



AGENDA REPORT

Meeting Date: September 27, 2011

Item Number: F-5

To: Honorable Mayor & City Council

From: David Gustavson, Director of Public Works & Transportation

Subject: LICENSE AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND 9336/9346 CIVIC CENTER DRIVE, L.P

Attachments:

1. License Agreement
2. Exhibit(s)

RECOMMENDATION

Approve a license agreement with 9336/9346 Civic Center Drive, L.P for the staging and operation of a crane on City property located at 345 Foothill Road.

INTRODUCTION

This report requests formal approval of a license agreement between the City of Beverly Hills and 9336/9346 Civic Center Drive, L.P for the staging and operation of a crane on City property located at 345 Foothill Road from October 10, 2011 through October 19, 2011. The work is only expected to take 3 to 4 days.

DISCUSSION

Tishman Speyer (TS) has purchased the former Hilton Hotel headquarters building located at 9336/9346 Civic Center Drive and is in the process of making exterior improvements to their buildings. In doing so, they need to mobilize a crane to facilitate the requisite steel fabrication and have asked to use the City property (345 Foothill Road; site of the Public Works & Transportation building) adjacent to these buildings to do so. More specifically, TS has asked to use the parcel of land that used be an old railroad right-of-way and is used by City staff to access the City's fueling facility among other things (legally described as Lot 7 of Block 17 of Tract No. 5647).

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Although the BHMC grants staff the authority to issue a permit for this kind of operation within the public right-of-way, the City Attorney's office has confirmed that staff, including the City Manager, are **not** currently authorized by the BHMC to grant the request to use City-owned land (other than right-of-way) without City Council approval.

The City Attorney's office has prepared the license agreement attached to this report to accommodate the TS request while protecting the City's interests.

Staff recommends that the City Council approve the license agreement with 9336/9346 Civic Center Drive, L.P for the staging and operation of a crane on City property located at 345 Foothill Road

FISCAL IMPACT

Although staff does not recommend that TS pay for the use of the City property, TS shall reimburse City for its actual costs to draft, administer, and negotiate the License, and inspect the erection, use and removal of the Equipment.



David D. Gustavson

Approved By

Attachment 1

LICENSE AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND 9336/9346 CIVIC CENTER DRIVE, L.P.

1. PARTIES. This License Agreement (the "License") is dated as of _____, 2011 and is entered into by and between the CITY OF BEVERLY HILLS, a municipal corporation ("City") and 9336/9346 Civic Center Drive, L.P., a Delaware limited partnership ("Licensee").

2. CONDITIONS PRECEDENT. The effectiveness of this License is conditioned for the benefit of the City upon satisfaction of the following condition on or before October 10, 2011:

Delivery to City of the insurance certificates described in Section 9B below

3. LICENSE AREA. The area subject to this License is described on Exhibit "A" attached hereto (the "License Area"). City makes no warranties or representations, express or implied, regarding the condition of the License Area. City shall not be liable to Licensee for any condition of any latent defect in the License Area.

4. TERM. License shall commence on October 12, 2011 and shall terminate on October 17, 2011 unless terminated sooner upon not less than twenty-four (24) hours prior written notice by one party to the other. The City Manager shall have the authority to extend the term and execute such a written termination notice on behalf of the City.

5. USE; MAINTENANCE. Licensee desires to place on and use in the License Area one mobile hydraulic crane (the "Equipment"). Licensee shall at all times keep the Equipment in good and operable condition and repair, at Licensee's sole cost and expense. Any damage to the License Area or adjoining landscaping, improvements or property arising out of the operation, servicing or repair of the Equipment shall be repaired and/or replaced (as applicable) at the sole expense of the Licensee to the satisfaction of the City Manager. Licensee may only operate the Equipment between the hours of 7 am to 4 pm.

6. ALTERATIONS AND IMPROVEMENTS. Licensee shall not construct or install any structures, improvements, or fixtures on the License Area without the prior written consent of the City Manager.

7. ASSIGNMENT. Licensee shall not, either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this License or any interest herein, or any right or privilege appurtenant hereto, or allow any other person to occupy or use the License Area, or any portion thereof, without first obtaining the written consent of City Manager, which consent may be withheld in his sole and absolute discretion. Notwithstanding the foregoing, the City hereby consents to the occupancy and use of the License Area by the following agents of Licensee: (i) Hathaway Dinwiddie Construction Company (Licensee's general contractor); (ii) Washington Iron Works (steel subcontractor); (iii) Thyssen Krupp Elevators (Licensee's elevator contractor); and (iv) Champion Crane Rental Inc. (crane provider and operator). A consent to one occupation or use by any other person shall not be deemed to be a consent to any subsequent occupation or use by another person. Consent to any such

occupation or use shall in no way relieve Licensee of any liability under this License. Any such occupation or use without such consent shall be void, and shall, at the option of the City, constitute a default under this License.

8. INDEMNIFICATION. Licensee shall indemnify and hold harmless City, the City Council and each member thereof, and City's officers, employees and agents (all collectively referred to as "Indemnitees") from and against any and all claims, liabilities, losses, costs, expenses and damages arising from Licensee's use of the License Area or from the conduct of its business or from any activity, work, or other things done, suffered by the Licensee in or about the License Area, and shall further indemnify and hold harmless Indemnitees from and against any and all claims, liabilities, losses, costs, expenses and damages arising from any breach or default in the performance of any obligations on Licensee's part to be performed under the terms of this License, or arising from any act or negligence of the Licensee, or any officer, agent, employee, guest, or invitee of Licensee, and from all costs, attorneys' fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon. If any action or proceeding be brought against Indemnitees by reason of any such claim, Licensee, upon notice from Indemnitees shall defend Indemnitees at Licensee's expense, by counsel reasonably satisfactory to Indemnitees. Licensee, as a material part of the consideration to City, hereby assumes all risk of damage to property or injury to persons in, upon or about the License Area, from any cause; and Licensee hereby waives all claims in respect thereof against City. Licensee shall give prompt notice to City in case of casualty or accidents on or about the License Area.

9. INSURANCE.

A. Liability. Licensee shall at all times during the term of this License shall, at Licensee's expense, maintain in force insurance policies which will defend, insure and indemnify the Licensee, City and the other Indemnitees against liability or financial loss resulting from any suits, claims or actions and from all costs and expenses of litigation, in an amount of not less than Five Million Dollars (\$5,000,000) combined single limit for any injury to persons and/or damage to property in or about the License Area by reason of the use and occupation by Licensee or by any other person or persons of the License Area together with an endorsement as set forth in the standard City Certificate of Insurance. Such insurance shall include contractual liability coverage with respect to Licensee's obligations under Section 8 above. Not more frequently than once each year, if, in the opinion of the insurance broker or consultant retained by City, the amount of public liability and property damage insurance coverage at that time is not adequate, Licensee shall increase the insurance coverage as required by City's insurance broker or consultant. Licensee shall cause the owner of any vehicle utilized in connection with this License to maintain comprehensive vehicle liability coverage covering personal injury and property damage in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence, combined single limit, covering the Equipment and One Million Dollars (\$1,000,000) per occurrence, combined single limit, covering any other vehicle utilized in connection with this License. Licensee shall also maintain worker's compensation coverage in an amount adequate to comply with law, and employer's liability coverage with a limit of not less than One Million Dollars (\$1,000,000.00). The general and vehicle liability insurance shall contain an endorsement naming City as an additional insured. All of the policies required under this License shall contain an endorsement providing that the policies cannot be canceled or

reduced except on thirty (30) days prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this License.

B. Certificates. Said policy shall be issued by an insurer rated in Best's Insurance Guide with a financial rating of A X or better. Said policy shall provide that the insurance coverage shall not be cancelled or reduced by the insurance carrier without the City having been given 45 days' prior written notice thereof by such carrier. Licensee agrees that it will not cancel or reduce said insurance coverage. **Upon the execution of this License, and thereafter upon written request of Licensee, Licensee shall provide the City Clerk of the City a Certificate from the insurance carrier or carriers showing the aforesaid insurance policies are in effect in the amounts above provided, and if requested, a copy of each insurance policy.**

C. Lapsed Insurance. Licensee agrees that if it does not keep the aforesaid insurance in full force and effect, the City may (but shall not be obligated to) take out the necessary insurance and pay the premium thereon, and Licensee shall reimburse City for the cost thereof within ten (10) days after written demand.

D. Notice. Licensee shall give prompt written notice to City of any damage to the License Area during the term of this License and any damage to other property or to persons as a result of Licensee's use of the License Area or the operation of the Equipment.

10. **COMPLIANCE WITH LAW**. During the term of this License, Licensee agrees to comply with all existing and future ordinances, rules, laws, or regulations of any governmental agency which are applicable to the License Area or the operations of Licensee in the License Area.

11. **LICENSEE'S DEFAULT**. The failure by Licensee to observe or perform any of the covenants, conditions or provisions of this License to be observed or performed by the Licensee where such failure shall continue for a period of five (5) business days after written notice thereof by City Manager to Licensee shall entitle the City to terminate this License immediately by written notice from the City Manager.

12. **REMEDIES ON DEFAULT**. City shall be entitled to recover from Licensee all damages incurred by City by reason of Licensee's default, and may pursue any other remedy now or hereafter available to city under the laws or judicial decisions of the State of California.

13. **REIMBURSEMENT OF CITY EXPENSES**. Licensee shall reimburse City for its actual costs to draft and negotiate the License, and administer and inspect the erection, use and removal of the Equipment. City shall notify Licensee in writing of such actual costs incurred by City upon expiration or termination of the License

14. **PAYMENTS AND NOTICES**. All payments hereunder (if any) shall be paid by Licensee to the Office of the Cashier of the City at 455 North Rexford Drive, Beverly Hills, California 90210 or at such other address or to such other persons as the City may from time to time designate in writing, and all notices shall be delivered to the Director of Public Works of City at 445 North Rexford Drive, Beverly Hills, California 90210 and to the Chief Financial

Officer of the City at the same address, or at such other addresses or to such other persons as the City may from time to time designate in writing. All notices given by City to Licensee hereunder shall be in writing and delivered to Licensee at Tishman Speyer Properties, L.P., 45 Rockefeller Plaza, New York N.Y. 10111, Attention Chief Financial Officer and Attention Chief Legal Officer. Notices may be personally delivered, delivery by certified mail (return receipt requested), or delivered by reputable overnight delivery service.

15. **SURRENDER.** Upon the termination of the term of this License, Licensee shall surrender the License Area to the City in the same condition as received prior to initial use by Licensee (and Licensee shall remove all of its equipment and restore the License Area).

16. **GENERAL PROVISIONS.**

A. **Waiver.** The waiver by City of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The acceptance of payments hereunder by City shall not be deemed to be a waiver of any preceding default by Licensee of any term, covenant or condition of this License, other than the failure of the Licensee to pay the particular payment so accepted, regardless of City's knowledge of such preceding default at the time of the acceptance of such rent.

B. **Time.** Time is of the essence of this License and each and all of its provisions in which performance is a factor.

C. **Prior Agreements.** This License contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this License, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this License may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This License shall not be effective or binding on any party until fully executed by both parties hereto.

D. **Partial Invalidity.** Any provision of this License which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect.

E. **City's Approvals.** Neither City's execution of this License nor any consent or approval given by City hereunder in its capacity as City shall waive, abridge, impair or otherwise affect City's powers and duties as a governmental body.

F. **POSSESSORY INTEREST TAX. LICENSEE RECOGNIZES AND UNDERSTANDS THAT THIS LICENSE MAY CREATE A POSSESSORY INTEREST SUBJECT TO TAXES LEVIED UPON SUCH INTEREST. LICENSEE SHALL PAY ALL SUCH TAXES.**

G. **No Recording.** Licensee shall not record this License or any memorandum thereof.

H. Attorneys' Fees. If any party named herein brings an action to enforce the term hereof or to declare rights hereunder, the prevailing party in any such action, on trial and appeal, shall be entitled to recover its costs and reasonable attorneys' fees.

I. Authority of City. The City Manager shall have the authority to give any and all consents, approvals and terminations on behalf of the City hereunder.

LICENSEE:

9336/9346 CIVIC CENTER DRIVE, L.P.,
A Delaware limited partnership
By: *9336/9346 Civic Center Drive GP, L.L.C., its general partner*
By: Michael B. Benner *MB*

Print Name: Michael B Benner
vice President and Secretary

Title: _____

[Signatures continue]

CITY:
CITY OF BEVERLY HILLS,
a municipal corporation

BARRY BRUCKER
Mayor of the City of Beverly Hills

ATTEST:

(SEAL)
BYRON POPE
City Clerk

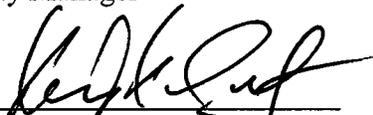
APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager



DAVID B. GUSTAVSON
Director of Public Works & Transportation



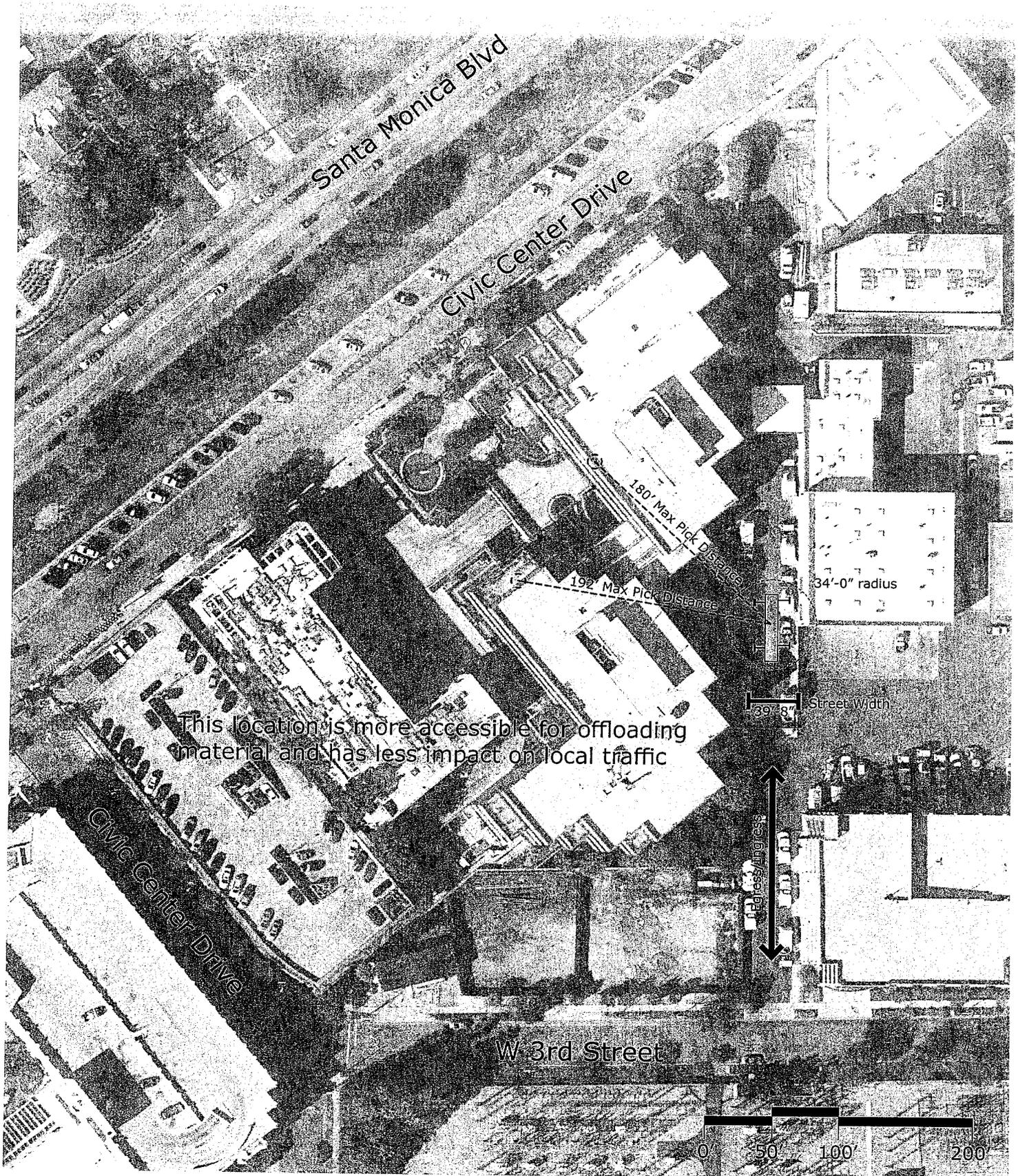
KARL KIRKMAN
Risk Manager

EXHIBIT "A"

DESCRIPTION OF LICENSE AREA

Tract 5647 Lot 7 Blk 17

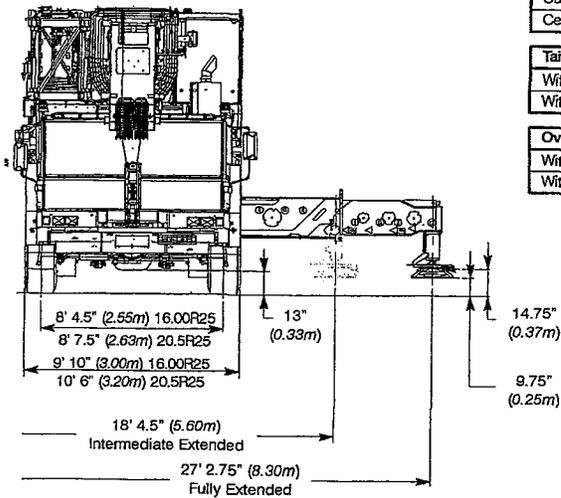
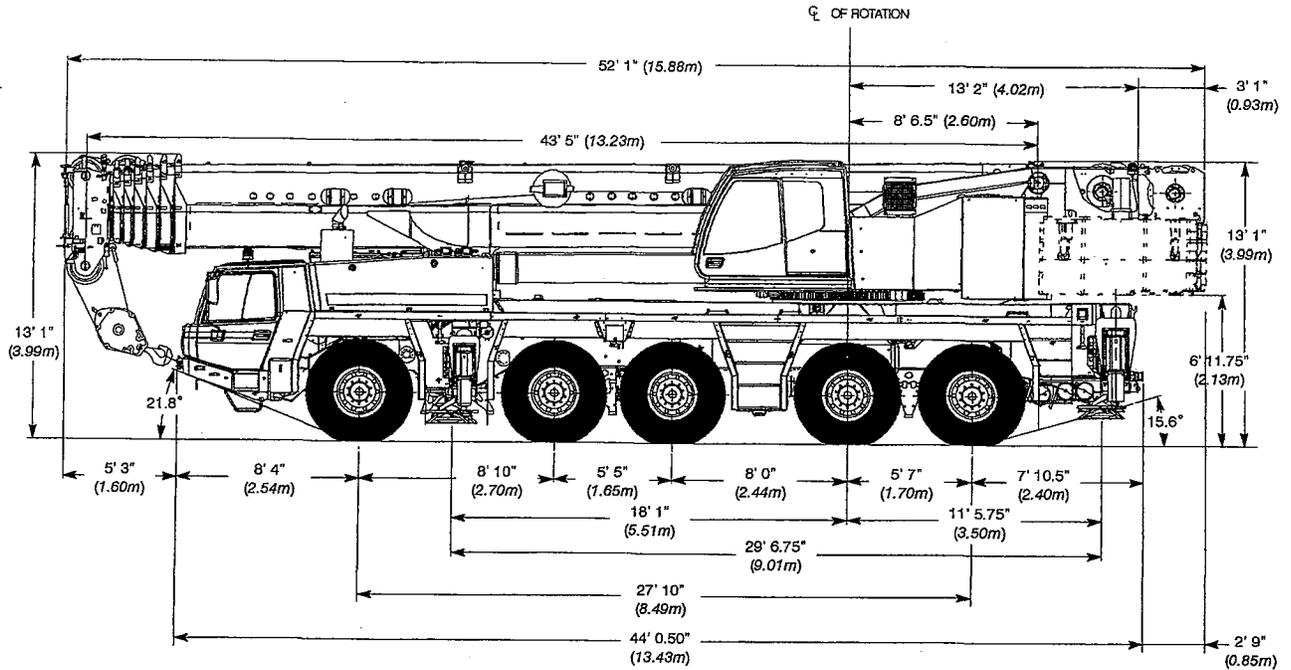
Attachment 2



9336-9346 Civic Center Drive

Proposed Crane Layout Solution

General Dimensions



Turning Radius	20.5R25		16.00R25	
	English	Metric	English	Metric
Wall to wall over carrier	36' 0"	11.0m	35' 9"	10.9m
Wall to wall over boom	38' 4"	11.7m	38' 1"	11.6m
Wall to wall over boom attachment	40' 7"	12.4m	40' 4"	12.3m
Curb to curb	32' 2"	9.80m	31' 11"	9.72m
Centerline of tire	31' 5"	9.6m	31' 2"	9.5m

Tail Swing	English	Metric
With auxiliary winch	16' 8"	5.1m
Without auxiliary winch	14' 5"	4.4m

Overall Width	English	Metric
With 51,808–103,616 lb (23 500–37 000kg) counterweight	15' 1"	4.6m
With 156,527 lb (71 000kg) counterweight	18' 5"	5.6m

Not To Scale