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EXEMPT FROM FEES PER GOV.
CODE § 6103

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CITY OF SAN CLEMENTE; CITY COUNCIL OF
7 SAN CLEMENTE; and PLANNING
COMMISSION OF CITY OF SAN CLEMENTE
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ORANGE – CIVIL COMPLEX CENTER
11

12 EMERGENCY SHELTER COALITION, a
non-profit organization,

13 Petitioner,

14 v.
15

16 CITY OF SAN CLEMENTE; CITY
COUNCIL OF SAN CLEMENTE; and
17 PLANNING COMMISSION OF CITY OF
SAN CLEMENTE,

18 Respondents.
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Case No. 30-2019-01080355-CU-WM-CXC
(CEQA)

Assigned to:
Judge Randall J. Sherman, Dept. CX105

**NOTICE OF MOTION AND MOTION OF
RESPONDENTS FOR AN ORDER
REQUIRING PETITIONER TO PAY THE
COSTS THAT THE CITY OF SAN
CLEMENTE INCURRED IN PREPARING
THE ADMINISTRATIVE RECORD**

Date: November 22, 2019
Time: 10:00 a.m.
Dept: CX105

*[Filed concurrently with Declaration of Alisha
M. Winterswyk; [Proposed] Order]*

Petition for Writ of Mandate Filed
June 28, 2019

1 **NOTICE OF MOTION AND MOTION**

2 **TO THE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**

3 NOTICE IS HEREBY GIVEN that, on November 22, 2019, at 10:00 a.m., or as soon
4 thereafter as the matter may be heard, in Department CX105 of the above-captioned court located
5 at 751 West Santa Ana Boulevard, Santa Ana, CA 92701, Respondent City of San Clemente
6 (“City”) will, and hereby does, move this Court for an order requiring Petitioner Emergency
7 Shelter Coalition (“Petitioner”) to (1) pay the City the \$10,516.85 in costs that the City incurred
8 to prepare the administrative record in the above-captioned action; and (2) make this payment no
9 later than November 27, 2019 and before the City releases the administrative record to Petitioner.

10 This motion is made under Code of Civil Procedure sections 1094.5 and 1094.6, Public
11 Resources Code section 21167.6, and case law interpreting these statutes. In particular, this
12 motion is made on the following grounds:

13 1. California law requires Petitioner to pay the costs of preparing the administrative
14 record. Petitioner filed its petition for writ of mandate in this action under Code of Civil
15 Procedure section 1094.5 and the California Environmental Quality Act (“CEQA”), and both
16 statutes require Petitioner to bear administrative record preparation costs. (Code Civ. Proc.,
17 §§ 1094.5, subd. (a) [“the cost of preparing the record shall be borne by the petitioner”], 1094.6,
18 subd. (c); Pub. Resources Code, § 21167.6, subd. (b)(1).) California courts have repeatedly held
19 that a petitioner in a CEQA action is statutorily obligated to pay the costs of preparing the
20 administrative record. (See *Coalition for Adequate Review v. City and County of San Francisco*
21 (2014) 229 Cal.App.4th 1043, 1052-1053 [CEQA’s “cost provision, by its plain terms, places the
22 costs an agency incurs in preparing the record on the parties, not the public agency”]; see also
23 *Black Historical Society v. City of San Diego* (2005) 134 Cal.App.4th 670, 677-678.)

24 2. “[A] petitioner can be ordered to pay for a requested record during the early stages
25 of the litigation, before the merits of the case are ever heard.” (*Coalition for Adequate Review,*
26 *supra*, 229 Cal.App.4th at p. 1053; see also *Black Historical Society, supra*, 134 Cal.App.4th at
27 pp. 674, 677-678 [trial court issued order requiring the petitioner “to bear the costs of preparing
28 the administrative record,” and “[n]othing in this order suggested the City was required to release

1 the record without prior payment”].) Petitioner here had the option to prepare the administrative
2 record itself, but it elected to burden the City with the task. (Declaration of Alisha Winterswyk
3 (“Winterswyk Decl.”), ¶ 2, Exh. 1.) Petitioner should thus be ordered to pay the costs the City
4 incurred in preparing the administrative record before the City releases the record.

5 3. The City reasonably and necessarily incurred over \$10,516.85 in costs preparing
6 the record, and it should not be required to release the Record until Petitioner pays these costs.
7 “[A] public agency can refuse to release a record it has been asked to prepare until the petitioner
8 making the request has paid the agency’s preparation costs.” (*Coalition for Adequate Review*,
9 *supra*, 229 Cal.App.4th at p. 1053.) Here, the City reasonably incurred over \$10,516.85 to
10 prepare an administrative record that entails 1,379 pages. (Winterswyk Decl., ¶ 11.) California
11 law requires Petitioner to pay the City these costs. (Code Civ. Proc., §§ 1094.5, subd. (a), 1094.6,
12 subd. (c); Pub. Resources Code, § 21167.4, subd. (b)(1).)

13 4. The Court has already ordered that, if this Motion is granted, Petitioner must pay
14 the City’s administrative record costs by November 27, 2019. (See Winterswyk Decl., Exh. 7
15 [Notice of Ruling, p. 3:4-5] [“On or before November 27, 2019, Petitioner shall pay the
16 administrative record costs requested by the City.”].)

17 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of
18 Points and Authorities, the Declaration of Alisha M. Winterswyk, all other pleadings and papers
19 on file herein, such evidence and oral argument as may be presented at or before the time of the
20 hearing, and on any other matters properly before the Court at the time of the hearing.

21
22 Dated: October 30, 2019

BEST BEST & KRIEGER LLP

23 By: /s/ Alisha Winterswyk

24 SCOTT C. SMITH
ALISHA WINTERSWYK
25 Attorneys for Respondents
CITY OF SAN CLEMENTE; CITY
26 COUNCIL OF SAN CLEMENTE; and
27 PLANNING COMMISSION OF CITY OF
SAN CLEMENTE

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 California law is clear: “the cost of preparing the record shall be borne by the petitioner.”
4 (Code Civ. Proc., § 1094.5, subd. (a), emphasis added.) Petitioner Emergency Shelter Coalition
5 (“Petitioner”) nevertheless refuses to pay this cost—even though Petitioner has cited no authority
6 justifying its refusal. (Declaration of Alisha Winterswyk (“Winterswyk Decl.”), ¶ 6.)

7 Petitioner had the choice under the California Environmental Quality Act (“CEQA”) to
8 prepare the administrative record (“Record”) in this action. (Pub. Resources Code, § 21167.6,
9 subd. (b)(2).) Rather than prepare the Record itself, Petitioner elected to burden Respondent City
10 of San Clemente (“City”) with the task. (Winterswyk Decl, ¶ 2, Exh. 1.) California law provides
11 that in such circumstance, Petitioner must pay the costs incurred by the City in preparing the
12 Record. (Code Civ. Proc., §§ 1094.5, subd. (a), 1094.6, subd. (c).) Indeed, “a public agency can
13 refuse to release a record it has been asked to prepare until the petitioner making the request has
14 paid the agency’s preparation costs.” (*Coalition for Adequate Review v. City and County of San*
15 *Francisco* (2014) 229 Cal.App.4th 1043, 1053; see also *Black Historical Society v. City of San*
16 *Diego* (2005) 134 Cal.App.4th 670, 677-678.)

17 The City incurred over \$10,516.85 in costs to prepare the Record. (Winterswyk Decl.,
18 ¶ 11.) California law entitles the City to withhold releasing the Record to Petitioner until
19 Petitioner fulfills its statutory obligation and pays the City these costs. (See *Black Historical*
20 *Society, supra*, 134 Cal.App.4th at pp 677-678; *Coalition for Adequate Review, supra*, 229
21 Cal.App.4th at p. 1053.) The City therefore requests that the Court grant this Motion and order
22 Petitioner to pay the City, no later than November 27, 2019, the \$10,516.85 in costs that the City
23 incurred preparing the Record.

24 **II. FACTUAL BACKGROUND**

25 **A. Petitioner Requested That The City Prepare The Administrative Record**

26 The City adopted Ordinance Nos. 1673 and 1674 (“Ordinances”) to protect the public
27 health and safety by designating City-owned property located at 380 Avenida Pico as the sole
28 public area in the city available for camping by persons experiencing homelessness. (Petition,

1 ¶ 1.) Petitioner challenged the City’s adoption of the Ordinances via a petition for writ of
2 mandate (“Petition”) filed on June 28, 2019. (Winterswyk Decl., ¶ 2.) The Petition seeks to set
3 aside the Ordinances alleging, among other things, that the City purportedly did not comply with
4 CEQA before approving the Ordinances. (See Petition, ¶¶ 86-87.)

5 Concurrent with its filing of the Petition, Petitioner filed a “Request that Respondents
6 Prepare Administrative Record Pursuant to Public Resources Code section 21167.6(a)” (“Request
7 that City Prepare Record”). (Winterswyk Decl., ¶ 2, Exh. 1.) In its Request that City Prepare
8 Record, Petitioner explicitly requested that the City prepare the Record in this action. (*Ibid.*)

9 **B. In Meet And Confer Efforts, Petitioner Refused To Pay Administrative**
10 **Record Costs And Suggested The City File This Motion**

11 On September 11, 2019, as the parties were negotiating a stipulation regarding preparation
12 of the Record, the City informed Petitioner:

13 In accordance with Public Resources Code, section 21167.6, the
14 City is preparing the record at ESC’s cost and will strive to do so at
15 reasonable cost in light of the scope of the record. The City will
16 provide ESC with a copy of the certified administrative record
17 upon receipt of payment for the same.

18 (Winterswyk Decl., ¶ 3, Exh. 2 [September 11, 2019 email].)

19 Petitioner responded on September 17, 2019 by claiming that California law does not
20 require it to pay administrative record preparation costs—a claim Petitioner failed to support with
21 any legal authority. (Winterswyk Decl., ¶ 4, Exh. 3 [Petitioner’s September 17, 2019 email].)
22 Later that day, the City provided Petitioner with statutory and decisional authority that
23 unambiguously establishes Petitioner’s obligation to pay administrative record preparation costs.
24 (*Id.* at ¶ 5, Exh. 4 [City’s September 17, 2019 email].)

25 Faced with such authority, Petitioner continued to refuse to pay the costs of preparing the
26 Record before the City released to Petitioner a copy of the Record—even though Petitioner could
27 not muster any authority in support of its refusal to pay such costs. Instead, Petitioner suggested
28 that the City file “a costs-related motion with the Court and ask the Court to issue an order

1 requiring ESC to pay costs in the near future.” (*Id.* at ¶ 6, Exh. 5 [September 19, 2019 emails].)
2 Moreover, Petitioner baselessly suggested that its obligation to pay the Record preparation costs
3 arises only if the City is the prevailing party in this action—an argument explicitly rejected by
4 California courts. (*Id.* at ¶ 7, Exh. 6 [September 20, 2019 email]; see also *Black Historical*
5 *Society, supra*, 134 Cal.App.4th at pp. 677-678 [rejecting petitioner’s contention that “the record
6 should have been released to it and it was liable for payment only if it failed to prevail on its
7 petition”].)

8 **C. The Court Set The Briefing Schedule For This Motion At A September 20,**
9 **2019 Ex Parte Hearing; At The Hearing, The Court Ordered That Petitioner**
10 **Pay The City’s Administrative Record Costs By November 27, 2019 If This**
11 **Motion Is Granted**

12 Petitioner moved ex parte on September 20, 2019 to obtain a hearing date in this action.
13 (Winterswyk Decl., ¶ 8.) The City opposed Petitioner’s application, arguing (among other things)
14 that the Record had not yet been certified and that Petitioner refused to pay the costs of Record
15 preparation. (*Ibid.*) After hearing oral argument, the Court directed the parties to meet and
16 confer regarding a briefing schedule and hearing date. (*Ibid.*) During these meet and confer
17 efforts, the City again pointed to well-established California law requiring Petitioner to bear the
18 cost of preparing the Record; Petitioner could cite no authority to the contrary, but still refused to
19 comply with its statutory obligation to pay these costs. (*Id.* at ¶ 9.) The parties eventually agreed
20 to a briefing schedule and a hearing date that took into account that the City would file this
21 Motion, and the Court issued an Order setting a briefing schedule for this Motion. (*Id.* at ¶ 9,
22 Exh. 7 [Notice of Ruling].)

23 Notably, the Court also ordered Petitioner to pay the City’s administrative record costs by
24 November 27, 2019 if this Motion is granted. (See Winterswyk Decl., Exh. 7 [Notice of Ruling,
25 p. 3:4-5] [“If the Court orders Petitioner to pay administrative record costs in the above-captioned
26 case before the City releases a copy of the certified administrative record to Petitioner, then the
27 following dates control: ... On or before November 27, 2019, Petitioner shall pay the
28 administrative record costs requested by the City.”].)

1 **D. The City Has Incurred Over \$10,516.85 Preparing The Record, But**
2 **Petitioner Refuses To Pay Any Amount**

3 The City provided Petitioner with the draft administrative record and index shortly after
4 the ex parte hearing, on September 20, 2019. (Winterswyk Decl., ¶ 10, Exh. 8.) Thereafter, the
5 City yet again sought to avoid this motion and sent Petitioner a meet and confer letter regarding
6 its obligation to pay the costs it incurred in preparing the administrative record. (*Ibid.* [October 8,
7 2019 Letter].) The letter is replete with statutory and decisional authority that unambiguously
8 establishes Petitioner’s statutory obligation to pay the costs incurred by the City in preparing the
9 Record. (*Ibid.*) The letter further provided Petitioner with the costs that the City had incurred to
10 date in preparing the Record, and it urged Petitioner to fulfill its statutory obligation and pay the
11 City these costs. Petitioner has not responded to this letter. (*Ibid.*)

12 The City has now prepared and certified the Record, which consists of 41 documents and
13 1379 pages, and it did so at significant cost to its taxpayers. (Winterswyk Decl., ¶ 12.) Notably,
14 the City has incurred over \$10,516.85 in actual and reasonable costs to prepare the Record. (*Id.* at
15 ¶¶ 12-16 [providing breakdown of costs incurred by the City].) California law is clear that
16 Petitioner must pay the City these costs, as discussed below.

17 **III. PETITIONER HAS A STATUTORY OBLIGATION TO PAY THE COST OF**
18 **PREPARING THE ADMINISTRATIVE RECORD**

19 Petitioner cannot reasonably dispute that it is statutorily required to pay the cost of
20 preparing the administrative record. California law on this issue is clear. Petitioner filed its
21 petition for writ of mandate pursuant to Code of Civil Procedure section 1094.5 and CEQA, and
22 both statutes require Petitioner to pay the cost of preparing the Record. (Petition, ¶ 7.)

23 Code of Civil Procedure section 1094.5 provides that “the cost of preparing the record
24 shall be borne by the petitioner.” (Code Civ. Proc., § 1094.5, subd. (a), emphasis added.) Code
25 of Civil Procedure section 1094.6, which imposes certain requirements for actions brought under
26 Section 1094.5, further reiterates: “The local agency may recover from the petitioner its actual
27 costs for transcribing or otherwise preparing the record.” (Code Civ. Proc., § 1094.6, subd. (c).)

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1 CEQA similarly requires Petitioner to bear the cost of preparing the Record—especially
2 since Petitioner elected to have the City prepare the administrative record. (Pub. Resources Code,
3 § 21167.6, subd. (b)(1); *Black Historical Society, supra*, 134 Cal.App.4th at pp. 677-678;
4 *Coalition for Adequate Review, supra*, 229 Cal.App.4th at p. 1053; *River Valley Preservation*
5 *Project v. Metropolitan Transit Dev. Bd.* (1995) 37 Cal.App.4th 154, 182 (“*River Valley*”).)

6 In *Black Historical Society v. City of San Diego* (2005) 134 Cal.App.4th 670, the
7 petitioner sought to excuse its failure to file its opening brief on the basis that “the City held the
8 administrative record hostage and refused to release it without advance payment.” (*Id.* at p. 677.)
9 The petitioner further contended that “the record should have been released to it and it was liable
10 for payment only if it failed to prevail on its petition.” (*Ibid.*) The appellate court expressly
11 rejected these arguments. (*Ibid.*) In doing so, the appellate court explained that “statutory law
12 generally requires a petitioner for a writ of mandate to bear the costs of preparing the record.”
13 (*Ibid.*, citing Code Civ. Proc., §§ 1094.5, subd. (a), 1094.6, subd. (c); Pub. Resources Code,
14 § 21167.6, subd. (b)(1).)

15 Similarly, *Coalition for Adequate Review v. City and County of San Francisco* (2014) 229
16 Cal.App.4th 1043 reiterates a petitioner’s statutory obligation to bear the cost of preparing the
17 administrative record. CEQA statutorily provides: “The parties shall pay any reasonable costs or
18 fees imposed for the preparation of the record of proceedings in conformance with any law or rule
19 of court.” (Pub. Resources Code, § 21167.6, subd. (b)(1).) In interpreting this language,
20 *Coalition for Adequate Review* explained: “The cost provision, by its plain terms, places the costs
21 an agency incurs in preparing the record on the parties, not the public agency.” (*Coalition for*
22 *Adequate Review, supra*, 229 Cal.App.4th at p. 1052.) The appellate court further explained that
23 the “statutory obligation” of a petitioner to pay record preparation costs implements an “important
24 policy—that public monies should not be used to fund CEQA challenges brought by private
25 parties.” (*Id.* at p. 1058; see also *River Valley, supra*, 37 Cal.App.4th at p. 182 [“taxpayers ...
26 should not have to bear the cost of preparing the administrative record in a lawsuit brought by a
27 private individual or entity”].)

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1 Like the petitioners in *Black Historical Society*, *Coalition for Adequate Review*, and *River*
2 *Valley*, Petitioner here is statutorily obligated to pay the costs of preparing the Record in this
3 action. (Code Civ. Proc., §§ 1094.5, subd. (a), 1094.6, subd. (c); Pub. Resources Code,
4 § 21167.6, subd. (b)(1).) Petitioner’s obligation to pay these costs is especially acute given that it
5 elected to burden the City with preparation of the Record. (Winterswyk Decl., ¶ 2, Exh. 1; *River*
6 *Valley*, *supra*, 37 Cal.App.4th at p. 182.)

7 **IV. PETITIONER MUST PAY THE CITY’S RECORD PREPARATION COSTS**
8 **BEFORE THE CITY RELEASES THE RECORD TO PETITIONER**

9 Courts have repeatedly held that, because a petitioner in a CEQA action is required to pay
10 the costs of preparing the administrative record, “a petitioner can be ordered to pay for a
11 requested record during the early stages of the litigation, before the merits of the case are ever
12 heard.” (*Coalition for Adequate Review*, *supra*, 229 Cal.App.4th at p. 1053; see also *Black*
13 *Historical Society*, *supra*, 134 Cal.App.4th at pp. 674, 677-678 [trial court issued order requiring
14 the petitioner “to bear the costs of preparing the administrative record,” and “[n]othing in this
15 order suggested the City was required to release the record without prior payment”].)

16 Indeed, “a public agency can refuse to release a record it has been asked to prepare until
17 the petitioner making the request has paid the agency’s preparation costs.” (*Coalition for*
18 *Adequate Review*, *supra*, 229 Cal.App.4th at p. 1053, citing *Black Historical Society*, *supra*, 134
19 Cal.App.4th at pp. 674, 677-678.)

20 Here, the Court may properly order Petitioner to pay the City’s Record preparation costs
21 before the City releases the Record to Petitioner. (See *Coalition for Adequate Review*, *supra*, 229
22 Cal.App.4th at p. 1053.) And, as discussed above, Petitioner is statutorily required to pay such
23 costs. (Pub. Resources Code, § 21167.6, subd. (b)(1); *Black Historical Society*, *supra*, 134
24 Cal.App.4th at pp 677-678; *Coalition for Adequate Review*, *supra*, 229 Cal.App.4th at p. 1053;
25 *River Valley*, *supra*, 37 Cal.App.4th at p. 182.) The City thus requests that the Court issue an
26 order requiring Petitioner to pay the City the \$10,516.85 it has incurred in preparing the Record
27 before the City serves a certified copy of the Record on Petitioner. (Winterswyk Decl., ¶ 12.)

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1 **V. THE CITY REASONABLY INCURRED OVER \$10,516.85 IN COSTS**
2 **PREPARING THE RECORD, AND PETITIONER MUST PAY THESE COSTS**

3 The City has reasonably and necessarily incurred over \$10,516.85 in costs and fees to
4 prepare the 1,379-page Record. (Winterswyk Decl., ¶ 12.) This cost breaks down as follows:

5 1. City Staff costs. The City reasonably and necessarily incurred over \$1,361.95 in
6 City Staff costs, reflecting time City Staff spent collecting documents and compiling the Record.
7 (Winterswyk Decl., ¶ 13.) In particular, City Staff spent 21 hours collecting documents and
8 compiling the Record, and City Staff hourly rates range between \$43.63 and \$105.00. (*Ibid.*)
9 Petitioner is required to pay these costs. (See *River Valley, supra*, 37 Cal.App.4th at pp. 180-
10 181.) In *River Valley*, the appellate court upheld the trial court’s determination that petitioner was
11 required to pay the public agency the “labor costs” of the public agency’s “employees for time
12 spent collecting and indexing [the] record.” (*Ibid.*) These labor costs were not minimal, and
13 included 102 hours spent by the public agency’s engineer to “review, organize, and index the
14 administrative record.” (*Ibid.*) The appellate court held that these costs were necessary and
15 reasonable. (*Id.* at p. 181.)

16 2. Paralegal costs. The City has incurred \$4,432.20 in costs relating to an
17 experienced CEQA paralegal’s work to help collect and organize documents, review emails for
18 relevance, privilege and completeness, communicate with City staff regarding the contents of the
19 Record, and index the Record. (Winterswyk Decl., ¶ 14.) In particular, the paralegal’s hourly
20 rate is \$166.00, and the paralegal spent 26.7 hours compiling the Record. (*Ibid.*) Petitioner is
21 required to pay these costs. (*River Valley, supra*, 37 Cal.App.4th at pp. 180-181 [upholding trial
22 court determination requiring petitioner to pay public agency’s costs in having paralegal spend 35
23 hours assembling the administrative record].) These costs were reasonably and necessarily
24 incurred, as the City’s Staff lacked extensive experience in preparing an administrative record and
25 thus relied heavily on the paralegal, who has over seven years of experience preparing
26 administrative records in CEQA litigation. (Winterswyk Decl., ¶ 14.)

27 3. Attorney costs. The City has incurred over \$2,681.40 in costs relating to attorney
28 review and supervision of the compiling of the Record. (Winterswyk Decl., ¶ 15.) The attorney

1 rate for work on the Record is \$327.00 per hour, and the City’s counsel spent over 8.2 hours
2 preparing the Record. (*Ibid.*) Petitioner is required to pay these costs. (*Otay Ranch, L.P. v.*
3 *County of San Diego* (2014) 230 Cal.App.4th 60, 70-71 [“Code of Civil Procedure sections
4 1094.5 and 1094.6 require a petitioner to pay ‘actual costs’ and expenses of preparing the
5 administrative record,” and this may include attorneys’ fees].) Notably, the \$2,681.40 in costs
6 that the City seeks to recover represents only the time that the City’s counsel spent supervising
7 the compiling of the Record and reviewing it to ensure completeness. (Winterswyk Decl., ¶ 15.)
8 The City is not seeking to have Petitioner pay for the vast majority of time that the City’s counsel
9 spent on the Record—including time spent substantively analyzing the contents of the Record,
10 time spent researching issues relating to the Record, time spent meeting and conferring on the
11 Record’s contents, and time spent preparing this Motion. The City only seeks to recover those
12 attorneys’ fees it actually incurred as a result of the City’s attorneys supervising compilation of
13 the Record and reviewing it to ensure completeness. (*Id.* at ¶ 15.)

14 4. Transcription of audio recordings of public meetings. The City incurred \$2,041.30
15 in costs transcribing two San Clemente City Council meetings (May 21, 2019 and June 4, 2019),
16 the transcripts of which the City has included in the Record. (Winterswyk Decl., ¶ 16.) CEQA
17 requires that these transcripts be included in the Record. (Pub. Resources Code, § 21167.6, subd.
18 (e)(4).) There can thus be no dispute that the City reasonably and necessarily incurred these costs
19 in preparing the Record. Petitioner is responsible for paying these costs. (*River Valley, supra*, 37
20 Cal.App.4th at p. 182 [petitioner responsible for transcription costs incurred in preparing record].)

21 The City reasonably and necessarily incurred the costs discussed above in preparing the
22 Record, and Petitioner is thus statutorily required to pay the City these costs. (Code Civ. Proc.,
23 §§ 1094.5, subd. (a), 1094.6, subd. (c); Pub. Resources Code, § 21167.6, subd. (b)(1).)

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VI. CONCLUSION

California law categorically provides that Petitioner must pay the costs of preparing the Record. The City thus requests that the Court issue an order requiring Petitioner to (1) pay the City the \$10,516.85 in costs that the City incurred to prepare the Record; and (2) make this payment no later than November 27, 2019 and before the City releases the Record to Petitioner.

Dated: October 30, 2019

BEST BEST & KRIEGER LLP

By: /s/ Alisha Winterswyk
SCOTT C. SMITH
ALISHA WINTERSWYK
Attorneys for Respondents
CITY OF SAN CLEMENTE; CITY
COUNCIL OF SAN CLEMENTE; and
PLANNING COMMISSION OF CITY OF
SAN CLEMENTE

PROOF OF SERVICE

At the time of service I was over 18 years of age and not a party to this action. My business address is 18101 Von Karman Avenue, Suite 1000, Irvine, California 92612. On October 30, 2019, I served the following document(s):

**NOTICE OF MOTION AND MOTION OF RESPONDENTS
FOR AN ORDER REQUIRING PETITIONER TO PAY THE
COSTS THAT THE CITY OF SAN CLEMENTE INCURRED
IN PREPARING THE ADMINISTRATIVE RECORD**

By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):

Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Irvine, California.

By personal service. At ____ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. A Declaration of Messenger is attached.

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By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

By e-mail or electronic transmission. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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1 I declare under penalty of perjury under the laws of the State of California that the above
is true and correct.

2 Executed on October 30, 2019, at Irvine, California.

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5 /s/ Laura Palmer
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