as set forth above, no contracting party or other user of pesticides shall fail to make a reasonable attempt to notify the owner or manager of the property at least forty-eight hours prior to the pesticide application. Upon receipt of such notice, such owner or manager shall not fail to post in a prominent place the information that the adjacent property will be treated.

#### **5-9.06 Post-application notification of Outdoor Application**

- (a) No contracting party or other user of pesticides which applies pesticides outdoors shall fail to display at least one warning sign for at least twenty-four hours following each pesticide application or longer if suggested or required by the manufacturer's label. All signs shall be posted at the time of the pesticide application.
- (b) Signs shall conform to the following criteria:

- (1) Signs shall include the following statement:  
**“WARNING, PESTICIDES APPLIED**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_. Remove sign after 24 hours, or per label requirements.”

- (2) The name and telephone number shall be either the contracting party or other user of pesticides.
- (3) Signs shall be at a minimum of four inches by five inches in area per face, and a maximum of 2 square feet in area per face.

(c) Signs shall comply with all other criteria set forth in Subsection 5-9.05, except subparagraph 5-9.05 (f),(5).

**5-9.07 Exceptions**

No notice of outdoor application is required pursuant to Section 5-9.06, “Post-application Notification Outdoor Application,” under the following circumstances:

- (a) Individual spraying of weeds if the spraying distance is less than three feet; and
- (b) Spot treatment of areas that are less than a total area of 100 square feet on a lot.

I hereby certify that the foregoing Resolution was duly passed and adopted at a regular meeting of the San Anselmo Town Council held on the 9<sup>th</sup> day of September, 2003, by the following vote, to wit:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Peter Kilkus, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

**AGENDA ITEM 6**

**TOWN OF SAN ANSELMO**

STAFF REPORT  
*September 3, 2003*

For the meeting of September 9, 2003

TO: Town Council  
FROM: Debra Stutsman, Town Administrator  
SUBJECT: Red Hill Field Lease and Improvement Agreement

A. RECOMMENDATION

*That Council approve the resolution authorizing the Town Administrator to enter into an agreement with the Tamalpais Union High School District (TUHSD) and the Ross Valley School District (RVSD) regarding the lease and improvement of Red Hill field, in substantially the form presented this evening.*

**BACKGROUND**

The Town has been working in partnership with TUHSD to explore the possibility of jointly developing the RVSD field at Red Hill School. At the meeting of June 10, 2003 the Town Council reviewed an executive summary of the proposed agreement. Council was supportive of the project in concept and regarding possible funding. There was discussion about the importance of conducting a traffic study as soon as feasible, possible funding sources for maintenance and the overall cost of the project.

B. DISCUSSION

The attached agreement, as presented in draft form, provides for a number of milestones that must be accomplished if the agreement is to remain in force. For example:

- The plans must be submitted to RVSD within 12 months of the execution of this agreement and submitted to approval agencies (including the Town) 30 days after RVSD approval.
- Approval from town, county or state agencies must be received within 20 months after the date of the agreement or the agreement is void.
- The Town or TUHSD may determine in their sole discretion at any time up to 18 months from the execution of the agreement that there is not likely to be sufficient funding.
- Town and TUHSD must enter into a further agreement regarding operation, scheduling and maintenance of the field by March 31, 2004.

RVSD has agreed to a 20-year term for the lease. Exhibit A (Site Plan) and Exhibit B (Beals Sports Plan) will be included in the final document.

C. CONCLUSION

The Town will require that a traffic study on the impact of this project be done first and foremost, and paid for out of the raised funds for the project.

Respectfully submitted,

Debra Stutsman  
Town Administrator

**Agreement for the  
Lease and Improvement  
of  
Red Hill Field**

This Agreement dated September 1, 2003 is by and between Ross Valley School District (“Ross Valley”), Tamalpais Union High School District (“Tamalpais”) and Town of San Anselmo (“Town”), Tamalpais and Town, collectively referred to herein as “Lessee.”

**I. Development of Athletic and Recreational Facilities:**

A. **Site; Name.** The “Site” on which athletic and recreational facilities will be developed pursuant to this Agreement is an approximately \_\_\_\_\_ square foot portion of land situated on Ross Valley’s former Red Hill School site, commonly known as 110 Shaw Drive, San Anselmo, California, and more particularly described in Exhibit A, which is attached hereto and incorporated by this reference. The Site shall be named “Red Hill Community Park.”

B. **Project.** At its sole cost and in accordance with all applicable laws and regulations, Lessee agrees to design and administer and supervise the construction, renovation, improvement, repair and development of the “Project” substantially as outlined in the Beals Sports Plans, a copy of which is attached hereto, marked Exhibit B, and incorporated by this reference. The Project shall include the following

Improvements (1) a playing field using natural or artificial turf; (2) a separate area where dogs will be permitted; (3) additional parking area with entry from Sunny Hills Drive; (4) demolition of the existing tennis court and construction of a new tennis court (if permitted by available funding); (5) a walking path; and (6) restroom facilities. In addition the Project shall include a fence or other appropriate barrier to discourage entry from Shaw Drive. It is understood and agreed that the configuration of the Improvements may be determined based on any of the options set forth in the Beals Sports Plans, subject to Ross Valley's final approval rights set forth in Section I, Paragraph C.

### **C. Approval of Plans.**

1. At its sole cost, Lessee shall cause a design professional (“Design Professional”) to prepare all specifications and drawings (collectively “Plans”) necessary for the complete construction of the Project including, but not limited to, separately metered utilities and signs to be placed on the Site. In doing so, Lessee shall be responsible for all environmental impact and mitigation measures related to construction of the Project.

2. During the development of the Plans for the Project, Lessee shall give reasonable notice and opportunity for Ross Valley to provide consultative advice. Lessee shall keep Ross Valley informed of the status of the Project by reasonable advance notice of meetings pertaining to the Project and, within ten (10) days after execution, by providing copies of any Project-related agreements, letters of intent or similar documents that Tamalpais and/or Town enter between them or with third parties.

3. The Plans shall be submitted to Ross Valley within twelve (12) months after the date of this Agreement, shall be subject to approval of Ross Valley and, to the extent required by law, within thirty (30) days of approval by Ross Valley shall be submitted to Town, county and state agencies (e.g., County of Marin Community Development Department and/or the Division of State Architect). Should necessary approval from Town, county or state agencies not be granted for the Project within 20 months after the date of this Agreement, this Agreement shall terminate and be of no force or effect. Lessee shall obtain all necessary approvals prior to commencement of construction.

4. Ross Valley and Lessee must mutually agree on the final Plans. If the parties are unable to agree, this Agreement shall terminate and be of no force or effect. Lessee shall not modify the design or location of the Improvements as set forth in the final Plans without Ross Valley’s advance written approval.

**D. Funding.** Lessee shall procure all necessary funding for the

design and construction of the Project. Nothing in this Agreement is intended to preclude Lessee from seeking and obtaining funding from public and/or private sources. Within four (4) months after all required approvals have been obtained and prior to commencement of construction of the Project, Lessee shall either deposit all necessary funding in an escrow account acceptable to Ross Valley or provide, in a form acceptable to Ross Valley, other security (e.g., Performance Bond or Irrevocable Letter of Credit) guarantying Lessee's performance of this Agreement. Lessee shall be deemed to have all necessary funding when Lessee has secured funds equal to (1) the sum of the bid(s) submitted by the party or parties with whom Tamalpais or Town, individually or collectively, intends to contract for construction of the Project, (2) the cost of any other services, labor, supplies, materials and fees reasonably anticipated as necessary to complete the Project, and (3) fifteen percent (15%) of the total sum of (1) and (2). Within the four (4) month period referenced above, Lessee shall give Ross Valley a written notice ("Funding Notice") confirming that all funding to complete the Project has been secured. If Lessee fails to procure all necessary funding within the time allowed, this Agreement shall terminate and be of no force or effect. Notwithstanding any other provision of this Agreement, either the Town or Tamalpais may determine in its sole discretion at any time up to 18 months from the date of this Agreement that there is not likely to be sufficient funding secured to complete the Project and may terminate this Agreement upon written notice to the other parties.

**E. Completion Date.** The Project shall be completed within eighteen (18) months after Lessee secures all necessary funding to complete the Project ("Completion Date").

**F. Construction Contract(s).** Lessee shall let and perform the contract(s) for the construction of the Project in accordance with all applicable laws and regulations.

**G. Contractor's Payment and Performance Bonds.** Lessee shall secure from any party engaged to perform work on the Project performance and payment bonds, which are in a form acceptable to Ross Valley and name Ross Valley as a dual obligee with Lessee. The bonds shall be secured and approved prior to commencing any work on the Site.

**H. Failure to Complete Project.** In the event Lessee is unable to complete the Project by the Completion Date and Lessee is not making substantial progress towards completion of the Project after reasonable notice by Ross Valley, at Ross Valley's option, upon thirty (30) days notice by Ross Valley, Lessee shall commence removing any or all Improvements and return the Site, as practicable, to its condition prior to the commencement of construction. Should this Agreement be terminated at any time after completion of the construction of the Project, Lessee shall not be required to remove any Improvements from the Site nor required to return the Site to its pre-construction condition.

**I. Title to Site/Improvements.** The Site and Improvements shall remain the property of Ross Valley.

**J. Term.** The Term of this Agreement shall be twenty (20) years commencing upon the date of this Agreement. The Term of this Agreement shall not be extended except by written agreement of the parties.

## **II. Lease**

**A. Term/Use of Site.** The Lease Term (“LeaseTerm”) shall commence upon Ross Valley's receipt of the Funding Notice pursuant to Section I, Paragraph D, and end on the last day of the Term as set forth in Section I, Paragraph J. During the Lease Term Lessee may use the Site to construct the Project and for athletic, recreational, and reasonably related lawful purposes only. Without the prior consent of Ross Valley, Lessee may allow third parties to use the Site and, at Lessee’s sole discretion, Lessee may charge third parties a fee for use of the Site provided that such fees are used solely for ongoing maintenance and improvement of the Site. Any holding over by Lessee shall not be construed as a renewal of the Lease Term or Term but shall constitute a month-to-month tenancy which Ross Valley may terminate upon 30 days prior written notice to Lessee.

### **B. Title:**

1. To the best of its knowledge, Ross Valley owns good and sufficient title to and interest in the Site; and

2. To the best of Ross Valley’s knowledge, there are no liens, encumbrances, covenants, restrictions or judgments affecting the Site which impede or adversely affect Lessee’s intended use of the Site; and

3. To the best of their knowledge, Ross Valley, Town and Tamalpais each has full right, power and authority to execute, deliver and perform this Agreement.

4. To the extent desired Town and Tamalpais each has had an opportunity to research and review the status of the title to the Site and any liens, restrictions, or judgments affecting the Site. Town and Tamalpais understand and agree that they are proceeding with this Agreement based

solely upon their research and review of such matters and not upon any representation of the same by Ross Valley.

**C. Rent and Consideration:**

In consideration of Lessee's construction of the Improvements and other promises set forth herein, Ross Valley agrees that Lessee is not required to pay any rent during the Lease Term.

**D. Maintenance:**

1. From the date of Ross Valley's receipt of the Funding Notice pursuant to Section I, Paragraph D, Lessee shall be solely responsible for utilities, cleaning, upkeep, maintenance and repair of the Site and Improvements. Lessee shall not permit dogs on the site except in the areas specifically designated in the final Plans, and Lessee shall diligently enforce this restriction. Lessee shall at all times maintain the Site and Improvements in a safe and sanitary condition acceptable to Ross Valley in its reasonable judgment and in accordance with all applicable laws and regulations. At the end of the Lease Term the Site and Improvements shall be in good, serviceable condition.

2. Applicable local, state and federal laws and regulations and Ross Valley policies and procedures shall govern all herbicidal pesticide use.

**E. Alterations and Additional Improvements**

Other than as provided in the final Plans approved by Ross Valley, and excepting routine maintenance and repair of the Improvements, Lessee shall not make any alterations or other improvements on the Site without Ross Valley's advance written authorization.

**F. Indemnification and Insurance**

**1. Indemnification.**

- a. Tamalpais and Town, jointly and severally, shall indemnify, defend, and hold Ross Valley and its governing board, officers, agents and employees, harmless from any Liability.
- b. The term “Liability” for purposes of Section II, Paragraph F.1.a., shall include any claim, demand, suit, action, cost, damage, loss, injury, fine, penalty, and attorney’s fee arising out of, caused by, connected with, or attributable to acts or omissions of Town or Tamalpais under this Agreement, their individual or joint activities, or either of their contractors, officers, subcontractors, employees, agents, clients, or invitees.
- c. The obligations of Tamalpais or Town to Ross Valley under Section II, Paragraph F.1.a., shall apply notwithstanding the concurrent passive or active negligence of Ross Valley be it sole or contributory.
- d. The obligations of Tamalpais and Town under Section II, Paragraph F.1.a., shall not extend to liabilities caused by the willful misconduct of Ross Valley.
- e. Without limiting the foregoing, Liability shall be construed to include personal injury and property damage based on

sexual, racial, or gender harassment /discrimination and other civil rights violations, construction of the Project, environmental requirements associated with Lessee's preparation for and construction of the Project, Lessee's use and maintenance of the Site, and use of the Site by any third party except when the third party user is acting solely under the direction of Ross Valley.

- f. Lessee's obligations under this indemnification provision shall commence upon the date of the Funding Notice and terminate on the last day of the Term, unless modified as specifically provided in Section III, Paragraph A.
- g. Lessee's obligations under this indemnification provision shall be construed to apply for the benefit of Ross Valley to the fullest extent permitted by law.

2. **Insurance.**

- a. From the date of the Funding Notice, Tamalpais and Town shall each provide comprehensive general public liability and property damage coverage in the sum of at least ten million dollars (\$10,000,000) combined single limit per occurrence, which sum shall be increased to fifteen million dollars (\$15,000,000) on the tenth anniversary of the date of this Agreement.

b. Tamalpais and Town shall each name Ross Valley and its governing board, officers, agents and employees as additional insureds on all said insurance policies, which shall be carried by each for the life of this Agreement and shall be subject to the advance written approval of Ross Valley, which approval shall not be withheld unreasonably.

c. The policies shall be written on an occurrence basis and be endorsed with the following specific language:

The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured and the coverage afforded shall apply as though separate policies have been issued to each insured; the insurance provided herein is primary and no insurance held or owned by any additional insured shall be called upon to contribute to a loss; and coverage provided by this policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to Ross Valley.

d. On or before the date of the Funding Notice Tamalpais and Town shall each provide Ross Valley with properly executed Certificates of Insurance clearly evidencing all coverage, limits, and endorsements required above. During the Term of this Agreement, Tamalpais and Town shall provide updated Certificates of Insurance upon renewal or any change in policies required under this Agreement.

e. The parties recognize that insurance practices and requirements of towns and school districts differ from that of private parties and may change from time-to-time. Subject to the advance

written approval of Ross Valley, during any period of time in which either Tamalpais or Town, as a regular practice does not maintain insurance, but rather self-insures or participates in a joint powers authority (“JPA”) for liability insurance purposes with other governmental entities, either Tamalpais or Town may meet the insurance requirements of this Agreement through either self-insurance or a JPA. Ross Valley may withhold its approval if it determines in its reasonable discretion that the proposed self insurance or the insurance obtained through a JPA does not provide substantially the same protection required under subparagraphs (a) – (d).

- f. Lessee acknowledges that Lessee’s failure to provide any insurance required under this Agreement is a material breach of this Agreement and that in such event Ross Valley may terminate this Agreement, unless such breach is cured within ten (10) days after written notice to Lessee. Upon service of such notice, Lessee shall cease all use and activities on the Site until the default is cured.

### **III. Conversion to “Use Agreement”**

**A. Opening of A School on Site.** If Ross Valley, in its discretion, decides to open a school at the former Red Hill School site, Ross Valley shall give Lessee a notice of school opening (“Notice”), and Lessee’s rights under Section II, Paragraph A, shall terminate, effective on a date specified therein that shall be at least 12 months after

delivery of the Notice. As used herein, "school" shall mean a regular, alternative or charter school operated by or through Ross Valley or any other public agency.

1. Upon the effective date of the Notice, the Use Agreement in this Section III shall take effect for the remainder of the Term, and the Lease in Section II of this Agreement shall terminate.

2. Upon the effective date of the Notice, Lessee's obligations under Section II of this Agreement shall terminate except as provided in Section III, Paragraph A.3.

3. Lessee's obligations to Ross Valley under Section II, Paragraph F.1., with respect to Liabilities arising out of facts and circumstances that occurred prior to the effective date of the Notice, and obligations under Section II, Paragraph F.2., concerning Insurance, shall survive the expiration and/or full or partial termination of this Agreement

**B. Use.** During school hours determined by Ross Valley in Ross Valley's discretion, Ross Valley shall have exclusive use of the Site and Improvements. Tamalpais shall have the right to prescheduled use of the playing field for up to fifteen (15) hours per week after school hours and on Saturdays for Sir Francis Drake High School athletic programs from August 15 to November 15 and February 1 to May 31 of each year. Subject to Ross Valley's approval, and Tamalpais's prescheduled use rights prescheduled use shall be according to a schedule proposed each May by Tamalpais for the succeeding school year. Subject to Ross Valley's exclusive use rights, Tamalpais and Town may use the Site for athletic, recreational, and reasonably related lawful purposes on a first-come, first-served basis; provided, however, in the event Tamalpais and Town, or a third party and Town, simultaneously request to use the Site at competing

times, Ross Valley shall give Town priority. Subject to the parties' use rights and consistent with the requirements of the Civic Center Act, Ross Valley shall allow public use of the Site at all times during the term of this Use Agreement. Notwithstanding any of the foregoing, Ross Valley may restrict use and/or close the Site on a temporary basis in the interest of public health or safety. During use of the Site, Tamalpais and Town shall comply with all applicable laws and regulations and Ross Valley policies and procedures, including requirements for clean-up of the Site after each use.

C. **Fees.** Ross Valley shall not charge Tamalpais or Town any fees for use of the Site during the first ten (10) years of the Term, except for 1) reasonable clean-up fees and 2) "fair rental value" as defined by the Civic Center Act (Education Code sections 38130 et seq.) or successor provision, when Tamalpais or Town uses the Site for meetings or entertainments where admission fees are charged or contributions solicited and the fees/contributions are not expended for the welfare of Ross Valley's students. After the tenth year of the Term, Ross Valley shall charge Tamalpais and Town fees in accordance with its facilities use policies and procedures.

D. **Maintenance.** Ross Valley shall assume responsibility for utilities and Maintenance of the Site, except Tamalpais and Town shall be responsible for damage to the Site associated with their respective use.

E. **Indemnification.** To the fullest extent permitted by law each party shall indemnify, defend, hold harmless, the other parties and their governing boards, officers, agents and employees, from and against any and all claims, demands, suit, action, cost damage, loss, injury, fine, penalty, and attorney's fees (collectively "Damages") arising out of, caused by, connected with, or attributable to any act,

omission, or negligence of such indemnifying party or their governing boards, officers, agents, employees or invitees. The obligation of the parties under this paragraph shall be construed to include Damages based on sexual, racial, or gender harassment/discrimination and other civil rights violations.

#### ***IV. Operations Contract between Tamalpais and Town***

Tamalpais and Town shall execute a separate Operations Contract setting forth their respective rights and responsibilities, as between them, regarding construction and maintenance of the Site and all related issues including, but not limited to, costs and indemnification, and all aspects of management, maintenance, and scheduling use of the Improvements. The Operations Contract shall not in any way operate to alter Lessee's duties and obligations to Ross Valley under this Agreement. In the event that Tamalpais and Town have not executed an Operations Contract by March 31, 2004, this Agreement shall immediately terminate and be of no further force and effect. Tamalpais and Town shall provide a copy of the Operations Contract to Ross Valley within ten (10) days of execution thereof.

#### **V. Default and Dispute Resolution**

**A. Default.** Except as provided in Section II, Paragraph F.2.f, Insurance, the failure by Lessee to comply with or perform any of the terms, covenants, or conditions under this Agreement shall constitute a default and breach of this Agreement where such failure continues for a period of thirty (30) days after Ross Valley gives written notice of default; provided, however, if the nature of the default is such that more than thirty (30) days are reasonably required to cure, Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) day period and thereafter diligently

prosecutes such cure to completion. **B. Mediation.** If a dispute arises out of or relates to this Agreement, or its breach, the parties agree to first try in good faith to settle the dispute by voluntary mediation before resorting to arbitration as set forth in Section V, Paragraph B.

**C. Arbitration of Disputes.**

**1. Location.** Except with respect to matters concerning Tamalpais's or Town's compliance with Section II, Paragraph F.2, Insurance, any dispute between the parties arising under or relating to this Agreement shall be settled by arbitration in Marin County, California, or such other place as the arbitrators and parties agree upon, in accordance with the procedures set forth below; provided, however, with respect to any dispute arising from events which, in any party's reasonable judgment, create an emergency condition requiring immediate and decisive action by any of the parties for its resolution, then any party may take such action, including filing court actions, as either of them deems reasonably necessary to preserve such party's rights in the subject areas and under this Agreement, without first subjecting such dispute to arbitration under this Section V. For purposes of this provision the term "emergency" means an imminent threat to personnel, health or safety, or damage to property. During the pendency of any arbitration proceeding, the time for (i) performance of any obligation, (ii) exercise of any right, and (iii) cure of any default, arising under or by virtue of this Agreement, which is the subject of or directly relates to the matter being arbitrated in such proceeding, shall be tolled, and extended for a period equal to the amount of time consumed by the arbitration process, and ending ten (10) business days after rendering of the written final decision in the arbitration proceeding as to such matter, as described in this Section V., Paragraph B.

2. **Triggering of Arbitration Procedure; Appointment of Arbitrators.**

With respect to any dispute subject to arbitration under Section V, Paragraph B, before commencing the arbitration procedure described herein, the parties shall be obligated to meet in person with the other parties within five (5) days after notice of the dispute from any party and negotiate in good faith in an effort to resolve such dispute without arbitration. If within the later to occur of (i) five (5) days after such meeting or (ii) ten (10) days after the initial notice of dispute (if the parties have been unwilling or unable to meet in person or to discuss the matter) the dispute remains unresolved, any party ("Initiating Party") may give notice of such party's demand for arbitration of such dispute to the other parties ("Other Party"). The arbitrator, who shall be a licensed attorney or retired judge, shall be selected as mutually agreed by Town, Tamalpais, and Ross Valley. If the parties cannot so agree then designation of the arbitrator shall be made pursuant to Code of Civil Procedure Section 1281.6

3. **Awards; Time for Decisions.** The arbitrator appointed and selected as described above shall render a decision and make an award as to the matter in dispute within sixty (60) days after the date of selection of the arbitrator.

4. **Limited Discovery.** In any arbitration proceeding conducted under this Section V, Paragraph .B., each party shall have the right to the following limited discovery from any other party to the proceeding: (i) depositions; (ii) thirty-five (35) interrogatories, whether "specifically prepared" or in "official form", as such terms are used in California Code of Civil Procedures ("CCP") section 2030 as from time-to-time amended; and, (iii) the right to obtain and review any documents relevant to the subject

matter of the arbitration proceeding held by any other party which are not subject to a claim of attorney-client or attorney work-produce privilege. The parties' other rights and obligations with respect to the discovery process shall be governed by CCP sections 2016 and 2036, as from time-to-time amended, provided that nothing in such sections shall apply to expand or increase any party's limited rights of discovery as set forth in this Paragraph.

5. **Arbitrator's Powers.** The arbitrator appointed and selected pursuant to this Section V, Paragraph C.2., shall have the rights and powers set forth in CCP sections 1283.05(b) and (c), as from time-to-time amended, and CCP section 1283.05(d), as from time-to-time amended, shall be applicable to any disputes arbitrated pursuant to this Agreement.

6. **The Arbitration Hearing.** The arbitration hearing shall be subject to and governed by the Evidence Code, Code of Civil Procedure and such other California law or statutes as may be applicable.

7. **Conclusiveness.** Any award shall be a conclusive determination of the matter and shall be binding upon Tamalpais, Town and Ross Valley and shall not be contested by either of them. Upon receipt of an award in writing by the arbitrators, the losing party shall make payment in the amount, if any, set forth in such award to the prevailing party.

8. **Fees and Expenses.** Tamalpais, Town, and Ross Valley shall share equally the arbitrator's costs (including the fees and expenses) incurred in connection with the resolution of disputes and each shall bear its own arbitration-related expert's and attorney's fees.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT OF THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

TAMALPAIS

ROSS VALLEY

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TOWN

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**VI. Miscellaneous Items.**

A. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns. Nothing in this Agreement, expressed or implied, is intended to confer upon any person other than the parties hereto and their successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

B. This Agreement may only be amended or modified by written instrument executed by the parties.

C. Each individual executing this Agreement, or its counter part, on behalf of the respective party thereto, warrants that he/she is authorized to do so and that this Agreement constitutes the legally binding obligation of the party which he/she represents.

D. This Agreement contains the entire understanding of the parties and constitutes the sole and only agreement between them concerning the subject matter hereof or the rights and duties of any of them in connection therewith. Any agreements or representations among the parties hereto regarding the Site or the Project not expressly set forth in this Agreement are null and void.

E. Each of the parties hereto agrees that it shall act in good faith in an attempt to cause all the conditions precedent to the respective obligations to be satisfied.

F. Any notice required to be given pursuant to this Agreement shall be given in writing to the other party either personally or by depositing the same in the United States mail, by first class mail, registered or certified, postage pre-paid, addressed to the party at the addresses set below:

Ross Valley: Superintendent  
Ross Valley School District  
110 Shaw Drive  
San Anselmo, CA 94960

Tamalpais: Superintendent  
Tamalpais Union High School District  
P.O. Box 605  
Larkspur, CA 94977

Town: Town Administrator  
Town of San Anselmo  
525 San Anselmo Avenue  
San Anselmo, CA 94960

Any notice delivered by mail shall be deemed delivered five (5) days after the date of deposit in the mail. The address at which any notices to be delivered may be changed by either party by compliance with terms of this paragraph.

G. Time is of the essence in this Agreement and each of its provisions and failure to comply with this provision shall be a material breach of this Agreement.

H. This Agreement shall be governed by and interpreted under laws of the State of California, and each party shall be deemed to have participated equally in the drafting of this Agreement. Should any term, condition or provision be deemed to be invalid or unenforceable, the remaining terms and conditions shall remain in full force and effect.

I. No waiver by a party of any provision of this Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by a party of any remedy provided in this Agreement or at law shall not present the exercise by that party of any other remedy provided in this Agreement or at law.

J. This Agreement, or any interest of Tamalpais or Town therein, shall not be assignable by either of them or by operation of law without the advance written consent of Ross Valley. Any attempt to assign without first obtaining such written consent shall be null and void.

K. In the event that either party hereto shall commence an action in a court of competent jurisdiction to enforce any provision hereof, the party prevailing in that action shall be entitled to recover, in addition to court costs, reasonable attorney's fees from the non-prevailing party.

Executed the day and year first above written.

ROSS VALLEY SCHOOL DISTRICT

By \_\_\_\_\_  
Patricia Davis,  
Superintendent

TAMALPAIS UNION HIGH SCHOOL DISTRICT

By \_\_\_\_\_  
William Levinson,  
Superintendent

TOWN OF SAN ANSELMO

By \_\_\_\_\_  
Debra Stutsman,  
Town Administrator

**EXHIBIT "A"**

**SITE PLAN  
(to be attached)**

**EXHIBIT "B"**

**BEALS SPORTS PLAN  
(to be attached)**

NLK\RossVly\RedHill\Agreement-Draft 90503