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CV13-00707-*mmm*
(CWK)

26 Attorney for Defendant City of Lomita

Agreed Order

28

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA,)
5 Plaintiff,) CIVIL ACTION NO.
6 v.) AGREED ORDER
7 CITY OF LOMITA, CALIFORNIA,)
8 Defendant.)

9
10
11 I. INTRODUCTION AND BACKGROUND

12 1. This Agreed Order is entered into between the United States of
13 America ("United States") and the City of Lomita, California ("City").

14
15 2. This action is brought by the United States to enforce the Religious
16 Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc-
17 2000cc-5. Specifically, the United States alleges that the City, in denying a land use
18 application by the Islamic Center of the South Bay ("Islamic Center") to construct a
19 mosque on its property, imposed a substantial burden on the religious exercise of the
20 Islamic Center and its members, which burden is not in furtherance of a compelling
21 governmental interest and/or is not the least restrictive means of furthering such interest.
22 See 42 U.S.C. § 2000cc(a).

23
24
25 3. The United States' allegations arise out of the City's March 1, 2010,
26 denial of the Islamic Center's application to demolish the existing structures and build a
27 mosque and accessory uses on the four contiguous properties it then owned, located at
28

1 25816 Walnut Street, 25829 ¼ Appian Way, 25833 Appian Way, and 25833 ½ Appian
2 Way. The mosque and its accessory uses would include a prayer hall, wudu facilities, a
3 library, classrooms, a kitchen, a multi-purpose room, an office, and housing for the
4 imam and the caretaker.
5

6 4. Subsequent to the City's denial of the Islamic Center's application,
7 the Islamic Center acquired a fifth property, located at 25829 Appian Way. This
8 property is contiguous to the four it owned at the time of its land use application.
9

10 5. On March 21, 2012, the Islamic Center filed a complaint in the
11 United States District Court for the Central District of California against the City and
12 seven current or former Lomita City Council members alleging that the City's denial of
13 the Islamic Center's land use application violated RLUIPA, the United States
14 Constitution, and the California Constitution. The City has moved to dismiss portions
15 of the RLUIPA claim, the state civil rights claims, as well as the claims against all of the
16 individually-named defendants. That action is pending.
17
18

19 6. The City has denied all allegations of wrongdoing and has alleged
20 that its land use decision was based only on legitimate land use considerations.
21

22 7. The United States and the City agree that the United States' claims
23 should be resolved amicably and without protracted, expensive, and unnecessary
24 litigation. Accordingly, the United States and the City agree to the terms of and entry of
25 this Agreed Order, as indicated by their signatures below.
26

27 Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:
28

1 **II. JURISDICTION**

2 8. This Court has subject matter jurisdiction over this case under 42
3 U.S.C. § 2000cc-2(f) and 28 U.S.C. §§ 1331 and 1345.

4 9. The City is a “government” within the meaning of RLUIPA, 42
5 U.S.C. §§ 2000cc-5(4)(A) and 2000cc(a)(1).

6 10. The Islamic Center is a “religious assembly or institution” within the
7 meaning of RLUIPA, 42 U.S.C. § 2000cc(a)(1).
8

9 11. The Islamic Center’s proposed building on its property constitutes
10 “religious exercise” pursuant to RLUIPA, 42 U.S.C. §§ 2000cc-5(7)(A)–(B).
11

12 12. Through its Zoning Ordinance, the City has the authority to regulate
13 and restrict the use of land and structures within its borders. The City’s processes and
14 requirements regarding the grant or denial of a land use application constitute a “land
15 use regulation” pursuant to RLUIPA, 42 U.S.C. § 2000cc-5(5). The City’s denial of the
16 Islamic Center’s application constitutes an “individualized assessment” undertaken
17 under this “land use regulation” that “limit[ed] or restrict[ed]” the Islamic Center’s “use
18 or development of land (including a structure affixed to land).” *Id.*; *see also id.*
19 § 2000cc(a)(2)(C).
20
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23 **III. GENERAL INJUNCTION**

24 13. The City shall not impose or implement any land use regulation in a
25 manner that, within the meaning of RLUIPA, imposes a substantial burden on the
26 religious exercise of any person, including a religious assembly or institution, unless the
27
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1 City can demonstrate that imposition of that burden furthers a compelling governmental
2 interest and is the least restrictive means of furthering that compelling governmental
3 interest.
4

5 **IV. APPLICATION OF THE ISLAMIC CENTER**

6 14. Upon renewed application by the Islamic Center, the City, in
7 conformity with all local, state, and federal laws, shall consider the Islamic Center's
8 application to build, occupy, and operate a mosque and accessory uses on the properties
9 located at 25816 Walnut Street, 25829 Appian Way, 25829 ¼ Appian Way, 25833
10 Appian Way, and 25833 ½ Appian Way in accordance with paragraph 1(c)(1) of the
11 separate agreement reached between the Islamic Center and the City effective January 3,
12 2013 ("ICSB Agreement") (attached as Appendix C).
13
14

15 15. The City, in conformity with all local, state, and federal laws, will
16 process the application referred to in paragraph 14 according to the expedited schedule
17 contained in paragraph 1(c)(4) of the ICSB Agreement, including any necessary
18 planning approvals, scheduled meetings, and/or public hearings.
19
20

21 16. If the City has not approved the application referred to in paragraph
22 14 by October 1, 2013, the City shall provide the United States a written statement of
23 progress, including the reason(s) that the application has not been approved, a statement
24 of whether the City expects that the application will be granted, and, if so, a statement of
25 the City's expectation of when approval will be granted. If approval is not granted by
26 December 1, 2013, the United States may rescind this Agreed Order and reinstate its
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1 Complaint. In the event that the United States opts to rescind this Agreed Order under
2 the terms of this paragraph, the City expressly agrees not to count time during which
3 this Agreed Order is in place, or use the terms or existence of this Agreed Order, to
4 plead, argue, or otherwise raise any defenses under theories of claim preclusion, issue
5 preclusion, statute of limitations, estoppel, laches, or similar theories.
6

7 **V. NOTICE TO THE PUBLIC**
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9 ~~17. Within 30 days after the date of entry of this Order, the City shall~~
10 notify the public of this Agreed Order as follows:

11 (a) Posting the Notice attached as Appendix A for no fewer than 180 days
12 at Lomita City Hall in a prominent place where it can be seen and read by
13 members of the public; and
14

15 (b) Posting and maintaining a notice on the front page of the City's
16 internet website (<http://www.lomita.com/cityhall/>) for no fewer than 180
17 days. The notice shall be in type equivalent in size to the majority of other
18 type on the page and shall read, "Information about an Agreed Order
19 resolving a lawsuit brought against the City of Lomita by the United States
20 under the Religious Land Use and Institutionalized Persons Act of 2000 is
21 available here." The words "available here" shall contain a link that
22 connects interested persons to the full text of a notice in the form of
23 Appendix A.
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28 **VI. NOTICE TO CITY OFFICIALS**

1 18. Within 30 days after the entry of this Agreed Order, the City shall
2 provide a copy of this Agreed Order to each member of the City Council, each member
3 of the Planning Commission, all employees of the Community Development
4 Department including clerical staff, and any other City elected official, appointee,
5 employee, or contractor involved in the review of land use applications. In the event
6 that new persons are elected, appointed, or hired to these positions during the term of
7 this Agreed Order, a copy of the Agreed Order shall be provided to such persons by the
8
9 ~~this Agreed Order, a copy of the Agreed Order shall be provided to such persons by the~~
10 City within 15 days after they enter service.

11 19. The City shall ensure that each person who receives a copy of the
12 Agreed Order pursuant to paragraph 18 signs a statement confirming the person has
13 received, has read, has had an opportunity to ask questions about, and understands the
14 Agreed Order and its requirements. The text of this statement shall conform to
15 Appendix B. The City shall deliver such statements to counsel for the United States
16 within 15 days upon receipt thereof.¹

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20 **VII. TRAINING**

21 20. Within 90 days after the entry of this Agreed Order, the City shall
22 provide training on the requirements of RLUIPA to all members of the City Council, all
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24
25 ¹ For purposes of this Agreed Order, all submissions to the United States or its
26 counsel shall be submitted to: Chief, Housing and Civil Enforcement Section, Civil
27 Rights Division, U.S. Department of Justice, 1800 G Street, N.W., Suite 7002,
28 Washington, D.C. 20006, Attn: DJ 201-12C-20 or as otherwise directed by the United
States. Facsimile transmissions shall be sent to (202) 514-1116.

1 members of the Planning Commission, all employees of the Community Planning
2 Department including clerical staff, and any other City elected official, appointee,
3 employee, or contractor involved in the review of land use applications. The training
4 shall be conducted by a qualified person or organization selected by the City Attorney
5 and approved by the United States, which approval shall not be unreasonably withheld.
6 Within 120 days after the entry of this Agreed Order, the City shall secure and deliver to
7
8
9 ~~counsel for the United States a written certification of each individual's attendance at~~
10 the RLUIPA training, together with a copy of all training materials, including but not
11 limited to a course syllabus, outline, or other written handout(s) distributed.

12
13 21. In addition to the training for City officials and employees described
14 in paragraph 20, a component of the training will be open to the public. The public
15 training will be publicized in the Daily Breeze newspaper at least once a week for three
16 consecutive weeks prior to the training. The City shall provide the United States a copy
17 of any course syllabus, outline, or written handout(s) distributed at the public training
18 that differ from those referenced in paragraph 20.
19

20
21 22. The City shall pay all training costs.

22 **VIII. REPORTING, RECORD KEEPING, AND MONITORING**

23
24 23. The City shall maintain copies of all written applications that seek
25 the City's consideration or approval of any land use for religious purposes in accordance
26 with the City's standard records-retentions schedule. Such applications include, but are
27 not limited to, applications for changes in the Zoning Ordinance, Zoning Map, General
28

1 Plan, General Plan Use Map, and applications for conditional use permits, variances, or
2 a site plan review. The City shall provide the United States with a written copy of all
3 public notices related to any such applications at the same time they are noticed to the
4 public, and a copy of the minutes of any proceeding or hearing related to such
5 applications. Upon request, the City shall deliver to counsel for the United States copies
6 of any land-use application and any attachments filed therewith, any minutes of
7 ~~8 Planning Commission and/or City Council meetings or hearings in connection with each~~
9 application, and a statement of the final resolution by the Planning Commission and/or
10 the City Council.
11

12
13 24. The City shall provide the United States with a written copy of all
14 public notices, at the same time they are noticed to the public, related to any proposed or
15 approved amendment to the Lomita Zoning Ordinance that may affect religious land
16 uses. Upon request, the City shall deliver to counsel for the United States copies of all
17 such proposed or approved amendments, which copies shall also be maintained by the
18 City.
19

20
21 25. The City shall advise the United States in writing within 15 days
22 after receipt of any written complaint concerning any alleged restriction or prohibition
23 by the City of, or interference with, the use of land in Lomita for religious purposes.
24 The City shall forward a copy of the complaint to the United States along with the
25 notice required by this paragraph, and a copy shall also be maintained by the City. If
26 the City receives an oral complaint, the City shall provide the complainant with a copy
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1 of the Notice attached as Appendix A and inform the complainant that he or she may
2 submit a complaint to the City in writing and/or contact the Department of Justice. The
3 City shall also notify the United States in writing within 15 days after the City's
4
5 response to any complaint covered by this paragraph.

6 26. The City shall retain all records related to the Islamic Center. These
7 records shall include, but are not limited to:

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-
- 9 ~~(a) Correspondence to the City concerning the Islamic Center;~~
10 (b) Complaints made to the Lomita Code Enforcement Division or other
11 City or county enforcement departments concerning the Islamic Center;
12 (c) Any law enforcement or investigative action taken by the City
13 concerning the Islamic Center; and
14 (d) Any complaints obtained by or provided to the City concerning the
15 Islamic Center made to the Los Angeles County Sheriff's Department.
16
17

18 **IX. INSPECTION OF RECORDS**

19 27. Upon reasonable notice by counsel for the United States to counsel
20
21 for the City, the City shall permit representatives of the United States to inspect and
22 copy all non-privileged, pertinent records of the City, including, but not limited to, those
23 records referenced in paragraphs 23–26 herein.
24

25 **X. DURATION AND ENFORCEMENT OF AGREED ORDER**

26 28. This Agreed Order shall remain in effect for 3 years after the date of
27 entry by the Court. The Court shall retain jurisdiction for the duration of this Agreed
28

1 Order to enforce its terms and to resolve any disputes arising out of the Agreed Order.

2 The United States may move to extend the duration of the Agreed Order in the interests
3 of justice.

4
5 29. Any time limits for performance imposed by this Agreed Order may
6 be extended by the mutual written agreement of the parties to this Agreed Order and do
7 not require Court approval.

8
9 ~~30. The parties shall use their best efforts to effectuate the purposes of~~
10 this Agreed Order and to resolve informally any differences regarding the interpretation
11 of and compliance with the Agreed Order prior to bringing such matters to the Court for
12 resolution. In the event of a failure by the City to perform in a timely manner any act
13 required by this Agreed Order or otherwise to act in conformance with any provision
14 thereof, the United States may move this Court to impose any remedy authorized by law
15 or equity, including, but not limited to, an order requiring performance of an act, and
16 costs and reasonable attorneys' fees occasioned by any violation or failure to perform.

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19 **XI. INTEGRATION**

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21 31. This Agreed Order contains the entire agreement between the United
22 States and the City. No agreements or negotiations, oral or otherwise, between the
23 parties to this Agreed Order that are not included herein shall be of any force or effect.

24
25 **XII. LITIGATION COSTS**

26
27 32. Except as otherwise stated herein, each party to this Agreed Order
28 shall bear its own costs and attorneys' fees.

1 **XIII. ELECTRONICALLY STORED INFORMATION**

2 33. The parties agree that, as of the expiration of this Agreed Order,
3 litigation is not "reasonably foreseeable" concerning the matters described above. To
4 the extent that either party previously implemented a litigation hold to preserve
5 documents, electronically stored information (ESI), or things related to the matters
6 described above, the party is no longer required to maintain such litigation hold.
7

8
9 ~~Nothing in this paragraph relieves either party of any other obligations imposed by this~~
10 Agreed Order.

11
12
13 ENTERED THIS 8th DAY OF MARCH, 2013

14
15
16 *Margaret M. Morrow*

17
18 THE HON.
19 UNITED STATES DISTRICT JUDGE
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1 For Plaintiff United States of America:

2
3 Dated February 1, 2013

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5 ANDRÉ BIROTTE, JR.
6 United States Attorney
7 Central District of California

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

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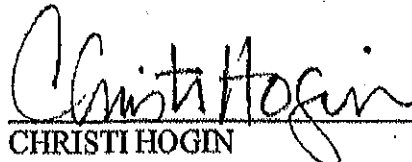


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1 For Defendant City of Lomita:

2
3 Dated January 29, 2013



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13 E-mail: Chogin@localgovlaw.com

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APPENDIX A

On _____, 2013, the United States District Court for the Central District of California accepted and entered an Agreed Order resolving a lawsuit brought by the United States against the City of Lomita, California under the federal Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA").

Under RLUIPA, no government, including the City of Lomita, may apply its zoning or land use laws in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution. RLUIPA also provides that no government may apply a land use regulation in a manner that treats a religious assembly or institution on less than equal terms than a nonreligious institution or assembly. Finally, RLUIPA provides that no government may impose or implement a land use regulation in a manner that discriminates against a religious assembly or institution.

If you believe that the City of Lomita, or any other local government or municipality, has substantially burdened your religious exercise or discriminated against you in the implementation of its zoning or land use laws, please contact the United States Department of Justice at:

United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Avenue NW — G Street
Washington, DC 20530
(202) 514-4713

If you would like a copy of the Agreed Order referenced above and entered in *United States v. City of Lomita* (C.D. Cal.), please visit the City's website at <http://www.lomita.com/cityhall/>, or the Department of Justice's website at <http://www.justice.gov/crt/about/hce/caselist.php>.

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APPENDIX B

CERTIFICATION OF RECEIPT OF ORDER

I certify that I have received a copy of the Agreed Order entered by the United States District Court for the Central District of California in *United States v. City of Lomita*. I further certify that I have read the Agreed Order, had any questions I had concerning the Agreed Order answered, and understand the Agreed Order. I understand that the City of Lomita may be sanctioned or penalized if I violate the Agreed Order.

Signature

Printed Name

Title

Date

Appendix C

CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE

THIS CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is made and entered into as of this 3rd day of January, 2013 (the "Effective Date") by and between THE ISLAMIC CENTER OF THE SOUTH BAY, LOS ANGELES, ("ICSB") on the one hand, and the CITY OF LOMITA, a California municipal corporation ("City"), on the other hand. The above parties will occasionally be individually referred to as "Party" and collectively referred to as the "Settling Parties" or the "Parties." For purposes of this Agreement, "City" shall include the Lomita City Council and its Department of Community Development and every officer, employee, department and division of the City, as well as the named Defendants, including without limitation former City Councilmembers Don Suminaga and Ken Blackwood.

I. RECITALS

A. In 2008, ICSB applied to the City's planning department for the approvals necessary to demolish the existing structures and construct a new prayer hall and related facilities on four contiguous, but differently zoned parcels in the City of Lomita (25816 Walnut Street, 25829 -1/4, 25833, 25833-1/2 Appian Way, and the property fronting Pacific Coast Highway associated with Assessor's Parcel No. 7553-010-032). The proposed project required variances from setbacks and height requirements and several legislative actions, including a general plan amendment, zone change and zoning ordinance amendment.

B. On March 1, 2010, after a public hearing, the City Council voted to deny the application, without prejudice.

C. On March 21, 2012, the ICSB filed a complaint against the City of Lomita and several current and former City Councilmembers in the United States District Court, Central District of California (Case No. CV 12-2418 JAK (JEMx)(the Action). The lawsuit alleges violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA), violations of federal constitutional rights and related civil rights claims, and state constitutional claims all arising from the City's 2010 denial of the ICSB's application for variances, zone change, General Plan amendment and associated permits required to redevelop its facility in the City.

D. The City denies any allegation of wrongdoing in the Complaint and contends that the denial was based on legitimate land use considerations.

E. The ICSB has since acquired a fifth contiguous parcel fronting Appian Way (25829 Appian Way).

F. On September 4, 2012, the parties participated in a court-ordered mediation, with former Judge Stephen Larson presiding. The mediator continued to facilitate settlement discussions throughout October, culminating in this Agreement. The Parties have agreed that the ICSB will file a new development application with the City to demolish the existing structures and construct a new prayer hall and related facilities

within the development parameters set forth in this Agreement (Project). The Project would utilize the five contiguous parcels that ICSB owns and, if the entitlements described in detail in section 1.c below were approved, the Project would meet all development standards in the Lomita Municipal Code.

G. The Settling Parties by this Agreement now wish to resolve and settle conditionally the Action, all disputes encompassed within and that could have been raised in the Action and all attendant and potential litigation arising therefrom.

NOW, THEREFORE, in consideration of the mutual covenants and agreements described below, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Settling Parties hereby agree:

1. Obligations of the Settling Parties.

a. Within 5 court days of execution of this Agreement by the City, the Settling Parties shall jointly file in the United States District Court, Central District of California, in the courtroom of John A. Kronstadt, a joint request for a court order to stay the Action for the duration of the performance by the Settling Parties of their obligations under this Section 1, and will seek to have the District Judge maintain jurisdiction over resolution of any conflicts that may arise regarding the interpretation of this Agreement, until it is finally resolved and a dismissal entered, or the Court lifts the stay. Provided that court consent is obtained, all deadlines in the Action shall be extended and tolled for the duration of the stay. Should the court refuse to stay the Action, either Party may terminate this Agreement. If the Action is stayed, the Parties shall file joint status reports with the District Court every 60 days until the City has taken final action on the Project application.

b. The Settling Parties further acknowledge that the City enters into this Agreement contingent on the Agreed Order between the City and United States, through its Department of Justice, (DOJ), which resolves alleged RLUIPA claims against the City arising from the same events giving rise to the Action. Should DOJ exercise its option under the Agreed Order to rescind the Agreed Order and reinstate litigation against the City, the City may, at its sole option, terminate this Agreement and rescind any planning approvals given pursuant to the applications contemplated by this Agreement.

c. Upon execution of this Agreement, the ICSB shall promptly file a development application for all entitlements required for the Project with the City of Lomita Planning Department containing the following substantive terms:

(1) The Project proposed in the application shall be in substantial compliance with the September 11, 2012 counterproposal submitted by Anne Richardson on behalf of the ICSB to Judge Larson (mediator), and meet the following criteria:

(a) The structure(s) shall be no larger than 14,320 square feet, with the top of the habitable building (i.e. the portion of the building that is

not the dome or minaret) reaching a maximum of 27 feet from the average level of natural grade, the top of the minaret reaching a maximum of 33 feet from the average level of natural grade, and the top of the two domes reaching maximum of 32 feet from the average level of natural grade (as the term "building height" is defined in the Lomita Municipal Code);

- (b) Ingress and egress shall be from Walnut Street, right turn ingress and right turn egress shall be from Pacific Coast Highway (should the ICSB decide to include right turn ingress), and there shall be no vehicular access from Appian Way; however, the development shall provide a minimum of 85 and at least the number of parking spaces required by code, whichever is greater, and shall include as many additional spaces as the remainder of the City's requirements permit, and on-site traffic circulation shall be designed to accommodate those spaces, which may limit the ingress and egress to one way if necessary to provide the parking;
- (c) The Project shall have one floor of habitable space partially below the average level of natural grade;
- (d) The Floor Area Ratio shall not exceed 0.60;
- (e) The Project shall meet all applicable LMC setback requirements, including 20 feet from the front and rear property lines and 5 feet from the side property lines; and
- (f) The Project shall comply with the Lomita Municipal Code.

The abovementioned standards may be revised based on the unique planning considerations of a project as necessary to protect the public health, safety, comfort, convenience, and general welfare (see LMC 11-1.11.01). However, the City is not currently aware of any reasons why any of the standards or criteria listed above should be revised, except as noted in (b) above. Should the City impose any condition that changes the height, total square footage or other listed criteria in (a) through (e) above, ICSB may refuse to dismiss the Action, in which case any Project approvals are automatically vacated.

These listed standards are required based on the City's understanding of the September 11, 2012 counterproposal. Revisions to the Project during the review period may trigger additional applicable requirements under the LMC.

(2) The ICSB shall apply for the following entitlements:

- (a) A general plan amendment to amend the Lomita General Plan Land Use Map from Commercial to Low-Density Residential for the properties at 25816 Walnut, and 25829 and 25829 ¼ Appian Way;

- (b) A zone change to amend the Lomita Zoning Map from C-R (Commercial-Retail) to R-1 (Single-Family Residential) and/or to an overlay zone for the properties located at 25816 Walnut, and 25829 and 25829 1/4 Appian Way;
- (c) A zone text amendment amending LMC Section 11-1.48.04 to allow parking lots and parking buildings as a conditionally permitted use in the C-R Zone;
- (d) A conditional use permit to allow up to a 14,320 square foot religious facility within the R-1 Zone, and a stand-alone parking lot within the C-R Zone; and
- (e) A variance to allow a minaret to reach up to 33 feet in height and the top of the domes to reach 32 feet in height from the average level of natural grade (as the term "building height" is defined in the Lomita Municipal Code).

(3) The City shall waive its usual fees for planning application and processing for the Project, including, but not limited to, any fees associated with hiring a consultant to prepare the required environmental review under the California Environmental Quality Act (CEQA). ICSB shall pay all other required development fees and building permits applicable to the Project that would be required of any similarly situated land owner.

(4) The City will diligently and expeditiously process the Project application as a priority, conduct such analysis and prepare any such documents as are required by the CEQA, and in accordance with all applicable laws, proceed in accordance with the following schedule. Any delay by the ICSB in providing required submittals to the City shall advance the City's deadlines by an amount of time equivalent to the amount of delay.

Task	Timeline	Comments
ICSB submits a complete Project application to City	Within six months of execution	
City to provide list of four approved traffic consultants with a scope of work per the City's traffic guidelines	Within 7 days after application is submitted	Applicant to pay for cost of traffic consultant.
Determination of Project Completeness	Within 30 days from submittal	
ICSB selects and hires traffic consultant	Within 14 days after receipt of the list of approved consultants	

Preparation of Initial Study, and Negative Declaration (ND) or Mitigated Negative Declaration (MND) or EIR (depending on results of Initial Study) and traffic study and circulation for public review per CEQA guidelines.	Approx. 2 months after application deemed complete	Notice of Intent and copy of the ND or MND must be circulated for 20 day comment period. Guidelines §§15072, 15073. The time to prepare a ND or MND varies, based on the workload of traffic consultant hired and the number of comments received during the public comment period.
Staff works with architect to refine plans, if needed (site plan, floor plan and elevations)	Concurrent	Major revisions to the plans may require recirculation of the ND or MND if those revisions would substantially increase environmental impacts. Guidelines § 15073.5.
Planning Commission Meeting <u>NOTE:</u> 10 day public hearing notice required prior to meeting	Within 30 days after completion of ND or MND	Gov. Code §65090. Planning Commission meets once a month on the 2 nd Monday.
City Council Meeting to consider Project, and if approved, Introduce Ordinances on first reading <u>NOTE:</u> 10 day public hearing notice required prior to meeting	Within 30 days of decision by Planning Commission	Gov. Code §65090. City Council meets twice a month on the 1 st and 3 rd Mondays.
If approved, City Council Second Reading of Ordinance	The following regularly scheduled City Council meeting	Legislative acts, such as zone changes and zone text amendments, require two readings prior to adoption by City Council that are separated by at least 5 days. Gov. Code §36964.
City files Notice of Determination	Within 5 days after City Council approval	Guidelines § 15094.

(5) While the entitlement process is underway, at its own risk and understanding that any change, even minor ones, may require revisions and additional plan check, the applicant may submit plans for grading plan check; however, the grading permit shall not issue until the project is approved by the City Council.

(6) Following ICSB's submission of a complete project application to the City, counsel for parties will confer about the specific dates for each task listed above.

(7) In the event that the Project is approved by the City, ICSB shall within five (5) court days of City Project approval becoming final (the date on which the legislative enactments take effect) file a request for dismissal with prejudice of the entire Action with the District Court and deliver a conformed copy of same to the City's attorneys. The form of the dismissal request shall be in whatever form is required by the District Court.

(8) The City shall pay ICSB the sum of \$50,000.00, which shall constitute settlement for all attorneys' and witness fees and other costs of litigation or monetary damages or fines incurred by ICSB that have or could have been claimed in connection with or arising out of this Action or the actions taken by any defendant in connection with the 2010 denial of the ICSB's development application, and ICSB hereby waives any other claims for recovery arising out of this Action or any alleged actions or occurrences associated with the allegations in the Action up to and including the Effective Date this Settlement Agreement. The payment of \$50,000.00 shall be made within ten (10) days of the date on which the District Court enters an order granting dismissal. The payments shall be made in the form of a check payable to "Hadsell Stormer Richardson & Renick Client Trust Account," addressed to 128 N. Fair Oaks Ave. Pasadena, CA 91103, sent overnight delivery. This \$50,000 payment is in addition to the \$6000 to \$21,000 of planning application and processing fees waived by the City.

(9) In the event that ICSB fails to submit a complete application for the Project in accordance with this Agreement within six months of the date of execution of this Agreement, ICSB shall dismiss the Action with prejudice and thereafter the City shall have no further obligation under this Agreement.

2. Condition Precedent.

The Settling Parties acknowledge, understand and agree that approval of the Project is an express condition precedent to the consummation of this Agreement and the covenants, conditions and agreements contained herein. In the event that the Project is not approved or the legislative changes do not go into effect, then this Agreement shall be null and void and shall be of no further force and effect. In such event, neither this Agreement, nor any of its terms or provisions, shall be admissible in the Action for any purpose.

Further, the ICSB recognizes and acknowledges that the City will and must comply with all applicable state, municipal, and federal laws and that the City reserves all of its discretion and the full measure of its police powers to evaluate the application on its merits in accordance with applicable procedures, standards and requirements. It is understood and agreed that this Agreement shall not be construed in any fashion as an advance determination of the Project. An adverse decision on the Project will not constitute a default of this Agreement, but instead will constitute a terminating event of this Agreement. Upon termination of this Agreement due to the failure of the contingency described in this Section 2, the Action will resume and parties will stipulate to a revised discovery and trial schedule.

The Parties are entering into this Agreement in good faith and despite their right to continue with the Action. At any point in time up through the dismissal of the action, the Parties agree that either party shall have the ability to halt the stay and continue with the Action.

3. Release.

a. Subject to the performance of the Settling Parties' obligations in this Agreement, and the satisfaction of the condition precedent set forth in Section 2, the Settling Parties hereby fully and finally waive, release, and permanently discharge each other (and their respective officers, employees, agents, representatives and attorneys) (the "Releasees"), from any and all past, present, or future matters, claims, demands, obligations, liens, actions or causes of action, suits in law or equity, or claims for damages or injuries, whether known or unknown, which they now own, hold or claim to have or at any time heretofore have owned, held or claimed to have held against each other by reason of any matter or thing alleged or referred to, or in any way connected with, arising out of or in any way relating to any of the matters, acts, events or occurrences alleged or referred to in any of the pleadings filed in the Action for all conduct up to and including the date of the signing of this Agreement (collectively, the "Released Claims"). In connection with the release of the Released Claims, the Settling Parties waive any and all rights that they may have under the provisions of section 1542 of the California Civil Code, which states as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In the event that any waiver of the provisions of Section 1542 of the California Code provided for in this Agreement shall be judicially determined to be invalid, voidable or unenforceable, for any reason, such waiver to that extent shall be severable from the remaining provisions of this Agreement, and the invalidity, voidability or unenforceability of the waiver shall not affect the validity, effect, enforceability or interpretation of the remaining provisions of this Agreement.

b. The Settling Parties understand and acknowledge that the foregoing release extends to any claims or damages, without limitation, arising out of the Released Claims that may exist on the date of the execution of this Agreement, but which the Settling Parties do not know to exist, which, if known, would have materially affected their decision to execute this Agreement, regardless of whether their lack of knowledge is a result of ignorance, oversight, error, negligence or any other cause.

c. Each Party acknowledges and agrees that this Agreement is a compromise and settlement of their disputes and differences, and is not an admission of liability or wrongdoing by any Party.

d. Except as may be provided in this Agreement, each of the Parties waives any and all claims for the recovery of any costs, expenses, or fees, including attorney fees, associated with the matters and claims released in this Agreement.

e. Each Party understands and acknowledges that if the condition precedent contained in Section 2 of this Agreement is satisfied and this Agreement is consummated, the Dismissal of the lawsuit will terminate the Action and any and all claims arising thereunder or resulting therefrom, and this Agreement and the promises and actions provided for in this Agreement are in full accord, satisfaction, and discharge of any and all claims for compensation of any kind that ICSB may have related to the Action.

4. Representations and Warranties.

a. ICSB hereby represents and warrants to the City as of the Effective Date, as follows:

(1) Neither it nor any of its members, agents, officers, board members nor attorneys (collectively referred to as ICSB) has heretofore assigned or transferred, or purported to assign or transfer, to any party not named herein any Released Claim, or any part or portion thereof.

(2) To the ICSB's knowledge, there are no legal actions, suits or similar proceedings pending and served, or threatened in writing against the ICSB that would adversely affect its ability to consummate the transactions contemplated in this Agreement. To the best of its knowledge, ICSB is not aware of any existing claims nor of any facts that might give rise to any claims of any type or nature against the City pertaining to the Action, whether asserted or not, that have not been fully released and discharged by the release set forth in this Agreement.

(3) ICSB have received all corporate and other approvals necessary to enter into this Agreement on its behalf and that the persons signing this Agreement on its behalf are fully authorized to commit and bind ICSB to each and all of the commitments, terms and conditions hereof, and to release the claims described herein, and that all documents and instruments relating thereto are, or, upon execution and delivery will be, valid and binding obligations, enforceable against it in accordance with their respective terms.

(4) ICSB has freely entered into this Agreement and is not entering into this Agreement because of any duress, fear, or undue influence; this Agreement is being entered into in good faith.

(5) ICSB has made such investigation of the facts pertaining to this Agreement as it deems necessary.

(6) ICSB has, prior to the execution of this Agreement, obtained the advice of independent legal counsel of its own selection regarding the substance of this Agreement, and the claims released herein.

b. In executing this Agreement, the Settling Parties acknowledge, represent, and warrant that they have not relied upon any statement or representation of any person regarding any facts not expressly set forth within this Agreement.

c. The representations and warranties of each of the Settling Parties set forth in this Section 4 and elsewhere in this Agreement will survive the execution and delivery of this Agreement and are a material part of the consideration to the City in entering into this Agreement.

5. Interpretation.

a. All Settling Parties have cooperated in the drafting and preparation of this Agreement and in any construction or interpretation to be made of this Agreement, the same shall not be construed against any such Settling Party. This Agreement is the product of bargained for and arms' length negotiations between the Settling Parties and their counsel. This Agreement is the joint product of the Settling Parties.

b. This Agreement is an integrated contract and sets forth the entire agreement between the parties hereto with respect to the subject matter contained herein. All agreements, covenants, representations and warranties, express or implied, oral or written, of the parties hereto with regard to such subject matter are contained in this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made or relied on by any party hereto.

c. This Agreement may not be changed, modified or amended except by written instrument specifying that it amends such agreement and signed by the party against whom the enforcement of any waiver, change, modification, extension or discharge is sought. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision whether or not similar, nor shall any waiver be deemed a continuing waiver; and no waiver shall be implied from delay or be binding unless executed in writing by the party making the waiver.

d. All of the covenants, releases and other provisions herein contained in favor of the persons and entities released are made for the express benefit of each and all of the said persons and entities, each of which has the right to enforce such provisions.

e. This Agreement shall be binding upon and inure to the benefit of each of the Settling Parties, and their respective representatives, officers, employees, agents, heirs, devisees, successors and assigns.

f. This Agreement may not be pleaded in any manner in connection with any demand or cause of action related to the subject matter of this Agreement, nor will any provision, covenant, or term of this Agreement be admissible in the Action should it resume due to the failure of the condition precedent in Paragraph 2.

6. Further Cooperation. Each party shall perform any further acts and to execute and deliver any further documents that may be reasonably necessary or

appropriate to carry out the provisions and intent of this Agreement. Except as expressly stated otherwise in this Agreement, actions required of the Parties or any of them will not be unreasonably withheld or delayed, and approval or disapproval will be given within the time set forth in this Agreement, or, if no time is given, within a reasonable time. Time will be of the essence of actions required of any of the Parties.

7. No Third Party Beneficiaries. Nothing in this Agreement is intended to benefit any third party or create a third party beneficiary. This Agreement will not be enforceable by any person not a Party to this Agreement, or their respective representatives, heirs, devisees, successors and assigns.

8. Enforced Delay (Force Majeure).

a. Performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, acts of terrorism, epidemic, quarantine, casualties, acts of God, litigation, governmental restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations (but only if the party claiming delay complies at all times with the provisions of this Agreement pertaining to such conflicting laws), or other similar circumstances beyond the reasonable control of the Parties and which substantially interferes with the ability of a Party to perform its obligations under this Agreement.

b. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other parties within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Party claiming such delay and interference delivers to the other Parties written notice describing the event, its cause, when and how such Party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Any Party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. The time for performance will be extended for such period of time as the cause of such delay exists but in any event not longer than for such period of time. Any Party may challenge the assertion of a Force Majeure Delay by seeking review by the Honorable John A. Kronstadt, United States District Judge for the Central District of California.

9. Attorney's Fees. In the event of any litigation or arbitration claim concerning any controversy, claim or dispute between the parties arising out of or relating to this Agreement or the interpretation or enforcement thereof, the prevailing party shall be entitled to recover from the other party its expenses and costs, including reasonable attorneys fees, incurred in conjunction therewith or in the enforcement or collection of any judgment or award rendered therein. The "prevailing party" means the party determined by the court to have prevailed, even if such party did not prevail in all matters, not necessarily the one in whose favor a judgment or award is rendered. Each party to this Agreement shall bear its own costs, attorneys' fees and other expenses incurred in association with negotiation and execution of this Agreement.

10. Governing Law; Venue. This agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to any otherwise applicable principles of conflicts of laws. Any action arising out of this agreement subsequent to the dismissal must be commenced in the state courts of the State of California, County of Los Angeles, or in the United States District Court for the Central District of California and each party hereby consents to the jurisdiction of the above courts in any such action and to the laying of venue in the State of California, County of Los Angeles, and agrees that such courts have personal jurisdiction over each of them. Any dispute that arises out of this Agreement prior to the final approval of the project and the dismissal of the action shall be first raised with the Honorable Judge John A Kronstadt.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Settling Parties hereto have caused this Agreement to be duly executed as of the Effective Date.

**CITY OF LOMITA and NAMED
DEFENDANTS**

**ISLAMIC CENTER OF THE SOUTH BAY,
LOS ANGELES**

By: Margaret Estrada
MARGARET ESTRADA
MAYOR

By: _____
EHTESHAM M. MIRZA,
PRESIDENT OF THE BOARD

ATTEST:

APPROVED AS TO FORM:

By: Lena Shumway
Lena Shumway,
Assistant City Clerk
(Seal)

By: _____
Reem Salahi
Hadsell Stormer Richardson & Renick, LLP
Attorneys for ICSB

APPROVED AS TO FORM:

By: Christi Hogin
Christi Hogin
Jenkins & Hogin LLP
Attorneys for the City of Lomita

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By: _____
MARGARET ESTRADA
MAYOR

By: E.M. Mirza 1/4/13
ERTESHAM M. MIRZA,
PRESIDENT OF THE BOARD

ATTEST:

APPROVED AS TO FORM:

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Assistant City Clerk
(Seal)

By: _____
Reem Salahi
Hadsell Stormer Richardson & Renick, LLP
Attorneys for ICSB

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DEFENDANTS**

**ISLAMIC CENTER OF THE SOUTH BAY,
LOS ANGELES**


By: _____
MARGARET ESTRADA
MAYOR

By: _____
EHTESHAM M. MIRZA,
PRESIDENT OF THE BOARD

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Assistant City Clerk
(Seal)

By:  _____
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