

## TRACY AVIARY LEASE AGREEMENT

This LEASE AGREEMENT ("Lease") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2019 by and between SALT LAKE COUNTY, a body corporate and politic of the State of Utah (the "COUNTY") and FRIENDS OF TRACY AVIARY, a Utah non-profit corporation ("FRIENDS").

### RECITALS

- A. COUNTY owns certain real property located at 1111 West 3300 South in South Salt Lake (Parcel No. 15-26-377-001) known as James Madison Park (the "Park Property").
- B. FRIENDS would like to lease up to 20,000 square feet of the Park Property (the "Leased Premises") for the purpose of running a small nature center to educate and connect visitors with the natural environment (the "Nature Center"). This small Nature Center is intended to be an interim use in anticipation of the development of a larger Nature Center that may encompass several acres owned by the County, including the entire Park Property.
- C. COUNTY desires to lease to FRIENDS and FRIENDS desires to lease from the COUNTY the Leased Premises to the terms and conditions of this Lease Agreement.

### AGREEMENT

IN CONSIDERATION of the mutual covenants set forth herein, the COUNTY and FRIENDS agree as follows:

1. **PREMISES.** The COUNTY hereby leases to FRIENDS and FRIENDS hereby leases from the COUNTY the Leased Premises that is further described and illustrated in Exhibit "A."
2. **TERM.** The term of this Lease shall be for a period of two (2) years commencing May 15, 2019 and continuing in full effect until May 14, 2021 or upon termination as provided herein. FRIENDS shall have the option to renew this Lease on the terms and conditions provided herein for two (2) additional periods of one (1) year each by notifying COUNTY in writing of FRIENDS' intention to renew at least ninety (90) but not more than one hundred twenty (120) days before the expiration of the then current term of this Lease.
3. **RENT.** FRIENDS shall pay COUNTY \$1.00 per year as rent for the Leased Premises, payable in advance for each term of this Lease. In addition, FRIENDS shall maintain the Leased Premises during the term of the Lease in a clean and orderly manner, including watering, weeding, lawn mowing, and removal of litter, junk, garbage, trash, and any debris that may appear on the Leased Premises.
4. **PURPOSE.** The Leased Premises are to be used as a Nature Center and for no other purpose without written consent of COUNTY. FRIENDS acknowledges that the Leased Premises is subject to the Nature Center Pilot Project Overlay District and that any use of the Leased Premises must comply with the requirements of Section 17.13.230 of the City of South Salt Lake Municipal Code. FRIENDS shall not use the Leased Premises in a manner that conflicts with any law, statute, ordinance, or governmental rule or regulation now in force or that

may hereafter be enacted or promulgated, nor shall FRIENDS cause, maintain, or permit any nuisance in or about the Leased Premises. FRIENDS shall not commit or suffer to be committed any waste in or about the Leased Premises.

5. **IMPROVEMENTS.** FRIENDS may place or install on the Leased Premises the following structures: a. a visitor education center; b. a shade or picnic pavilion; and c. a container structure for bicycle share/rental. COUNTY shall have the right to review and approval the designs and plans for any structure installed by FRIENDS. COUNTY shall install public restroom facilities within the Leased Premises that may be used by FRIENDS. FRIENDS shall install a fence around the perimeter of the Leased Premises that complies with all applicable laws and ordinances. FRIENDS may also install such fixtures and equipment as it deems necessary for the conduct of the Nature Center that are also compliant with applicable laws, ordinances or regulations. Except as provided above, FRIENDS agrees not to disturb the surface or construct any structures, roads, trails, fences, or improvements of any kind upon the Leased Premises without the prior express written consent of COUNTY. Upon vacating the Leased Premises, the FRIENDS will leave the Leased Premises in as good a condition as when FRIENDS took possession of it.

6. **OWNERSHIP OF IMPROVEMENTS.** The ownership of the structures that FRIENDS may install on the Leased Premises pursuant to Section 5, shall remain with the FRIENDS at the expiration or termination of this Lease. FRIENDS agrees to remove such structures and repair any damage to the Leased Premises resulting from such removal upon the expiration or termination of this Lease. The ownership of any other improvements and repairs which FRIENDS shall make or install in or on the Leased Premises shall remain with the Leased Premises at the expiration of this Lease. Should COUNTY request FRIENDS to remove any such improvements made by FRIENDS, FRIENDS shall do so prior to the termination of this Lease.

7. **MAINTENANCE AND UTILITIES.** FRIENDS shall, at its sole expense, keep the Leased Premises in reasonably good order, condition, and repair, including but not limited to all structures and fixtures installed by FRIENDS within the Leased Premises. If FRIENDS does not maintain the Leased Premises and make the repairs and replacements required herein promptly and adequately (in COUNTY's reasonable judgment), COUNTY may, after providing FRIENDS twenty (20) days written notice (unless exigent circumstances exist and make a shorter notice period necessary), make such repairs and replacements, and FRIENDS shall, upon demand, pay COUNTY for its reasonable costs for such repairs and replacements. COUNTY will be responsible for all landscaping and snow removal of the Park Property outside of the Leased Premises. Further, COUNTY shall be responsible for expenses and charges for the following utilities during the term of this Lease: electricity, sewer services, and water; FRIENDS shall be responsible for all other utilities including, but not limited to, expenses and charges for telephone, internet, and cable/satellite television.

8. **PARKING.** During the term of this Lease, FRIENDS' staff, volunteers, and guests may use the parking lot adjacent to the Leased Premises on the Park Property.

9. **HAZARDOUS WASTE.** FRIENDS shall maintain the Leased Premises in conformance with all applicable federal, state and local laws, rules and regulations, including but not limited to

all environmental and public health related laws, rules and regulations. FRIENDS shall not store, use, manufacture or bring on or about the premises any toxic material, hazardous waste, regulated by any city, county, state or federal government authority as well as agricultural waste, solid waste, pollutants or sewage. In the event any hazardous waste is discovered on the Leased Premises which is a result of any act by FRIENDS or FRIENDS's agents or customers, FRIENDS shall remove the hazardous or toxic waste at its own cost and expense in accordance with federal and state laws and regulations. FRIENDS shall be solely responsible for and shall defend, indemnify, and hold COUNTY harmless from and against all claims, actions; proceedings, costs, liabilities, attorney's fees and judgments resulting from FRIENDS's failure to comply with the provisions of this paragraph. FRIENDS's obligation under this provision shall survive the termination or expiration of this Lease.

10. **ASSIGNMENT**. FRIENDS shall not assign this Lease or sublet the Leased Premises or any part thereof without the prior written permission of COUNTY.

11. **INDEMNIFICATION**. FRIENDS shall indemnify, hold harmless, and defend the COUNTY from and against all claims, damages, expenses, liabilities, and judgments on account of injury to persons, loss of life, or damage to property occurring in the Leased Premises caused by the negligence or willful misconduct of FRIENDS, its agents, officers, or employees. COUNTY shall indemnify, hold harmless, and defend FRIENDS from and against all claims, damages, expenses, liabilities, and judgments on account of injury to persons, loss of life, or damages to property caused by the negligence or willful misconduct of the COUNTY, its agents, officers, or employees. FRIENDS' and COUNTY's obligations with respect to indemnification hereunder shall remain effective, notwithstanding the expiration or termination of this Lease, as to claims accruing prior to the expiration or termination of this Lease.

12. **INSURANCE**. FRIENDS shall, at its sole cost and expense, secure and maintain during the term of this Lease the following minimum insurance coverage:

A. Required Insurance Policies

1. Commercial general liability insurance, on an occurrence form, with COUNTY as an additional insured, in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 general policy aggregate and \$2,000,000 products completed operations policy aggregate. The policy shall protect COUNTY and FRIENDS from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from the FRIENDS' use of the Leased Premises under this Lease, whether caused by the FRIENDS itself, or anyone directly or indirectly employed or engaged by FRIENDS. The policy shall be primary and not contributing to any other policy or coverage available to COUNTY whether such coverage be primary, contributing or excess.

2. Workers' compensation with limits as required by the State of Utah, and employers liability coverage in the amount of \$1,000,000 per loss. Proof of workers' compensation coverage is required unless a waiver of coverage is allowed and acquired pursuant to Utah law. This requirement includes contractors who are doing business as an individual and/or as a sole proprietor as well as corporations and partnerships. In the event any work is subcontracted, FRIENDS shall require its subcontractor(s) similarly to provide workers' compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law

3. Commercial automobile liability insurance that provides coverage for

owned, hired, and non-owned automobiles, in the minimum amount of \$500,000 per person, \$1,000,000 per accident, \$250,000 per occurrence for property damage, or a single combined limit of \$1,000,000.

B. General Insurance Requirements For All Policies

1. Any insurance coverage required herein that is written on a “claims made” form rather than on an “occurrence” form shall (i) provide full prior acts coverage or have a retroactive date effective before the date of this Lease, and (ii) be maintained for a period of at least three (3) years following the end of the term of this Lease or contain a comparable “extended discovery” clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to COUNTY.

2. All policies of insurance shall be issued by insurance companies licensed to do business in the state of Utah and either:

(a) Currently rated A- or better by A.M. Best Company;

—OR—

(b) Listed in the United States Treasury Department’s current Listing of Approved Sureties (Department Circular 570), as amended.

3. FRIENDS shall furnish certificates of insurance, acceptable to COUNTY, verifying compliance with the insurance requirements herein prior to the execution of this Lease. FRIENDS shall also provide updated certificates of insurance on or before the anniversary date of any of the evidenced policies throughout the life of this Lease.

4. In the event any work to be performed on the Leased Premises is subcontracted, FRIENDS shall require its subcontractor, at no cost to COUNTY, to secure and maintain all minimum insurance coverages required of FRIENDS hereunder.

5. FRIENDS’ insurance policies shall be primary and non-contributory to any other coverage available to COUNTY. The workers' compensation, general liability and auto liability policies shall be endorsed with a waiver of subrogation in favor of COUNTY.

6. In the event that governmental immunity limits are subsequently altered by legislation or judicial opinion, FRIENDS shall provide a new certificate of insurance within thirty (30) days after being notified thereof in writing by COUNTY, certifying coverage in compliance with the modified limits or, if no new limits are specified, in an amount acceptable to COUNTY.

7. All required policies shall provide that coverage thereunder shall not be canceled or modified without providing (30) days prior written notice to COUNTY in a manner approved by the County District Attorney.

8. In the event FRIENDS fails to maintain and keep in force any insurance policies as required herein, COUNTY shall have the right at its sole discretion to obtain such coverage and recover the costs of said insurance from FRIENDS.

13. **RE-ENTRY.** FRIENDS hereby grants a continuing right of re-entry to the Leased Premises or any part thereof to COUNTY and its employees, agents and representatives. Said access shall be afforded at all reasonable times for the purpose of inspecting the Leased Premises, for necessary repairs and maintenance, for enforcement of the provisions hereof or for any other necessary or reasonable purpose of COUNTY.

14. **AS-IS CONDITION.** FRIENDS accepts the Leased Premises in its present condition and COUNTY makes no warranties as to the present or future condition of the Leased Premises or any portion thereof, and it is expressly understood and agreed that COUNTY is under no

obligation at any time during the term of this Lease to repair, maintain or improve the Leased Premises. To the extent the Leased Premises may require maintenance during the term of this Lease, FRIENDS agrees to provide such maintenance as reasonable and necessary.

15. **LIENS AND ENCUMBRANCES.** FRIENDS shall not take any actions or make any representations in connection either with the Leased Premises or its activities on the Leased Premises which shall have the effect of, or result in the attachment of, any lien or other encumbrance to the Leased Premises or otherwise interfere with COUNTY's title to the Leased Premises.

16. **TERMINATION.** This Lease Agreement may be terminated by either party upon giving three (3) months prior written notice to the other party, or upon entering into another lease agreement between these same parties for the development of a larger Nature Center encompassing the Leased Premises.

17. **INTERPRETATION.** This Lease shall be construed according to and be governed by the laws of the State of Utah.

18. **NON-FUNDING.** It is understood and agreed by the COUNTY and FRIENDS that this Lease shall not bind future COUNTY Councils and Mayors. Any obligation on the COUNTY to provide funds shall be subject to the availability and appropriation of funds by the COUNTY Council.

19. **DISPUTES.** It is the intent of the COUNTY and FRIENDS to communicate to each other about the performance of this Lease and to try to work together in good faith to resolve any disputes that may arise under this Lease. Therefore, if either party under this Lease intends to take any action based on an alleged breach of this Lease, that party shall provide the other party at least thirty (30) days advance written notice (unless exigent circumstances exist and make a shorter time period necessary) prior to taking the intended action.

20. **ETHICAL STANDARDS.** FRIENDS represents that it has not knowingly: (a) provided an illegal gift or payoff to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in State statute or Salt Lake County's Ethics Code, Chapter 2.07, Salt Lake County Code of Ordinances, 2001; or (d) influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

21. **CAMPAIGN CONTRIBUTIONS.** FRIENDS acknowledges the prohibition of campaign contributions by contractors to County candidates, pursuant to Chapter 2.72A, Salt Lake County Code of Ordinances, 2001. FRIENDS also acknowledges and understands this prohibition means that any person, business, corporation or other entity that enters into a contract or is engaged in a contract with the County is prohibited from making campaign contributions to

County candidates. FRIENDS further acknowledges that violation of this prohibition may result in criminal sanctions as well as termination of this Lease. FRIENDS represents, by executing this Lease, that FRIENDS has not knowingly made or caused others to make any campaign contribution to any County candidate in violation of the above-referenced County ordinance.

22. **NOTICE.** Whenever any notice is given or made pursuant to this Lease, it shall be in writing sent by regular U. S. mail or delivered personally to the following address for COUNTY and FRIENDS, or such addresses as may be specified in writing by the parties from time to time:

COUNTY: Salt Lake County  
c/o Salt Lake County Real Estate Section  
2001 South State Street, #S3-110  
Salt Lake City, Utah 84114-4575

FRIENDS: Friends of Tracy Aviary  
c/o Tim Brown  
589 East 1300 South  
Salt Lake City, UT 84105

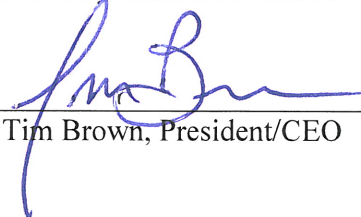
23. **INTEGRATION.** This Lease represents the entire agreement of the parties and there are no other representations, oral or written. This Lease supersedes and cancels any and all previous leases; verbal understandings, negotiations, arrangement, agreements, representations, and undertakings between the parties relating to the leasing of the Leased Premises. This Lease may only be amended by a writing executed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**SALT LAKE COUNTY**

By: \_\_\_\_\_  
Mayor or Designee

**FRIENDS OF TRACY AVIARY**

By:  \_\_\_\_\_  
Tim Brown, President/CEO

APPROVED AS TO FORM:

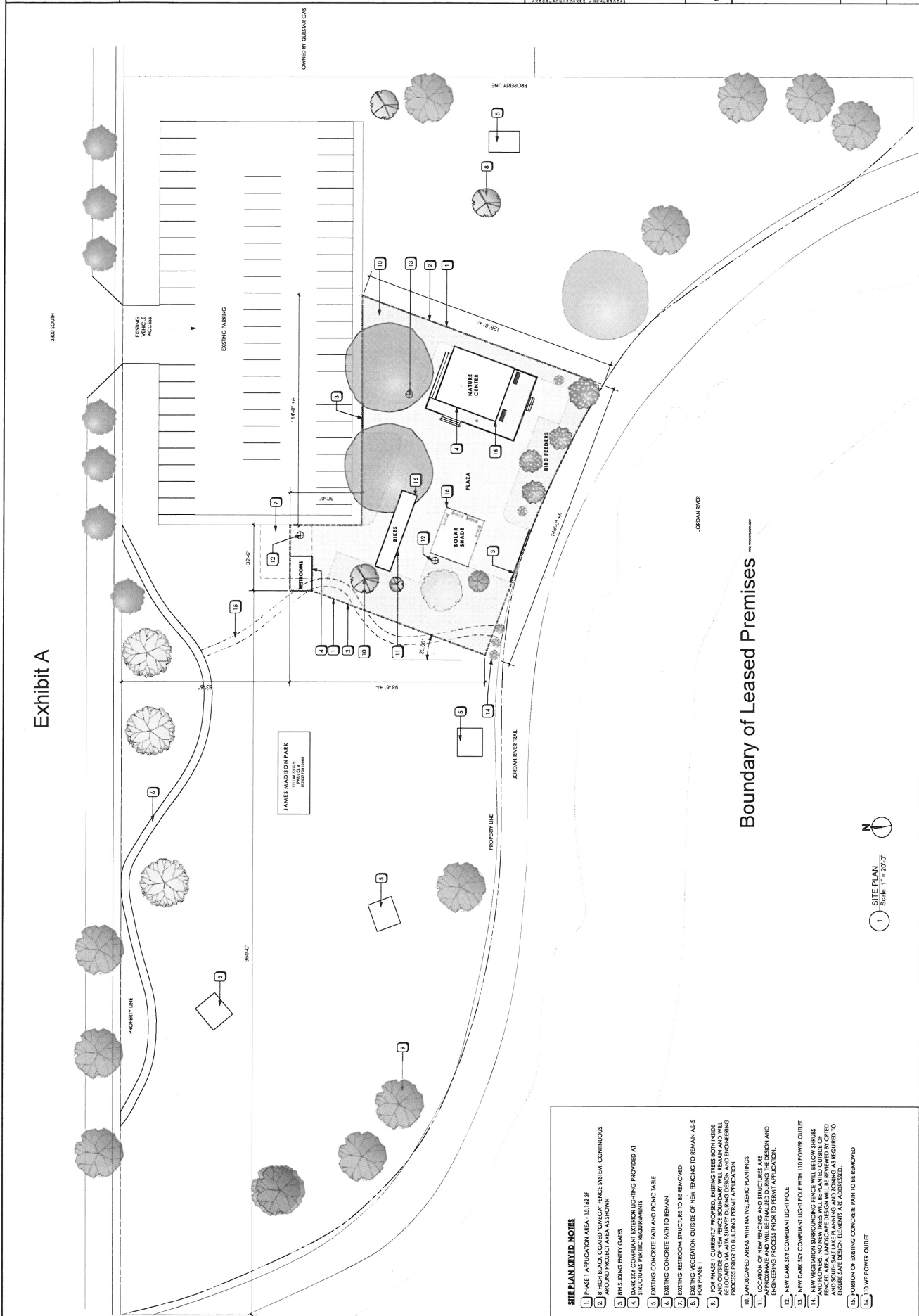


Digitally signed by Robert Preston  
Date: 2019.08.28 16:04:21 -06'00'

\_\_\_\_\_  
R. Christopher Preston  
Deputy District Attorney

Exhibit "A"  
NATURE CENTER

**Exhibit A**



**Boundary of Leased Premises**

**SITE PLAN KEYED NOTES**

1. PHASE 1 APPLICATION AREA - 15,162 SF
2. 8' HIGH BLACK COATED 'ORANGE' FENCE SYSTEM, CONTINUOUS AROUND PROJECT AREA AS SHOWN
3. 8' HIGH SLIDING ENTRY GATES
4. DARK SKY COMPLIANT EXTERIOR LIGHTING PROVIDED AT STRUCTURES FOR IBC REQUIREMENT
5. EXISTING CONCRETE PATH AND PICNIC TABLE
6. EXISTING CONCRETE PATH TO REMAIN
7. EXISTING RESTROOM STRUCTURE TO BE REMOVED
8. EXISTING VEGETATION OUTSIDE OF NEW FENCING TO REMAIN AS IS FOR PHASE 1
9. FOR PHASE 1, CURRENTLY PROPOSED, EXISTING TREES BOTH INSIDE AND OUTSIDE OF NEW FENCING TO BE REMOVED AND RELOCATED VIA AVALA MARKET DURING DESIGN AND ENGINEERING PROCESS PRIOR TO BUILDING PERMIT APPLICATION
10. LANDSCAPED AREAS WITH NATIVE XERIS PLANTINGS
11. LOCATION OF NEW FENCING AND STRUCTURES ARE APPROXIMATE AND WILL BE FINISHED DURING THE DESIGN AND ENGINEERING PROCESS
12. NEW DARK SKY COMPLIANT LIGHT FIXTURE
13. NEW DARK SKY COMPLIANT LIGHT POLE WITH 110 POWER OUTLET
14. NEW VEGETATION SURROUNDING FENCE WILL BE LOW SHRUB FENCED AREA, LANDSCAPE DESIGN WILL BE REVIEWED BY CIPED FOR PHASE 1
15. EXISTING VEGETATION TO BE REMOVED AS REQUIRED TO INSTALL NEW FENCING AND LIGHTING
16. PORTION OF EXISTING CONCRETE PATH TO BE REMOVED
17. 110 W/P POWER OUTLET

