CITY OF NEWPORT BEACH
CITY COUNCIL AGENDA

MARCH 25, 2025
COUNCIL CHAMBERS - 100 CIVIC CENTER DRIVE, NEWPORT BEACH, CA 92660

REGULAR MEETING - 4:00 P.M.
CLOSED SESSION - FOLLOWS MOTION FOR RECONSIDERATION

JOE STAPLETON, Mayor
LAUREN KLEIMAN, Mayor Pro Tem
MICHELLE BARTO, Councilmember
NOAH BLOM, Councilmember
ROBYN GRANT, Councilmember
SARA J. WEBER, Councilmember
ERIK WEIGAND, Councilmember

GRACE K. LEUNG, City Manager
AARON C. HARP, City Attorney
MOLLY PERRY, Interim City Clerk

NOTICE REGARDING PRESENTATIONS REQUIRING USE OF CITY EQUIPMENT
Any presentation requiring the use of the City of Newport Beach's equipment must be submitted to the City Clerk 24 hours prior to the scheduled City Council meeting.

LEVINE ACT
Under the Levine Act, Section 84308 of the Government Code, a party to a proceeding before the City involving a contract (other than competitively bid, labor, or personal employment contracts), franchise, license, permit, or other entitlement for use, is required to disclose on the record of the proceeding any contribution in an amount of more than five hundred dollars ($500) made within the preceding 12 months by the party or the party's agent to any elected or appointed officer of the City. If you have made a qualifying contribution, please ensure to make this disclosure on the record.

PUBLIC HEARINGS
If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

NOTICE TO THE PUBLIC
Any times listed in this agenda are provided as a courtesy and the actual item may be heard either before or after the time given.

This agenda was prepared by the City Clerk and staff reports are available in the City Council Chambers lobby located at 100 Civic Center Drive. Staff reports or other written documentation have been prepared or organized with respect to the items of business listed on the agenda. If you have any questions or require copies of any of the staff reports or other documentation regarding any item of business on the agenda, please contact City Clerk staff at 949-644-3005. Agendas and staff reports are also available on the City's webpage at newportbeachca.gov/agendas.

The City of Newport Beach's goal is to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, we will attempt to accommodate you in every reasonable manner. Please contact City Clerk staff prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or cityclerk@newportbeachca.gov).

I. ROLL CALL - 4:00 p.m.

II. INVOCATION - Reverend Dr. George Okusi, St. John the Divine Episcopal Church

III. PLEDGE OF ALLEGIANCE

IV. PRESENTATIONS

- **History of the Balboa Island Ferry by Seymour Beek**
- **Proclamation Recognizing National Library Week**
- **Recognition of Newport-Mesa Unified School District Students**

V. NOTICE TO THE PUBLIC

The City Council of Newport Beach welcomes and encourages community participation. Public comments are generally limited to three minutes per person to allow everyone to speak. Written comments are encouraged as well. The City Council has the discretion to extend or shorten the time limit on agenda or non-agenda items.

VI. CITY COUNCIL ANNOUNCEMENTS AND ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES

VII. PUBLIC COMMENTS ON CONSENT CALENDAR

This is the time in which Councilmembers may pull items from the CONSENT CALENDAR for discussion (ITEMS 1 - 11). Public comments are also invited on Consent Calendar items. Speakers must limit comments to three minutes. Before speaking, please state your name for the record. If any item is removed from the Consent Calendar by a Councilmember, members of the public are invited to speak on each item for up to three minutes per item.

All matters listed under CONSENT CALENDAR are considered to be routine and will all be enacted by one motion in the form listed below. Councilmembers have received detailed staff reports on each of the items recommending an action. There will be no separate discussion of these items prior to the time the City Council votes on the motion unless members of the City Council request specific items to be discussed and/or removed from the Consent Calendar for separate action.

VIII. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. Minutes for the March 11, 2025 City Council Meeting

Waive reading of subject minutes, approve as written, and order filed.

Minutes

Written Comments

2. Reading of Ordinances

Waive reading in full of all ordinances under consideration, and direct the City Clerk to read by title only.

ORDINANCE FOR ADOPTION

3. Ordinance No. 2025-4: Amending the Newport Beach Municipal Code to Update Administrative Procedures Related to Good Cause Determinations and the Extension of Deadlines for Short-Term Lodging Permits

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because this action will not result in a physical change to the environment, directly or indirectly; and

b) Conduct second reading and adopt Ordinance No. 2025-4, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Section 1.08.120 (Definitions) of Title 1 (General Provisions), Section 5.95.042 (Maximum Number of Permits), Section 5.95.043 (Transfer of Permit), and Section 5.95.065 (Suspensions and Revocations) of Chapter 5.95 (Short-Term Lodging Permit) of Title 5 (Business Licenses and Regulations) of the Newport Beach Municipal Code to Update Administrative Procedures Related to Good Cause Determinations and the Extension of Deadlines*.

Staff Report

Attachment A - Ordinance No. 2025-4

Attachment B - Changes to the Code (redlines)

Written Comments

RESOLUTION FOR ADOPTION

4. Resolution No. 2025-12: Creating the Ad Hoc Refuse Committee

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
b) Adopt Resolution No. 2025-12, *A Resolution of the City Council of the City of Newport Beach, California, Creating the Ad Hoc Refuse Committee*; and
c) Confirm the appointments of Councilmember Robyn Grant and Councilmember Michelle Barto to serve on the Ad Hoc Refuse Committee.

Staff Report
Attachment A - Resolution No. 2025-12
Written Comments

CONTRACTS AND AGREEMENTS

5. Irrigation Controller Replacement Phase 2 - Award of Contract No. 9735-1

a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because this project has no potential to have a significant effect on the environment;
b) Award Contract No. 9735-1 to EMTS for the total bid price of $480,202.74 for the replacement of 37 irrigation controllers, and authorize the Mayor and City Clerk to execute the agreement; and
c) Establish a contingency of $24,000 (approximately 5% of total bid) to cover the cost of unforeseen work not included in the original contract.

Staff Report
Attachment A - Contract
Attachment B - Protest Letter
Written Comments

6. **Approval to Increase the Purchase Order Amount with W. W. Grainger, Inc. for As-Needed Procurement of Public Works Department Maintenance and Repair Tools, Materials and Supplies**

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
b) Approve a change order to Purchase Order No. 22500148 with W. W. Grainger, Inc., increasing the amount from $120,000 to $200,000 for FY 2024-25; and
c) Approve issuing a purchase order with W. W. Grainger, Inc., for $200,000 for FY 2025-26 on or after July 1, 2025.

Staff Report

Attachment A - Contract

7. **Amendment to Professional Services Agreement with Sampson Oil Company for Oil Well Management Services**

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
b) Approve Amendment No. Seven to the Professional Services Agreement with Sampson Oil Company for Oil Well Management Services, which extends the contract to June 30, 2026, and increases the contract amount by $750,000, and authorize the Mayor and City Clerk to execute the Agreement.

Staff Report

Attachment A - Amendment No. Seven

8. **Professional Services Agreement with Environmental Science Associates for Environmental Services Related to Proposed Improvements at Back Bay Landing and Bayside Village Marina (PA2024-0135)**

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and

b) Authorize the Mayor and City Clerk to execute a Professional Services Agreement with Environmental Science Associates for Supplemental EIR Related to Back Bay Landing and Bayside Village Marina Improvement Project in an amount not-to-exceed $426,100, in a form substantially similar to the agreement attached to the staff report.

Staff Report

Attachment A - Agreement

9. **Concession Agreement with Kit at the Library, Inc. for Use of the Concession Facility at the Central Library Located at 1000 Avocado Avenue**

a) Find this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing facilities) and Section 15302 (Replacement or Reconstruction) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because this project has no potential to have a significant effect on the environment;

b) Authorize the City Manager and City Clerk to execute the Concession Agreement between the City of Newport Beach and Kit at the Library, Inc., for use of the concession facility at the Central Library, located at 1000 Avocado Avenue, in a form substantially similar to the agreement attached to the staff report; and

c) Approve a waiver of City Council Policy F-7 - *Income and Other Property* based on the findings contained in the staff report and the Agreement, that charging less than fair market rent promotes the City's goals to provide essential or unique services to the community, that cannot otherwise be provided if full market rates were charged.

Staff Report

Attachment A - Concession Agreement

Attachment B - Proposed Menu

Attachment C - Proposed Tenant Improvements

Attachment D - City Council Policy F-7

On the Agenda

Written Comments

10. Amendment to Professional Services Agreement with Dudek, Inc. for Consulting Services on the Comprehensive General Plan Update (PA2022-080)

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and

b) Approve Amendment No. One to the Professional Services Agreement with Dudek, Inc. for Consulting Services on the Comprehensive General Plan Update, which augments the Scope of Work, extends the contract to June 30, 2026, and increases the contract amount by $128,479.99 for a total not-to-exceed amount of $1,606,509.74, and authorize the Mayor and City Clerk to execute Amendment No. One to the Agreement.

Staff Report

Attachment A - Amendment No. One

Attachment B - GPUSC Memo

Written Comments

MISCELLANEOUS

11. General Plan Annual Progress Report Including Housing Element Report for 2024 (PA2025-0008)

a) Find the preparation, review and submission of the 2024 General Plan Progress Report not subject to the California Environmental Quality Act (CEQA) as the actions are not a project as defined by Section 15378(b)(2) of the Public Resources Code;

b) Approve the 2024 General Plan Progress Report, including the Housing Element Annual Progress Report; and

c) Authorize submittal of the 2024 General Plan Progress Report to the State Office of Land Use and Climate Innovation and the submittal of the Housing Element Annual Progress Report to the State Department of Housing and Community Development.

Staff Report

Attachment A - Annual Progress Report

On the Agenda

ACTION: MOVE AFFIRMATIVE ACTION OF THE CONSENT CALENDAR, EXCEPT FOR THOSE ITEMS REMOVED

IX. ITEMS REMOVED FROM THE CONSENT CALENDAR

X. PUBLIC COMMENTS ON AGENDA AND NON-AGENDA ITEMS

Public comments are invited on agenda and non-agenda items generally considered to be within the subject matter jurisdiction of the City Council. Speakers must limit comments to three minutes. Before speaking, please state your name for the record.

XI. CURRENT BUSINESS

12. Ordinance No. 2025-5: An Amendment to Section 15.02.095 of the Newport Beach Municipal Code Related to Timeframes for Completion of Construction

a) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and

b) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2025-5, *An Ordinance of the City of Council of the City of Newport Beach, California, Amending Section 15.02.095 (Section 105.3.4) of the Newport Beach Municipal Code Related to Timeframes for Completion of Construction*, and pass to second reading on April 15, 2025.

Staff Report

Attachment A - Ordinance No. 2025-5

Attachment B - Ordinance (redlines)

On the Agenda

Written Comments

XII. MOTION FOR RECONSIDERATION

A motion to reconsider the vote on any action taken by the City Council at either this meeting or the previous meeting may be made only by one of the Councilmembers who voted with the prevailing side.

XIII. CLOSED SESSION - Council Chambers Conference Room

A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Government Code § 54956.8): 3 matters

1. **Property:** 3848 Campus Drive, Newport Beach, CA 92660 (Assessor Parcel Number 427-151-08).

   City Negotiators: Seimone Jurjis, Assistant City Manager and Lauren Whitlinger, Real Property Administrator.

   Negotiating Parties: John Saunders on behalf of 3848 Campus Drive LP.

   Under Negotiation: Instruction to City Negotiators regarding price and terms of payment.

2. **Property:** 12 Corporate Plaza Drive, Newport Beach, CA 92660 (Assessor Parcel Numbers 442-271-12 & 442-271-30).

   City Negotiators: Seimone Jurjis, Assistant City Manager and Lauren Whitlinger, Real Property Administrator.

   Negotiating Parties: John Pomer on behalf of Junkins 12 Corporate Plaza, LLC; and The Irvine Company

   Under Negotiation: Instruction to City Negotiators regarding price and terms of payment.

3. **Property:** 707 E. Balboa Blvd, Newport Beach, CA 92661 (Assessor Parcel Number 048-135-02).

   City Negotiators: Seimone Jurjis, Assistant City Manager and Lauren Whitlinger, Real Property Administrator.

   Negotiating Parties: Linda Sadeghi on behalf of Balboa Theater Company, LLC

   Under Negotiation: Instruction to City Negotiators regarding price and terms of payment.

Written Comments

B. CONFERENCE WITH LABOR NEGOTIATORS
(Government Code § 54957.6): 1 matter

Agency Designated Representatives: Grace K. Leung, City Manager, and Jonathan Holtzman, Esq., Negotiators.

Employee Organizations: Association of Newport Beach Ocean Lifeguards (ANBOL); Newport Beach City Employees Association (NBCEA); Newport Beach Employees League (NBEL); Newport Beach Firefighters Association (NBFA); Newport Beach Fire Management Association (NBFMA); Newport Beach Lifeguard Management Association (NBLMA); Newport Beach Police Association (NBPA); Newport Beach Police Management Association (NBPMA); Newport Beach Professional and Technical Employees Association (NBPTEA); and Part Time Employees Association of Newport Beach (PTEANB).

XIV. CLOSED SESSION REPORT

XV. ADJOURNMENT - In memory of Mary Romeo and Fran Ursini

Testimony given before the City Council is recorded.
The timer light will turn yellow when the speaker has one minute remaining.
The timer light will turn red when the speaker has 10 seconds remaining.

PLEASE TURN CELL PHONES OFF OR SET IN SILENT MODE.

CITY OF NEWPORT BEACH

City Council Meeting Minutes
Study Session and Regular Meeting
March 11, 2025

I. ROLL CALL – 4:00 p.m.

Present: Mayor Joe Stapleton, Mayor Pro Tem Lauren Kleiman, Councilmember Michelle Barto, Councilmember Noah Blom, Councilmember Robyn Grant, Councilmember Sara J. Weber, Councilmember Erik Weigand

II. CURRENT BUSINESS

SS1. Clarification of Items on the Consent Calendar – None

SS2. Presentation to the City by the Newport Beach Sister City Association on Behalf of Mayor Yasuhiro Uchida of Okazaki, Japan

Truly Boring, President of the Newport Beach Sister City Association, discussed the summer exchange program and presented a taiko drum to the City from Mayor Yasuhiro Uchida of Okazaki.

Mayor Stapleton presented Mayor Uchida and the Association with a framed photograph of the Newport Beach Wedge by local photographer Michael Pickett.

SS3. Proclamation Recognizing *National Nutrition Month*

Mayor Stapleton read the proclamation and presented it to Dr. Sangeeta Shrivastava, current President of the California Academy of Nutrition and Dietetics, and her colleagues, who thanked the City, commented that many chronic diseases can be prevented through the transformative power of food and nutrition, and encouraged everyone to avoid wasting food.

SS4. History of Balboa Island by the Balboa Island Museum

Bruce Cook discussed the history of Balboa Island; and Shirley Pepys talked about the Balboa Island Museum and noted the exhibits, visitor count, hours of operation, as well as other events and activities held at the museum.

SS5. Capital Improvement Program (CIP) Early Look

City Clerk Brown announced that she would be recusing herself during discussions regarding the Balboa Boulevard/Newport Boulevard Pavement Rehabilitation Project, the Oceanfront Boardwalk Expansion Project, and the Beach and Bay Sand Management Project due to potential real property interest conflicts.

Councilmember Blom announced that he would be recusing himself during discussions regarding the Balboa Boulevard/Newport Boulevard Pavement Rehabilitation Project, the Underground Assessment District 124 Project, the Balboa Island Water Main Replacement Project, the Balboa Island Drainage/Pump Station Improvements Project, and the Balboa Island Seawall Project due to real property interest conflicts.

Councilmember Weber announced that she would be recusing herself during discussions regarding the Streets and Drainage Project on Spyglass Hill Road/ San Joaquin Hills Road due to real property interest conflicts.

Draft

Mayor Pro Tem Kleiman announced that she would be recusing herself during discussions regarding the Landscape Enhancement Program Project in Cameo Shores and the Shore Cliffs Water System Improvements Project due to real property interest conflicts.

Mayor Stapleton announced that he would be recusing himself during discussions regarding the Concrete Replacement and Slurry Program Project in the Airport Area and the Street Pavement Rehabilitation/Repair Project on MacArthur Boulevard and Von Karman Avenue due to real property interest conflicts; and the Balboa Yacht Basin Dock Replacement/Dredging Project because there may be a conflict since a client, who is a source of income, lives near the project.

Public Works Director Webb and Deputy Public Works Director Houlihan utilized a presentation to explain CIP allocations, completed projects during FY 2024-25, projects under construction, FY 2025-26 CIP projections, proposed new funding and projects from each of the funding types, and the 5-year look ahead and significant projects.

In response to Council questions, Public Works Director Webb and Deputy Public Works Director Houlihan indicated that the slurry seal project will be bid out, the Pacific Coast Highway project near Newport Coast was managed by Caltrans and will be corrected, and there is a partnership and agreement with the City of Laguna Beach for water wells and pipe wells in Fountain Valley.

Councilmember Weigand expressed his appreciation for the work on the Orange County Water District (OCWD) loan approval and Mayor Stapleton recognized the importance of the project.

Carmen Rawson asked that the boardwalk expansion project be deferred and discussed further at a future City Council meeting.

Ken Rawson discussed the existing length of the boardwalk, plans for the expansion, and asked Council to consider implementing a complete plan.

Dennis Bress commended the Public Works Department and thanked Council for providing project funding.

In response to Councilmember Weigand's questions regarding congestion concerns and public input, Public Works Director Webb stated that the next Parks, Beaches and Recreation Commission meeting is scheduled for April 1, 2025, and at that meeting staff will discuss the 15th Street restroom area of the boardwalk project. He also noted segmented areas of the project and indicated that the City is focusing on the busiest segments of the boardwalk.

Mayor Stapleton reiterated the date of the April 1, 2025 Parks, Beaches and Recreation Commission meeting and emphasized the need for continuing the conversation then.

Councilmember Grant acknowledged staff's accomplishments.

III. PUBLIC COMMENTS

Dennis Bress acknowledged the new trash interceptor and asked about opportunities for the public to visit it.

IV. RECESSED – 5:03 p.m.

V. RECONVENED AT 5:03 P.M. FOR REGULAR MEETING

VI. ROLL CALL

Draft

Present: Mayor Joe Stapleton, Mayor Pro Tem Lauren Kleiman, Councilmember Michelle Barto, Councilmember Noah Blom, Councilmember Robyn Grant, Councilmember Sara J. Weber, Councilmember Erik Weigand

VII. INVOCATION – Gene Clark, Church of Jesus Christ Latter-day Saints

VIII. PLEDGE OF ALLEGIANCE – Councilmember Barto

IX. NOTICE TO THE PUBLIC

X. CITY COUNCIL ANNOUNCEMENTS AND ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES

Councilmember Weigand:
- Attended a meeting with Orange County Supervisor Katrina Foley and Councilmember Grant regarding the Dunes property

Councilmember Barto:
- Attended the Water Quality/Coastal Tidelands Committee meeting
- Announced a meeting next week with the Orange County Watershed Committee

Councilmember Grant:
- Provided an update from the Transportation Corridor Agencies (TCA) where she serves as the Vice Chair of the Joint Capital Projects Committee regarding the reuse of the Catalina View toll plaza
- Attended the Orange County Transportation Authority (OCTA) tour of the transportation facility with Transportation Engineer Sommers, the OASIS Wine and Cheese event with Councilmembers Barto and Weber, the Fire Station 2 demolition party, the trash interceptor ribbon cutting, and the Orange County Iranian American Chamber of Commerce (OCIACC) Nowruz Spring Festival with Mayor Stapleton

Councilmember Blom:
- Wished Mayor Stapleton a happy birthday

Mayor Pro Tem Kleiman:
- Attended the Corona del Mar commercial corridor study roundtable, the Southern California Association of Governments (SCAG) transportation committee meeting, and the trash interceptor ribbon cutting

Mayor Stapleton:
- Delivered the State of the City message at the Corporate Yard, City Hall, and at Wake Up Newport
- Attended the Newport Shores annual HOA meeting, the trash interceptor ribbon cutting, the OCIACC Nowruz Spring Festival, and the Fire Station 2 demolition party and extended congratulations to Bob Olsen

XI. PUBLIC COMMENTS ON CONSENT CALENDAR

Regarding Item 5 (Ordinance No. 2025-4) Jim Mosher expressed the opinion that the item needs more work since certain definitions and verbiage should be referenced within the municipal code itself rather than just obscurely within the ordinance.

XII. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. **Minutes for the February 25, 2025 City Council Meeting**
   Waive reading of subject minutes, approve as amended, and order filed.

Draft

2. **Reading of Ordinances**
   Waive reading in full of all ordinances under consideration and direct the City Clerk to read by title only.

ORDINANCES FOR ADOPTION

3. **Ordinance No. 2025-2: Updating the Military Equipment Use Policy for the Newport Beach Police Department**
   a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
   b) Conduct second reading and adopt Ordinance No. 2025-2, *An Ordinance of the City Council of the City of Newport Beach, California, Updating the Military Equipment Use Policy for the Newport Beach Police Department.*

4. **Ordinance No. 2025-3: Designating a Portion of Corona del Mar as a Safety Enhancement Zone and Expanding West Newport Safety Enhancement Zone to Include Memorial Day, Fourth of July, and Labor Day Holidays**
   a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
   b) Conduct second reading and adopt Ordinance No. 2025-3, *An Ordinance of the City Council of the City of Newport Beach, California, Designating a Portion of Corona del Mar as a Safety Enhancement Zone During the Memorial Day, Fourth of July Independence Day, and Labor Day Holidays and Expanding the West Newport Safety Enhancement Zone to Include the Memorial Day and Labor Day Holidays by Amending Section 1.04.060 (Safety Enhancement Zone), Chapter 10.58 (Police Services at Large Parties, Gatherings or Events on Private Property), and Section 10.66.060 (Violation-Penalty-Civil Fine) of the Newport Beach Municipal Code*.

ORDINANCE FOR INTRODUCTION

5. **Ordinance No. 2025-4: Amending the Newport Beach Municipal Code to Update Administrative Procedures Related to Good Cause Determinations and the Extension of Deadlines for Short-Term Lodging Permits**
   a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because this action will not result in a physical change to the environment, directly or indirectly; and
   b) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2025-4, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Section 1.08.120 (Definitions) of Title 1 (General Provisions), Section 5.95.042 (Maximum Number of Permits), Section 5.95.043 (Transfer of Permit), and Section 5.95.065 (Suspensions and Revocations) of Chapter 5.95 (Short-Term Lodging Permit) of Title 5 (Business Licenses and Regulations) of the Newport Beach Municipal Code to Update Administrative Procedures Related to Good Cause Determinations and the Extension of Deadlines*, and pass to second reading on March 25, 2025.

RESOLUTION FOR ADOPTION

6. **Pulled from the Consent Calendar**

CONTRACTS AND AGREEMENTS

Draft

7. **Balboa Boulevard, Newport Boulevard, and 32nd Street Pavement Rehabilitation (Project No. 22R11) – Notice of Completion for Contract No. 8833-2**
   a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project.

8. **Newport Beach Police Station Video Surveillance System Replacement (Project No. 24F02) – Notice of Completion for No. 9500-1**
   a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
   b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
   c) Release Faithful Performance Bond one year after acceptance by the City Council.

9. **Approval of On-Call Maintenance and Repair Services Agreement for Roll-Up Doors and Gates with Excel Door & Gate Company, Inc. (C-7381-2)**
   a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
   b) Approve a Maintenance and Repair Services Agreement with Excel Door and Gate Company, Inc. for on-call Roll-Up Door and Gates Maintenance and Repair Services for a five-year term and total not-to-exceed amount of $550,000; and
   c) Authorize the Mayor and City Clerk to execute the agreement.

10. **Amendment No. One to Purchase and License Agreement with T2 Systems Canada, Inc. for Multi-Space Pay Stations (C-8644-1)**
    a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 1578) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because this project has no potential to have a significant effect on the environment;
    b) Authorize staff to purchase and replace the outdated pay stations over the next five years, ensuring all units are replaced by the end of their 10-year lifespan, while maintaining compliance with the City's Local Coastal Program Implementation Plan and the California Vehicle Code;
    c) Authorize the City Manager or designee to enter into an amendment to the existing agreement to purchase, install and maintain up to 86 additional multi-space pay stations, replacing those purchased between 2014 and 2018 as they reach the end of their 10-year lifespan in the coming years, with an amount not-to-exceed $785,122.04; and
    d) Waive the standard bidding requirements provided by City Council Policy F-14 and approve a single source award of the agreement to T2 Systems, Inc. (T2).

MISCELLANEOUS

11. **Planning Commission Agenda for the March 6, 2025 Meeting**
    Receive and file.

12. **Cultural Arts Grants Fiscal Year 2024-25 (C-8577)**
    a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
    b) Approve recommended recipients for Fiscal Year 2024-25 Cultural Arts Grants as selected by the City Arts Commission in accordance with City Council Policy I-10, *Culture and Arts Grants*.

Motion by Mayor Pro Tem Kleiman, seconded by Councilmember Barto, to approve the Consent Calendar, except the item that was removed (Item 6); and noting the amendments to Item 1.

Draft

The motion carried unanimously.

XIII. ITEM REMOVED FROM THE CONSENT CALENDAR

6. Resolution No. 2025-11: Waiving Section A.1. of City Council Policy B-13 to Allow for Alcoholic Beverages at Charity Polo Event Held at Peninsula Park, and Repeal of Resolution No. 2024-14

Mayor Stapleton and Mayor Pro Tem Kleiman recused themselves from Item 6 due to their positions with the former operator of the event.

In response to Councilmember Blom's concern for the legitimacy of the Alcoholic Beverage Control (ABC) license approval noted in Attachment A, Recreation and Senior Services Director Levin indicated that it was incorrect and the applicant has been informed. He added that the applicant was also provided clear direction and given a deadline of Thursday to abide by the rules for special event permits. Furthermore, he stated that approving the item does not approve the alcohol request.

Motion by Councilmember Blom, seconded by Councilmember Barto, to a) find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15304 under Class 4 (Minor Alterations to Land) because it has no potential to have a significant effect on the environment; and b) adopt Resolution No. 2025-11, *A Resolution of the City Council of the City of Newport Beach, California, Waiving Section A.1 of City Council Policy B-13 to Allow for Alcoholic Beverages at Charity Polo Event Held at Peninsula Park, and Repeal of Resolution No. 2024-14.*

Kelly Carlson, President of the Balboa Village Merchant Association, relayed the lack of excitement from local merchants for the event, the impact to local businesses and parking the event has to the area, and concerns for local ties and participation.

Councilmember Blom acknowledged the impact to local merchants from larger events. He noted that he would only move forward with staff's recommendation under the strict caveat that the applicant abide by all special event permit requirements.

Councilmember Grant expressed her support for local business, partnerships, and events in the area and noted strict protocols for events and the need to apply regulations fairly to all businesses.

In response to Councilmember Weigand's questions, Recreation and Senior Services Director Levin stated the applicant was informed of this meeting multiple times, a different group is running the event than last year, and that synergy with local merchants and events in Peninsula Park is encouraged. He further stated that the alcohol waiver is not indefinite and is only valid this year.

With Mayor Stapleton and Mayor Pro Tem Kleiman recusing themselves, the motion carried 5-0.

XIV. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Luca Shakoori, Policy Intern for Supervisor Katrina Foley's office, relayed an update of a recent ordinance that went into effect addressing nitrous oxide, discussed OCTA Measure M2 bond refinancing, and expressed continued interest in partnering with the City.

XV. CURRENT BUSINESS

13. Ordinance No. 2025-5: An Amendment Deleting Section 5 of Ordinance No. 2022-8 Removing Sunset Date of April 21, 2025

Mayor Stapleton noted that staff provided a memo requesting that the item be pulled from the agenda.

Draft

XVI. MOTION FOR RECONSIDERATION – None

City Attorney Harp announced that the City Council would adjourn to Closed Session to discuss the item listed on the Closed Session agenda and read the title.

Mayor Stapleton recessed the meeting at 5:41 p.m.

XVII. CLOSED SESSION – Council Chambers Conference Room

A. CONFERENCE WITH LABOR NEGOTIATORS
(Government Code § 54957.6): 1 matter

Agency Designated Representatives: Grace K. Leung, City Manager, Barbara Salvini, Human Resources Director, and Jonathan Holtzman, Esq., Negotiators.

Employee Organizations: Association of Newport Beach Ocean Lifeguards (ANBOL); Newport Beach City Employees Association (NBCEA); Newport Beach Employees League (NBEL); Newport Beach Firefighters Association (NBFA); Newport Beach Fire Management Association (NBFMA); Newport Beach Lifeguard Management Association (NBLMA); Newport Beach Police Association (NBPA); Newport Beach Police Management Association (NBPMA); Newport Beach Professional and Technical Employees Association (NBPTEA); and Part Time Employees Association of Newport Beach (PTEANB).

Mayor Stapleton reconvened the meeting at 7:47 p.m.

XVIII. CLOSED SESSION REPORT

City Attorney Harp announced that no reportable actions were taken.

XIX. ADJOURNMENT – Adjourned at 7:47 p.m. in memory of Jack Croul

The agenda was posted on the City's website and on the City Hall electronic bulletin board located in the entrance of the City Council Chambers at 100 Civic Center Drive, Newport Beach, on March 6, 2025, at 4:00 p.m.

Draft

_____
Joe Stapleton
Mayor

_____
Leilani I. Brown
City Clerk

March 25, 2025, City Council Agenda Comments

The following comments on items on the Newport Beach City Council agenda are submitted by:
Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item 1. Minutes for the March 11, 2025 City Council Meeting

The passage shown in *italics* below is from the draft minutes with a suggested correction shown in ***~~strikeout~~*** ***underline*** format. The page number refers to Volume 66.

> **Page 279**, Item X, Mayor Stapleton, end of last bullet: "*Attended the Newport Shores annual HOA meeting, the trash interceptor ribbon cutting, the OCIACC Nowruz Spring Festival, and the Fire Station 2 demolition party and extended congratulations to Bob* ***~~Olsen~~*** ***Olson***."

Item 3. Ordinance No. 2025-4: Amending the Newport Beach Municipal Code to Update Administrative Procedures Related to Good Cause Determinations and the Extension of Deadlines for Short-Term Lodging Permits

This matter involving who should be authorized to grant exceptions to STL permit deadlines, and for what reasons, is unusual in that parts of it have had fairly extensive Council discussion even though it has never been publicly announced on any agenda, including this one, as a matter for such discussion.

The proposal started as part of Item 3 on the October 8, 2024, consent calendar (along with an unrelated Finance Department matter about demolition debris hauling), from which it was pulled for a discussion that was continued to a future planning session.

That discussion was indeed continued (see video) at the Council's February 1, 2025, planning session, and a person hoping for relief from the STL deadlines was apparently even expected to plead their case to the Council. However, nothing on the agenda reminded the public that such a discussion by the Council was planned for that day.

In the February 1 discussion, Council members seemed to agree that what qualified as "good cause" needed to be defined (which it had not been in the October 8 offering). But curiously, the example of an aggrieved person, who turned out to be a professional asset manager who had apparently failed to properly manage his client's asset rather than a property owner who had innocently missed a deadline due to some special hardship, never explained the unusual circumstances that had caused him to miss a deadline (see video), nor did the Council discuss whether they would agree his circumstances constituted "good cause" for relief or, more generally, how they thought "good cause" should be defined.

The matter returned as Item 5 on the March 11 consent calendar, where a definition of "good cause" was proposed, but not discussed, although I provided extensive written comments.

As a policy matter, I think it is good for the City to have flexibility in the administration of its regulations. However, in the case of STL permits, since having one is a privilege rather than a right, and there is a long waiting list of people not presently having a permit, but hoping to get one, I would think leniency for those who have the permits but fail to follow the rules, including

failing to meet deadlines, should be very limited. I would also think that in evaluating whether a missed STL permit deadline should be excused, factors in addition to the existence of good cause should be considered, such as whether the property has been the subject of complaints or other enforcement actions. The Council might also want to include in the ordinance examples of circumstances which staff should *not* regard as "good cause" or limit how long after a missed deadline a request for extension can be entertained.

It is, therefore, disappointing that on March 11 the Council did not publicly discuss whether the rather broad definition offered by staff meets their expectations (and how it would be applied to the unknown circumstances of the asset manager at the February 1 Planning Session) – or whether there should be a very narrow definition provided for staff to use to which a mechanism could be added for more problematic claims to be referred on appeal to the Council.

Even assuming the Council members individually reviewed the proposed definition of "good cause" for missing an STL permit deadline, and found it met their expectations, I continue to think the proposed ordinance is defective for two reasons.

Making Definition Applicable to Entire Municipal Code is a Bad Idea

First, rather than placing the definition of "good cause" in the chapter of the Municipal Code regarding STL permits, to which it is intended to apply, staff proposes putting it in a section that will make it applicable to the entire Municipal Code.

This a bad recommendation, or, at the very least, a decision that needs further review.

As I pointed out in my March 11 written comments, the phrase "good cause" appears 27 times in 19 different chapters of the code, in each of which it may have been intended to be understood differently. Inserted after-the-fact a definition that may or may not have been intended is not wise.

A recent example of the problems this can cause was the entry of Pacaso fractional ownership homes into the Newport Beach market. As indicated in my comments on that subject on pages 12-44 & 45 of the March 14, 2023, Council agenda packet, since 1982, with adoption of Ordinance No. 82-14, Newport Beach had perfectly clear regulations in its Zoning Code (Title 20 of the Municipal Code) intended to prohibit such activity (time-share arrangements in residential areas). However, the original language used the phrases "time-share *projects*" and "time-share *development,*" which were explicitly intended to apply to conversion of existing residences to a time-share model, including fractional ownership, even though the terms "project" and "development" were not explicitly defined. However, without considering this, the Zoning Code was repeatedly rearranged and revised, and eventually, definitions of "project" and "development" applicable to the entire Zoning Code were added. And even though the introduction of those definitions was presumably not intended to alter the meaning of the time-share regulations, by the time Pacaso came to town, staff said they did, and they could not prohibit conversions of existing homes, only new construction.

One has to wonder if the Council members have reviewed the 18 Municipal Code chapters unrelated to STL permits in which "good cause" appears, and determined that applying to them

the definition proposed in the STL permit context does not alter the meaning of "good cause" that earlier Councils intended in those other contexts?

Placing Substantive Regulations in Uncodified Portions of Ordinances is a Bad Idea

Second, although neither the Council nor the public heard the circumstances of the speaker seeking relief at the February 1 Planning Session (only that "things come up"), it appears the intent of these code revisions is to allow staff to excuse people who have *missed* STL permit deadlines. Yet the proposed code revisions are written entirely in terms of *extending* deadlines, which implies a request to extend the deadline has been received before the deadline comes.

The fact that an "extension" can be granted retroactively, in effect *excusing* the missing of a deadline is relegated to an obscure reference in uncodified Section 7 of the proposed ordinance, on page 3-13 of the agenda packet.

Not only could the fact that a deadline can be extended retroactively have easily been included in the codified portion of the code, where all those reading the code would see it, but the code might even have limited how long after the fact a retroactive extension can be granted and how long such an extension can be.

The problems that can be created by not codifying substantive portions of regulations is illustrated by Item 12 on the current agenda. In that case, when enacting a Building Code revision in 2022, the Council only intended for it to be in effect until April 21, 2025, at which time the unrevised text would return. It would have been relatively easy to include this proviso in the code (the state legislature does this quite frequently). Instead, much like here, it exists only in an obscure uncodified section of the 2022 ordinance (see page 12-21 of the present agenda packet). Despite a subsequent ordinance reenacting the code section in question without any mention of an expiration, the proviso in the earlier ordinance seems to remain, like a zombie, completely unknown to those reading the existing code, which does not even mention the ordinance containing it in its revision history.

In the present case, the fact that STL deadline extensions can be retroactive will not only be unknown to readers of the code, but it may assume a similar zombie status if the code were subsequently revised without an intent to be retroactive but without explicitly repealing the present ordinance.

Item 4. Resolution No. 2025-12: Creating the Ad Hoc Refuse Committee

I think the idea of staff reaching out in considering its response to refuse regulations is a good one, and the present proposal is an improvement over the roll-out of the three-cart residential collection system, regarding which input seems to have been sought from a 3-member Council Ad Hoc Solid Waste Committee that was never formally appointed and which the public knew nothing about.

That said, I think it would be better for the Council to appoint a committee of affected residents and business owners from whom staff could seek input. The advantage of that, is that the Brown Act would require the discussions to be noticed and public.

The problem with Council-appointed ad hoc committees (and with ad hoc committees of the City boards and commissions in general, is that they are created precisely to avoid public visibility. Since the Brown Act does not require it, their discussions are rarely if ever public. As a result there is a complete lack of transparency as to how their recommendations were arrived at and what input was considered.

A happy recent, but still extremely rare, exception was the PB&R ad hoc committee seeking to make a recommendation about the proposed Aquatic Center at Lower Castaways, which held a noticed public workshop in the Community Room on February 12.

Item 5. Irrigation Controller Replacement Phase 2 – Award of Contract No. 9735-1

With a low bid of $472,186 to acquire(?) and install 37 controllers, that comes to nearly $13,000 per controller.

This contract is clearly for something more than a typical home controller, so it might have been helpful to provide a little more information on what is being contemplated. From the bid package, it looks like it is some version of the Toro 21-1196-IRC-DXi-Controller-SS.

Item 9. Concession Agreement with Kit at the Library, Inc. for Use of the Concession Facility at the Central Library Located at 1000 Avocado Avenue

Why is no information provided regarding the 16 other proposals that were received but rejected by City staff?

Why are “limited cosmetic tenant improvements to the Space” anticipated to take as much as 12 months to complete?

Libraries are known to attract children, and I seem to recall seeing them in the entry area adjacent to the concession. Does the menu contain any items that would appeal to young children?

Item 10. Amendment to Professional Services Agreement with Dudek, Inc. for Consulting Services on the Comprehensive General Plan Update (PA2022-080)

The City Council has, in my view, caused significant delay to the general plan update process by announcing its plan, in December, to dismiss all the GPAC and GPUSC members and make new appointments in the new year, which finally happened as Item 11 at the February 25, 2025, meeting.

I am grateful for my reappointment, and as chair of the subcommittee reviewing the existing Noise Element in the GPAC’s prior configuration, I have considerable interest in the current item, although I don’t yet know if I will be continuing that role in the new iteration.

I might note that at the time the subcommittee and full GPAC made our recommendation, we were unaware the traffic noise contours resulting from the addition of 6th Cycle RHNA units (for everything but the 73 freeway and toll road) had already been projected by a prior consultant as part of the recent Housing Implementation Program EIR (PA2022-0245), specifically in Chapter 4.11 and Appendix E. It appears Dudek is proposing to do something more supported by measurement.

In that regard, I am a little puzzled by proposed Task 1.2.b (agenda packet page 10-10), calling for Dudek to evaluate noise in the Airport Area "*based upon sound level contour mapping from the corresponding Airport Land Use Compatibility Plan (ALUCP)*." This seems to be a reference to what the County calls the John Wayne Airport Airport Environs Land Use Plan (AELUP).

Dudek seems not to have been informed that the contours in that plan were created in 1985, or before, and included projections, made then, to the anticipated contours in 2005. The City has an ongoing dispute with the OC Airport Land Use Commission as to whether the projections published in 1985 are still appropriate contours for planning purposes, and has, indeed, substituted a different set of contours in the November 14, 2023, Item 22 Noise Element revisions mentioned on page 10-2 of the staff report (prepared and adopted without GPAC input). The ALUC does not accept that change, and rejects submissions based on them. There is a particularly acute disagreement as to the noise impact of the small piston-powered planes that fly over what the City calls the "Airport Area" north of Bristol, yet no one seems to have any actual measurements to support their view of what the current situation there actually is.

Assuming this item is approved, I hope staff will instruct Dudek to perform some of its long-term monitoring (Task 1.1) in that area.

I am also a little concerned about the clarity of Task 2. Although entitled "GPAC Subcommittee Coordination," the unnumbered opening paragraph suggests Dudek feels it has more than fulfilled its obligation to attend meetings of the full GPAC, since the ones it has attended to date ran longer than the 1-hour anticipated (as future ones may also). Do Dudek and staff have a clear understanding of how many additional full GPAC and GPUSC meetings Dudek is expected to attend? Is there sufficient budget for them?

As to the GPAC subcommittees, the Council may wish to know there are six subcommittees, organized to review various combinations of general plan elements, as well as one for the Vision Statement. The proposed 12 meetings would mean Dudek attendance at at most 2 each to review their proposed revisions, none of which have yet been seen, before they go to the Planning Commission and Council. That seems possible, but minimal. Does staff anticipate the possibility of a need for additional GPAC subcommittee discussion meetings *without* Dudek present?

Item 12. Ordinance No. 2025-5: An Amendment to Section 15.02.095 of the Newport Beach Municipal Code Related to Timeframes for Completion of Construction

As noted in my comments when this item was first introduced (and then withdrawn) on March 11, it is unusual in that the current Municipal Code cites Ordinances No. 2023-22 § 693 and 2022-26 § 1 as the source of the language presently found in NBMC Section 15.02.095, and makes no mention of Ordinance No. 2022-8, where the sunset provision resides.

I concluded from this that no action was needed since neither of those ordinances makes any mention of the provisions they added being subject to sunsetting. But perhaps action is needed, since neither seems to have explicitly repealed the uncodified parts Ordinance No. 2022-8.

Assuming the April 21, 2025, sunsetting provision in Ordinance No. 2022-8 *is* still operative, it would appear the present ordinance repealing it will not be adopted until a second reading on April 15, and will not become effective until 30 days later, on May 15.

What will happen to projects that, under the prior code that staff believes will be restored for the 24 days from April 21 to May 15, would need to file for an extension during that time?

Item XIII.A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

This item involving three non-City-owned properties with no explanation of what the City's interest in them might be, also seems rather unusual.

One of the properties, the former Balboa Theatre at 707 E. Balboa Blvd., the City formerly owned and sold. What happened to that new owner's plans? Is the City considering buying it back?

Another, at 12 Corporate Plaza Drive, is the subject of an active Preliminary Application, PA2025-0017, for 38 residential units in an 85-foot high tower. Is the City contemplating becoming a partner in the development?

And the remaining one, at 3848 Campus Drive, has been the subject of prior closed session agendas, such as on January 28, and also seems to have a pending application, PA2023-0145, to construct a private self-storage facility on the site. What became of those?

CITY OF

NEWPORT BEACH

City Council Staff Report

March 25, 2025
Agenda Item No. 3

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Jason Al-Imam, Finance Director/Treasurer - 949-644-3126, jalimam@newportbeachca.gov
PREPARED BY:	Jason Al-Imam, Finance Director/Treasurer - 949-644-3126, jalimam@newportbeachca.gov
TITLE:	Ordinance No. 2025-4: Amending the Newport Beach Municipal Code to Update Administrative Procedures Related to Good Cause Determinations and the Extension of Deadlines for Short-Term Lodging Permits

ABSTRACT:

For the City Council's consideration is the adoption of an ordinance to amend various provisions of the Newport Beach Municipal Code to authorize the finance director to extend deadlines for short-term lodging permit applications, transfers, suspensions and revocations upon finding "good cause." "Good cause" includes unforeseen circumstances such as medical emergencies, natural disasters, administrative errors, or events beyond the applicant's control. Ordinance No. 2025-4 was introduced and considered at the City Council's regular meeting on March 11, 2025.

RECOMMENDATIONS:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because this action will not result in a physical change to the environment, directly or indirectly; and

b) Conducted second reading and adopt Ordinance No. 2025-4, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Section 1.08.120 (Definitions) of Title 1 (General Provisions), Section 5.95.042 (Maximum Number of Permits), Section 5.95.043 (Transfer of Permit), and Section 5.95.065 (Suspensions and Revocations) of Chapter 5.95 (Short-Term Lodging Permit) of Title 5 (Business Licenses and Regulations) of the Newport Beach Municipal Code to Update Administrative Procedures Related to Good Cause Determinations and the Extension of Deadlines*.

DISCUSSION:

At its March 11, 2025, meeting, the City Council introduced and passed to second reading Ordinance No. 2025-4: Amending the Newport Beach Municipal Code to Update Administrative Procedures Related to Good Cause Determinations and the Extension of Deadlines for Short-Term Lodging Permits.

The ordinance defines "good cause" as substantial evidence of unusual or unforeseen circumstances that justify the requested action. Such circumstances include, but are not limited to, medical emergencies, delays caused by events beyond the applicant's control, natural disasters, weather-related delays, administrative errors, or health and safety concerns.

The proposed ordinance authorizes the finance director to grant a waiver for "good cause" to extend deadlines in the following cases:

1. Deadlines for Applications from the Waiting List (Section 5.95.042(D)) – The finance director may extend the deadline for individuals on the waiting list to file an application for a short-term lodging permit upon determining that good cause exists.

2. Transfer of Permit Deadlines (Section 5.95.043(B)) – The finance director may extend the deadline to file an application for transferring a valid short-term lodging permit upon finding good cause.

3. Suspension and Revocation Deadlines (Section 5.95.065(E)) – The finance director may extend deadlines related to the suspension or revocation of a permit if a waiver for good cause is granted.

4. Retroactive Extensions (Section 7 of the Ordinance) – The finance director may retroactively extend deadlines covered by the ordinance upon determining that a waiver for good cause is warranted.

FISCAL IMPACT:

The City of Newport Beach may incur costs related to the administration of hearings if the City allows for the extension of deadlines related to the transfer, suspension and revocation of short-term lodging permits. The fiscal impact is expected to be nominal and can be absorbed within the existing budget.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Ordinance No. 2025-4
Attachment B – Redlined Changes to the Code

Attachment A

Ordinance No. 2025-4

ORDINANCE NO. 2025-4

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING SECTION 1.08.120 (DEFINITIONS) OF TITLE 1 (GENERAL PROVISIONS), SECTION 5.95.042 (MAXIMUM NUMBER OF PERMITS), SECTION 5.95.043 (TRANSFER OF PERMIT), AND SECTION 5.95.065 (SUSPENSIONS AND REVOCATIONS) OF CHAPTER 5.95 (SHORT TERM LODGING PERMIT) OF TITLE 5 (BUSINESS LICENSES AND REGULATIONS) OF THE NEWPORT BEACH MUNICIPAL CODE TO UPDATE ADMINISTRATIVE PROCEDURES RELATED TO GOOD CAUSE DETERMINATIONS AND THE EXTENSION OF DEADLINES

WHEREAS, Section 200 of the City Charter, of the City of Newport Beach ("City"), vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the City Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges or procedures granted or prescribed by any law of the State of California;

WHEREAS, the City is committed to ensuring the safety, health, and welfare of all its residents, visitors, and businesses;

WHEREAS, Chapter 5.95 (Short Term Lodging Permit) of the Newport Beach Municipal Code ("NBMC"), regulates the rental of dwelling units, for less than thirty (30) consecutive calendar days, to help preserve the City's housing stock, maintain the quality and character of the City's residential neighborhoods, and limit the impacts of short term lodgings on residential neighborhoods;

WHEREAS, Section 5.95.042 (Maximum Number of Permits), which imposes a limit on the number of active short term lodging permits, Section 5.95.043 (Transfer of Permit), which imposes limits on the transfer of short term lodging permits, and Section 5.95.065 (Suspensions and Revocations), which sets forth the applicable procedures for the suspension and revocation of short term lodging permits, contain fixed deadlines that cannot be extended;

WHEREAS, as part of the administration of the short term lodging permit program, the Finance Director has determined that, in certain circumstances, good cause may exist to extend deadlines for the transfer of permits or the filing of a request for hearing;

WHEREAS, to ensure that the short term lodging permit provisions of the NBMC are administered in the most fair and efficient manner, the Finance Director requests the City Council amend Section 5.95.042 (Maximum Number of Permits), Section 5.95.043 (Transfer of Permit), and Section 5.95.065 (Suspensions and Revocations) to authorize the Finance Director to extend deadlines if the Finance Director determines that there is good cause to grant an extension;

WHEREAS, several sections throughout the NBMC provide exceptions from the provisions of the NBMC based on a determination that good cause exists, such that adding a globally applicable definition for good cause will provide consistency and minimize redundancy;

WHEREAS, Chapter 1.08 (Rules of Construction) sets forth provisions that are globally applicable throughout the NBMC, including but not limited to, Section 1.08.120 (Definitions) which defines terms that are commonly used throughout the NBMC, except where a more specific definition is provided or the context clearly requires otherwise; and

WHEREAS, the City Council desires to amend the NBMC to increase efficiency and ensure that the NBMC is administered in an efficient and fair manner by adding a global definition of good cause to Section 1.08.120 (Definitions), and by amending Section 5.95.042 (Maximum Number of Permits), Section 5.95.043 (Transfer of Permit), and Section 5.95.065 (Suspensions and Revocations) to authorize the Finance Director to grant an extension where the Finance Director determines goods cause exists.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: Section 1.08.120 (Definitions) is hereby amended in its entirely to read as follows:

1.08.120 Definitions.

Unless a more specific definition is provided or the context in which they are used clearly requires otherwise, the following terms and phrases used in this Code shall have the meaning ascribed to them in this section:

Assistant City Manager. The term "Assistant City Manager" means an Assistant City Manager working in the City Manager's office.

Building Official. The term "Building Official" means the Building Manager or Chief Building Official of the City's Community Development Department or the person designated by the Community Development Director as the Building Official.

California Code of Regulations. The terms "California Code of Regulations" or "CCR" means the State administrative regulations that are cited as "title number CCR section number" or "title number CCR division number, chapter number, article number, section number."

California Environmental Quality Act or CEQA. The term "California Environmental Quality Act" or "CEQA" means the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) and the State CEQA Guidelines (14 CCR Section 15000 et seq.).

Chief of Police. The term "Chief of Police" or "Police Chief" means the individual who manages and directs the City's Police Department.

City. The term "City" means the City of Newport Beach, a municipal corporation and charter city, or, when referring to territory or territorial limits, it means the area within the territorial City limits of the City and such territory outside the City over which the City has jurisdiction or control by virtue of any law.

City Attorney. The term "City Attorney" means the City Council appointed official who occupies the position as the City Attorney of the City.

City Charter. The term "City Charter" means the City Charter of the City.

City Clerk. The term "City Clerk" means the City Council appointed official who occupies the position as the City Clerk of the City.

City Council. The term "City Council" or "Council" means the City Council of the City of Newport Beach.

City Engineer. The term "City Engineer" means the City Engineer of the City's Public Works Department, or the individual designated by the Public Works Director as the City Engineer.

City Hall or Civic Center. The term "City Hall" or "Civic Center" means the City's Civic Center located at 100 Civic Center Drive, Newport Beach, California, that includes most administrative offices of the City and related parking.

City Manager. The term "City Manager" means the City Council appointed official who occupies the position as the chief administrative officer of the City.

City Treasurer. The term "City Treasurer" means the individual appointed as the City's Finance Director.

Code. The term "Code" means the Newport Beach Municipal Code.

Community Development Director. The term "Community Development Director" means the individual who manages and directs the City's Community Development Department.

Consumer Price Index. The term "Consumer Price Index" means the Los Angeles-Long Beach-Anaheim, California Area, All Urban Consumers, All Items, Base Period (1982-84 = 100), or successor index, as published by the United States Department of Labor, Bureau of Labor Statistics.

County. The term "County" means the County of Orange.

Day. The term "day" or "days" means a calendar day, unless otherwise specifically provided.

Day Care Center. The term "day care center" means a child care—infant center, and child care center (preschool) licensed by the State Department of Social Services that is not located on a residentially zoned property including, but not limited to, Bright Horizons at Newport Beach; Carden Hall; Catalyst Kids-Newport Heights; Christ Church by the Sea Children's Center; Environmental Nature Center (ENC) Nature Preschool; Miraculous Milestones; Montessori Way Learning Center, Inc., Newport Coast Child Development Preschool; Newport Harbor Lutheran Church; St. Andrew's Preschool; St. Mark Community Preschool; St. Matthew's Montessori Preschool; Temple Bat Yahm; and Tutor Time Child Care/Learning Center.

Designee. The term "designee" means a position, employee, or person that is authorized to fulfill a duty, obligation or responsibility.

District Attorney. The term "District Attorney" means the Orange County District Attorney.

Fair Political Practices Commission. The term "Fair Political Practices Commission" or "FPPC" means the five-member independent, nonpartisan commission that has primary responsibility for the impartial and effective administration of the Political Reform Act.

Finance Director. The term "Finance Director" means the individual who manages and directs the City's Finance Department.

Fire Chief. The term "Fire Chief" means the individual who manages and directs the Fire Department.

Fire Marshal. The term "Fire Marshal" means the Fire Marshal of the City's Fire Department, or the individual designated by the Fire Chief as the Fire Marshal.

Good Cause. The term "good cause" means that there is substantial evidence that unusual or unforeseen circumstances justify the taking of a particular action, which circumstances include, but are not limited to, a medical emergency; a delay caused by events beyond the person's control; a natural disaster; a weather-related delay; an administrative error; or health and safety concerns.

Harbor Commission. The term "Harbor Commission" means the Harbor Commission of the City.

Harbor Department. The term "Harbor Department" means the Harbor Department of the City. Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Division shall mean the Harbor Department.

Harbormaster. The term "Harbormaster" means the individual who manages and directs the Harbor Department. Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Manager shall mean the Harbormaster.

Health Officer. The term "Health Officer" means the Orange County Health Officer.

Human Resources Director. The term "Human Resources Director" means the individual who manages and directs the City's Human Resources Department.

Library Services Director. The term "Library Services Director" means the individual who manages and directs the City's Public Library System.

Oath. The term "oath" means and includes affirmation.

Office. The term "office" means the title of any officer, employee, or office, of the City of Newport Beach.

Owner. The term "owner," applied to a building or land, means and includes any part owner, joint owner, tenant, tenant in common or joint tenant, of the whole or a part of such building or land.

Pacific Ocean. The term "Pacific Ocean" means the waters off of the City from the beach to a point three nautical miles seaward.

Person. The term "person" means and includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this State, any county, city and county, municipality, district, or other political subdivision of the State, or any other group or combination acting as a unit.

Public park or public facility. The terms "public park" or "park facility" means all publicly owned, managed or leased land that is open to the public, walking or hiking trails, parks and park-related buildings, facilities and improvements, and any school facilities when they are in use as recreational or community center facilities and under the control of the Director of the Recreation and Senior Services Department including, but not limited to, Arroyo Park; 38th Street Park; Back Bay View Park; Bayside Park; Bayview Park; Begonia Park; Big Canyon Park; Bob Henry Park; Bolsa Park; Bonita Canyon Sports Park; Bonita Creek Park & Community Center; Buffalo Hills Park; Canyon Watch Park; Carroll Beek Community Center and Balboa Island Park; Castaways Park; Channel Place Park; Civic Center Community Center; Civic Center Park; Cliff Drive Park and Community Center; Coastal Peak Park; Corona del Mar Pocket Park; Corona del Mar State Beach; Dog Park; Eastbluff Park and Boys and Girls Club; Galaxy

View Park; Gateway Park; Grant Howald Park & Community Youth Center; Harbor View Nature Park; Harbor Watch Park; Inspiration Point; Irvine Terrace Park; Jasmine Creek Park; John Wayne Park and Theater Arts Center; Kings Road Park; L Street Park; Lake Ave Park; Lido Park; Lincoln Athletic Center; Lookout Point; Los Trancos Canyon View Park (lower, middle, upper); Lower Castaways Park; M Street Park; Marian Bergeson Aquatic Center; Marina Park; Mariners Park and VJ Community Center; Mesa Birch Park; Miramar Park; Myrtle Park; Newport Aquatic Center; Newport Coast Community Center; Newport Island Park; Newport Shores Park; North Star Beach; OASIS Senior Center; Old School Park; Peninsula Park; Rhine Wharf Park; San Joaquin Hills Park and Lawn Bowling Center; San Miguel Park; Spyglass Hill Park; Spyglass Hill Reservoir Park; Sunset Ridge Park; Sunset View Park; Upper Buck Gully Reserve; Uptown Park; Veterans Memorial Park; West Jetty View Park; West Newport Community Center; West Newport Park; and Westcliff Park.

Public Works Director. The term "Public Works Director" means the individual who manages and directs the City's Public Works Department.

Recreation and Senior Services Director. The term "Recreation and Senior Services Director" means the individual who manages and directs the City's Recreation and Senior Services Department.

Revenue Division. The term "Revenue Division" means the City's Finance Department Revenue Division.

Risk Manager. The term "Risk Manager" means the Risk Manager of the City's Human Resources Department, or the individual appointed by the Human Resources Director as the Risk Manager.

School. The term "school" means an institution of learning, whether public or private, which offers in-person instruction in grades K through twelve (12) in those courses of study required by the California Education Code and is licensed by the State Board of Education. This definition includes all kindergarten, elementary, junior high, senior high or any special institution of learning under the jurisdiction of the State Department of Education including, but not limited to, Andersen Elementary School; Carden Hall; Corona del Mar Middle and High School; Eastbluff Elementary School; Ensign Intermediate School; Harbor Day School; Harbor View Preschool and Elementary School; Lincoln Elementary School; Mariners Elementary School; Newport Christian Academy; Newport

Coast Preschool and Elementary School; Newport Preschool and Elementary School; Newport Harbor High School; Newport Heights Elementary School; Our Lady Queen of Angels Catholic School; Pacifica Christian High School; and Sage Hill High School.

State. The term "State" means the State of California.

Street. The term "street" means and includes all streets, roads, highways, avenues, lanes, alleys, courts, boulevards, places, squares, curbs, or other public ways in this City, which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this State.

Tenant, Occupant. The term "tenant" or "occupant" applied to a building or land means and includes any person who occupies the whole or part of such building or land, whether alone or with others.

Utilities Director. The term "Utilities Director" means the individual who manages and directs the City's Utilities Department.

Section 2: Subsection (D) of Section 5.95.042 (Maximum Number of Permits) of the NBMC is hereby amended and shall read as follows:

D. If the City has issued the maximum number of permits available, the City shall maintain a waiting list. An application for placement on the waiting list shall be submitted to the Finance Director, on a form approved by the Finance Director, and shall be accompanied by a fee established by resolution of the City Council. In the event a short term lodging permit becomes available, the Finance Director shall notify the person or persons next in order on the waiting list. The notice shall specify that applications will be accepted for ten (10) calendar days after the date of the notice, and that failure to apply within the ten (10) calendar-day period shall result in removal of the person or persons receiving notice from the waiting list. The Finance Director may extend the deadline to apply if the Finance Director determines that good cause has been shown to extend the deadline. Notice shall be deemed given when deposited in the United States mail, with the first-class postage prepaid, and addressed as specified by the person or persons on the waiting list. The City shall not be liable for a failure to notify any person or persons on the waiting list since placement on the list does

not create any property right in any person or persons on the list nor any contractual obligation on the part of the City.

Section 3: Subsection (B) of Section 5.95.043 (Transfer of Permit) of the NBMC is hereby amended and shall read as follows:

B. The deadlines set forth in subsection (A) of this section are established for purposes of setting deadlines for the transfer of a valid permit that has not been deemed abandoned in accordance with Sections 5.95.030 (B) through (F). The deadlines set forth in subsection (A) of this section shall not extend the deadlines set forth in or in accordance with Sections 5.95.030 (B) through (F). Authorization to transfer a valid short term lodging permit shall be deemed waived and the permit abandoned if an application is not filed to transfer a permit in accordance with the deadlines set forth in subsection (A), unless the Finance Director determines that good cause has been shown for extending the deadline.

Section 4: Subsection (B) (1) of Section 5.95.065 (Suspensions and Revocations) of the NBMC is hereby amended and shall read as follows:

B. Permits shall be suspended or revoked, only in the manner provided in this section.

1. The Finance Director shall investigate whenever he or she has reason to believe that an owner has submitted an application that contains false information or committed a violation of a permit condition, this Code, state or federal law related to a permitted unit. Such investigation may include, but is not limited to, on-site property inspections. Should the investigation reveal substantial evidence to support a finding that warrants a suspension or revocation of the short term lodging permit, the Finance Director shall issue written notice of intention to suspend or revoke the short term lodging permit. The written notice shall be served on the owner in accordance with Section 1.08.080, and shall specify the facts which, in the opinion of the Finance Director constitute substantial evidence to establish grounds for imposition of the suspension and/or revocation, and specify the proposed time the short term lodging permit shall be suspended and/or that the short term lodging permit shall be revoked within thirty (30) calendar days from the date the notice is given, unless the owner files with the Finance Director, before the suspension or revocation becomes effective, a request for hearing before a hearing officer, who shall be retained by the City, and pays the fee for the hearing established by resolution of the City Council.

Subject to subsection (E), failure to file a timely request for a hearing and pay all applicable fees shall result in the suspension or revocation of the permit.

Section 5: Subsection (E) is hereby added to Section 5.95.065 (Suspensions and Revocations) of the NBMC and shall read as follows:

E. The Finance Director may extend the deadlines set forth in this section if the Finance Director determines that good cause has been shown to extend the deadline.

Section 6: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 7: The Finance Director is hereby authorized to retroactively extend deadlines as provided in Sections 2 through 5 of this ordinance upon a determination by the Finance Director that good cause has been shown to do so.

Section 8: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 9: The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 10: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the NBMC shall remain unchanged and shall be in full force and effect.

Section 11: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 11th day of March, 2025, and adopted on the 25th day of March, 2025, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

_____
JOE STAPLETON, MAYOR

ATTEST:

_____
LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

_____
AARON C. HARP, CITY ATTORNEY

Attachment B

Redlined Changes to the Code

Chapter 1.08 (Rules for Construction)

1.08.120 Definitions.

Unless a more specific definition is provided or the context in which they are used clearly requires otherwise, the following terms and phrases used in this Code shall have the meaning ascribed to them in this section:

Assistant City Manager. The term "Assistant City Manager" means an Assistant City Manager working in the City Manager's office.

Building Official. The term "Building Official" means the Building Manager or Chief Building Official of the City's Community Development Department or the person designated by the Community Development Director as the Building Official.

California Code of Regulations. The terms "California Code of Regulations" or "CCR" ~~mean~~ means the State administrative regulations that are cited as "title number CCR section number" or "title number CCR division number, chapter number, article number, section number."

California Environmental Quality Act or CEQA. The term "California Environmental Quality Act" or "CEQA" means the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) and the State CEQA Guidelines (14 CCR Section 15000 et seq.).

Chief of Police. The term "Chief of Police" or "Police Chief" means the individual who manages and directs the City's Police Department.

City. The term "City" means the City of Newport Beach, a municipal corporation and charter city, or, when referring to territory or territorial limits, it means the area within the territorial City limits of the City and such territory outside the City over which the City has jurisdiction or control by virtue of any law.

City Attorney. The term "City Attorney" means the City Council appointed official who occupies the position as the City Attorney of the City.

City Charter. The term "City Charter" means the City Charter of the City.

City Clerk. The term "City Clerk" means the City Council appointed official who occupies the position as the City Clerk of the City.

City Council. The term "City Council" or "Council" means the City Council of the City of Newport Beach.

City Engineer. The term "City Engineer" means the City Engineer of the City's Public Works Department, or the individual designated by the Public Works Director as the City Engineer.

City Hall or Civic Center. The term "City Hall" or "Civic Center" means the City's Civic Center located at 100 Civic Center Drive, Newport Beach, California, that includes most administrative offices of the City and related parking.

City Manager. The term "City Manager" means the City Council appointed official who occupies the position as the chief administrative officer of the City.

City Treasurer. The term "City Treasurer" means the individual appointed as the City's Finance Director.

Code. The term "Code" means the Newport Beach Municipal Code.

Community Development Director. The term "Community Development Director" means the individual who manages and directs the City's Community Development Department.

Consumer Price Index. The term "Consumer Price Index" means the Los Angeles-Long Beach-Anaheim, California Area, All Urban Consumers, All Items, Base Period (1982-84 = 100), or successor index, as published by the United States Department of Labor, Bureau of Labor Statistics.

County. The term "County" means the County of Orange.

Day. The term "day" or "days" means a calendar day, unless otherwise specifically provided.

Day Care Center. The term "day care center" means a child care—infant center, and child care center (preschool) licensed by the State Department of Social Services that is not located on a residentially zoned property including, but not limited to, Bright Horizons at Newport Beach; Carden Hall; Catalyst Kids-Newport Heights; Christ Church by the Sea Children's Center; Environmental Nature Center (ENC) Nature Preschool; Miraculous Milestones; Montessori Way Learning Center, Inc., Newport Coast Child Development Preschool; Newport Harbor Lutheran Church; St. Andrew's Preschool; St. Mark Community Preschool; St. Matthew's Montessori Preschool; Temple Bat Yahm; and Tutor Time Child Care/Learning Center.

Designee. The term "designee" means a position, employee, or person that is authorized to fulfill a duty, obligation or responsibility.

District Attorney. The term "District Attorney" means the Orange County District Attorney.

Fair Political Practices Commission. The term "Fair Political Practices Commission" or "FPPC" means the five-member independent, nonpartisan commission that has primary responsibility for the impartial and effective administration of the Political Reform Act.

Finance Director. The term "Finance Director" means the individual who manages and directs the City's Finance Department.

Fire Chief. The term "Fire Chief" means the individual who manages and directs the Fire Department.

Fire Marshal. The term "Fire Marshal" ~~shall mean~~means the Fire Marshal of the City's Fire Department, or the individual designated by the Fire Chief as the Fire Marshal.

Good Cause. The term "good cause" means that there is substantial evidence that unusual or unforeseen circumstances justify the taking of a particular action, which circumstances include, but are not limited to, a medical emergency; a delay caused by events beyond the person's control; a natural disaster; a weather-related delay; an administrative error; or health and safety concerns.

Harbor Commission. The term "Harbor Commission" ~~shall mean~~means the Harbor Commission of the City.

Harbor Department. The term "Harbor Department" ~~shall mean~~means the Harbor Department of the City. Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Division shall mean the Harbor Department.

Harbormaster. The term "Harbormaster" ~~shall mean~~means the individual who manages and directs the Harbor Department. Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Manager shall mean the Harbormaster.

Health Officer. The term "Health Officer" means the Orange County Health Officer.

Human Resources Director. The term "Human Resources Director" means the individual who manages and directs the City's Human Resources Department.

Library Services Director. The term "Library Services Director" means the individual who manages and directs the City's Public Library System.

Oath. The term "oath" means and includes affirmation.

Office. The term "office" means the title of any officer, employee, or office, of the City of Newport Beach.

Owner. The term "owner," applied to a building or land, means and includes any part owner, joint owner, tenant, tenant in common or joint tenant, of the whole or a part of such building or land.

Pacific Ocean. The term "Pacific Ocean" means the waters off of the City from the beach to a point three nautical miles seaward.

Person. The term "person" means and includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this State, any county, city and county, municipality, district, or other political subdivision of the State, or any other group or combination acting as a unit.

Public park or public facility. The terms "public park" or "park facility" means all publicly owned, managed or leased land that is open to the public, walking or hiking trails, parks and park-related buildings, facilities and improvements, and any school facilities when they are in use as recreational or community center facilities and under the control of the Director of the Recreation and Senior Services Department including, but not limited to, Arroyo Park; 38th Street Park; Back Bay View Park; Bayside Park; Bayview Park; Begonia Park; Big Canyon Park; Bob Henry Park; Bolsa Park; Bonita Canyon Sports Park; Bonita Creek Park & Community Center; Buffalo Hills Park; Canyon Watch Park; Carroll Beek Community Center and Balboa Island Park; Castaways Park; Channel Place Park; Civic Center Community Center; Civic Center Park; Cliff Drive Park and Community Center; Coastal Peak Park; Corona del Mar Pocket Park; Corona del Mar State Beach; Dog Park; Eastbluff Park and Boys and Girls Club; Galaxy View Park; Gateway Park; Grant Howald Park & Community Youth Center; Harbor View Nature Park; Harbor Watch Park; Inspiration Point; Irvine Terrace Park; Jasmine Creek Park; John Wayne Park and Theater Arts Center; Kings Road Park; L Street Park; Lake Ave Park; Lido

Park; Lincoln Athletic Center; Lookout Point; Los Trancos Canyon View Park (lower, middle, upper); Lower Castaways Park; M Street Park; Marian Bergeson Aquatic Center; Marina Park; Mariners Park and VJ Community Center; Mesa Birch Park; Miramar Park; Myrtle Park; Newport Aquatic Center; Newport Coast Community Center; Newport Island Park; Newport Shores Park; North Star Beach; OASIS Senior Center; Old School Park; Peninsula Park; Rhine Wharf Park; San Joaquin Hills Park and Lawn Bowling Center; San Miguel Park; Spyglass Hill Park; Spyglass Hill Reservoir Park; Sunset Ridge Park; Sunset View Park; Upper Buck Gully Reserve; Uptown Park; Veterans Memorial Park; West Jetty View Park; West Newport Community Center; West Newport Park; and Westcliff Park.

Public Works Director. The term "Public Works Director" means the individual who manages and directs the City's Public Works Department.

Recreation and Senior Services Director. The term "Recreation and Senior Services Director" means the individual who manages and directs the City's Recreation and Senior Services Department.

Revenue Division. The term "Revenue Division" means the City's Finance Department Revenue Division.

Risk Manager. The term "Risk Manager" means the Risk Manager of the City's Human Resources Department, or the individual appointed by the Human Resources Director as the Risk Manager.

School. The term "school" means an institution of learning, whether public or private, which offers in-person instruction in grades K through twelve (12) in those courses of study required by the California Education Code and is licensed by the State Board of Education. This definition includes all kindergarten, elementary, junior high, senior high or any special institution of learning under the jurisdiction of the State Department of Education including, but not limited to, Andersen Elementary School; Carden Hall; Corona del Mar Middle and High School; Eastbluff Elementary School; Ensign Intermediate School; Harbor Day School; Harbor View Preschool and Elementary School; Lincoln Elementary School; Mariners Elementary School; Newport Christian Academy; Newport Coast Preschool and Elementary School; Newport Preschool and Elementary School; Newport Harbor High School; Newport Heights Elementary School; Our Lady Queen of Angels Catholic School; Pacifica Christian High School; and Sage Hill High School.

State. The term "State" means the State of California.

Street. The term "street" means and includes all streets, roads, highways, avenues, lanes, alleys, courts, boulevards, places, squares, curbs, or other public ways in this City, which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this State.

Tenant, Occupant. The term "tenant" or "occupant" applied to a building or land means and includes any person who occupies the whole or part of such building or land, whether alone or with others.

Utilities Director. The term "Utilities Director" means the individual who manages and directs the City's Utilities Department.

Chapter 5.95 (Short Term Lodging Permit)

5.95.042 Maximum Number of Permits.

D. If the City has issued the maximum number of permits available, the City shall maintain a waiting list. An application for placement on the waiting list shall be submitted to the Finance Director, on a form approved by the Finance Director, and shall be accompanied by a fee established by resolution of the City Council. In the event a short term lodging permit becomes available, the Finance Director shall notify the person or persons next in order on the waiting list. The notice shall specify that applications will be accepted for ten (10) calendar days after the date of the notice, and that failure to apply within the ten (10) calendar-day period shall result in removal of the person or persons receiving notice from the waiting list. The Finance Director may extend the deadline to apply if the Finance Director determines that good cause has been shown to extend the deadline. Notice shall be deemed given when deposited in the United States mail, with the first class postage prepaid, and addressed as specified by the person or persons on the waiting list. The City shall not be liable for a failure to notify any person or persons on the waiting list since placement on the list does not create any property right in any person or persons on the list nor any contractual obligation on the part of the City.

5.95.043 Transfer of Permit.

B. The deadlines set forth in subsection (A) of this section are established for purposes of setting deadlines for the transfer of a valid permit that has not been deemed abandoned in accordance with Sections 5.95.030(B) through (F). The deadlines set forth in subsection (A) of this section shall not extend the deadlines set forth in or in accordance with Sections 5.95.030(B) through (F). Authorization to transfer a valid short term lodging permit shall be deemed waived and the permit abandoned if an application is not filed to transfer a permit in accordance with the deadlines set forth in ~~this section~~subsection (A), unless the Finance Director determines that good cause has been shown for extending the deadline.

5.95.065 Suspensions and Revocations.

B. Permits shall be suspended or revoked, only in the manner provided in this section.

1. The Finance Director shall investigate whenever he or she has reason to believe that an owner has submitted an application that contains false information or committed a violation of a permit condition, this Code, state or federal law related to a permitted unit. Such investigation may include, but is not limited to, on-site property inspections. Should the investigation reveal substantial evidence to support a finding that warrants a suspension or revocation of the short term lodging permit, the Finance Director shall issue written notice of intention to suspend or revoke the short term lodging permit. The written notice shall be served on the owner in accordance with Section 1.08.080, and shall specify the facts which, in the opinion of the Finance Director constitute substantial evidence to establish grounds for imposition of the

suspension and/or revocation, and specify the proposed time the short term lodging permit shall be suspended and/or that the short term lodging permit shall be revoked within thirty (30) calendar days from the date the notice is given, unless the owner files with the Finance Director, before the suspension ~~and/~~or revocation becomes effective, a request for hearing before a hearing officer, who shall be retained by the City, and pays the fee for the hearing established by resolution of the City Council. Subject to subsection (E), failure to file a timely request for hearing and pay all applicable fees shall result in the suspension or revocation of the permit.

E. The Finance Director may extend the deadlines set forth in this section if the Finance Director determines that good cause has been shown to extend the deadline.

March 25, 2025, City Council Agenda Comments

The following comments on items on the Newport Beach City Council agenda are submitted by:
Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item 1. Minutes for the March 11, 2025 City Council Meeting

The passage shown in *italics* below is from the draft minutes with a suggested correction shown in ***~~strikeout~~*** ***underline*** format. The page number refers to Volume 66.

> **Page 279**, Item X, Mayor Stapleton, end of last bullet: "*Attended the Newport Shores annual HOA meeting, the trash interceptor ribbon cutting, the OCIACC Nowruz Spring Festival, and the Fire Station 2 demolition party and extended congratulations to Bob* ***~~Olsen~~*** ***Olson***."

Item 3. Ordinance No. 2025-4: Amending the Newport Beach Municipal Code to Update Administrative Procedures Related to Good Cause Determinations and the Extension of Deadlines for Short-Term Lodging Permits

This matter involving who should be authorized to grant exceptions to STL permit deadlines, and for what reasons, is unusual in that parts of it have had fairly extensive Council discussion even though it has never been publicly announced on any agenda, including this one, as a matter for such discussion.

The proposal started as part of Item 3 on the October 8, 2024, consent calendar (along with an unrelated Finance Department matter about demolition debris hauling), from which it was pulled for a discussion that was continued to a future planning session.

That discussion was indeed continued (see video) at the Council's February 1, 2025, planning session, and a person hoping for relief from the STL deadlines was apparently even expected to plead their case to the Council. However, nothing on the agenda reminded the public that such a discussion by the Council was planned for that day.

In the February 1 discussion, Council members seemed to agree that what qualified as "good cause" needed to be defined (which it had not been in the October 8 offering). But curiously, the example of an aggrieved person, who turned out to be a professional asset manager who had apparently failed to properly manage his client's asset rather than a property owner who had innocently missed a deadline due to some special hardship, never explained the unusual circumstances that had caused him to miss a deadline (see video), nor did the Council discuss whether they would agree his circumstances constituted "good cause" for relief or, more generally, how they thought "good cause" should be defined.

The matter returned as Item 5 on the March 11 consent calendar, where a definition of "good cause" was proposed, but not discussed, although I provided extensive written comments.

As a policy matter, I think it is good for the City to have flexibility in the administration of its regulations. However, in the case of STL permits, since having one is a privilege rather than a right, and there is a long waiting list of people not presently having a permit, but hoping to get one, I would think leniency for those who have the permits but fail to follow the rules, including

failing to meet deadlines, should be very limited. I would also think that in evaluating whether a missed STL permit deadline should be excused, factors in addition to the existence of good cause should be considered, such as whether the property has been the subject of complaints or other enforcement actions. The Council might also want to include in the ordinance examples of circumstances which staff should *not* regard as "good cause" or limit how long after a missed deadline a request for extension can be entertained.

It is, therefore, disappointing that on March 11 the Council did not publicly discuss whether the rather broad definition offered by staff meets their expectations (and how it would be applied to the unknown circumstances of the asset manager at the February 1 Planning Session) – or whether there should be a very narrow definition provided for staff to use to which a mechanism could be added for more problematic claims to be referred on appeal to the Council.

Even assuming the Council members individually reviewed the proposed definition of "good cause" for missing an STL permit deadline, and found it met their expectations, I continue to think the proposed ordinance is defective for two reasons.

Making Definition Applicable to Entire Municipal Code is a Bad Idea

First, rather than placing the definition of "good cause" in the chapter of the Municipal Code regarding STL permits, to which it is intended to apply, staff proposes putting it in a section that will make it applicable to the entire Municipal Code.

This a bad recommendation, or, at the very least, a decision that needs further review.

As I pointed out in my March 11 written comments, the phrase "good cause" appears 27 times in 19 different chapters of the code, in each of which it may have been intended to be understood differently. Inserted after-the-fact a definition that may or may not have been intended is not wise.

A recent example of the problems this can cause was the entry of Pacaso fractional ownership homes into the Newport Beach market. As indicated in my comments on that subject on pages 12-44 & 45 of the March 14, 2023, Council agenda packet, since 1982, with adoption of Ordinance No. 82-14, Newport Beach had perfectly clear regulations in its Zoning Code (Title 20 of the Municipal Code) intended to prohibit such activity (time-share arrangements in residential areas). However, the original language used the phrases "time-share *projects*" and "time-share *development,*" which were explicitly intended to apply to conversion of existing residences to a time-share model, including fractional ownership, even though the terms "project" and "development" were not explicitly defined. However, without considering this, the Zoning Code was repeatedly rearranged and revised, and eventually, definitions of "project" and "development" applicable to the entire Zoning Code were added. And even though the introduction of those definitions was presumably not intended to alter the meaning of the time-share regulations, by the time Pacaso came to town, staff said they did, and they could not prohibit conversions of existing homes, only new construction.

One has to wonder if the Council members have reviewed the 18 Municipal Code chapters unrelated to STL permits in which "good cause" appears, and determined that applying to them

the definition proposed in the STL permit context does not alter the meaning of "good cause" that earlier Councils intended in those other contexts?

Placing Substantive Regulations in Uncodified Portions of Ordinances is a Bad Idea

Second, although neither the Council nor the public heard the circumstances of the speaker seeking relief at the February 1 Planning Session (only that "things come up"), it appears the intent of these code revisions is to allow staff to excuse people who have *missed* STL permit deadlines. Yet the proposed code revisions are written entirely in terms of *extending* deadlines, which implies a request to extend the deadline has been received before the deadline comes.

The fact that an "extension" can be granted retroactively, in effect *excusing* the missing of a deadline is relegated to an obscure reference in uncodified Section 7 of the proposed ordinance, on page 3-13 of the agenda packet.

Not only could the fact that a deadline can be extended retroactively have easily been included in the codified portion of the code, where all those reading the code would see it, but the code might even have limited how long after the fact a retroactive extension can be granted and how long such an extension can be.

The problems that can be created by not codifying substantive portions of regulations is illustrated by Item 12 on the current agenda. In that case, when enacting a Building Code revision in 2022, the Council only intended for it to be in effect until April 21, 2025, at which time the unrevised text would return. It would have been relatively easy to include this proviso in the code (the state legislature does this quite frequently). Instead, much like here, it exists only in an obscure uncodified section of the 2022 ordinance (see page 12-21 of the present agenda packet). Despite a subsequent ordinance reenacting the code section in question without any mention of an expiration, the proviso in the earlier ordinance seems to remain, like a zombie, completely unknown to those reading the existing code, which does not even mention the ordinance containing it in its revision history.

In the present case, the fact that STL deadline extensions can be retroactive will not only be unknown to readers of the code, but it may assume a similar zombie status if the code were subsequently revised without an intent to be retroactive but without explicitly repealing the present ordinance.

Item 4. Resolution No. 2025-12: Creating the Ad Hoc Refuse Committee

I think the idea of staff reaching out in considering its response to refuse regulations is a good one, and the present proposal is an improvement over the roll-out of the three-cart residential collection system, regarding which input seems to have been sought from a 3-member Council Ad Hoc Solid Waste Committee that was never formally appointed and which the public knew nothing about.

That said, I think it would be better for the Council to appoint a committee of affected residents and business owners from whom staff could seek input. The advantage of that, is that the Brown Act would require the discussions to be noticed and public.

The problem with Council-appointed ad hoc committees (and with ad hoc committees of the City boards and commissions in general, is that they are created precisely to avoid public visibility. Since the Brown Act does not require it, their discussions are rarely if ever public. As a result there is a complete lack of transparency as to how their recommendations were arrived at and what input was considered.

A happy recent, but still extremely rare, exception was the PB&R ad hoc committee seeking to make a recommendation about the proposed Aquatic Center at Lower Castaways, which held a noticed public workshop in the Community Room on February 12.

Item 5. Irrigation Controller Replacement Phase 2 – Award of Contract No. 9735-1

With a low bid of $472,186 to acquire(?) and install 37 controllers, that comes to nearly $13,000 per controller.

This contract is clearly for something more than a typical home controller, so it might have been helpful to provide a little more information on what is being contemplated. From the bid package, it looks like it is some version of the Toro 21-1196-IRC-DXi-Controller-SS.

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I might note that at the time the subcommittee and full GPAC made our recommendation, we were unaware the traffic noise contours resulting from the addition of 6th Cycle RHNA units (for everything but the 73 freeway and toll road) had already been projected by a prior consultant as part of the recent Housing Implementation Program EIR (PA2022-0245), specifically in Chapter 4.11 and Appendix E. It appears Dudek is proposing to do something more supported by measurement.

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CITY OF

NEWPORT BEACH

City Council Staff Report

March 25, 2025
Agenda Item No. 4

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	David A. Webb, Public Works Director - 949-644-3311, dawebb@newportbeachca.gov
PREPARED BY:	Charles Springer, Senior Management Analyst – 949-718-3466, cspringer@newportbeachca.gov
TITLE:	Resolution No. 2025-12: Creating the Ad Hoc Refuse Committee

ABSTRACT:

If adopted, Resolution No. 2025-12 would establish an Ad Hoc Refuse Committee, comprised of two councilmembers, to review various upcoming refuse-related items, and make recommendations to the full City Council.

RECOMMENDATIONS:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;

b) Adopt Resolution No. 2025-12, *A Resolution of the City Council of the City of Newport Beach, California, Creating the Ad Hoc Refuse Committee*; and

c) Confirm the appointments of Councilmember Robyn Grant and Councilmember Michelle Barto to serve on the Ad Hoc Refuse Committee.

DISCUSSION:

The City of Newport Beach has several significant upcoming refuse-related items, including continued implementation of existing and future State mandates, changes to various City agreements, and the commercial refuse franchise system.

If adopted, Resolution No. 2025-12 would establish the Ad Hoc Refuse Committee to work with staff and make recommendations to the entire City Council regarding various upcoming refuse items, including:

- Current and pending State legislative mandates and potential implications,
- New master agreement with Orange County for waste disposal,
- Commercial refuse franchise system and franchise agreement updates/renewals,
- City refuse-collection contract agreements.

The committee would also review, seek and identify potential funding sources, such as public and private grants and partnerships, to help support any necessary changes or program enhancements.

The committee would terminate upon making its recommendations to the full City Council or on December 31, 2026, whichever is sooner.

Additionally, for the Council's consideration are the appointments of Councilmembers Robyn Grant and Michelle Barto to serve on the ad hoc committee.

FISCAL IMPACT:

There is no fiscal impact related to this item.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENT:

Attachment A – Resolution No. 2025-12

RESOLUTION NO. 2025-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, CREATING THE REFUSE AD HOC ADVISORY COMMITTEE

WHEREAS, Section 200 of the Charter of the City of Newport Beach ("Charter") vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges or procedures granted or prescribed by any law of the State of California;

WHEREAS, Chapter 6.06 (State Mandated Municipal Solid Waste Diversion Programs) and Chapter 6.04 (Garbage, Refuse and Cuttings) of the Newport Beach Municipal Code ("NBMC") provide minimum standards for the safe and sanitary collection, storage, and transportation of solid waste, food scraps, green waste, and wood and recyclable materials generated within the city, and diversion of food scraps, green waste, wood and recyclable materials from landfills;

WHEREAS, Chapter 12.63 (Solid Waste Management) of the NBMC requires a commercial solid waste enterprise to obtain a franchise agreement from the City before it may conduct solid waste handling to ensure recycling and diversion requirements of the Waste Management Act of 1989 are met;

WHEREAS, the City contracts with solid waste enterprises for solid waste handling services, several of which are nearing expiration, including contracts for public facilities service, beach service, and street service;

WHEREAS, over the last decade, the state has adopted significant new legislation regulating the collection, storage, and transportation of waste including, but not limited to, Senate Bill ("SB") 1383 (2016) requiring cities and counties to procure a minimum amount of products made from recycled organic waste each year, SB 1013 (2022) updating beverage container recycling requirements, SB 1053 (2024) updating recycled and paper carryout bag regulations, SB 707 (2024) updating textile recovery regulations, and SB 54 (in process) updating plastic pollution prevention and packaging regulations; and

WHEREAS, the City Council desires to create a Refuse Ad Hoc Advisory Committee to work with City staff and make recommendations to the entire City Council regarding: (1) possible updates to the City's solid waste ordinances, resolutions, commercial collection contracts, franchise agreements, policies, and regulations, which may be affected by current and pending legislation; (2) alternatives to the non-exclusive solid waste collection franchise system; (3) the Orange County Waste & Recycling waste disposal agreement and the implementation thereof; (4) Balboa Village waste management; (5) compliance with current and upcoming state mandates; (6) potential funding sources, such as public and private grants and partnerships, to help support any necessary changes or program enhancements; and (7) enforcement of state and local laws, rules and regulations.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The City Council hereby creates the Refuse Ad Hoc Advisory Committee ("Committee"), which shall be comprised of two Council Members appointed by the Mayor and confirmed by the entire City Council.

Section 2: The sole purpose and responsibility of the Committee shall be to work with City staff and make recommendations to the entire City Council regarding: (1) possible updates to the City's solid waste ordinances, resolutions, commercial collection contracts, franchise agreements, policies, and regulations, which may be affected by current and pending legislation; (2) alternatives to the non-exclusive solid waste collection franchise system; (3) the Orange County Waste & Recycling waste disposal agreement and the implementation thereof; (4) Balboa Village waste management; (5) compliance with current and upcoming state mandates; (6) potential funding sources, such as public and private grants and partnerships, to help support any necessary changes or program enhancements; and (7) enforcement of state and local laws, rules and regulations.

Section 3: The Committee shall function as an ad hoc committee and shall not be subject to the Ralph M. Brown Act codified in California Section 54950 *et seq*.

Section 4: The Committee shall expire upon making its final recommendations to the entire City Council at a noticed public meeting of the City Council or December 31, 2026, whichever occurs first.

Section 5: If any section, subsection, sentence, clause or phrase of this resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 6: The recitals provided in this resolution are true and correct and are incorporated into the substantive portion of this resolution.

Section 7: The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 8: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting this resolution.

ADOPTED this 25th day of March, 2025.

_____
Joe Stapleton
Mayor

ATTEST:

_____
Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

_____
Aaron C. Harp
City Attorney

March 25, 2025, City Council Agenda Comments

The following comments on items on the Newport Beach City Council agenda are submitted by:
Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item 1. Minutes for the March 11, 2025 City Council Meeting

The passage shown in *italics* below is from the draft minutes with a suggested correction shown in ***~~strikeout~~*** ***underline*** format. The page number refers to Volume 66.

> **Page 279**, Item X, Mayor Stapleton, end of last bullet: "*Attended the Newport Shores annual HOA meeting, the trash interceptor ribbon cutting, the OCIACC Nowruz Spring Festival, and the Fire Station 2 demolition party and extended congratulations to Bob* ***~~Olsen~~*** ***Olson***."

Item 3. Ordinance No. 2025-4: Amending the Newport Beach Municipal Code to Update Administrative Procedures Related to Good Cause Determinations and the Extension of Deadlines for Short-Term Lodging Permits

This matter involving who should be authorized to grant exceptions to STL permit deadlines, and for what reasons, is unusual in that parts of it have had fairly extensive Council discussion even though it has never been publicly announced on any agenda, including this one, as a matter for such discussion.

The proposal started as part of Item 3 on the October 8, 2024, consent calendar (along with an unrelated Finance Department matter about demolition debris hauling), from which it was pulled for a discussion that was continued to a future planning session.

That discussion was indeed continued (see video) at the Council's February 1, 2025, planning session, and a person hoping for relief from the STL deadlines was apparently even expected to plead their case to the Council. However, nothing on the agenda reminded the public that such a discussion by the Council was planned for that day.

In the February 1 discussion, Council members seemed to agree that what qualified as "good cause" needed to be defined (which it had not been in the October 8 offering). But curiously, the example of an aggrieved person, who turned out to be a professional asset manager who had apparently failed to properly manage his client's asset rather than a property owner who had innocently missed a deadline due to some special hardship, never explained the unusual circumstances that had caused him to miss a deadline (see video), nor did the Council discuss whether they would agree his circumstances constituted "good cause" for relief or, more generally, how they thought "good cause" should be defined.

The matter returned as Item 5 on the March 11 consent calendar, where a definition of "good cause" was proposed, but not discussed, although I provided extensive written comments.

As a policy matter, I think it is good for the City to have flexibility in the administration of its regulations. However, in the case of STL permits, since having one is a privilege rather than a right, and there is a long waiting list of people not presently having a permit, but hoping to get one, I would think leniency for those who have the permits but fail to follow the rules, including

failing to meet deadlines, should be very limited. I would also think that in evaluating whether a missed STL permit deadline should be excused, factors in addition to the existence of good cause should be considered, such as whether the property has been the subject of complaints or other enforcement actions. The Council might also want to include in the ordinance examples of circumstances which staff should *not* regard as "good cause" or limit how long after a missed deadline a request for extension can be entertained.

It is, therefore, disappointing that on March 11 the Council did not publicly discuss whether the rather broad definition offered by staff meets their expectations (and how it would be applied to the unknown circumstances of the asset manager at the February 1 Planning Session) – or whether there should be a very narrow definition provided for staff to use to which a mechanism could be added for more problematic claims to be referred on appeal to the Council.

Even assuming the Council members individually reviewed the proposed definition of "good cause" for missing an STL permit deadline, and found it met their expectations, I continue to think the proposed ordinance is defective for two reasons.

Making Definition Applicable to Entire Municipal Code is a Bad Idea

First, rather than placing the definition of "good cause" in the chapter of the Municipal Code regarding STL permits, to which it is intended to apply, staff proposes putting it in a section that will make it applicable to the entire Municipal Code.

This a bad recommendation, or, at the very least, a decision that needs further review.

As I pointed out in my March 11 written comments, the phrase "good cause" appears 27 times in 19 different chapters of the code, in each of which it may have been intended to be understood differently. Inserted after-the-fact a definition that may or may not have been intended is not wise.

A recent example of the problems this can cause was the entry of Pacaso fractional ownership homes into the Newport Beach market. As indicated in my comments on that subject on pages 12-44 & 45 of the March 14, 2023, Council agenda packet, since 1982, with adoption of Ordinance No. 82-14, Newport Beach had perfectly clear regulations in its Zoning Code (Title 20 of the Municipal Code) intended to prohibit such activity (time-share arrangements in residential areas). However, the original language used the phrases "time-share *projects*" and "time-share *development,*" which were explicitly intended to apply to conversion of existing residences to a time-share model, including fractional ownership, even though the terms "project" and "development" were not explicitly defined. However, without considering this, the Zoning Code was repeatedly rearranged and revised, and eventually, definitions of "project" and "development" applicable to the entire Zoning Code were added. And even though the introduction of those definitions was presumably not intended to alter the meaning of the time-share regulations, by the time Pacaso came to town, staff said they did, and they could not prohibit conversions of existing homes, only new construction.

One has to wonder if the Council members have reviewed the 18 Municipal Code chapters unrelated to STL permits in which "good cause" appears, and determined that applying to them

the definition proposed in the STL permit context does not alter the meaning of "good cause" that earlier Councils intended in those other contexts?

Placing Substantive Regulations in Uncodified Portions of Ordinances is a Bad Idea

Second, although neither the Council nor the public heard the circumstances of the speaker seeking relief at the February 1 Planning Session (only that "things come up"), it appears the intent of these code revisions is to allow staff to excuse people who have *missed* STL permit deadlines. Yet the proposed code revisions are written entirely in terms of *extending* deadlines, which implies a request to extend the deadline has been received before the deadline comes.

The fact that an "extension" can be granted retroactively, in effect *excusing* the missing of a deadline is relegated to an obscure reference in uncodified Section 7 of the proposed ordinance, on page 3-13 of the agenda packet.

Not only could the fact that a deadline can be extended retroactively have easily been included in the codified portion of the code, where all those reading the code would see it, but the code might even have limited how long after the fact a retroactive extension can be granted and how long such an extension can be.

The problems that can be created by not codifying substantive portions of regulations is illustrated by Item 12 on the current agenda. In that case, when enacting a Building Code revision in 2022, the Council only intended for it to be in effect until April 21, 2025, at which time the unrevised text would return. It would have been relatively easy to include this proviso in the code (the state legislature does this quite frequently). Instead, much like here, it exists only in an obscure uncodified section of the 2022 ordinance (see page 12-21 of the present agenda packet). Despite a subsequent ordinance reenacting the code section in question without any mention of an expiration, the proviso in the earlier ordinance seems to remain, like a zombie, completely unknown to those reading the existing code, which does not even mention the ordinance containing it in its revision history.

In the present case, the fact that STL deadline extensions can be retroactive will not only be unknown to readers of the code, but it may assume a similar zombie status if the code were subsequently revised without an intent to be retroactive but without explicitly repealing the present ordinance.

Item 4. Resolution No. 2025-12: Creating the Ad Hoc Refuse Committee

I think the idea of staff reaching out in considering its response to refuse regulations is a good one, and the present proposal is an improvement over the roll-out of the three-cart residential collection system, regarding which input seems to have been sought from a 3-member Council Ad Hoc Solid Waste Committee that was never formally appointed and which the public knew nothing about.

That said, I think it would be better for the Council to appoint a committee of affected residents and business owners from whom staff could seek input. The advantage of that, is that the Brown Act would require the discussions to be noticed and public.

The problem with Council-appointed ad hoc committees (and with ad hoc committees of the City boards and commissions in general, is that they are created precisely to avoid public visibility. Since the Brown Act does not require it, their discussions are rarely if ever public. As a result there is a complete lack of transparency as to how their recommendations were arrived at and what input was considered.

A happy recent, but still extremely rare, exception was the PB&R ad hoc committee seeking to make a recommendation about the proposed Aquatic Center at Lower Castaways, which held a noticed public workshop in the Community Room on February 12.

Item 5. Irrigation Controller Replacement Phase 2 – Award of Contract No. 9735-1

With a low bid of $472,186 to acquire(?) and install 37 controllers, that comes to nearly $13,000 per controller.

This contract is clearly for something more than a typical home controller, so it might have been helpful to provide a little more information on what is being contemplated. From the bid package, it looks like it is some version of the Toro 21-1196-IRC-DXi-Controller-SS.

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CITY OF

NEWPORT BEACH

City Council Staff Report

March 25, 2025
Agenda Item No. 5

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	David A. Webb, Public Works Director - 949-644-3311, dawebb@newportbeachca.gov
PREPARED BY:	Kevin Pekar, Public Works Superintendent - 949-644-3069, kpekar@newportbeachca.gov
TITLE:	Irrigation Controller Replacement Phase 2 – Award of Contract No. 9735-1

ABSTRACT:

The City of Newport Beach received construction bids for Phase 2 of the Irrigation Controller Replacement project. Staff requests City Council approval to award the construction contract to EMTS, Inc. (EMTS) of Clovis. This project replaces and upgrades 37 outdated controllers at the Civic Center and various parks and right-of-way locations.

RECOMMENDATIONS:

a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because this project has no potential to have a significant effect on the environment;

b) Award Contract No. 9735-1 to EMTS for the total bid price of $480,202.74 for the replacement of 37 irrigation controllers, and authorize the Mayor and City Clerk to execute the agreement; and

c) Establish a contingency of $24,000 (approximately 5% of total bid) to cover the cost of unforeseen work not included in the original contract.

DISCUSSION:

The City's Fiscal Year 2024-25 Park Maintenance Master Plan (PMMP) includes Phase 2 of updating the City's irrigation controllers. This project replaces 37 outdated controllers at various locations and continues the City's conversion to a cloud-based system that allows staff to monitor and control irrigation and its programming from any location via computer, tablet or cell phone.

The Public Works Department issued the Request for Bids (RFB) for replacement of 37 irrigation controllers through the City's electronic bidding portal.

One hundred fifty-nine vendors were notified and at 2 p.m. on February 12, 2025, the City Clerk opened and read the bids for this project.

	BIDDER	BID AMOUNT
Low	The Davey Tree Expert Company	$472,186.08
2nd	EMTS, Inc.	$480,202.74
3rd	Superb Engineering	$494,533.00
4th	Greenfield Landscaping & Maintenance	$495,888.00
5th	American Landscape, Inc.	$549,512.00
6th	Merchants Landscape, Inc.	$577,532.56
7th	SGD Enterprises	$593,000.00
8th	Environmental Construction, Inc.	$650,360.00
9th	Nakae & Associates, Inc.	$655,055.00
10th	Kormex Construction, Inc.	$788,000.00

The City received 10 bids for these services. The Davey Tree Expert Company was determined non-responsive for not providing its bid bond sealed and delivered prior to the bid opening. The lowest responsible bidder, EMTS, possesses a California State Contractor's License Classification C-27, as required by the project specifications, and a review of its references shows satisfactory completion of similar projects.

After the bid opening, the City received a bid protest claiming deficiencies in the apparent low bidder's responsiveness and ability to perform the work. Public Works Department and City Attorney's Office staff reviewed and considered the bid protest, relevant provisions of State law, and the bid responses, and concluded that EMTS is the lowest responsible bidder and has the capacity and experience to satisfactorily perform the work for this project. The protest letter is included as an attachment to this report.

Pursuant to the contract specifications, the contractor will have 120 consecutive working days to complete the work. Work is scheduled to start in April 2025.

FISCAL IMPACT:

The adopted Capital Improvement Program budget includes sufficient funding for this contract. It will be expensed to the PMMP account in the Public Works Department, 57001-980000-25P02. The following funds will be expended:

Account Description	Account Number	Amount
PMMP	57001-980000-25P02	$ 504,202.74
	Total:	$ **504,202.74**

Proposed fund uses are as follows:

Vendor	Purpose	Amount
EMTS	Construction Contract	$ 480,202.74
EMTS	Construction Contingency	$ 24,000.00
	Total:	**$ 504,202.74**

Staff recommends including $24,000 (approximately 5% of total bid) for contingency purposes and unforeseen conditions associated with construction.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Contract
Attachment B – Protest Letter

IRRIGATION CONTROLLER REPLACEMENT PHASE 2
CONTRACT NO. 9735-1

THIS CONTRACT FOR PUBLIC WORKS ("Contract") is entered into this 25th day of March, 2025 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and EMTS, Inc., a California corporation ("Contractor"), whose address is 2972 Larkin Ave, Clovis, CA 93612, and is made with reference to the following:

RECITALS

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.

B. City has advertised for bids for the following described public work: The work necessary for the completion of this contract consists of the contractor to purchase and install Toro DXi Central Irrigation Controllers with Laguna software in various locations throughout the City of Newport Beach (the "Project" or "Work").

C. Contractor has been determined by City to be the lowest responsible bidder and Contractor's bid, and the compensation set forth in this Contract, is based upon Contractor's careful examination of all Contract documents, plans and specifications.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. CONTRACT DOCUMENTS

The complete Contract for the Project includes all of the following documents: Notice Inviting Bids, Instructions to Bidders, Proposal, Bidder's Bond, Non-Collusion Affidavit, Notice to Successful Bidder, Labor and Materials Payment Bond (Exhibit A), Faithful Performance Bond (Exhibit B), Permits, Standard Special Provisions and Standard Drawings, Plans and Special Provisions for Contract No. **9735-1**, Standard Specifications for Public Works Construction (current adopted edition and all supplements), and this Contract, and all modifications and amendments thereto (collectively the "Contract Documents"), all of which are incorporated herein by reference. The Contract Documents comprise the sole agreement between the parties as to the subject matter therein. Any representations or agreements not specifically contained in the Contract Documents are null and void. Any amendments must be made in writing, and signed by both parties in the manner specified in the Contract Documents.

2. SCOPE OF WORK

Contractor shall perform everything required to be performed, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment and all utility and transportation services required for the Project. All of the Work to be performed and

materials to be furnished shall be in strict accordance with the provisions of the Contract Documents. Contractor is required to perform all activities, at no extra cost to City, which are reasonably inferable from the Contract Documents as being necessary to produce the intended results.

3. COMPENSATION

3.1 As full compensation for the performance and completion of the Project as required by the Contract Documents, City shall pay to Contractor and Contractor accepts as full payment the sum of **Four Hundred Eighty Thousand Two Hundred Two Dollars and 74/100 ($480,202.74).**

3.2 This compensation includes:

3.2.1 Any loss or damage arising from the nature of the Work;

3.2.2 Any loss or damage arising from any unforeseen difficulties or obstructions in the performance of the Work; and

3.2.3 Any expense incurred as a result of any suspension or discontinuance of the Work, but excludes any loss resulting from earthquakes of a magnitude in excess of 3.5 on the Richter Scale and tidal waves, including tsunamis, and which loss or expense occurs prior to acceptance of the Work by City.

4. PROJECT MANAGER

Contractor shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the term of the Contract. Contractor has designated Jose Arce to be its Project Manager. Contractor shall not remove or reassign the Project Manager without the prior written consent of City. City's approval shall not be unreasonably withheld.

5. ADMINISTRATION

This Contract shall be administered by the Public Works Department. City's Public Works Director, or designee, shall be the Project Administrator and shall have the authority to act for City under this Contract. The Project Administrator or designee shall represent City in all matters pertaining to the Work to be rendered pursuant to this Contract.

6. NOTICE OF CLAIMS

6.1 Unless a shorter time is specified elsewhere in this Contract, before making its final request for payment under the Contract Documents, Contractor shall submit to City, in writing, all claims for compensation under or arising out of this Contract. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Contract except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and City expressly agree that in addition to all claims filing

requirements set forth in the Contract and Contract Documents, Contractor shall be required to file any claim Contractor may have against City in strict conformance with the Government Claims Act (Government Code 900 *et seq.).*

6.2 To the extent that Contractor's claim is a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, the Parties agree to follow the dispute resolution process set forth therein. Any part of such "Claim" remaining in dispute after completion of the dispute resolution process provided for in Public Contract Code section 9204 or any successor statute thereto shall be subject to the Government Claims Act requirements requiring Contractor to file a claim in strict conformance with the Government Claims Act. To the extent that Contractor's claim is not a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, Contractor shall be required to file such claim with the City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.*).

7. WRITTEN NOTICE

7.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Contract shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

7.2 All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attention: Director of Public Works
City of Newport Beach
Public Works Department
100 Civic Center Drive
Newport Beach, CA 92660

7.3 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at:

Attention: Ranisa Wells
EMTS, Inc.
2972 Larkin Ave
Clovis, CA 93612

8. INDEPENDENT CONTRACTOR

City has retained Contractor as an independent contractor and neither Contractor nor its employees are to be considered employees of City. The manner and means of conducting the Work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the express terms of this Contract. No civil service status or other right of employment shall accrue to Contractor or its employees.

Contractor shall have the responsibility for and control over the means of performing the Work, provided that Contractor is in compliance with the terms of this Contract. Anything in this Contract that may appear to give City the right to direct Contractor as to the details of the performance or to exercise a measure of control over Contractor shall mean only that Contractor shall follow the desires of City with respect to the results of the Work.

9. BONDING

9.1 Contractor shall obtain, provide and maintain at its own expense during the term of this Contract both of the following: (1) a Faithful Performance Bond in the amount of one hundred percent (100%) of the total amount to be paid Contractor as set forth in this Contract in the form attached as Exhibit B and incorporated herein by reference; and (2) a Labor and Materials Payment Bond in the amount of one hundred percent (100%) of the total amount to be paid Contractor as set forth in this Contract and in the form attached as Exhibit A and incorporated herein by reference.

9.2 The Faithful Performance Bond and Labor and Materials Payment Bond shall be issued by an insurance organization or surety (1) currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, (2) listed as an acceptable surety in the latest revision of the Federal Register Circular 570, and (3) assigned a Policyholders' Rating A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of *Best's Key Rating Guide: Property-Casualty.*

9.3 Contractor shall deliver, concurrently with execution of this Contract, the Faithful Performance Bond and Labor and Materials Payment Bond, and a certified copy of the "Certificate of Authority" of the Insurer or Surety issued by the Insurance Commissioner, which authorizes the Insurer or Surety to transact surety insurance in the State of California.

10. COOPERATION

Contractor agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Contractor on the Project.

11. PROGRESS

Contractor is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

12. INSURANCE

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Contract or for other periods as specified in the Contract Documents, policies of

insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

13. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Contract, the services to be provided under this Contract shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Contractor is a partnership or joint-venture or syndicate or co-tenancy, which shall result in changing the control of Contractor. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

14. PREVAILING WAGES

14.1 Pursuant to the applicable provisions of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages including legal holidays and overtime Work for each craft or type of workman needed to execute the Work contemplated under the Contract shall be paid to all workmen employed on the Work to be done according to the Contract by the Contractor and any subcontractor. In accordance with the California Labor Code (Sections 1770 et seq.), the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the Work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the Contract. A copy of said determination is available by calling the prevailing wage hotline number (415) 703-4774 and requesting one from the Department of Industrial Relations. The Contractor is required to obtain the wage determinations from the Department of Industrial Relations and post at the job site the prevailing rate or per diem wages. It shall be the obligation of the Contractor or any subcontractor under him/her to comply with all State of California labor laws, rules and regulations, and the parties agree that the City shall not be liable for any violation thereof.

14.2 If both the Davis-Bacon Act and State of California prevailing wage laws apply and the federal and state prevailing rate of per diem wages differ, Contractor and subcontractor, if any, shall pay the higher of the two rates. Said prevailing rate of per diem wages are on file at the City, Office of the City Clerk, 100 Civic Center Drive, Newport Beach, California 92660, and are available to any interested party on request.

15. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform the Work on this Project are identified in the Contractor's Proposal and are attached as part of the Contract Documents. Contractor shall be fully responsible to City for all acts and omissions of any subcontractors. Nothing in this Contract shall create any contractual relationship between City and subcontractor, nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise

required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Work to be performed under this Contract shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

16. RESPONSIBILITY FOR DAMAGES OR INJURY

16.1 City and its elected or appointed officers, agents, officials, employees and volunteers shall not be responsible in any manner for any loss or damage to any of the materials or other things used or employed in performing the Project or for injury to or death of any person as a result of Contractor's performance of the Work required hereunder, or for damage to property from any cause arising from the performance of the Project by Contractor, or its subcontractors, or its workers, or anyone employed by either of them.

16.2 Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects, obstructions or from any cause arising from Contractor's Work on the Project, or the Work of any subcontractor or supplier selected by Contractor.

16.3 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its elected or appointed officers, agents, officials, employees and volunteers (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Contract, any Work performed or Services provided under this Contract including, without limitation, defects in workmanship or materials or Contractor's presence or activities conducted on the Project (including the negligent, reckless, and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable for any or all of them).

16.4 Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Contract. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor.

16.5 Contractor shall perform all Work in a manner to minimize public inconvenience and possible hazard, to restore other work areas to their original condition

and former usefulness as soon as possible, and to protect public and private property. Contractor shall be liable for any private or public property damaged during the performance of the Project Work.

16.6 To the extent authorized by law, as much of the money due Contractor under and by virtue of the Contract as shall be considered necessary by City may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

16.7 Nothing in this Section or any other portion of the Contract Documents shall be construed as authorizing any award of attorneys' fees in any action to enforce the terms of this Contract, except to the extent provided for above.

16.8 The rights and obligations set forth in this Section shall survive the termination of this Contract.

17. CHANGE ORDERS

17.1 This Contract may be amended or modified only by mutual written agreement of the parties.

17.2 The Contractor shall only commence work covered by a change order after the change order is executed and notification to proceed has been provided by the City.

17.3 There shall be no change in the Contractor's members of the project team, as listed in the approved proposal, which is a part of this contract without prior written approval by the City.

18. CONFLICTS OF INTEREST

18.1 Contractor or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Contract, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

18.2 If subject to the Act and/or Government Code §§ 1090 et seq., Contractor shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Contract by City. Contractor shall indemnify and hold harmless City for any and all claims for damages resulting from Contractor's violation of this Section.

19. TERMINATION

19.1 In the event that either party fails or refuses to perform any of the provisions of this Contract at the time and in the manner required, that party shall be deemed in default in the performance of this Contract. If such default is not cured within a period of

two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the non-defaulting party may terminate the Contract forthwith by giving to the defaulting party written notice thereof.

19.2 Notwithstanding the above provisions, City shall have the right, at its sole discretion and without cause, of terminating this Contract at any time by giving seven (7) calendar days' prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred up to the effective date of termination for which Contractor has not been previously paid. On the effective date of termination, Contractor shall deliver to City all materials purchased in performance of this Contract.

20. STANDARD PROVISIONS

20.1 Recitals. City and Contractor acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Contract.

20.2 Compliance with all Laws. Contractor shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Contractor shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator.

20.3 Integrated Contract. This Contract represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

20.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Contract and any other attachments attached hereto, the terms of this Contract shall govern.

20.5 Interpretation. The terms of this Contract shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Contract or any other rule of construction which might otherwise apply.

20.6 Amendments. This Contract may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

20.7 Severability. If any term or portion of this Contract is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Contract shall continue in full force and effect.

20.8 Controlling Law and Venue. The laws of the State of California shall govern this Contract and all matters relating to it and any action brought relating to this Contract shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

20.9 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

20.10 No Attorney's Fees. In the event of any dispute or legal action arising under this contract, the prevailing party shall not be entitled to attorneys' fees.

20.11 Counterparts. This Contract may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

21. EFFECT OF CONTRACTOR'S EXECUTION

Execution of this Contract and all other Contract Documents by Contractor is a representation that Contractor has visited the Project site, has become familiar with the local conditions under which the Work is to be performed, and has correlated all relevant observations with the requirements of the Contract Documents.

22. WAIVER

A waiver by City or any term, covenant, or condition in the Contract Documents shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

23. RECITALS

City and Contractor acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Contract.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed on the day and year first written above.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 3/5/25

By: Jose Montoya for 3.5.25 AH
Aaron C. Harp
City Attorney

ATTEST:
Date:_____

By:_____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation
Date:_____

By:_____
Joe Stapleton
Mayor

CONTRACTOR: EMTS, INC., a California corporation
Date:_____

By:_____
Guy Stockbridge
Chief Executive Officer, Chief Financial Officer

Date:_____

By:_____
Darin Sherlock
Secretary

[END OF SIGNATURES]

Attachments: Exhibit A -- Labor and Materials Payment Bond
Exhibit B -- Faithful Performance Bond
Exhibit C – Insurance Requirements

EXHIBIT A

CITY OF NEWPORT BEACH
BOND NO. _____

LABOR AND MATERIALS PAYMENT BOND

WHEREAS, the City of Newport Beach, State of California, has awarded to EMTS, Inc. hereinafter designated as the "Principal," a contract for The work necessary for the completion of this contract consists of the contractor to purchase and install Toro DXi Central Irrigation Controllers with Laguna software in various locations throughout the City of Newport Beach. in the City of Newport Beach, in strict conformity with the Contract on file with the office of the City Clerk of the City of Newport Beach, which is incorporated herein by this reference.

WHEREAS, Principal has executed or is about to execute the Contract and the terms thereof require the furnishing of a bond, providing that if Principal or any of Principal's subcontractors, shall fail to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of the Work agreed to be done, or for any work or labor done thereon of any kind, the Surety on this bond will pay the same to the extent hereinafter set forth.

NOW, THEREFORE, We the undersigned Principal, and, _____ _____ duly authorized to transact business under the laws of the State of California, as Surety, (referred to herein as "Surety") are held and firmly bound unto the City of Newport Beach, in the sum of Four Hundred Eighty Thousand Two Hundred Two Dollars and 74/100 ($480,202.74) lawful money of the United States of America, said sum being equal to 100% of the estimated amount payable by the City of Newport Beach under the terms of the Contract; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, or assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal or the Principal's subcontractors, fail to pay for any materials, provisions, or other supplies, implements or machinery used in, upon, for, or about the performance of the Work contracted to be done, or for any other work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Principal and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, then the Surety will pay for the same, in an amount not exceeding the sum specified in this Bond, and also, in case suit is brought to enforce the obligations of this Bond, a reasonable attorneys' fee, to be fixed by the Court as required by the provisions of Section 9554 of the Civil Code of the State of California.

The Bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Section 9100 of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this Bond, as

required by and in accordance with the provisions of Sections 9500 *et seq.* of the Civil Code of the State of California.

And Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations or additions to the terms of the Contract or to the Work to be performed thereunder shall in any wise affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alterations or additions to the terms of the Contract or to the Work or to the specifications.

In the event that any principal above named executed this Bond as an individual, it is agreed that the death of any such principal shall not exonerate the Surety from its obligations under this Bond.

IN WITNESS WHEREOF, this instrument has been duly executed by the above named Principal and Surety, on the _____ day of _____, 20___.

_____	_____
Name of Contractor (Principal)	Authorized Signature/Title
_____	_____
Name of Surety	Authorized Agent Signature
_____	_____
Address of Surety	Print Name and Title
_____	(Corporate Seal)
Telephone	

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date:_____

By:_____
Aaron C. Harp
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR AND SURETY MUST BE ATTACHED

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____} *ss.*
On _____, 20_____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature (seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____} *ss.*
On _____, 20_____ before me, _____,
Notary Public, personally appeared _____,
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature (seal)

EXHIBIT B

CITY OF NEWPORT BEACH
BOND NO. _____

FAITHFUL PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Newport Beach, (hereinafter referred to as "City") has awarded to EMTS, Inc., (hereinafter referred to as the "Contractor") an agreement for the The work necessary for the completion of this contract consists of the contractor to purchase and install Toro DXi Central Irrigation Controllers with Laguna software in various locations throughout the City of Newport Beach. (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated March 25, 2025, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of Four Hundred Eighty Thousand Two Hundred Two Dollars and 74/100 ($480,202.74), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, their or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, their respective officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

i. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

ii. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

iii. Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the _____ day of _____,20___.

_____	_____
Name of Contractor (Principal)	Authorized Signature/Title
_____	_____
Name of Surety	Attorney-in-Fact
_____	_____
Address of Surety	Print Name and Title
_____	(Corporate Seal)
Telephone	

(Attach Attorney-in-Fact Certificate)

The rate of premium on this bond is _____ per thousand. The total amount of premium charges is $_____.
(The above must be filled in by corporate attorney.)

Any claims under this bond may be addressed to:

(Name and Address of Surety or Agent for Service in California) _____
_____
_____

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date:_____

By:_____
Aaron C. Harp
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR AND SURETY MUST BE ATTACHED

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____} *ss.*
On _____, 20_____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature (seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____} *ss.*
On _____, 20_____ before me, _____,
Notary Public, personally appeared _____,
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature (seal)

EXHIBIT C

INSURANCE REQUIREMENTS

1. Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Contract, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.

2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

3. Coverage Requirements.

   A. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance providing statutory benefits and Employer's Liability Insurance with limits of at least one million dollars ($1,000,000) each employee for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California. In addition, Contractor shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with California law for all of the subcontractor's employees.

   Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement.

   B. General Liability Insurance. Contractor shall maintain commercial general liability insurance, and if necessary excess/umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than two million

dollars ($2,000,000) per occurrence, four million dollars ($4,000,000) general aggregate and four million dollars ($4,000,000) completed operations aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

C. Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Contractor arising out of or in connection with Work to be performed under this Contract, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars ($1,000,000) combined single limit for each accident.

D. Excess/Umbrella Liability Insurance. If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this contract, then said policies shall be "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this contract, including, but not limited to, the additional insured and primary & non-contributory insurance requirements stated herein. No insurance policies maintained by the City, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess/umbrella liability policies are exhausted.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess/umbrella liability, pollution

liability, and automobile liability, if required, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement shall be included as additional insureds under such policies.

C. Primary and Non-Contributory. Contractor's insurance coverage shall be primary insurance and/or the primary source of recovery with respect to City, its City Council, boards and commissions, officers, agents, volunteers and employees. Any insurance or self-insurance maintained by City shall be excess of Contractor's insurance and shall not contribute with it.

D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation or nonrenewal of coverage (except for nonpayment for which ten (10) calendar days' notice is required) for each required coverage.

5. Additional Agreements Between the Parties. The parties hereby agree to the following:

A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. All of the executed documents referenced in this Contract must be returned to City within ten (10) regular City business days after the date on the "Notification of Award". Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Contract. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

B. City's Right to Revise Requirements. The City reserves the right at any time during the term of the Contract to change the amounts and types of insurance required by giving Contractor sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Contractor, City and Contractor may renegotiate Contractor's compensation.

C. Right to Review Subcontracts. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.

D. Enforcement of Contract Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.

E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Exhibit A are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Contractor. Any available proceeds in excess of specified minimum limits of insurance and coverage shall be available to the City.

F. Self-Insured Retentions. Contractor agrees not to self-insure or to use any self-insured retentions on any portion of the insurance required herein and further agrees that it will not allow any indemnifying party to self-insure its obligations to City. If Contractor's existing coverage includes a self-insured retention, the self-insured retention must be declared to City. City may review options with Contractor, which may include reduction or elimination of the self-insured retention, substitution of other coverage, or other solutions. Contractor agrees to be responsible for payment of any deductibles on their policies.

G. City Remedies for Non-Compliance. If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Contract, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.

H. Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Contract, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

I. Contractor's Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.

J. Coverage Renewal. Contractor will renew the coverage required here annually as long as Contractor continues to provide any Work under this or any other Contract or agreement with City. Contractor shall provide proof that policies of insurance required herein expiring during the term of this Contract have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Contractor's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City with five (5) calendar days of the expiration of the coverages.

K. Maintenance of General Liability Coverage. Contractor agrees to maintain commercial general liability coverage for a period of ten (10) years after completion of the Project or to obtain coverage for completed operations liability for an equivalent period.

2/27/25

VIA E-MAIL
City of Newport Beach
100 Civic Center Dr.
Newport Beach, CAS 92660

RE: Superb Engineering, Inc.'s Protest of The Davey Tree Expert Company and EMTS, Inc.
Project: –Irrigation Controller Replacement Phase 2

To Whom It May Concern:

On behalf of Superb Engineering, we formally submit this protest regarding the bid results for the Irrigation Controller Replacement Phase 2 project. Based on our review of the qualifications submitted by the two lowest bidders, The Davey Tree Expert Company and EMTS, Inc. dba Elite Maintenance & Tree Services, we respectfully challenge their experience in meeting the project's specific requirements.

I. The Davey Tree Expert Company – Lack of Relevant Experience
The Davey Tree Expert Company provided the following project experience:

1. City of Manassas Park Downtown – Landscape removal, utility infrastructure coordination, and revegetation.
2. Fairfax County Government, VA – Tree services, vegetation management, and watershed vegetation.
3. University of California – San Francisco – Fire mitigation and vegetation management BMPs.
4. City of Pacifica Tree Vegetation Management – Tree and vegetation management.
5. Emergency Response – Hurricane Storm Damage – Emergency assistance for storm damage in Texas.
6. Loudoun Water Authority Infrastructure Assistance – Municipal stormwater management.

The above-listed projects do not demonstrate specific experience in *purchasing and installing Toro DXI Central Irrigation Controllers with Laguna software*, which is a critical requirement of this contract. The projects described primarily focus on vegetation management, tree services, and stormwater infrastructure—none of which establish their ability to successfully execute this specialized irrigation installation work. We request that the City of Newport Beach conduct a further review of their qualifications and direct experience with irrigation control systems of this nature.

Additionally, we request the City investigate the number of arbitrations, lawsuits, and settlements they disclosed on page 20 of their bid submittal. This may indicate prior challenges in project execution, which could impact their ability to complete this project successfully and within the City's expectations.

II. EMTS, Inc. – Public Project Experience Deficiency
EMTS, Inc. provided the following project experience:

1. Clovis Community Hospital Landscape Improvements
2. Disneyland Parking Lot Improvements
3. Quail Lakes ($35K contract, while the requirement was for projects of $150K or more)
4. San Joaquin Country Club Renovations
5. Seefried – DSJ5 – Fresno
6. Logistic Center at Fairfield – Project No. 21506

While these projects include landscaping improvements, they appear to have been performed for private entities rather than public agencies. Given that the Irrigation Controller Replacement Phase 2 project is a public works contract for the City of Newport Beach, prior public agency experience is a critical factor in ensuring compliance with public contract codes, prevailing wage requirements, and municipal project management standards.

We respectfully request that the City review whether EMTS, Inc. has demonstrated prior successful completion of public sector irrigation control projects of similar scope and complexity.

III. Superb Engineering – The More Qualified Bidder
Superb Engineering specializes in public works construction projects, particularly those involving irrigation system installations. Our extensive experience in public agency projects ensures our ability to meet contract specifications, adhere to municipal standards, and successfully deliver this project.

IV. Request for Review and Action
Based on the concerns outlined above, we formally request the City of Newport Beach to:

1. Further investigate whether The Davey Tree Expert Company has sufficient direct experience in installing Toro DXI Central Irrigation Controllers with Laguna software and review the litigation history they disclosed.
2. Verify whether EMTS, Inc. has completed comparable public agency projects of similar scope to demonstrate the ability to comply with municipal contract requirements.
3. Reconsider the award in favor of a contractor with proven expertise in public works construction rather than maintenance-focused firms.

We appreciate your time and consideration of this matter and look forward to your response. Please let us know if any additional information is needed.

Sincerely,
Estela Candelario
President
Superb Engineering
(909) 269-2333

P.O. Box 3036 - Beaumont, CA 92223 – 909-262-4626

Lic. No. 1074243

CITY OF NEWPORT BEACH

NOTICE INVITING BIDS

Sealed bids shall be submitted electronically via PlanetBids to office of the City Clerk,
100 Civic Center Drive, Newport Beach, CA 92660
before 2:00 PM on the 12 day of February, 2025,
at which time such bids shall be opened and read for

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

$425,000.00

Project Estimate

Approved by

James M. Houlihan
Deputy PWD/City Engineer

Prospective bidders may obtain Bid Documents, Project Specifications and Plans via PlanetBids:
http://www.planetbids.com/portal/portal.cfm?CompanyID=22078

Contractor License Classification(s) required for this project: Minimum "B", "C27", AND/OR a "C10"

For further information, call Kevin Pekar, Project Manager at (949) 644-3069

BID INFORMATION IS AVAILABLE ON THE CITY WEBSITE:
https://www.newportbeachca.gov/government/data-hub/online-services/bids-rfps-vendor-registration

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

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PROPOSAL PR-1

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

INSTRUCTIONS TO BIDDERS

1. The following documents shall be completed, executed, uploaded and received by the City Clerk *via PlanetBids* in accordance with NOTICE INVITING BIDS:

   INSTRUCTIONS TO BIDDERS
   BIDDER'S BOND *(Original copies must be submitted to the City Clerk's Office in Sealed Envelope before the bid opening)*
   DESIGNATION OF SUBCONTRACTORS ACKNOWLEDGEMENT (*Subcontractor information to be submitted via PlanetBids*)
   CONTRACTOR'S INDUSTRIAL SAFETY RECORD
   INFORMATION REQUIRED OF BIDDER
   ALL ADDENDA TO PLANS AND SPECIFICATIONS AS ISSUED BY AGENCY PRIOR TO BID OPENING DATE (if any; *Contractor shall confirm via PlanetBids*)
   TECHNICAL ABILITY AND EXPERIENCE REFERENCES
   NON-COLLUSION AFFIDAVIT
   DESIGNATION OF SURETIES
   PROPOSAL ACKNOWLEDGEMENT (*Line Items to be completed via PlanetBids)*

   The City Clerk's Office will open and read the bid results from PlanetBids immediately following the Bid Opening.

   The Bid Results are immediately available to the public via PlanetBids following the Bid Opening Date (Bid Due Date). Members of the public who would like to attend this reading may go to Bay E, 2nd Floor of the Civic Center (Located at 100 Civic Center Dr.)

2. Cash, certified check or cashier's check (sum not less than 10 percent of the total bid price) may be received in lieu of the BIDDER'S BOND. The title of the project and the words "Sealed Bid" shall be clearly marked on the outside of the envelope containing the documents. Original copies must be submitted to the City Clerk's Office *before the Bid Opening.*

3. The City of Newport Beach will not permit a substitute format for the Contract Documents listed above. Bidders are advised to review their content with bonding and legal agents prior to submission of bid.

4. BIDDER'S BOND shall be issued by an insurance organization or surety (1) currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, and (2) listed as an acceptable surety in the latest revision of the Federal Register Circular 570. The successful bidder's security shall be held until the Contract is executed. *Original, sealed copies must be submitted to the City Clerk's Office before the Bid Opening.* The title of the project, Contract Number and the words "Sealed Bid" shall be clearly marked on the outside of the envelope containing the documents.

5. The estimated quantities indicated in the PROPOSAL are approximate and are given solely to allow the comparison of total bid prices.

6. Bids are to be computed upon the estimated quantities indicated in the PROPOSAL multiplied by unit price submitted by the bidder. In the event of discrepancy between wording and figures,

bid wording shall prevail over bid figures. In the event of error in the multiplication of estimated quantity by unit price, the correct multiplication will be computed and the bids will be compared with correctly multiplied totals. The City shall not be held responsible for bidder errors and omissions in the PROPOSAL.

7. The City of Newport Beach reserves the right to reject any or all bids and to waive any minor irregularity or informality in such bids. The City may request clarification on any information contained in a bid. The City may consider the qualifications of the proposers and whether the bids comply with the prescribed requirements. Pursuant to Public Contract Code Section 22300, at the request and expense of the Contractor, securities shall be permitted in substitution of money withheld by the City to ensure performance under the contract. The securities shall be deposited in a state or federal chartered bank in California, as the escrow agent.

8. In accordance with the California Labor Code (Sections 1770 *et seq.),* the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the contract. A copy of said determination is available by calling the prevailing wage hotline number **(415) 703-4774** and requesting one from the Department of Industrial Relations. All parties to the contract shall be governed by all provisions of the California Labor Code – including, but not limited to, the requirement to pay prevailing wage rates (Sections 1770-7981 inclusive). A copy of the prevailing wage rates shall be posted by the Contractor at the job site.

9. The Contractor shall be responsible for insuring compliance with provisions of Section 1777.5 of the Labor Code Apprenticeship requirements and Section 4100 *et seq.* of the Public Contracts Code, "Subletting and Subcontracting Fair Practices Act".

10. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

11. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

12. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

13. All documents shall bear signatures and titles of persons authorized to sign on behalf of the bidder. For corporations, the signatures shall be of a corporate officer or an individual authorized by the corporation. For partnerships, the signatures shall be of a general partner. For sole ownership, the signature shall be of the owner.

14. Pursuant to Public Contract Code section 9204, for any demand by contractor, whether on behalf of itself or a subcontractor that lacks privity of contract with the City but has requested that contractor proceed on its behalf, sent by registered mail or certified mail return receipt requested for a time extension, payment by the City for money or damages arising from work done by, or on behalf of, the contractor and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled, or for payment of an amount that is disputed by the City, the following is a summary of the claims resolution process to be applied:

A. The City shall review the claim and, within 45 days, shall provide a written statement identifying the portions of the claim that are disputed and undisputed. This time period may be extended by mutual agreement. The claimant shall furnish all reasonable documentation to support the claim. If the City needs approval from its City Council to provide the written statement and the City Council does not meet within the prescribed time period, the City shall have up to 3 days following the next regular meeting of the City Council to provide the written statement. Payment of the undisputed portion of the claim shall be made within 60 days after the City issues its written statement.

B. If the claimant disputes the City's written statement or if the City does not issue a written statement in the prescribed time period, the claimant may demand in writing an informal meet and confer conference, which shall be scheduled within 30 days of receipt of claimant's demand.

C. Within 10 business days of the meet and confer conference, if a dispute remains, the City shall provide a written statement identifying the portion of the claim that remains in dispute and the undisputed portion. The City shall pay any remaining amount of the undisputed portion within 60 days. Any disputed portion of the claim shall be submitted to nonbinding mediation or similar nonbinding process, with the City and claimant sharing the costs equally and agreeing to a mediator within 10 business days. If the parties cannot timely agree on a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate the remaining disputed portion. If mediation is unsuccessful, any remaining disputed portion shall be addressed using procedures outside of Public Contract Code section 9204.

D. Failure by the City to meet the time requirements herein shall result in the claim being rejected in its entirety and shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

The signature below represents that the above has been reviewed.

694001 C27, C61, D49	Paul Kovacik Managing Consultant
Contractor's License No. & Classification	Authorized Signature/Title
BT30083744 Ex: 2/28/2025	February 12, 2025
DIR Registration Number & Expiration Date	Date
The Davey Tree Expert Company	
Bidder	

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

BIDDER'S BOND

We, the undersigned Principal and Surety, our successors and assigns, executors, heirs and administrators, agree to be jointly and severally held and firmly bound to the City of Newport Beach, a charter city, in the principal sum of __ _____ _____ Dollars ($ _____), to be paid and forfeited to the City of Newport Beach if the bid proposal of the undersigned Principal for the construction of **IRRIGATION CONTROLLER REPLACEMENT PHASE 2, Contract No. 9735-1** in the City of Newport Beach, is accepted by the City Council of the City of Newport Beach and the proposed contract is awarded to the Principal, and the Principal fails to execute the Contract Documents in the form(s) prescribed, including the required bonds, and original insurance certificates and endorsements for the construction of the project within thirty (30) calendar days after the date of the mailing of "Notification of Award", otherwise this obligation shall become null and void.

If the undersigned Principal executing this Bond is executing this Bond as an individual, it is agreed that the death of any such Principal shall not exonerate the Surety from its obligations under this Bond.

Witness our hands this __12th_____day of _____February_____, **2025.**

_____	_____
Name of Contractor (Principal)	Authorized Signature/Title
_____	_____
Name of Surety	
_____	_____
Address of Surety	Print Name and Title
_____	**Refer to Bond Attachment**
Telephone	

(Notary acknowledgment of Principal & Surety must be attached)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of ~~California~~ Ohio
County of Portage } ss.
On February 12, 2025 before me, Jamie McMullen,
Notary Public, personally appeared Michael Veney,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jamie McMullen
Signature

NOTARIAL SEAL
STATE OF OHIO
(Seal)

Jamie McMullen
Notary Public, State of Ohio
My Commission Expires:
August 15, 2027

OPTIONAL INFORMATION

Date of Document _____

Type or Title of Document _____

Number of Pages in Document _____

Document in a Foreign Language _____

Thumbprint of Signer

☐ Check here if no thumbprint or fingerprint is available.

Type of Satisfactory Evidence:
_____ Personally Known with Paper Identification
_____ Paper Identification
_____ Credible Witness(es)

Capacity(ies) claimed by Signer(s):
_____ Trustee
_____ Power of Attorney
_____ CEO / CFO / COO
_____ President / Vice-President / Secretary / Treasurer
_____ Other: _____

Other Information:_____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____} *ss.*
On _____, 20_____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature (seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____} *ss.*
On _____, 20_____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature (seal)

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

DESIGNATION OF SUBCONTRACTOR(S) - AFFIDAVIT

State law requires the listing of all subcontractors who will perform work in an amount in excess of one-half of one percent of the Contractor's total bid. If a subcontractor is not listed, the Contractor represents that he/she is fully qualified to and will be responsible for performing that portion of the work. Substitution of subcontractors shall be made only in accordance with State law and/or the Standard Specifications for Public Works Construction, as applicable.

Pursuant to Public Contract Code Section 22300 appropriate securities may be substituted for any monies to be withheld to ensure performance under the Contract.

The Bidder, by signing this designation, certifies that bids from the subcontractors as listed in the Bidder's electronic bid have been used in formulating the bid for the project and that these subcontractors will be used subject to the approval of the Engineer and in accordance with State law. No changes may be made in these subcontractors except with prior approval of the City of Newport Beach. Bidders must also include DIR registration numbers for each subcontractor.

The Davey Tree Expert Company	Paul Kovacik Managing Consultant
Bidder	Authorized Signature/Title

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

TECHNICAL ABILITY AND EXPERIENCE REFERENCES

Contractor must use this form!!! Please print or type.

Bidder's Name The Davey Tree Expert Company

FAILURE OF THE BIDDER TO PROVIDE ALL REQUIRED INFORMATION IN A COMPLETE AND ACCURATE MANNER MAY BE CONSIDERED NON-RESPONSIVE.

For all public agency projects you have worked on (or are currently working on) in the past 2 years in excess of $150,000, provide the following information:

No. 1

Project Name/Number City of Manassas Park Downtown - Landscape Redesign

Project Description Landscape removal, utility infrastructure coordination, revegetation

Approximate Construction Dates: From Spring 2024 To: Fall 2024

Agency Name Department of Transportation

Contact Person Steven Hall Telephone ( ) 703-335-8800

Original Contract Amount $180,000 Final Contract Amount $ 220,000

If final amount is different from original, please explain (change orders, extra work, etc.)

Change order due to additional request by the municipality

Did you file any claims against the Agency? Did the Agency file any claims against you/Contractor? If yes, briefly explain and indicate outcome of claims.

No

No. 2

Project Name/Number Fairfax County Government VA

Project Description Tree Services, Vegetation Management, Watershed Vegetation

Approximate Construction Dates: From 2020 To: March 2025

Agency Name Park Authority

Contact Person Patrick Thompson Telephone ( ) 703-408-7913

Original Contract Amount $ 800,000 Final Contract Amount $ 1,250,000 +/-

If final amount is different from original, please explain (change orders, extra work, etc.)

Change order due to diversification of portfolio, including work on PL 566 projects for water quality protection

Did you file any claims against the Agency? Did the Agency file any claims against you/Contractor? If yes, briefly explain and indicate outcome of claims.

No

No. 3

Project Name/Number University of California - San Francisco

Project Description Fire Mitigation and Vegetation Management BMPS

Approximate Construction Dates: From 2022 To: Ongoing

Agency Name University of California

Contact Person Morgan Vaisset - Fauvel Telephone ( ) 415-653-9629

Original Contract Amount $ 357,150 Final Contract Amount $ 700,000 +/-

If final amount is different from original, please explain (change orders, extra work, etc.)

Change orders based on additional request - fire protection/mitigation

Did you file any claims against the Agency? Did the Agency file any claims against you/Contractor? If yes, briefly explain and indicate outcome of claims.

No

No. 4

Project Name/Number City of Pacifica Tree Vegetation Mgt.

Project Description Tree and Vegetation Care

Approximate Construction Dates: From 2021 To: 2023

Agency Name Pacifica Public Works Department

Contact Person Gino Assereto Telephone ( ) 650-738-3760

Original Contract Amount $ 150,000 Final Contract Amount $ 150,000

If final amount is different from original, please explain (change orders, extra work, etc.)

N/A

Did you file any claims against the Agency? Did the Agency file any claims against you/Contractor? If yes, briefly explain and indicate outcome of claims.

No

No. 5

Project Name/Number Emergency Response - Hurricane Storm Damage

Project Description Special Taxing District, Woodlands Township, TX Emergency Assistance

Approximate Construction Dates: From Summer 2024 To: Fall 2024

Agency Name Parks and Recreation Department - The Woodlands

Contact Person Mitch Hall Telephone ( ) 281-210-3908

Original Contract Amount $ Hourly Final Contract Amount $ 400,000 +/-

If final amount is different from original, please explain (change orders, extra work, etc.)

Rates based on hourly emergency response, time, material and mobilization

Did you file any claims against the Agency? Did the Agency file any claims against you/Contractor? If yes, briefly explain and indicate outcome of claims.

No

No. 6

Project Name/Number Loudoun Water Authority Infrastructure Assistance

Project Description Municipal Stormwater Management

Approximate Construction Dates: From 2020 To: Ongoing

Agency Name Loudoun Water (Authority of County)

Contact Person Scott Robinson Telephone ( ) 571-291-7941

Original Contract Amount $ Varies Final Contract Amount $ Ongoing $150,000

If final amount is different from original, please explain (change orders, extra work, etc.)

Open Contract based on service request

Did you file any claims against the Agency? Did the Agency file any claims against you/Contractor? If yes, briefly explain and indicate outcome of claims.

No

Attach additional sheets if necessary.

Attach to this Bid the experience resume of the person who will be designated as General Construction Superintendent or on-site Construction Manager for the Contractor.

Upon request, the Contractor shall attach a financial statement and other information sufficiently comprehensive to permit an appraisal of the Contractor's current financial conditions.

The Davey Tree Expert Company
Bidder

Paul Kovacik Managing Consultant
Authorized Signature/Title

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

NON-COLLUSION AFFIDAVIT

State of ~~California~~ OHIO)
) ss.
County of _____)

Michael Veney, being first duly sworn, deposes and says that he or she is Director, Davey Institute of The Davey Tree Expert Co, the party making the foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that party making the foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

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

Michael Veney — Bidder

Director — Authorized Signature/Title

Subscribed and sworn to (or affirmed) before me on this 12th day of February 2025 by Michael Veney, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Jamie McMullen
Notary Public

[SEAL]

My Commission Expires: 8-15-27

NOTARIAL SEAL STATE OF OHIO

Jamie McMullen
Notary Public, State of Ohio
My Commission Expires:
August 15, 2027

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

DESIGNATION OF SURETIES

Bidder's name The Davey Tree Expert Company

Provide the names, addresses, and phone numbers for all brokers and sureties from whom Bidder intends to procure insurance and bonds (list by insurance/bond type):

Marsh USA

Old Republic Insurance Co.

First Federal Insurance Co.

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

CONTRACTOR'S INDUSTRIAL SAFETY RECORD TO ACCOMPANY PROPOSAL

Bidder's Name The Davey Tree Expert Company - 165068

Record Last Five (5) Full Years
Current Year of Record

	Current Year of Record **2024**	Record for **2023**	Record for **2022**	Record for **2021**	Record for **2020**	Record for **2019**	Total
No. of contracts	11	9	9	N/A	N/A	N/A	29
Total dollar Amount of Contracts (in Thousands of $)	6,200,000	2,900,000	700,000				
No. of fatalities	0	0	0	0	0	0	0
No. of lost Workday Cases	0	0	0	0	0	0	0
No. of lost workday cases involving permanent transfer to another job or termination of employment	0	0	0	0	0	0	0

The information required for these items is the same as required for columns 3 to 6, Code 10, Occupational Injuries, Summary--Occupational Injuries and Illnesses, OSHA No. 102.

Legal Business Name of Bidder: The Davey Tree Expert Company
Business Address: 1500 N. Mantua St. Kent, Ohio 44240
Business Tel. No.: 330-673-9511
State Contractor's License No. and Entity Type: 694001 C27,C61,D49
Title: Managing Consultant

The above information was compiled from the records that are available to me at this time and I declare under penalty of perjury that the information is true and accurate within the limitations of those records.

Signature of bidder: Paul Kovacik
Date: February 12, 2025
Title: Managing Consultant

Signature of bidder: _____
Date: _____
Title: _____

Signature of bidder: _____
Date: _____
Title: _____

Signature of bidder: _____
Date: _____
Title: _____

Signature Requirements: If bidder is an individual, name and signature of individual must be provided, if doing business under a fictitious name, the fictitious name must be set fort along with the County. If bidder is a partnership or joint venture, legal name of partnership/joint venture must be provided, followed by signatures of all of the partners/joint ventures or if fewer than all of the partners/joint ventures submit with evidence of authority to act on behalf of the partnership/joint venture. If bidder is a corporation, legal name of corporation must be provided, followed by signatures of the corporation President or Vice President or President and Secretary or Assistant Secretary, and the corporate seal, or submit with evidence of authority to act on behalf of the corporation. All must be acknowledged before a Notary Public, who must certify that such individuals, partners/joint ventures, or officers were proven on the basis of satisfactory evidence to be the persons whose name are subscribed to and acknowledged that they executed the same in their authorized capacities.

[NOTARY ACKNOWLEDGMENT and CORPORATE SEAL MUST BE ATTACHED]

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

ACKNOWLEDGEMENT OF ADDENDA

Bidder's name The Davey Tree Expert Company

The bidder shall signify receipt of all Addenda here, if any, and attach executed copy of addenda to bid documents:

Addendum No.	Date Received	Signature
N/A	February 12, 2025	Paul Kovacik

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

INFORMATION REQUIRED OF BIDDER

Bidder certifies under penalty of perjury under the laws of the State of California that the following information is true and correct:

Name of individual Contractor, Company or Corporation: The Davey Tree Expert Company

Business Address: 1500 N. Mantua St. Kent, Ohio 44240

Telephone and Fax Number: 330-673-9511

California State Contractor's License No. and Class: 694001 C27, C61, D49
(REQUIRED AT TIME OF AWARD)

Original Date Issued: 8-8-1994 Expiration Date: 8-31-2026

List the name and title/position of the person(s) who inspected for your firm the site of the work proposed in these contract documents:

Jason McIntyre Consultant

The following are the names, titles, addresses, and phone numbers of all individuals, firm members, partners, joint ventures, and company or corporate officers having a principal interest in this proposal:

Name	Title	Address	Telephone
Andrew Chase	Senior Consultant	5601 Eastgate Drive San Diego, CA 92121	520-275-7350
Jason McIntyre	Consultant	5601 Eastgate Drive San Diego, CA 92121	951-375-6523
Paul Kovacik	Managing Consultant	1500 N. Mantua St. Kent, Ohio 44240	715-892-2813

Corporation organized under the laws of the State of Ohio

The dates of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this proposal are as follows:

None

All company, corporate, or fictitious business names used by any principal having interest in this proposal are as follows:

Davey, Davey Commercial Landscape Services, Lewis Tree Service - a Davey Company, Davey Tree Surgery Company

For all arbitrations, lawsuits, settlements or the like (in or out of court) you have been involved in with public agencies in the past five years (Attach additional Sheets if necessary) provide:

Provide the names, addresses and telephone numbers of the parties;

Yes. We are party to a number of arbitrations, lawsuits, and settlements arising out of the normal course of business. We assess our liabilities and contingencies in connection with outstanding legal proceedings utilizing the latest information available. Where it is probable that we will incur a loss and the amount of loss can be resonably estimated, we record a liability in our consolidated financial statements and disclose it in our filings with the Securities Exchange Commission. These legal accruals may be increased or decreased to reflect any relevant developments on a quarterly basis. Where a loss is not probable or the amount of loss is not estimable, we don not record an accrual, consistent with applicable accounting guidance.

Briefly summarize the parties' claims and defenses;

Please refer to the statement in the above line.

Have you ever had a contract terminated by the owner/agency? If so, explain.

We are not aware of any contract that Davey Tree was terminated from in the City of Newport Beach

Have you ever failed to complete a project? If so, explain.

Davey was founded in 1880 and has operations throughout the United States and Canada. In the normal course of business, it is likely that there have been instances where we have failed to complete a project.

For any projects you have been involved with in the last 5 years, did you have any claims or actions by any outside agency or individual for labor compliance (i.e. failure to pay prevailing wage, falsifying certified payrolls, etc.)? Yes / No

Davey is a roughly $1.5 billion dollar employee owned company that employs over 10,000 employees throughout the United States and Canada. Thus, we are party to a number of lawsuits and investigationsarising out of the normal course of business which can result in penalties by local, sta and federal agencies to ensure compliance with labor and employment laws and regulations, including but not limited to the National Labor Relatior Act and the Civil Rights Act of 1964.

Are any claims or actions unresolved or outstanding? Yes / No

If yes to any of the above, explain. (Attach additional sheets, if necessary)

Yes. We are party to a number of claims and actions arising out of the normal course of business. We assess our liabilities and contingencies in connection with outstanding legal proceedings utilizing the latest information available. Where it is probable that we will incur a loss and the amount of loss can be reasonably estimated, we record the liability in our consolidated financial statements and disclose it in our filings with the Securities Exchange Commission. These legal accruals may be increased or decreased to reflect any relevant developments on a quarterly basis. Where a loss is not proable or the amount of loss is not estimable, we do not record an accrual, consistant with applicable accounting guidance.

Failure of the bidder to provide ALL requested information in a complete and accurate manner may be considered non-responsive.

PAT COVEY
(Print name of Owner or President of Corporation/Company)

Michael Vevey
Bidder

Authorized Signature/Title

Director, Davey Institute
Title

2-12-2025
Date

On February 12th 2025 before me, Jamie McMullen Notary Public, personally appeared Michael Vevey, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jamie McMullen
Notary Public in and for said State Ohio

My Commission Expires: 8-15-27

(SEAL) NOTARIAL SEAL STATE OF OHIO

Jamie McMullen
Notary Public, State of Ohio
My Commission Expires:
August 15, 2027

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

NOTICE TO SUCCESSFUL BIDDER

The following Contract Documents shall be executed and delivered to the Engineer within ten (10) days (not including Saturday, Sunday and Federal holidays) after the date shown on the "Notification of Award" to the successful bidder:

- CONTRACT WITH REQUIRED INSURANCE CERTIFICATES AND ENDORSEMENTS
- LABOR AND MATERIALS PAYMENT BOND
- FAITHFUL PERFORMANCE BOND

The City of Newport Beach will not permit a substitute format for these Contract Documents. Bidders are advised to review their content with bonding, insuring and legal agents prior to submission of bid. **Original Certificate(s) of Insurance, General Liability Insurance Endorsement, and Automobile Liability Insurance Endorsement shall be provided as required by the Contract documents and delivered to the Public Works Department within ten (10) working days after the date shown on the Notification of Award to the successful bidder.**

The Labor and Materials Payment Bond and Faithful Performance Bond shall be issued by an insurance organization or surety (1) currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, and (2) listed as an acceptable surety in the latest revision of the Federal Register Circular 570.

Pursuant to Public Contract Code Section 22300, appropriate securities may be substituted for any monies to be withheld to ensure performance under the Contract.

Insurance companies affording coverage shall be (1) currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, and (2) assigned Policyholders' Rating A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide: Property-Casualty. Coverages shall be provided as specified in the Standard Specifications for Public Works Construction, except as modified by the Special Provisions. Certificates of Insurance and additional insured endorsements shall be on the insurance company's forms, fully executed and delivered with the Contract. The Notice to Proceed will not be issued until all contract documents have been received and approved by the City.

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

SAMPLE CITY CONTRACT

(SEPARATE ATTACHMENT)

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

PROPOSAL

(Contractor shall submit proposals via the PROPOSAL (Bid Line Items) contained in PlanetBids. Contractor shall sign the below acknowledgement)

To the Honorable City Council
City of Newport Beach
100 Civic Center Drive
Newport Beach, California 92660

Councilmembers:

The undersigned declares that the Contractor has carefully examined the location of the work, has read the Instructions to the Bidders, has examined the Plans and Special Provisions, and hereby proposes to furnish all materials except that material supplied by the City and shall perform all work required to complete Contract No. **9735-1** in accordance with the Plans and Special Provisions, and will take in full payment therefore the following unit prices for the work, complete in place, to wit:

February 12, 2025	The Davey Tree Expert Company
Date	Bidder
715-892-2813	*Paul Kovacik* Managing Consultant
Bidder's Telephone and Fax Numbers	Bidder's Authorized Signature and Title
694001 C27, C61, D49	5601 Eastgate Drive San Diego, CA 92121
Bidder's License No(s). and Classification(s)	Bidder's Address
BT30083744	
DIR Registration Number	

Bidder's email address: Paul.Kovacik@davey.com

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

BIDDER'S BOND

We, the undersigned Principal and Surety, our successors and assigns, executors, heirs and administrators, agree to be jointly and severally held and firmly bound to the City of Newport Beach, a charter city, in the principal sum of Ten Percent of Amount Bid Dollars ($ 10%), to be paid and forfeited to the City of Newport Beach if the bid proposal of the undersigned Principal for the construction of **IRRIGATION CONTROLLER REPLACEMENT PHASE 2, Contract No. 9735-1** in the City of Newport Beach, is accepted by the City Council of the City of Newport Beach and the proposed contract is awarded to the Principal, and the Principal fails to execute the Contract Documents in the form(s) prescribed, including the required bonds, and original insurance certificates and endorsements for the construction of the project within thirty (30) calendar days after the date of the mailing of "Notification of Award", otherwise this obligation shall become null and void.

If the undersigned Principal executing this Bond is executing this Bond as an individual, it is agreed that the death of any such Principal shall not exonerate the Surety from its obligations under this Bond.

Witness our hands this 12th day of February, **2025.**

The Davey Tree Expert Company
Name of Contractor (Principal)

Paul Kovacik Managing Consultant
Authorized Signature/Title

Federal Insurance Company
Name of Surety

Carolyn E. Wheeler
Authorized Agent Signature

202B Halls Mill Road
Whitehouse Station, NJ 08889-3454
Address of Surety

Carolyn E. Wheeler, Attorney-In-Fact
Print Name and Title

(908) 903-2000
Telephone

FEDERAL INSURANCE COMPANY INDIANA

(Notary acknowledgment of Principal & Surety must be attached)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____} *ss.*
On _____, 20_____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature (seal)

OPTIONAL INFORMATION

Date of Document _____

Type or Title of Document _____

Number of Pages in Document _____

Document in a Foreign Language _____

Thumbprint of Signer

☐ Check here if no thumbprint or fingerprint is available.

Type of Satisfactory Evidence:
_____ Personally Known with Paper Identification
_____ Paper Identification
_____ Credible Witness(es)

Capacity(ies) claimed by Signer(s):
_____ Trustee
_____ Power of Attorney
_____ CEO / CFO / COO
_____ President / Vice-President / Secretary / Treasurer
_____ Other: _____

Other Information:_____

CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Tennessee }

County of Knox }

On February 12, 2025 before me, Vicki Nobinger, Notary Public,
(Here insert name and title of the officer)

personally appeared Carolyn E. Wheeler,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Vicki Nobinger

Notary Public Signature (Notary Public Seal)

VICKI NOBINGER
STATE OF TENNESSEE NOTARY PUBLIC
KNOX COUNTY

My Commission Expires: May 26, 2027

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date_____

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
- ☐ Corporate Officer

(Title)

- ☐ Partner(s)
- ☐ Attorney-in-Fact
- ☐ Trustee(s)
- ☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they,~~ is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

2015 Version www.NotaryClasses.com 800-873-9865

CHUBB

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company
Westchester Fire Insurance Company | ACE American Insurance Company

Know All by These Presents, that **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, **PACIFIC INDEMNITY COMPANY**, a Delaware corporation, **WESTCHESTER FIRE INSURANCE COMPANY** and **ACE AMERICAN INSURANCE COMPANY** corporations of the Commonwealth of Pennsylvania, do each hereby constitute and appoint

Carolyn E. Wheeler

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY**, **PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY** and **ACE AMERICAN INSURANCE COMPANY** have each executed and attested these presents and affixed their corporate seals on this **19th** day of **July, 2024.**

Rupert HD Swindells, Assistant Secretary

Warren Eichhorn, Vice President

STATE OF NEW JERSEY
County of Hunterdon SS.

On this **19th** day of **July, 2024** before me, a Notary Public of New Jersey, personally came Rupert HD Swindells and Warren Eichhorn, to me known to be Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY, the companies which executed the foregoing Power of Attorney, and the said Rupert HD Swindells and Warren Eichhorn, being by me duly sworn, severally and each for himself did depose and say that they are Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY and know the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that their signatures as such officers were duly affixed and subscribed by like authority.

Notarial Seal

Albert Contursi
NOTARY PUBLIC OF NEW JERSEY
No 50202369
Commission Expires August 22,2027

Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016; WESTCHESTER FIRE INSURANCE COMPANY on December 11, 2006; and ACE AMERICAN INSURANCE COMPANY on March 20, 2009:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

(1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.

(2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.

(3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.

(4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.

(5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Rupert HD Swindells, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY (the "Companies") do hereby certify that

(i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
(ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this February 12, 2025

Rupert HD Swindells, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903- 3493 Fax (908) 903- 3656 e-mail: surety@chubb.com

CHUBB®

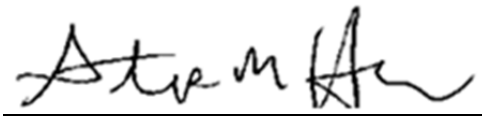
SURETY BOND CORPORATE SEAL NOTICE AND ADDENDUM

In an effort to facilitate the use of our respective corporate seals during the COVID-19 pandemic, FEDERAL INSURANCE COMPANY ("FEDERAL") has authorized its respective Attorneys-in-Fact to affix FEDERAL'S corporate seal to any surety bond executed on behalf of FEDERAL by any such Attorney-in-Fact by attaching this Notice and Addendum to said bond.

To the extent this Notice and Addendum is attached to a surety bond that is executed on behalf of FEDERAL by its Attorney-in-Fact, FEDERAL hereby agrees that the corporate seal below for FEDERAL shall be deemed affixed to said bond to the same extent as if its raised corporate seal was physically affixed to the face of the bond.

Dated this 30th day of March, 2020.

FEDERAL INSURANCE COMPANY

By: 

Stephen M. Haney, Vice President



City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

INSTRUCTIONS TO BIDDERS

1. The following documents shall be completed, executed, uploaded and received by the City Clerk *via PlanetBids* in accordance with NOTICE INVITING BIDS:

   INSTRUCTIONS TO BIDDERS
   BIDDER'S BOND *(Original copies must be submitted to the City Clerk's Office in Sealed Envelope before the bid opening)*
   DESIGNATION OF SUBCONTRACTORS ACKNOWLEDGEMENT (*Subcontractor information to be submitted via PlanetBids*)
   CONTRACTOR'S INDUSTRIAL SAFETY RECORD
   INFORMATION REQUIRED OF BIDDER
   ALL ADDENDA TO PLANS AND SPECIFICATIONS AS ISSUED BY AGENCY PRIOR TO BID OPENING DATE (if any; *Contractor shall confirm via PlanetBids*)
   TECHNICAL ABILITY AND EXPERIENCE REFERENCES
   NON-COLLUSION AFFIDAVIT
   DESIGNATION OF SURETIES
   PROPOSAL ACKNOWLEDGEMENT (*Line Items to be completed via PlanetBids)*

   The City Clerk's Office will open and read the bid results from PlanetBids immediately following the Bid Opening.

   The Bid Results are immediately available to the public via PlanetBids following the Bid Opening Date (Bid Due Date). Members of the public who would like to attend this reading may go to Bay E, 2nd Floor of the Civic Center (Located at 100 Civic Center Dr.)

2. Cash, certified check or cashier's check (sum not less than 10 percent of the total bid price) may be received in lieu of the BIDDER'S BOND. The title of the project and the words "Sealed Bid" shall be clearly marked on the outside of the envelope containing the documents. Original copies must be submitted to the City Clerk's Office *before the Bid Opening*.

3. The City of Newport Beach will not permit a substitute format for the Contract Documents listed above. Bidders are advised to review their content with bonding and legal agents prior to submission of bid.

4. BIDDER'S BOND shall be issued by an insurance organization or surety (1) currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, and (2) listed as an acceptable surety in the latest revision of the Federal Register Circular 570. The successful bidder's security shall be held until the Contract is executed. *Original, sealed copies must be submitted to the City Clerk's Office before the Bid Opening.* The title of the project, Contract Number and the words "Sealed Bid" shall be clearly marked on the outside of the envelope containing the documents.

5. The estimated quantities indicated in the PROPOSAL are approximate and are given solely to allow the comparison of total bid prices.

6. Bids are to be computed upon the estimated quantities indicated in the PROPOSAL multiplied by unit price submitted by the bidder. In the event of discrepancy between wording and figures,

bid wording shall prevail over bid figures. In the event of error in the multiplication of estimated quantity by unit price, the correct multiplication will be computed and the bids will be compared with correctly multiplied totals. The City shall not be held responsible for bidder errors and omissions in the PROPOSAL.

7. The City of Newport Beach reserves the right to reject any or all bids and to waive any minor irregularity or informality in such bids. The City may request clarification on any information contained in a bid. The City may consider the qualifications of the proposers and whether the bids comply with the prescribed requirements. Pursuant to Public Contract Code Section 22300, at the request and expense of the Contractor, securities shall be permitted in substitution of money withheld by the City to ensure performance under the contract. The securities shall be deposited in a state or federal chartered bank in California, as the escrow agent.

8. In accordance with the California Labor Code (Sections 1770 *et seq.),* the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the contract. A copy of said determination is available by calling the prevailing wage hotline number **(415) 703-4774** and requesting one from the Department of Industrial Relations. All parties to the contract shall be governed by all provisions of the California Labor Code – including, but not limited to, the requirement to pay prevailing wage rates (Sections 1770-7981 inclusive). A copy of the prevailing wage rates shall be posted by the Contractor at the job site.

9. The Contractor shall be responsible for insuring compliance with provisions of Section 1777.5 of the Labor Code Apprenticeship requirements and Section 4100 *et seq.* of the Public Contracts Code, "Subletting and Subcontracting Fair Practices Act".

10. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

11. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

12. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

13. All documents shall bear signatures and titles of persons authorized to sign on behalf of the bidder. For corporations, the signatures shall be of a corporate officer or an individual authorized by the corporation. For partnerships, the signatures shall be of a general partner. For sole ownership, the signature shall be of the owner.

14. Pursuant to Public Contract Code section 9204, for any demand by contractor, whether on behalf of itself or a subcontractor that lacks privity of contract with the City but has requested that contractor proceed on its behalf, sent by registered mail or certified mail return receipt requested for a time extension, payment by the City for money or damages arising from work done by, or on behalf of, the contractor and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled, or for payment of an amount that is disputed by the City, the following is a summary of the claims resolution process to be applied:

A. The City shall review the claim and, within 45 days, shall provide a written statement identifying the portions of the claim that are disputed and undisputed. This time period may be extended by mutual agreement. The claimant shall furnish all reasonable documentation to support the claim. If the City needs approval from its City Council to provide the written statement and the City Council does not meet within the prescribed time period, the City shall have up to 3 days following the next regular meeting of the City Council to provide the written statement. Payment of the undisputed portion of the claim shall be made within 60 days after the City issues its written statement.

B. If the claimant disputes the City's written statement or if the City does not issue a written statement in the prescribed time period, the claimant may demand in writing an informal meet and confer conference, which shall be scheduled within 30 days of receipt of claimant's demand.

C. Within 10 business days of the meet and confer conference, if a dispute remains, the City shall provide a written statement identifying the portion of the claim that remains in dispute and the undisputed portion. The City shall pay any remaining amount of the undisputed portion within 60 days. Any disputed portion of the claim shall be submitted to nonbinding mediation or similar nonbinding process, with the City and claimant sharing the costs equally and agreeing to a mediator within 10 business days. If the parties cannot timely agree on a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate the remaining disputed portion. If mediation is unsuccessful, any remaining disputed portion shall be addressed using procedures outside of Public Contract Code section 9204.

D. Failure by the City to meet the time requirements herein shall result in the claim being rejected in its entirety and shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

The signature below represents that the above has been reviewed.

911565 C27 - LANDSCAPING	Darin Sherlock Regional Operations Manage
Contractor's License No. & Classification	Authorized Signature/Title
1000008208 exp 6/30/2025	2/10/2025
DIR Registration Number & Expiration Date	Date
EMTS, Inc. dba Elite Maintenance & Tree Services	
Bidder	

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

DESIGNATION OF SUBCONTRACTOR(S) - AFFIDAVIT

State law requires the listing of all subcontractors who will perform work in an amount in excess of one-half of one percent of the Contractor's total bid. If a subcontractor is not listed, the Contractor represents that he/she is fully qualified to and will be responsible for performing that portion of the work. Substitution of subcontractors shall be made only in accordance with State law and/or the Standard Specifications for Public Works Construction, as applicable.

Pursuant to Public Contract Code Section 22300 appropriate securities may be substituted for any monies to be withheld to ensure performance under the Contract.

The Bidder, by signing this designation, certifies that bids from the subcontractors as listed in the Bidder's electronic bid have been used in formulating the bid for the project and that these subcontractors will be used subject to the approval of the Engineer and in accordance with State law. No changes may be made in these subcontractors except with prior approval of the City of Newport Beach. Bidders must also include DIR registration numbers for each subcontractor.

EMTS, Inc.
dba Elite Maintenance & Tree Services

Bidder

Darin Sherlock
Regional Operations Manage

Authorized Signature/Title

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

TECHNICAL ABILITY AND EXPERIENCE REFERENCES

Contractor must use this form!!! Please print or type.

Bidder's Name EMTS, Inc. dba Elite Maintenance & Tree Services

FAILURE OF THE BIDDER TO PROVIDE ALL REQUIRED INFORMATION IN A COMPLETE AND ACCURATE MANNER MAY BE CONSIDERED NON-RESPONSIVE.

For all public agency projects you have worked on (or are currently working on) in the past 2 years in excess of $150,000, provide the following information:

No. 1

Project Name/Number Clovis Community Hospital Landscape Improvements

Project Description Sod Installation / Grading / Irrigation System

Approximate Construction Dates: From Feb 2022 To: presemt

Agency Name Clovis Community Hospital (CCMC)

Contact Person Alejandro Torres Telephone (559) 259-8460

Original Contract Amount $ varies Final Contract Amount $ $300,000

If final amount is different from original, please explain (change orders, extra work, etc.)

Multiple enhancement projects performed through out the past two years

Did you file any claims against the Agency? Did the Agency file any claims against you/Contractor? If yes, briefly explain and indicate outcome of claims.

None

No. 2

Project Name/Number Disneyland Parkinglot Improvements

Project Description 96" box Tree installation and irrigation retrofitting

Approximate Construction Dates: From Aug 2023 To: Nov 2024

Agency Name Disneyland Resort

Contact Person Mike Atkinson Telephone (760) 250-2919

Original Contract Amount $ varies Final Contract Amount $ $150,000

If final amount is different from original, please explain (change orders, extra work, etc.)

Multiple enhancement projects performed through out the past two years

Did you file any claims against the Agency? Did the Agency file any claims against you/Contractor? If yes, briefly explain and indicate outcome of claims.

None

No. 3

Project Name/Number Quail Lakes

Project Description Sod Removal/Irrigation System / Bark Installation

Approximate Construction Dates: From Mar 2023 To: Sept 2023

Agency Name Quail Lakes HOA

Contact Person Gabriel Telephone (559) 712-0961

Original Contract Amount $ 35,000 Final Contract Amount $ $35,000

If final amount is different from original, please explain (change orders, extra work, etc.)

n/a

Did you file any claims against the Agency? Did the Agency file any claims against you/Contractor? If yes, briefly explain and indicate outcome of claims.

None

No. 4

Project Name/Number San Joaquin Country Club Renovations

Project Description Landscape, Site Furnishings, Site Lighting

Approximate Construction Dates: From Jan 2024 To: July 2024

Agency Name SJCC Renovations

Contact Person Darrell Higgins Telephone (559) 348-0421

Original Contract Amount $$149,500.00 Final Contract Amount $ $150,296.65

If final amount is different from original, please explain (change orders, extra work, etc.)

Change Orders for the duration of services

Did you file any claims against the Agency? Did the Agency file any claims against you/Contractor? If yes, briefly explain and indicate outcome of claims.

None

No. 5

Project Name/Number Seefried – DSJ5 – Fresno

Project Description Irrigation, Planting, Offsite Irrigation, Site Furnishings, Maintenance

Approximate Construction Dates: From June 2023 To: Dec 2023

Agency Name Seefried Industrial Properties, Inc

Contact Person John Murray, Project Executive Telephone (562) 705-2556

Original Contract Amount $$885,200.00 Final Contract Amount $ $1,063,197.76

If final amount is different from original, please explain (change orders, extra work, etc.)

Change Orders for the duration of services

Did you file any claims against the Agency? Did the Agency file any claims against you/Contractor? If yes, briefly explain and indicate outcome of claims.

None

No. 6

Project Name/Number Logisticenter at Fairfield - Project No. 21506

Project Description Irrigation, Landscape, Bio-Retention, Grading, Landscape Revisions

Approximate Construction Dates: From Mar 2023 To: Aug 2023

Agency Name Jannette Manalo, Project Manager

Contact Person FCL Builders California, LLC Telephone (949) 537-1411

Original Contract Amount $2,903,700.00 Final Contract Amount $ $3,129,993.05

If final amount is different from original, please explain (change orders, extra work, etc.)

Change Orders for the Duration of Services

Did you file any claims against the Agency? Did the Agency file any claims against you/Contractor? If yes, briefly explain and indicate outcome of claims.

None

Attach additional sheets if necessary.

Attach to this Bid the experience resume of the person who will be designated as General Construction Superintendent or on-site Construction Manager for the Contractor. SEE ATTACHED HEREIN

Upon request, the Contractor shall attach a financial statement and other information sufficiently comprehensive to permit an appraisal of the Contractor's current financial conditions.

EMTS, Inc dba Elite Maintenance & Tree Services — Bidder

Darin Sherlock
Regional Operations Manage — Authorized Signature/Title



Jose Arce

General Manager

Professional Experience

Jose got his start in landscape as a laborer with Elite. After a year and a half, Jose had taken a major interest in landscape and ventured to another company to continue his growth. It did not take Jose long to work his way up and by 2005 he became a Foreman, focused on building custom homes.

In 2008, Jose was recruited to another landscape company that allowed him to use his experience and knowledge to help them build track homes. This company was located outside of the Valley and after six months, Jose decided to transition back to Elite as a laborer to be closer to his family.

The move proved worthy as Jose was promoted to Foreman within a year and in 2017 he became an Elite Landscape Construction Superintendent. Jose's 17+ years of experience, passion, and confidence are what earned his promotion to General Manager of Elite Private Landscape in 2022.

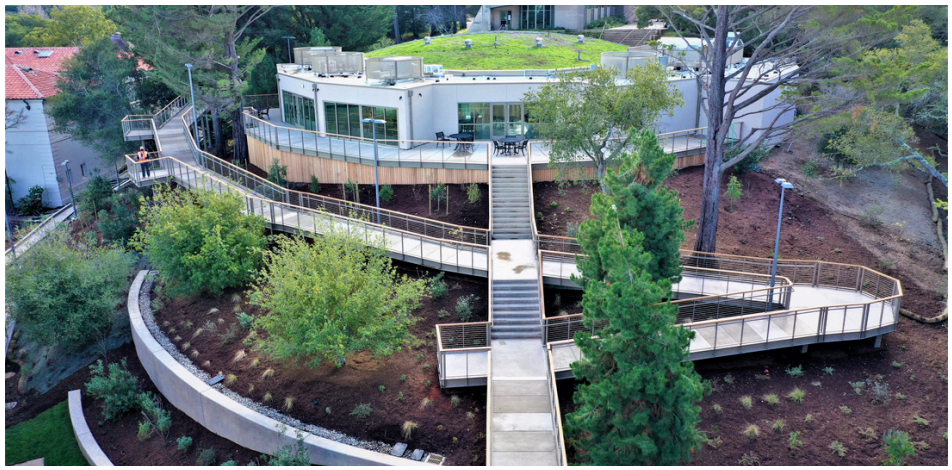
Experience

15+ Years

Certifications

OSHA 30 Certified
Fully Apprenticed





ELITE
PRIVATE LANDSCAPE

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

NON-COLLUSION AFFIDAVIT

State of California)
) ss.
County of Fresno)

Darin Sherlock, being first duly sworn, deposes and says that he or she is Secretary of EMTS, Inc., the party making the foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that party making the foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

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

EMTS, Inc.
Bidder

Darin Sherlock
Secretary
Authorized Signature/Title

Subscribed and sworn to (or affirmed) before me on this 7 day of February, 2025

by Darin Sherlock, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Ranisa Wells
Notary Public

[SEAL]

RANISA WELLS
Notary Public - California
Fresno County
Commission # 2499615
My Comm. Expires Oct 10, 2028

My Commission Expires: Oct. 10, 2028

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

DESIGNATION OF SURETIES

Bidder's name EMTS, Inc dba Elite Maintenance & Tree Services

Provide the names, addresses, and phone numbers for all brokers and sureties from whom Bidder intends to procure insurance and bonds (list by insurance/bond type):

SURETY: Alliant 525 Market Street, Ste. 2900, San Francisco, CA 94105
T. 559 - 374 - 3570 Steve Edwards sedwards@alliant.com

SURETY: Fidelity 9 E. River Park Place East Suite 310, Fresno, CA 93720
T. 559 - 374 - 3647 Kim Wilson Kim.Wilson@alliant.com

INSURER: EPIC Insurance 200 S Virigina Street, Suite 450, Reno, NV 89508
T. 775 - 954 - 0408 Deseree Carper deseree.carper@epicbrokers.com

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

CONTRACTOR'S INDUSTRIAL SAFETY RECORD TO ACCOMPANY PROPOSAL

Bidder's Name EMTS, Inc dba Elite Maintenance & Tree Services

Record Last Five (5) Full Years
Current Year of Record

	Current Year of Record **2024**	Record for **2023**	Record for **2022**	Record for **2021**	Record for **2020**	Record for **2019**	Total
No. of contracts		18	15	15	18	17	106
Total dollar Amount of Contracts (in Thousands of $)	9,900, 200	8,530, 000	8,000, 000	7,008, 216	7,000, 000	4,971, 452	45,409, 868
No. of fatalities	0	0	0	0	0	0	0
No. of lost Workday Cases	0	0	3	1	1	3	8
No. of lost workday cases involving permanent transfer to another job or termination of employment	0	0	4	1	1	3	9

The information required for these items is the same as required for columns 3 to 6, Code 10, Occupational Injuries, Summary--Occupational Injuries and Illnesses, OSHA No. 102.

Legal Business Name of Bidder: EMTS, Inc. dba Elite Maintenance & Tree Services
Business Address: 2972 Larkin Avenue, Clovis, CA 93612
Business Tel. No.: main o 559.292.2900 | darin 209.316.2915
State Contractor's License No. and: 911565 C27 - LANDSCAPING
Entity Type: S-Coroporation
Title: Darin Sherlock - Secretary

The above information was compiled from the records that are available to me at this time and I declare under penalty of perjury that the information is true and accurate within the limitations of those records.

Signature of bidder: Don
Date: 2/10/2025
Title: Darin Sherlock - Secretary

Signature of bidder: _____
Date: _____
Title: _____

Signature of bidder: _____
Date: _____
Title: _____

Signature of bidder: _____
Date: _____
Title: _____

Signature Requirements: If bidder is an individual, name and signature of individual must be provided, if doing business under a fictitious name, the fictitious name must be set fort along with the County. If bidder is a partnership or joint venture, legal name of partnership/joint venture must be provided, followed by signatures of all of the partners/joint ventures or if fewer than all of the partners/joint ventures submit with evidence of authority to act on behalf of the partnership/joint venture. If bidder is a corporation, legal name of corporation must be provided, followed by signatures of the corporation President or Vice President or President and Secretary or Assistant Secretary, and the corporate seal, or submit with evidence of authority to act on behalf of the corporation. All must be acknowledged before a Notary Public, who must certify that such individuals, partners/joint ventures, or officers were proven on the basis of satisfactory evidence to be the persons whose name are subscribed to and acknowledged that they executed the same in their authorized capacities.

[NOTARY ACKNOWLEDGMENT and CORPORATE SEAL MUST BE ATTACHED]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF Fresno

On February 10 2025 before me, Ranisa Wells Notary Public,

personally appeared Darin Sherlock , who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Ranisa Wells



(affix seal in above space)

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

ACKNOWLEDGEMENT OF ADDENDA

Bidder's name EMTS, Inc.

The bidder shall signify receipt of all Addenda here, if any, and attach executed copy of addenda to bid documents:

Addendum No.	Date Received	Signature
Q&A 1	1/28/2025	
Q&A 2	2/06/2025	

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

INFORMATION REQUIRED OF BIDDER

Bidder certifies under penalty of perjury under the laws of the State of California that the following information is true and correct:

Name of individual Contractor, Company or Corporation: EMTS, Inc dba Elite Maintenance & Tree Services

Business Address: 2972 Larkin Avenue, Clovis, CA 93612

Telephone and Fax Number: main o 559.292.2900 | f. 229.292.7756 | darin 209.316.2915

California State Contractor's License No. and Class: 911565 C27 - LANDSCAPING
(REQUIRED AT TIME OF AWARD)

Original Date Issued: 2/29/2008 Expiration Date: 2/28/2026

List the name and title/position of the person(s) who inspected for your firm the site of the work proposed in these contract documents:

Felix Ruiz-Account Manager and Jose Arce

The following are the names, titles, addresses, and phone numbers of all individuals, firm members, partners, joint ventures, and company or corporate officers having a principal interest in this proposal:

Name	Title	Address	Telephone
Guy Stockbridge	–CEO	2972 Larkin Avenue, Clovis, CA 93612	T. 559.292.2900
Derik Jakusz	– COO	2972 Larkin Avenue, Clovis, CA 93612	T. 559.647.8295
Tom Spradling	– CFO	2972 Larkin Avenue, Clovis, CA 93612	T. 559.292.2900
Darin Sherlock	- Secretary	2972 Larkin Avenue, Clovis, CA 93612	T. 209.316.2915

Corporation organized under the laws of the State of California

The dates of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this proposal are as follows:

n/a

All company, corporate, or fictitious business names used by any principal having interest in this proposal are as follows:

parent company ETO, Inc. Affiliates are ELC, Inc., EMTS,Inc., EPL, Inc., Stockbridge General Contracting, Live Action General Engineering, SRVC, Lokes Rental Equipment, and Stock Five Development

For all arbitrations, lawsuits, settlements or the like (in or out of court) you have been involved in with public agencies in the past five years (Attach additional Sheets if necessary) provide:

Provide the names, addresses and telephone numbers of the parties;

n/a

Briefly summarize the parties' claims and defenses;

n/a

Have you ever had a contract terminated by the owner/agency? If so, explain.

n/a

Have you ever failed to complete a project? If so, explain.

n/a

For any projects you have been involved with in the last 5 years, did you have any claims or actions by any outside agency or individual for labor compliance (i.e. failure to pay prevailing wage, falsifying certified payrolls, etc.)? Yes / (No)

Are any claims or actions unresolved or outstanding? Yes / (No)

If yes to any of the above, explain. (Attach additional sheets, if necessary)
n/a

Failure of the bidder to provide ALL requested information in a complete and accurate manner may be considered non-responsive.

EMTS, Inc
dba Elite Maintenance & Tree Services
Bidder

(Print name of Owner or President of Corporation/Company)

Darin Sherlock
Authorized Signature/Title

Secretary
Title

2/10/2025
Date

On Feb. 10, 2025 before me, Ranisa Wells, Notary Public, personally appeared Darin Sherlock, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Ranisa Wells, California
Notary Public in and for said State

(SEAL)

RANISA WELLS
Notary Public - California
Fresno County
Commission # 2499615
My Comm. Expires Oct 10, 2028

My Commission Expires: Oct. 10, 2024

City of Newport Beach

IRRIGATION CONTROLLER REPLACEMENT PHASE 2

Contract No. 9735-1

BIDDER'S BOND

We, the undersigned Principal and Surety, our successors and assigns, executors, heirs and administrators, agree to be jointly and severally held and firmly bound to the City of Newport Beach, a charter city, in the principal sum of Ten Percent of Bid Amount _____ Dollars ($ 10%), to be paid and forfeited to the City of Newport Beach if the bid proposal of the undersigned Principal for the construction of **IRRIGATION CONTROLLER REPLACEMENT PHASE 2, Contract No. 9735-1** in the City of Newport Beach, is accepted by the City Council of the City of Newport Beach and the proposed contract is awarded to the Principal, and the Principal fails to execute the Contract Documents in the form(s) prescribed, including the required bonds, and original insurance certificates and endorsements for the construction of the project within thirty (30) calendar days after the date of the mailing of "Notification of Award", otherwise this obligation shall become null and void.

If the undersigned Principal executing this Bond is executing this Bond as an individual, it is agreed that the death of any such Principal shall not exonerate the Surety from its obligations under this Bond.

Witness our hands this 4th day of February, **2025.**

EMTS, Inc.
Name of Contractor (Principal)

Secretary
Authorized Signature/Title

Fidelity and Deposit Company of Maryland
Name of Surety

Authorized Agent Signature

4 Embarcadero Center, Suite 3740
San Francisco, CA 94111
Address of Surety

Kim Wilson, Attorney-in-Fact
Print Name and Title

916-952-0800
Telephone

(Notary acknowledgment of Principal & Surety must be attached)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

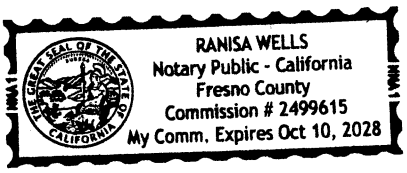
COUNTY OF Fresno

On February 7 2025 before me, Ranisa Wells Notary Public,

personally appeared Darin Sherlock, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature: Ranisa Wells

(affix seal in above space)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT — Civil Code § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of Fresno)

On February 4, 2025, before me, Lyn Genito, Notary Public, personally appeared Kim Wilson, who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is~~/are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity~~(ies)~~, and that by ~~his~~/her/~~their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

LYN GENITO
NOTARY PUBLIC - CALIFORNIA
COMMISSION # 2435271
FRESNO COUNTY
My Comm. Exp. January 21, 2027

Signature: Lyn Genito

(Seal)

Lyn Genito, Notary Public

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by Christopher Nolan, Vice President, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Joseph SHEA, Trey BUSCH, Kim WILSON, Lyn GENITO, Bonnie GONZALEZ of Fresno, California,** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings,** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN AND SURETY COMPANY, and FIDETIYAND DEPOSIT COMPANY OF MARYLAND, this 12th day of January 2025.

ATTEST:
ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Colonial American Casualty and Surety Company CORPORATE SEAL

ZURICH AMERICAN INSURANCE COMPANY CORPORATE SEAL 1977 NEW YORK

Fidelity and Deposit Company of Maryland CORPORATE SEAL 1890

By: Christopher Nolan
Vice President

By: Dawn E. Brown
Secretary

State of Maryland
County of Baltimore

On this 12th day of January A.D. 2025, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Christopher Nolan, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

GENEVIEVE M. MAISON NOTARY PUBLIC BALTIMORE COUNTY MD

Genevieve M. Maison
Notary Public
My Commission Expire January 27, 2029

Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify of revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 4 day of February, 2025.

Colonial American Casualty and Surety Company CORPORATE SEAL

ZURICH AMERICAN INSURANCE COMPANY CORPORATE SEAL 1977 NEW YORK

Fidelity and Deposit Company of Maryland CORPORATE SEAL 1890

MJ Pethick

Mary Jean Pethick
Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
reportsfclaims@zurichna.com
800-626-4577

Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

March 25, 2025, City Council Agenda Comments

The following comments on items on the Newport Beach City Council agenda are submitted by:
Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item 1. Minutes for the March 11, 2025 City Council Meeting

The passage shown in *italics* below is from the draft minutes with a suggested correction shown in ***~~strikeout~~*** ***underline*** format. The page number refers to Volume 66.

> **Page 279**, Item X, Mayor Stapleton, end of last bullet: "*Attended the Newport Shores annual HOA meeting, the trash interceptor ribbon cutting, the OCIACC Nowruz Spring Festival, and the Fire Station 2 demolition party and extended congratulations to Bob* ***~~Olsen~~*** ***Olson***."

Item 3. Ordinance No. 2025-4: Amending the Newport Beach Municipal Code to Update Administrative Procedures Related to Good Cause Determinations and the Extension of Deadlines for Short-Term Lodging Permits

This matter involving who should be authorized to grant exceptions to STL permit deadlines, and for what reasons, is unusual in that parts of it have had fairly extensive Council discussion even though it has never been publicly announced on any agenda, including this one, as a matter for such discussion.

The proposal started as part of Item 3 on the October 8, 2024, consent calendar (along with an unrelated Finance Department matter about demolition debris hauling), from which it was pulled for a discussion that was continued to a future planning session.

That discussion was indeed continued (see video) at the Council's February 1, 2025, planning session, and a person hoping for relief from the STL deadlines was apparently even expected to plead their case to the Council. However, nothing on the agenda reminded the public that such a discussion by the Council was planned for that day.

In the February 1 discussion, Council members seemed to agree that what qualified as "good cause" needed to be defined (which it had not been in the October 8 offering). But curiously, the example of an aggrieved person, who turned out to be a professional asset manager who had apparently failed to properly manage his client's asset rather than a property owner who had innocently missed a deadline due to some special hardship, never explained the unusual circumstances that had caused him to miss a deadline (see video), nor did the Council discuss whether they would agree his circumstances constituted "good cause" for relief or, more generally, how they thought "good cause" should be defined.

The matter returned as Item 5 on the March 11 consent calendar, where a definition of "good cause" was proposed, but not discussed, although I provided extensive written comments.

As a policy matter, I think it is good for the City to have flexibility in the administration of its regulations. However, in the case of STL permits, since having one is a privilege rather than a right, and there is a long waiting list of people not presently having a permit, but hoping to get one, I would think leniency for those who have the permits but fail to follow the rules, including

failing to meet deadlines, should be very limited. I would also think that in evaluating whether a missed STL permit deadline should be excused, factors in addition to the existence of good cause should be considered, such as whether the property has been the subject of complaints or other enforcement actions. The Council might also want to include in the ordinance examples of circumstances which staff should *not* regard as "good cause" or limit how long after a missed deadline a request for extension can be entertained.

It is, therefore, disappointing that on March 11 the Council did not publicly discuss whether the rather broad definition offered by staff meets their expectations (and how it would be applied to the unknown circumstances of the asset manager at the February 1 Planning Session) – or whether there should be a very narrow definition provided for staff to use to which a mechanism could be added for more problematic claims to be referred on appeal to the Council.

Even assuming the Council members individually reviewed the proposed definition of "good cause" for missing an STL permit deadline, and found it met their expectations, I continue to think the proposed ordinance is defective for two reasons.

Making Definition Applicable to Entire Municipal Code is a Bad Idea

First, rather than placing the definition of "good cause" in the chapter of the Municipal Code regarding STL permits, to which it is intended to apply, staff proposes putting it in a section that will make it applicable to the entire Municipal Code.

This a bad recommendation, or, at the very least, a decision that needs further review.

As I pointed out in my March 11 written comments, the phrase "good cause" appears 27 times in 19 different chapters of the code, in each of which it may have been intended to be understood differently. Inserted after-the-fact a definition that may or may not have been intended is not wise.

A recent example of the problems this can cause was the entry of Pacaso fractional ownership homes into the Newport Beach market. As indicated in my comments on that subject on pages 12-44 & 45 of the March 14, 2023, Council agenda packet, since 1982, with adoption of Ordinance No. 82-14, Newport Beach had perfectly clear regulations in its Zoning Code (Title 20 of the Municipal Code) intended to prohibit such activity (time-share arrangements in residential areas). However, the original language used the phrases "time-share *projects*" and "time-share *development,*" which were explicitly intended to apply to conversion of existing residences to a time-share model, including fractional ownership, even though the terms "project" and "development" were not explicitly defined. However, without considering this, the Zoning Code was repeatedly rearranged and revised, and eventually, definitions of "project" and "development" applicable to the entire Zoning Code were added. And even though the introduction of those definitions was presumably not intended to alter the meaning of the time-share regulations, by the time Pacaso came to town, staff said they did, and they could not prohibit conversions of existing homes, only new construction.

One has to wonder if the Council members have reviewed the 18 Municipal Code chapters unrelated to STL permits in which "good cause" appears, and determined that applying to them

the definition proposed in the STL permit context does not alter the meaning of "good cause" that earlier Councils intended in those other contexts?

Placing Substantive Regulations in Uncodified Portions of Ordinances is a Bad Idea

Second, although neither the Council nor the public heard the circumstances of the speaker seeking relief at the February 1 Planning Session (only that "things come up"), it appears the intent of these code revisions is to allow staff to excuse people who have *missed* STL permit deadlines. Yet the proposed code revisions are written entirely in terms of *extending* deadlines, which implies a request to extend the deadline has been received before the deadline comes.

The fact that an "extension" can be granted retroactively, in effect *excusing* the missing of a deadline is relegated to an obscure reference in uncodified Section 7 of the proposed ordinance, on page 3-13 of the agenda packet.

Not only could the fact that a deadline can be extended retroactively have easily been included in the codified portion of the code, where all those reading the code would see it, but the code might even have limited how long after the fact a retroactive extension can be granted and how long such an extension can be.

The problems that can be created by not codifying substantive portions of regulations is illustrated by Item 12 on the current agenda. In that case, when enacting a Building Code revision in 2022, the Council only intended for it to be in effect until April 21, 2025, at which time the unrevised text would return. It would have been relatively easy to include this proviso in the code (the state legislature does this quite frequently). Instead, much like here, it exists only in an obscure uncodified section of the 2022 ordinance (see page 12-21 of the present agenda packet). Despite a subsequent ordinance reenacting the code section in question without any mention of an expiration, the proviso in the earlier ordinance seems to remain, like a zombie, completely unknown to those reading the existing code, which does not even mention the ordinance containing it in its revision history.

In the present case, the fact that STL deadline extensions can be retroactive will not only be unknown to readers of the code, but it may assume a similar zombie status if the code were subsequently revised without an intent to be retroactive but without explicitly repealing the present ordinance.

Item 4. Resolution No. 2025-12: Creating the Ad Hoc Refuse Committee

I think the idea of staff reaching out in considering its response to refuse regulations is a good one, and the present proposal is an improvement over the roll-out of the three-cart residential collection system, regarding which input seems to have been sought from a 3-member Council Ad Hoc Solid Waste Committee that was never formally appointed and which the public knew nothing about.

That said, I think it would be better for the Council to appoint a committee of affected residents and business owners from whom staff could seek input. The advantage of that, is that the Brown Act would require the discussions to be noticed and public.

The problem with Council-appointed ad hoc committees (and with ad hoc committees of the City boards and commissions in general, is that they are created precisely to avoid public visibility. Since the Brown Act does not require it, their discussions are rarely if ever public. As a result there is a complete lack of transparency as to how their recommendations were arrived at and what input was considered.

A happy recent, but still extremely rare, exception was the PB&R ad hoc committee seeking to make a recommendation about the proposed Aquatic Center at Lower Castaways, which held a noticed public workshop in the Community Room on February 12.

Item 5. Irrigation Controller Replacement Phase 2 – Award of Contract No. 9735-1

With a low bid of $472,186 to acquire(?) and install 37 controllers, that comes to nearly $13,000 per controller.

This contract is clearly for something more than a typical home controller, so it might have been helpful to provide a little more information on what is being contemplated. From the bid package, it looks like it is some version of the Toro 21-1196-IRC-DXi-Controller-SS.

Item 9. Concession Agreement with Kit at the Library, Inc. for Use of the Concession Facility at the Central Library Located at 1000 Avocado Avenue

Why is no information provided regarding the 16 other proposals that were received but rejected by City staff?

Why are “limited cosmetic tenant improvements to the Space” anticipated to take as much as 12 months to complete?

Libraries are known to attract children, and I seem to recall seeing them in the entry area adjacent to the concession. Does the menu contain any items that would appeal to young children?

Item 10. Amendment to Professional Services Agreement with Dudek, Inc. for Consulting Services on the Comprehensive General Plan Update (PA2022-080)

The City Council has, in my view, caused significant delay to the general plan update process by announcing its plan, in December, to dismiss all the GPAC and GPUSC members and make new appointments in the new year, which finally happened as Item 11 at the February 25, 2025, meeting.

I am grateful for my reappointment, and as chair of the subcommittee reviewing the existing Noise Element in the GPAC’s prior configuration, I have considerable interest in the current item, although I don’t yet know if I will be continuing that role in the new iteration.

I might note that at the time the subcommittee and full GPAC made our recommendation, we were unaware the traffic noise contours resulting from the addition of 6th Cycle RHNA units (for everything but the 73 freeway and toll road) had already been projected by a prior consultant as part of the recent Housing Implementation Program EIR (PA2022-0245), specifically in Chapter 4.11 and Appendix E. It appears Dudek is proposing to do something more supported by measurement.

In that regard, I am a little puzzled by proposed Task 1.2.b (agenda packet page 10-10), calling for Dudek to evaluate noise in the Airport Area "*based upon sound level contour mapping from the corresponding Airport Land Use Compatibility Plan (ALUCP)*." This seems to be a reference to what the County calls the John Wayne Airport Airport Environs Land Use Plan (AELUP).

Dudek seems not to have been informed that the contours in that plan were created in 1985, or before, and included projections, made then, to the anticipated contours in 2005. The City has an ongoing dispute with the OC Airport Land Use Commission as to whether the projections published in 1985 are still appropriate contours for planning purposes, and has, indeed, substituted a different set of contours in the November 14, 2023, Item 22 Noise Element revisions mentioned on page 10-2 of the staff report (prepared and adopted without GPAC input). The ALUC does not accept that change, and rejects submissions based on them. There is a particularly acute disagreement as to the noise impact of the small piston-powered planes that fly over what the City calls the "Airport Area" north of Bristol, yet no one seems to have any actual measurements to support their view of what the current situation there actually is.

Assuming this item is approved, I hope staff will instruct Dudek to perform some of its long-term monitoring (Task 1.1) in that area.

I am also a little concerned about the clarity of Task 2. Although entitled "GPAC Subcommittee Coordination," the unnumbered opening paragraph suggests Dudek feels it has more than fulfilled its obligation to attend meetings of the full GPAC, since the ones it has attended to date ran longer than the 1-hour anticipated (as future ones may also). Do Dudek and staff have a clear understanding of how many additional full GPAC and GPUSC meetings Dudek is expected to attend? Is there sufficient budget for them?

As to the GPAC subcommittees, the Council may wish to know there are six subcommittees, organized to review various combinations of general plan elements, as well as one for the Vision Statement. The proposed 12 meetings would mean Dudek attendance at at most 2 each to review their proposed revisions, none of which have yet been seen, before they go to the Planning Commission and Council. That seems possible, but minimal. Does staff anticipate the possibility of a need for additional GPAC subcommittee discussion meetings *without* Dudek present?

Item 12. Ordinance No. 2025-5: An Amendment to Section 15.02.095 of the Newport Beach Municipal Code Related to Timeframes for Completion of Construction

As noted in my comments when this item was first introduced (and then withdrawn) on March 11, it is unusual in that the current Municipal Code cites Ordinances No. 2023-22 § 693 and 2022-26 § 1 as the source of the language presently found in NBMC Section 15.02.095, and makes no mention of Ordinance No. 2022-8, where the sunset provision resides.

I concluded from this that no action was needed since neither of those ordinances makes any mention of the provisions they added being subject to sunsetting. But perhaps action is needed, since neither seems to have explicitly repealed the uncodified parts Ordinance No. 2022-8.

Assuming the April 21, 2025, sunsetting provision in Ordinance No. 2022-8 *is* still operative, it would appear the present ordinance repealing it will not be adopted until a second reading on April 15, and will not become effective until 30 days later, on May 15.

What will happen to projects that, under the prior code that staff believes will be restored for the 24 days from April 21 to May 15, would need to file for an extension during that time?

Item XIII.A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

This item involving three non-City-owned properties with no explanation of what the City's interest in them might be, also seems rather unusual.

One of the properties, the former Balboa Theatre at 707 E. Balboa Blvd., the City formerly owned and sold. What happened to that new owner's plans? Is the City considering buying it back?

Another, at 12 Corporate Plaza Drive, is the subject of an active Preliminary Application, PA2025-0017, for 38 residential units in an 85-foot high tower. Is the City contemplating becoming a partner in the development?

And the remaining one, at 3848 Campus Drive, has been the subject of prior closed session agendas, such as on January 28, and also seems to have a pending application, PA2023-0145, to construct a private self-storage facility on the site. What became of those?

CITY OF

NEWPORT BEACH

City Council Staff Report

March 25, 2025
Agenda Item No. 6

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	David A. Webb, Public Works Director - 949-644-3311, dawebb@newportbeachca.gov
PREPARED BY:	Kyle Brodowski, Public Works Superintendent - 949-718-3464, kbrodowski@newportbeachca.gov
TITLE:	Approval to Increase the Purchase Order Amount with W. W. Grainger, Inc. for As-Needed Procurement of Public Works Department Maintenance and Repair Tools, Materials and Supplies

ABSTRACT:

Based on anticipated expenditures, staff requests City Council approval to increase the amount of Purchase Order (PO) No. 22500148 with W. W. Grainger, Inc. (Grainger) for as-needed procurement of Public Works Department maintenance and repair tools, materials and supplies from $120,000 to $200,000 for Fiscal Year 2024-25, and approval to issue a $200,000 PO on or after July 1, 2025 for FY 2025-26.

RECOMMENDATIONS:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;

b) Approve a change order to Purchase Order No. 22500148 with W. W. Grainger, Inc., increasing the amount from $120,000 to $200,000 for FY 2024-25; and

c) Approve issuing a purchase order with W. W. Grainger, Inc., for $200,000 for FY 2025-26 on or after July 1, 2025.

DISCUSSION:

The Public Works Department procures a wide variety of essential tools, materials and supplies from Grainger, through a contract they were awarded by the Sourcewell cooperative purchasing agency. Based on the department's FY 2024-25 expenditures to date, staff requests City Council approval to increase the amount of PO No. 22500148 for as-needed procurement of these items from $120,000 to $200,000 for FY 2024-25, and to issue a purchase order with Grainger for $200,000 for FY 2025-26 on or after July 1, 2025. This adjustment will ensure maintenance and operations crews can efficiently manage their various responsibilities in a cost-effective manner that complies with the City of Newport Beach's Purchasing Policy.

Sourcewell awarded Grainger with Contract #091422-WWG for maintenance, repair and operations-related supplies and equipment on November 7, 2022, with an initial term through November 8, 2026. The award was based on Grainger's response to Sourcewell RFP #091422, with Grainger receiving the highest total score of the submitted proposals. Grainger is a leading provider in the retail warehouse sector, and through this agreement provides qualifying agencies with ready access to pre-negotiated, discounted rates on a wide variety of essential maintenance-related supplies.

FISCAL IMPACT:

The adopted budget includes sufficient funding for this purchase. Depending on the respective use of the equipment and materials in question, costs will be expensed to accounts in Facility Maintenance (0108041), Fleet (7529031), Parks (0108031), or Streets/Beaches (0108061).

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENT:

Attachment A – Sourcewell Contract #091422-WWG

DocuSign Envelope ID: EAA832BF-3504-4984-93BA-1A8D8109ABD2

Sourcewell

Solicitation Number: RFP #091422

CONTRACT

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and W.W. Grainger, Inc., 100 Grainger Parkway, Lake Forest, IL 60045, and Acklands-Grainger, Inc., 123 Commerce Valley Drive East, Suite 700, Thornhill, ON L3T 7W8, collectively referred to in the attached Proposal as, "Grainger North America" (separately and collectively herein, Supplier).

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Facility MRO, Industrial, and Building-Related Supplies and Equipment from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

A. EFFECTIVE DATE. This Contract is effective upon the date of the final signature below.

B. EXPIRATION DATE AND EXTENSION. This Contract expires November 8, 2026, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended up to two times, for one additional year per extension, upon the request of Sourcewell and written agreement by Supplier.

C. SURVIVAL OF TERMS. Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All other rights will cease upon expiration or termination of this Contract.

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2. EQUIPMENT, PRODUCTS, OR SERVICES

A. EQUIPMENT, PRODUCTS, OR SERVICES. Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above. Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer close-out or refurbished Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. WARRANTY. Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Supplier warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Supplier's standard product warranty policy for Participating Entity purchases in the US or Canada (as revised from time-to-time) are available on the grainger.com and grainger.ca websites, respectively, and are incorporated by reference. Supplier's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Supplier's warranty will be passed on to the Participating Entity.

C. DEALERS, DISTRIBUTORS, AND/OR RESELLERS. Upon Contract execution and throughout the Contract term, Supplier will make available to Sourcewell, upon Sourcewell request, a current means to validate or authenticate Supplier's authorized resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition, which may include a separate line item for freight other than standard ground shipment as described in the attached Proposal. This means that the quoted cost, with such additional freight on non-standard ground shipments, is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

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Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. SHIPPING AND SHIPPING COSTS. All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Supplier must permit the Equipment and Products to be returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity. Supplier's standard product return policy for Participating Entity purchases in the US or Canada (as revised from time-to-time) are available on the grainger.com and grainger.ca websites, respectively, and are incorporated by reference.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. SALES TAX. Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities. Supplier's Proposal includes additional detail regarding its Hot List program for U.S. and Canadian Participating Entities.

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4. PRODUCT AND PRICING CHANGE REQUESTS

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;
- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Request Form will become an amendment to this Contract and will be incorporated by reference. Supplier will not be required to produce third-party confidential or proprietary information as justification for a requested price change, however, Sourcewell will make its determination on a price change request based on the information provided.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. A Participating Entity may be required by Supplier to document the Participating Entity's affiliation to this Contract prior to accessing the benefits of this Contract. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities

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to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment and payment terms are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, orders for non-catalog sourced products or services, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum, the terms of which will be negotiated directly between the Participating Entity and the Supplier or its authorized dealers, distributors, or resellers, as applicable. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

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D. TERMINATION OF ORDERS. Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

E. GOVERNING LAW AND VENUE. The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. PRIMARY ACCOUNT REPRESENTATIVE. Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. BUSINESS REVIEWS. Supplier must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, performance issues, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcewell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;

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- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcewell, the Supplier will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Participating Entities less returns, credits, tax, and additional freight handling charges. The Administrative Fee must be included in, and not added to, the pricing. Supplier may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Supplier will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

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10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. AUDIT. Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. ASSIGNMENT. Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

C. AMENDMENTS. Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. WAIVER. Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

E. CONTRACT COMPLETE. This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. RELATIONSHIP OF THE PARTIES. The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell or its Participating Entities, arising out of any negligent or intentional act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by Supplier's negligent or intentional act or omission causing some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

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12. GOVERNMENT DATA PRACTICES

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, maintained, or disseminated by the Supplier under this Contract.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:

   a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use the trademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.

   b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.

2. *Limited Right of Sublicense*. The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers, resellers, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. *Use; Quality Control.*

   a. Neither party may alter the other party's trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.

   b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's trademarks only in good faith and in a dignified manner consistent with such party's use of the trademarks. Each party has the right to inspect the other party's use of the licensed trademarks and the advertising and promotional materials used in connection with the licensed trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. *Termination*. Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

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B. PUBLICITY. Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. MARKETING. Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract. Once approved, marketing material can be used by Supplier for engagement with potential or existing Participating Entities.

D. ENDORSEMENT. The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party claiming Force Majeure must provide the other party prompt written notice.

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. PERFORMANCE. During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.

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2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending*. Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, the Supplier will bear any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed. This subparagraph 3 does not apply to invoice payment disputes in jurisdictions in which contract law requires Supplier to mitigate its damages.

B. DEFAULT AND REMEDIES. Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. REQUIREMENTS. At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*
Workers' Compensation: As required by any applicable law or regulation.
Employer's Liability Insurance: must be provided in amounts not less than listed below:
Minimum limits:
$500,000 each accident for bodily injury by accident
$500,000 policy limit for bodily injury by disease
$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less

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broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:
$1,000,000 each occurrence Bodily Injury and Property Damage
$1,000,000 Personal and Advertising Injury
$2,000,000 aggregate for products liability-completed operations
$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:
$1,000,000 each accident, combined single limit

4. *Umbrella Insurance*. During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:
$2,000,000

5. *Network Security and Privacy Liability Insurance*. During the term of this Contract, Supplier will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Supplier's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:
$2,000,000 per occurrence
$2,000,000 annual aggregate

Failure of Supplier to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this

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Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. WAIVER OF SUBROGATION. Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION. The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. LAWS AND REGULATIONS. All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. LICENSES. Supplier must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier conducts with Sourcewell and Participating Entities.

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20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcewell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all references to "federal" should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier's Equipment, Products, or Services with United States federal funds, and the Participating Entity has provided Supplier with advance written notice that additional federal requirements may be applicable.

A. EQUAL EMPLOYMENT OPPORTUNITY. Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. § 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The equal opportunity clause is incorporated herein by reference.

B. DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148). When required by federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted

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Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Supplier must be in compliance with all applicable Davis-Bacon Act provisions.

C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Supplier

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certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of $150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Supplier certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the mandatory standards and policies relating to energy efficiency which are

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contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, and following consultation with the Participating Entity to assess Supplier's ability to comply, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. FEDERAL SEAL(S), LOGOS, AND FLAGS. The Supplier cannot use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. NO OBLIGATION BY FEDERAL GOVERNMENT. The U.S. federal government is not a party to this Contract or any purchase by a Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

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P. FEDERAL DEBT. The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. CONFLICTS OF INTEREST. The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

22. CANCELLATION

Sourcewell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell	W.W. Grainger, Inc.
DocuSigned by: Jeremy Schwartz C0FD2A139D06489...	DocuSigned by: Allison Darling 16CF38856A0F4B7...
By: _____	By: _____
Jeremy Schwartz	Allison Darling
Title: Chief Procurement Officer	Title: Sr. National Government Sales Manager Grainger US
Date: 11/4/2022 | 2:10 PM CDT	Date: 11/7/2022 | 5:08 PM CST

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Approved:

DocuSigned by:
By: Chad Coauette
7E42B8F817A64CC...
Chad Coauette
Title: Executive Director/CEO
11/7/2022 | 8:04 PM CST
Date: _____

Acklands-Grainger, Inc.

DocuSigned by:
By: Marty Luciw
811ED1E83E5443A...
Marty Luciw
Title: Sr. Government Sales Manager
11/7/2022 | 5:49 PM CST
Date: _____

RFP 091422 - Facility MRO, Industrial, and Building-Related Supplies and Equipment

Vendor Details

Company Name:	W.W. Grainger
Address:	100 Grainger Parkway Lake Forest, IL 60045
Contact:	Allison Darling
Email:	allison.darling@grainger.com
Phone:	713-805-9845
HST#:	36-1150280

Submission Details

Created On:	Tuesday July 26, 2022 08:21:39
Submitted On:	Tuesday September 13, 2022 10:59:56
Submitted By:	Allison Darling
Email:	allison.darling@grainger.com
Transaction #:	bbaa1000-7f57-4a2d-bcef-ab4d80807b2b
Submitter's IP Address:	167.115.15.8

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *	
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	W.W. Grainger, Inc. (Grainger US)	*
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	Acklands-Grainger, Inc. (Grainger Canada)	*
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	Grainger US and Grainger Canada. Please note, Grainger US and Grainger Canada hereby referred to as "Grainger North America".	*
4	Provide your CAGE code or Unique Entity Identifier (SAM):	25795	*
5	Proposer Physical Address:	US: 100 Grainger Parkway, Lake Forest, IL 60045 Canada: 123 Commerce Valley Drive East, Suite 700, Thornhill, ON L3T 7W8	*
6	Proposer website address (or addresses):	US: www.grainger.com Canada: www.grainger.ca	*
7	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Allison Darling, Sr. National Government Sales Manager, Grainger US Address: Grainger Branch 358 6050 Southwest Freeway Houston, TX 77057 Email: Allison.Darling@grainger.com Phone: 713-805-9845	*
8	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Allison Darling, Sr. National Government Sales Manager, Grainger US Address: Grainger Branch 358 - 6050 Southwest Freeway Houston, TX 77057 Email: Allison.Darling@grainger.com Phone: 713-805-9845	*
9	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Marty Luciw, Sr Government Sales Manager, Grainger Canada Address: 123 Commerce Valley Dr. East, Suite 700, Thornhill ON L3T 7W8 Email: Marty.Luciw@grainger.ca Phone: 403-991-2727	

Table 2: Company Information and Financial Strength

Line Item	Question	Response *
10	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	In business for 94 years and incorporated in 1928, W.W. Grainger, Inc., headquartered in Lake Forest, IL, is the leading North American provider of maintenance, repair and operating (MRO) supplies. Our customers see us as a single solution with more than 1.5 million commercial off-the-shelf (COTS) products. In the US and Canada, we are authorized by more than 6,500 large and small businesses to distribute their products in fragmented, intensely competitive commercial and government markets. We own our inventory, distribution centers and retail branches and provide direct drop shipment from manufacturers and suppliers. In addition to any manufacturers' warranties, Grainger warrants the products it sells and manages its supply chain to ensure the product the customer purchases is of the type, quality and quantity represented and is delivered where and when the customer wants it. Grainger strategy is to distribute the broadest line of MRO products and service categories that assist small, medium, and large commercial, government and institutional customers. Central to Grainger's value is our broad offering across over 36 MRO categories, all with outstanding availability. We compete directly with broad line MRO suppliers as well as specialized distributors and manufacturers. Grainger

leads the industry in ability to provide customers one choice to procure MRO needs. Our deep expertise in products and services, including ability to locate difficult to find items, is available to every Sourcewell Member to gain long-lasting processing efficiency when they leverage Grainger's supply chain strength.

Grainger North America's Facility MRO proposal is designed for use by all levels of government in the US and Canada, education service cooperatives, K-12 and higher education schools, Tribal and Indigenous governments, qualifying non-profit agencies and Members of the Canoe procurement group of Canada. Grainger North America can fulfill the MRO needs of all agencies and entities envisioned in Sourcewell's RFQ Section B. Grainger's entire catalog offering is available to Sourcewell Members.

Pricing Offer

Grainger's North America Pricing offer, detailed in response # 57, is a most comprehensive and competitive Sourcewell offer to date. Numerous cost savings include:

- Category Discounts
- Hot List
- North America Market Basket
- General Catalog Discounts
- Large Order and Volume Discounts
- Customer Specific Pricing
- Access to all Grainger-Sourcewell Contract Awards and the Pricing Benefits of each

In response # 59, Grainger will extend its Sourcewell Enhanced Discount Incentive Program providing Members opportunity for a 3% increased discount across each of 25 MRO categories. In the alternative, the Sourcewell Plus program will provide Members opportunity to secure customized incentives through a Sourcewell approved participating addendum.

In serving government agencies and education institutions, we focus on knowing those products and services that assist daily operations and emergency environments and to ensure availability. In any circumstance, Grainger will deliver product and services to an incident scene or facility, expeditiously. Grainger will deploy team members to assist in logistic support. In any emergency, catalog product pricing does not change; it remains as stated in the contract.

Meaningful cost savings will flow from the depth and breadth of Grainger's North America MRO inventory and its distribution network centered on next day delivery. Sourcewell Members know that costs go beyond product price – searching for products, leaving facilities to shop, repetitive procurement processes, maintaining inventory of infrequently needed product and the burdens of spot purchases. Grainger North America's solution is directed to reducing these costs by streamlining acquisition with quantified savings.

Grainger North America - W.W. Grainger and Acklands-Grainger (Grainger North America)

Our offer presents Grainger's commitment to Sourcewell Members and will be fulfilled by its long-term businesses, W.W. Grainger, Inc. in the US and its wholly-owned subsidiary, Acklands-Grainger, Inc. in Canada, referred throughout as Grainger North America: *

United States:
- A US distribution network of 251 branches and 14 distribution centers servicing all the US
- An extensive product line, now more than 1.5 million products and over $1 billion of on-hand inventory.
- Most customers receive next day product delivery; most of in-stock orders are shipped within 24 hours.
- Proven experience in negotiating and implementing multi-state, complex, nationwide contracts.

Acklands-Grainger Inc.:
- Canada's largest MRO distributor.
- 34 strategically located branches and 4 distribution centers coast to coast, provide capability to service Sourcewell members in Canada with exceptional service and high levels of product availability.
- Offering more than 476,000 products across 32 product categories
- Most customers receive next day product delivery; most of in-stock orders are

shipped within 24 hours.
- Proven experience negotiating and implementing complex contracts.

Grainger's objective is always being able to serve short- and long-term customer needs. Grainger separates itself by providing a wide range of private and public customers with highly tailored solutions of products and services. The competitive environment needed to maintain these customer relationships drives the need to innovate and remain relevant to each customer.

Grainger North America's specialization is reflected across its 730-member team dedicated solely to government, education and healthcare. Grainger Team Members serving the public and education sector understand the range of needs and environments across varied departments. Account Managers pursue cost-savings initiatives to improve operational effectiveness and efficiency and to respond to emergent and ordinary needs. Each Grainger Team Member strives to exceed customer expectations.

Supporting the Government and Education Team is an enormous corporate investment dedicated to supplier relationships, supply chain infrastructure, team member expertise, technical support and ecommerce. Suppliers rely on Grainger for its market reach, financial strength, customer trust, experienced and expert sales team and technology driven supply chain. These enduring relationships with manufacturers give us unparalleled access to the right products and allows us to be a single source ensuring industry-leading availability of the broadest number of products.

Grainger's investments converge in our ecommerce and digital platforms. For more than 20 years, Grainger has provided public and private sector customers customized on-line websites to search and select products within catalogs uniquely assembled for them, place orders and access records and information associated with their purchases. This digital infrastructure is designed to support the compliance needs of government customers. Grainger's ecommerce platform will continue to be tailored for today's requirements and be robust and flexible to remain relevant as government and education institutions, industry, markets and technology continue to evolve.

Grainger North America proposal in as much in providing products quickly as in pursuing and presenting services enabling agencies to respond expeditiously to specific needs. Grainger's range of services has been expanded to assist Member personnel resource demands while comporting with state and agency laws and policies. Grainger support teams have deep expertise and experience across Sourcewell Member jurisdictions in provisioning services.

Grainger North America's offer encompasses comprehensive audit, oversight and training to adhere to all contract pricing and requirements across Sourcewell terms. Government Team training includes mandatory ethics and compliance responsibilities. Grainger information systems provide Member driven requirements supporting oversight, supervision and accountability. Reporting and compliance strictures are structed to individual Members.

Grainger is a value-based company; our work supporting Sourcewell and its Members is the highest of priorities. Grainger North America will continue to serve Sourcewell Members by understanding the mission and challenges of each agency and what this RFP entails. By doing the right things the right way, we benefit not just Grainger but our customers and communities where we live and work.

11	What are your company's expectations in the event of an award?	At Grainger, the focus is always being able to anticipate and meet our customers' needs. Grainger has gained extensive experience across Sourcewell's Members and will continue to improve products, services, and processes to deliver Sourcewell's value to more agencies throughout the US and Canada. Throughout the term of the current agreement, as Grainger has added team members, our training has evolved to address more specific agency needs, policies and protocols. Parallel enhancements have been and will continue to be made to corporate resources such as product management, ecommerce and supply chain logistics and IT innovation. As Sourcewell and its Members progress, so will our ability to serve refined needs and a broader customer base. Our path is centered on experience in anticipating and meeting agency challenges in emergencies and ordinary environments. The foundation of our work is providing value by assisting agencies in acquiring and maintaining MRO products and services, improving agency efficiency and effectiveness. The objective is to grow the Sourcewell MRO offering as to Member participation and revenue. Grainger North America's implementation processes will commit special attention to existing and new participating Members. We recognize that Sourcewell Members often enable individual departments wide autonomy as to product and service solutions. Grainger North America's national sales teams will reach out to these stakeholders. The unique value of Sourcewell and its dedication to assisting meaningfully all agencies as reflected in the new contract award will be prominent. Beyond the breadth and availability of our product and service offering, is our commitment to understand and improve how we can serve Members more effectively. Grainger North America's expectation is maintaining high standards of performance, expand service levels and to attract additional Members to acquiring their MRO requirements through Sourcewell.	*
12	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	Grainger (GWW) is a publicly held Fortune 500 company, with shares traded on the New York Stock Exchange. Grainger 2021 sales of $13.0 billion were up 12.4% from 2020. As of December 31, 2021, Grainger had approximately $1.5 billion in available liquidity. A full discussion related to the financial condition of the Company is found in Grainger's 2021 Annual Report, https://invest.grainger.com/home/default.aspxr Please see Grainger's 2021 Annual Report which contains three years of audited financial information. Additionally included Grainger's 2022 D&B Report.	*
13	What is your US market share for the solutions that you are proposing?	We estimate that Grainger's MRO US share is approximately 6%.	*
14	What is your Canadian market share for the solutions that you are proposing?	We estimate that Grainger's MRO US share is approximately 6%.	*
15	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No, Grainger North America has never filed for bankruptcy.	*
16	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	Grainger North America is an authorized distributor for all the 1.5 million products we sell. Grainger North America has contractual relationships with over 4500 suppliers providing product. We can provide evidence of these authorizations.	*
17	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	Grainger North America holds licenses to operate in all 50 states, the District of Columbia and US Territories, as W.W. Grainger, Inc., as well as in Canada's 10 provinces and 3 territories, as Acklands-Grainger, Inc.	*

18	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	No, Grainger North America has not ever been suspended or debarred.	*

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *	
19	Describe any relevant industry awards or recognition that your company has received in the past five years	W.W. Grainger, Inc. awards or recognitions over the past five years include: Industry Leadership • #1 Industrial Distribution's Big Fifty List: 2021, 2020. 2019, 2018 • Newsweek Americas' Most Responsible Companies: 2022 • LinkedIn Top Companies in Chicago: 2021 • Fortune World's Most Admired Companies: #1 in Diversified Wholesalers: 2020 (7th Consecutive Year) • Savoy Most Influential Black Corporate Directors • Selling Powers 50 Best Companies to Sell List: 2020 • FTSE4 Good Index Member Veterans • Military Times' Best for Vets: 2021 People & Purpose • Disability Equality Index 2021-2021, 90 percent rating: three years in a row • Human Rights Companies Best Places to Work for LGBTQ Equality: six years in a row • DiversityInc Top Regional Company: 2021 • Human Rights Campaign Foundation's Corporate Equality Index 2022: eight years in a row • Great Place to Work Certified: 2021-2022 • Built in Chicago's Best Places to Work: 2022 • Black Enterprise List of top Executives in Corporate Diversity: 2018-2019 • Fortune's 100 Best Companies to Work For 2022 • Best Places to Work for Disability Inclusion – American Association of People with Disabilities: 2017 • Certified USA Best Places to Work: 2021 Sustainability & Stewardship • Dow Jones Sustainability Index: 2021 • Barron's Most Sustainable Companies in the US: 2022 • EcoVadis Silver Rating: 2022 • S &P Global Yearbook:2022 • CDP B Rating: 2021 • MSCI ESG Rating AAA: 2021 • Investor Business Day Best ESG Companies Top 50 Information Technology • Digital Commerce 360 Ranking of 11th Largest E-Retailer: 2017-2020	*
20	What percentage of your sales are to the governmental sector in the past three years	US: 2019: 19.1%, 2020: 21.0%, 2021: 19.6% Canada: 2019: 6.6%, 2020: 12.4%, 2021: 11.4%	*
21	What percentage of your sales are to the education sector in the past three years	US: 2019: 5.1%, 2020: 5.0%, 2021: 5.2% Canada: 2019: .7%, 2020: 1.3%, 2021: 1.2%	*
22	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	US NASPO E&I OMNIA Sourcewell 2019: $450M - $500M $150 - $200M $100M - $150M $50M - $100M 2020: $450M - $500M $150 - $200M $100M - $150M $50M - $100M 2021: $450M - $500M $150 - $200M $100M - $150M $50M - $100M CANADA HealthPro MPSC 2019 $3M-$5M $0-$500K 2020 $5M-$10M $500K-$1M 2021 $7M-12M $500K-$1M	*
23	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	Grainger North America holds GSA Schedule: 51V Super Hardware Store – GS-06F-0007J/47QSHA18D000G. The annual sales volume for the last three years: 2019 - $271M+ | 2020 - $278M+ | 2021- $311+	*

Table 4: References/Testimonials

Line Item 24. Supply reference information from three customers who are eligible to be Sourcewell participating entities.

Entity Name *	Contact Name *	Phone Number *	
Confidential Trade Secret Information US: City of Austin	Sandy Wirtanen, Procurement	512-974-7711	*
Confidential Trade Secret Information US: Nassau County Department of Public Works	Fred Maroni, Superintendent of Buildings	516-572-0394	*
Confidential Trade Secret Information US: City of Toledo, Department of Public Utilities	Christine Minor, Administrator, Safety & Training	419-270-5888	*
CANADA: City of Kimberley	Rob Topping, Manager of Operations	250-427-9673	
CANADA: Municipalities Newfoundland and Labrador	Bradley Power, Director of Programs	709-753-6820	

Table 5: Top Five Government or Education Customers

Line Item 25. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
Entity 1	Education	Ohio - OH	Managed MRO Solutions: Grainger, as an agnostic acquisition manager for the University, pursues a performance metric of 2% annual cost savings in the storeroom. The savings categories encompass cost in use, warranties, returns, and consumption reduction. Progress is regularly tracked and documented. These processes identify a gap, provide a solution and document the value. One example relates to the University's "free stock" of nuts and bolts, cable ties, other minimal value items. The incumbent vendor had a blanket PO each month for $5K. By comparing the current pricing to that of Grainger's and eliminating non-moving items, Grainger expects to achieve a cost savings of $30K in 2022.	2019: $1 - $23K 2020: $1 - $24K 2021: $1 - $14K	2019: $620K 2020: $570K 2021: $590K	*
Entity 2	Government	Connecticut - CT	Emergency Preparedness Support: Grainger partnered with a state agency to provide warehouse and delivery services for PPE stockpile. Grainger provided a robust reporting system that includes on-hand inventory, expiration dates and daily demand. These services provide ability to allocate necessary PPE as well as to enable stockpile visibility so the agency can be more deliberate as to budgets, eliminate waste from expired PPE and mitigate risk by having the right products and quantities on hand.	2019: $1 - $97K 2020: $1 - $77K 2021: $1 - $65K	2019: $8.1M 2020: $10.5M 2021: $9.0M	*

Entity 3	Government	Texas - TX	MRO Expertise and Provisioning – Citywide support across all departments including Police, Fire, EMS and other first responders, Utilities (Water and Wastewater, Energy, Transportation, Public Works), Parks, Fleet Management, and Emergency Management. Grainger is relied on for product breadth, availability and service that assist daily operations, including employee and citizen safety. Grainger support during emergency circumstances has included Mega-Shelters, MRE's, water, cleaning, and sanitary products. All fire stations and special operations units use Grainger's KeepStock platform. Grainger also assists in securing certified training across all departments. Beyond meeting public safety MRO needs, departments leverage spend via significant discount opportunities and access to critical commodities needed to support first responders.	2019: $1 - $115K 2020: $1 - $188K 2021: $1 - $780K	2019: $4.6M 2020: $4.0M 2021: $5.4M	*
Entity 4	Education	North Carolina - NC	Managed MRO – Grainger onsite resources include daily ordering, Keep Performance Indicator (KPI) tracking, sourcing, recommending products/services, staffing, trouble resolution, inventory management, documenting value, lean initiative work, responding to emergent needs and maintaining reporting and compliance strictures across all university departments and facilities. A nearby Grainger branch provides product staging and further expertise in product selection. Grainger's ecommerce platform engages the University's E-PRO system.	2019: $1 - $19K 2020: $1 - $123K 2021: $1 - $44K	2019: $1.3M 2020: $1.8M 2021: $1.7M	*
CANADA	Government	ON - Ontario	MRO Expertise - Grainger provides MRO expertise ranging from high touch to low touch, customized to the need of each municipal department. Some departments use Grainger's self-service offering via our eCommerce platform and Customer Managed Inventory tools, while others rely on Grainger for our KeepStock Inventory Management capabilities. Our local Onsite Services Representative provides embedded support to specific departments to assist customers with day-to-day product identification, ordering, and replenishment. Our programs are specifically designed to ensure that on-hand inventory is properly deployed, to manage process costs to a minimum, and to free the customers' teams up to focus on more pressing matters.	2019 $1 - $15K 2020 $1 - $19.5K 2021 $1 - $19K	2019: $200K 2020: $300K 2021: $350K	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcewell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *
26	Sales force.	Grainger has gained extensive experience on how to best serve Sourcewell agencies throughout the US and Canada. Beyond the breadth and availability of our product and service offering is our commitment to understand and improve how we can serve Members more effectively. Throughout the current contract's term, Grainger has added team members and expanded their training. All team members are employees of Grainger North America. With a team of over 600 sellers, North America Grainger's US Sales organization, dedicated solely to government, education and healthcare, is divided into 3 regions to provide full coverage to all States, the District of Columbia, Territories, county and local governments. Customer Coverage is provided in all time zones including 24/7 online, chat, email and phone support. Each region is led by a Regional Vice President and Director who implements the Sourcewell strategy and supervises marketing outreach and service to Members. Sellers are aligned and accountable to specific geographic areas and segments. District Managers, Account Managers and Sales Managers and Representatives reach deep into jurisdictions, departments and agency components to understand the requirements and challenges of each and to pursue solutions. In remote geographies, Sourcewell Members are supported by the government-specialist Inside Sales Team and the Customer Service Team to bring and deliver Sourcewell-Grainger value. Grainger's Canada Team of over 100 sellers reflect similar accountability and coverage across all regions of Canada. This includes Account Managers, Government Sales Managers, District Sales Managers as well as Executive Sales Leaders. For rural areas, Grainger Canada's Inside Sales Team calls upon these customers to advise of the Sourcewell value, provide advice as to product selection, assist in logistic challenges, as does the Customer Service Team. Government team members are trained as to details of the Sourcewell Facility MRO contract, its comprehensive contracts portfolio, marketing strategy and its insight to specific customer opportunities. Through training and manufacturer presentations and literature, team members keep pace with challenges encountered by those Members and pursue innovative product solutions. All Grainger government team members also receive training annually in ethics and government sector compliance responsibilities. Grainger North America's Sales Team recognizes the importance and urgency to deliver products, services, and solutions to via Soucewell's suite of competitively solicited and awarded cooperative contract awards. Each team member recognizes that knowing these contract vehicles in detail helps our customers save time and money and ensures compliance. The Team is assisted by specialists in critical areas such as safety, health and industrial tools and equipment. The specialist teams collaborate with Government Account Managers to provide customer on-site assessments and evaluations and assist throughout emergencies. Such work is integral to Grainger's Facility MRO offer: Grainger Sales and Supporting Teams' Value City (TX) Emergency Water – Winter 2022: A city-wide precautionary boil water notice was issued when a water treatment plant was removed from service. As crews worked to resolve the circumstance, the City, a Sourcewell Member, sought drinking water for its residents. Contacted late on a Sunday night regarding the emergency, Grainger coordinated 17 tractor trailers delivering full truckloads of bottled water for distribution to residents by Tuesday. City (TX) Wardrobe & Firearms Lockers- Spring 2022: Sourcewell Member Police Department required turnkey solutions for wardrobe and gun lockers for 200 police officers at two locations. Grainger identified a qualified supplier, conferred with Department leadership, and is facilitating implementation, including CAD drawings, product acquisition and installation. City (OH) Night Work Hazards – Spring 2022: The city's parks agency, a Sourcewell Member, needed a lighting solution for night calls requiring tree climbing and cutting due to fallen power lines. Grainger identified a supplier partner with deep expertise in task lighting, who evaluated the need onsite and provided a demo

unit of a portable, high lumen scene light. Grainger provided the agency job site lights to outfit its crews within days.

County Public Schools (AL) – Summer, 2022: When a windstorm damaged this Sourcewell Member's 10x20 tents for an upcoming event, Grainger quickly delivered large replacement tents to the convention center location the next day in time for the School System's planned event.

County Public Schools (AL)– July, 2022: To address extreme heat at the school system's bus garage, Grainger helped the Fleet Team secure evaporate cooling and ceiling fans expeditiously.

Canada Province- 2020-2021: At the outset of the Covid-19 pandemic, Grainger Canada partnered with a key PPE supplier and leadership from a Canadian provincial government to prepare for the escalating PPE requirements for frontline workers and to support the province's extensive needs throughout the pandemic. Grainger and its partner identified and secured reputable sources in North America and globally. It also facilitated technology transfers to the government to use specific practices from the manufacturer's product engineering team to enable incremental PPE production domestically to meet supply chain shortfalls. Grainger Canada received a formal letter of appreciation from the Assistant Deputy Minister for its work through the most difficult period of the pandemic. *

County Purchasing and Transportation and Natural Resources TX) – Spring, 2021: With a freeze damaging several cement plants, and the resulting unavailability to acquire large quantities of cement mix, the County accessed Grainger-Sourcewell's broad product offer to secure 800 tons of cement mix while satisfying the County's procurement procedures.

County Public Schools (AL) – Spring, 2021: This Sourcewell Member's graduation ceremony required red painter's tape to delineate every other row in the graduation venue to maintain social distancing during the pandemic. Grainger accessed hundreds of units of the required tape within its distribution center network to fulfill this requirement within 2 days

County (VA) Waste Disposal - Summer, 2021: During a meeting with the County Safety Supervisor, the Sourcewell Member and Grainger Team identified several opportunities to close safety gaps, particularly regarding written safety procedures. Grainger's Field Safety Specialist was engaged and soon connected the County's Waste Disposal Team with an EH&S Consulting/Engineering Firm to assist with writing safety procedures and to institute changes conforming with the procedures and policies.

City (OH) Safety, Fall 2021: Sourcewell Member water and sewer agency sought Grainger's assistance to address challenges with concrete saws requiring significant time to power down, thereby presenting hazards to individuals in or near the work area. Grainger pursued its supplier network to provide a demo battery-powered concrete saw unit. The power tool enabled employees to eliminate fumes, control silica dust through a water feature, and deliver an instant stop feature to protect from injury.

County (TX) Pandemic Response - Spring 2020-Winter 2021: The Grainger Team collaborated with key County Departments including the Office of Emergency Management, Life Safety, Corrections, Health & Human Services, and Purchasing to secure pandemic supplies. Grainger supplier relationships and logistics capabilities secured gloves, masks, sanitizer, Tyvek suits, goggles, air purifiers, and sanitation equipment required by County personnel. In an environment of shortages across product categories, Grainger pursued solutions and leveraged relationships with manufacturers and suppliers to identify alternate options.

Grainger also provided supplies for COVID test centers, outfitted workers with PPE and tents, chairs, safety vests, cones, crowd control barriers, and cooling fans.

County Parks Department (TX) – December, 2021: At the end of 2021, this Sourcewell Member was challenged to locate large trash receptacles and recycling bins providing optimal fit, form and function throughout the park system. The Parks Department also noted its limited holding capacity to stage such a large amount of product. The Parks Department sought receptacles that were attractive, properly sized yet durable; with swift and accurate delivery to unique park locations and acquisition comporting with rules and procedures.

The Grainger solution allowed the County to secure attractive, durable products delivered to all sites in a short time; Grainger's Sourcewell Facility MRO contract enabled the Parks Department to satisfy their bidding procedures while streamlining the purchasing process through the use of the Sourcewell-Grainger cooperative contract.

		County (NY) Pandemic Response - Spring 2020-Winter 2020: Grainger's NY Team similarly leveraged supplier relationships to obtain critical cleaning and sanitary supplies and PPE. Grainger pursued regular supplier channels and special-order Sourcing resources, all within the scope of Grainger's Sourcewell Facility MRO cooperative contract award: • Public Works: Grainger NY leveraged the capabilities and extensive supplier relationships of Grainger's Sourcing Team to source cleaning supplies such as disinfecting liquids and sprayers and hand sanitizer for the County's Public Works Department. • Office of Emergency Management: Grainger's NY Team secured over 200K N95 masks for the Office of Emergency Management by working directly with 3M to support effort implementing a countywide PPE program in the County, including 1.5M pairs of gloves. County (VA) Pandemic Supply, Spring 2020: County Procurement used its Sourcewell-Grainger agreement to secure hundreds of difficult-to-source coveralls to outfit Police, Fire, EMS, and custodial staff throughout the pandemic. With the County encountering warehouse capacity challenges, Grainger staged shipments in its distribution center until the County was able to take delivery. The circumstances comported with the County's bid and compliance strictures. City (OH) Public Health – Spring 2020: Leaders from the city's highways and streets agency became concerned regarding environments where workers are exposed to hypodermic needles and sought Grainger's assistance. Within the week, Grainger provided this Sourcewell Member over 200 pairs of needlestick-resistant gloves to protect workers from injury and infection. City Water Reclamation (OH) - Spring 2018: Grainger assisted this Sourcewell Member that was seeking better Lockout Tagout procedures when disconnecting and connecting equipment. A supplier's 3-day lockout tagout project procedures was secured to assist Water Reclamation in maintaining standard operating procedures and improving workplace safety.
27	Dealer network or other distribution methods.	Grainger North America's company-owned supply chain makes inventory available to customers on a just-in-time basis. This distribution network includes 251 branch locations and 14 distribution centers (DCs) in the US and 34 branches and 4 DCs in Canada, which includes over $1 billion on-hand inventory. We also ship directly from our manufacturer-supplier partners. Grainger North America's branches and DCs tailor inventory to Member location demands to ensure products are available for immediate pick-up, same-day shipment, or same-day shipping. Grainger branches, and all other purchasing channels provide Sourcewell Member contract pricing. Grainger North America's analytical planning tools position and deliver products to the right place and time. Advanced algorithms determine inventory levels and the best means of delivery. Stocking levels are continuously refined as market intelligence is incorporated into the historical usage information to minimize lead times on orders for products stocked in our distribution centers. This analytical approach pervades Grainger's supply chain- knowing where product is and when it is required to be at a Member's location and the fastest means of delivery. In high demand circumstances, product can be staged at the local Grainger branch to assure just-in-time product availability. * Grainger's distribution system is designed to deliver complete orders in a single box to where it is needed. To ensure packages are properly coded, Grainger scrutinizes label information and pursues accurate and updated information with the end customer to avoid delays and costs. Most orders received by 4 PM local time at Grainger's facility will ship the same day. Customers receive most shipments the next business day through carriers including FedEx, UPS, USPS, Purolator and Canada Post. Grainger uses local delivery sources, such as messenger services or common carriers, to fulfill emergency deliveries. All distribution center and branch team members are directly employed by Grainger North America and do not overlap in other areas of the business. Please see attachment Grainger North America's Distribution Network

28	Service force.	Grainger provides a multichannel customer service platform to support Sourcewell Members: US and Canada Based Customer Service Team: The Grainger North America Customer Service team is highly trained and experienced. Customer Service Associates (CSAs) are available via email, chat or toll-free number The team has the resources needed to answer questions and resolve inquiries. US: 800-472-4643, 24 hours a day, 7 days a week, CustomerSupport@grainger.com Canada: 1-888-602-0000, M – F, 6:00AM – 8:00PM EST, Customerservice@grainger.ca Grainger's 3,000 CSAs are dedicated solely to receiving customer calls, emails and chat and providing after-sale support. Their focus is providing information, answering questions, placing orders and addressing customer concerns, including: • Information on order status and deliveries • Backorder information • Item price information based on Sourcewell contract pricing • Product availability • Detailed product information • Helping locate products for specific applications and finding products to meet technical requirements • Providing dedicated manufacturer and technical support resources • Helping Buyers select alternate products to complete purchases • Placing and managing emergency orders • Generating product quotations and assisting with order placement Full Support Branches: Beyond wide product availability, Grainger branch teams have extensive expertise and experience. The Grainger branch will maintain customer specific inventory and other services such as kitting, staging, and cycle counting and technical support. Over 160 Technical Product Support (TPS) team members: TPS team members provide assistance on product selection, installation support and troubleshooting. Team members have in-depth, professional field experience that keeps current with new products and trends. Emergency Support: Grainger Emergency support is available at phone number 800-472-4643 in the US, 24/7, 365 days a year for all critical needs. Canada Members may call their Account Manager if emergency support is needed.	*

29	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	Sourcewell Members can order in the following ways • Online through Grainger.com (US) or Grainger.ca (Canada) • The Grainger mobile app (available in the App Store and Google Play) • eProcurement EDI, XML • Toll-free phone with Customer Service Agents • Email • Online chat • Account Management Team • In-person at a Grainger Branch* • KeepStock(r) Inventory Management Solutions eCommerce Grainger.com is an intuitive, fully configurable eCommerce solution with enhanced tools for better purchasing control that is tailored to Sourcewell Member's purchasing process. Grainger customizes Member on-line websites to search and select products within their specific catalog, place orders and to access records and information associated with their purchases: • Grainger's advanced functions include dynamic search and compare capabilities, expansive product information, price, product location and shipping information. • Users can search and review by Image, Keywords, Description, Manufacturer/Brand, Model Number, Cross Reference Number, Relevant Categories, or Product Index. Search terms may be refined by Product Categories, "Brand" or "Price". • Detailed technical specifications can be accessed for each product. • Contract pricing is presented with clarity; products can be saved in the shopping cart function and shared with colleagues. Approval and workflow protocols can be enabled. • Users have real time online visibility to previous orders, product availability and expected delivery dates. Users are also provided the status of backorder items and expected arrival dates. • Expeditious checkout and payment and shipment tracking keep Member order processing time to a minimum. • Grainger eCommerce platform can identify product attributes reflecting a Member's priorities and highlight these attributes with product placement and in product descriptions. Green/Environmentally preferred, Made in USA, and EPA Certified (such as Energy Star), are among the product attributes that can be identified. Grainger's platform can also provide search filters associated with the priority. *Grainger's CSAs within the branch network are available 8:00 am to 4:00 pm each day in each time zone. CSAs in the US are available 24/7 via email, toll free number or fax. Grainger Canada CSAs are available M – F, 6:00AM – 8:00PM EST. Grainger US Emergency support is available at phone number 800-472-4643 24/7, 365 days a year for all critical need. Grainger Canada Emergency support can be requested by contacting the Member's Account Manager. In order for a Sourcewell Member to have access to Grainger's awarded contract pricing, the Member must have completed the Grainger-Sourcewell account affiliation process for the specific Sourcewell contract the Member wishes to affiliate to and be recognized as an affiliated Member by Grainger. This process can be found on Sourcewell's website, www.sourcewell-mn.gov, under "Vendors and Contracts." Simply search under the awarded contract number, where you will find the "Grainger Affiliation Form" as well as the "Contract Participation Details."

30	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	Confidential Trade Secret Information Each Customer Service Associate (CSA) uses state-of-the-art technology tools needed to address inquiries and ensure member expectations are met. CSAs use a workforce planning software so Grainger can accurately forecast volumes and handle work schedules based on historical and real-time needs. This capability allows Grainger to ensure adequate staffing levels to provide a consistent level of service throughout every interval of the day. Grainger uses phone routing logic that routes calls to the first available CSA. In emergency circumstances, calls are routed to the appropriate Grainger North American representative. Grainger has incorporated quality management principles within its operations. We use a combination of proven approaches to accomplish these objectives. We are dedicated to a culture of Continuous Improvement (CI) as the foundation of the Quality Assurance Plan. A critical part of CI is using a deliberate and iterative cycle of Plan, Do, Check and Adjust (PDCA) activities to drive quality. Grainger's Lean-based approach to CI is based on the Plan-Do-Check adjust cycle. Grainger North America's objective is to improve how we do our work: • Inventory Accuracy: measured monthly with minimum goal of 99% • Will Call Ready Rate: measured monthly with minimum goal of 95% of orders ready within 30 minutes • Product Availability: measured weekly with a goal of 97% of stocked items in stock • Percentage of calls answered within 30 seconds: Grainger's goal is 80% • Perfect Order / Order Accuracy: 98% The percent of our order lines that are not returned or sent out again as a Free of Charge. • Invoice Accuracy: Measures the percent of our orders that do not have credits/debits associated with them. Maintaining a 99.7% • Fill Rate: 93%-line fill rate • Same-day Shipping is achieved for most in-stock items within the continental US when the order is received by 4 p.m. local time at the shipping facility. Given the ongoing pandemic, global tensions, and labor and material shortages, the supply chain environment is volatile and uncertain. To address these challenges, Grainger continues working with our suppliers while also identifying alternate sources to reduce risk. We remain insistent that the products we distribute are manufactured and delivered with high ethical standards emphasizing quality, reliability, and aligned with our Supplier Code of Ethics. Throughout any circumstance, Grainger stays close to our state, province, local, educational, and non-profit customers to assist in examining multiple supply sources.	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	Grainger North America can provide full service across all states, the District of Columbia, and territories in the US.	*
32	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	Grainger North America can provide full service across all provinces and territories in Canada.	*
33	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	Grainger North America can provide full service across all states, territories and provinces in the US and Canada.	*
34	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	Grainger North America can provide full service across all participating entity sectors in the US and Canada.	*
35	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	Grainger North America sees no contract requirements or restrictions that would apply to Members in Hawaii, Alaska, or the US Territories.	*

Table 7: Marketing Plan

Line Item	Question	Response *	

36	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	Confidential Trade Secret Information Grainger North America's marketing strategy is to promote the relevancy and competitiveness of the new Sourcewell Facility MRO Industrial, and Building-Related Supplies and Equipment portfolio of products and services. It is driven by Grainger North America's expertise and experience associated with facility maintenance, repair, and operations. Grainger has two goals- to ensure continuity with seamless transition for incumbent Members and to generate interest from agencies that currently are not Members by promoting the benefits to increase participation. To drive awareness of the Sourcewell agreement, Grainger messaging and collateral communications will be deployed electronically through email, housed digitally through Grainger.com and Grainger.ca and made available for print. The multiple methods and channels allow Grainger to be consistent and relevant and engage current and potential new Members through their preferred communications mediums. Coordinated throughout with Sourcewell, Grainger North America's digitally enabled, integrated approach will amplify our marketing efforts though the following plan: Targeted state, province, local, educational, and non-profit agencies Advocacy Campaigns: • Press Release announcing new Sourcewell Facility MRO Industrial, and Building-Related Supplies and Equipment award • Social Media platforms broadcasts • Updated and revised Sourcewell Landing Page • Direct Mail Catalog focused on Facility MRO • Promotion of Sourcewell at trade shows and government conferences Customer Member Landing Page: Upon login, the Member will be directed to the new Sourcewell custom content, including contract Member pricing. The landing page will profile the new contract's benefits and how it will assist it meeting agency mission and responsibilities. Member Enablement Toolkit: A toolkit that includes a marketing document providing an overview of contract benefits and relevant services and solutions will be deployed. This marketing presentation will be designed to be Member-facing. These customer-facing materials will be ready for immediate distribution upon award. Sample documents can be viewed as part of our document uploads in this section. a. Sourcewell Welcome Kit – Guide to Grainger b. Sourcewell One-Page Contract Benefits c. Sourcewell Contract Benefits Presentation d. Grainger Facility MRO Product Lists e. Grainger.com – Public Landing Page f. Member-Specific Landing Page Media Kit: The kit contains a bundle of Grainger-branded flyers, prints and digital banner ads to leverage marketing and sales programs for Sourcewell Collaborate on Co-Marketing Efforts: Grainger's North America Government Sales Team is a critical facet of our marketing initiatives. We continually integrate Sourcewell opportunities through collaboration, including our recent launch of Sourcewell Short-Takes, a series of informative 3-8 minute videos designed to convey important concepts pertaining to Sourcewell Cooperative Contracts. We will expand this channel to include our joint offer around our new MRO contract launch, if awarded. These videos, created by Sourcewell and Grainger, are distributed to Grainger Sales Team members via our Sourcewell Teams Page, which is accessed by the entire Grainger Government Team. Executive Sponsorship: Executive alignment is crucial to a successful strategy. Our National Government Sales Team conducts business reviews with Sourcewell Supplier Development Administrators and Leadership to assess performance, identify trends and adjust marketing plans. The Grainger team presents monthly reviews relating to Facility MRO and trends in state, province, local, educational, and non-profit agency needs to Grainger leadership to gain direction and additional support to drive Sourcewell initiatives. Sourcewell's portfolio is vital to delivering premium customer value that benefits customers and Grainger.	*

37	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	Confidential Trade Secret Information Grainger North America's technology-driven marketing parallels competitive commercial markets with social media presence across not only major platforms such as Facebook, LinkedIn, Twitter and Instagram but also more refined channels reflecting our customer and product base. Grainger North America online customer transactions, digital presence and over 5 million customers present considerable leverage to shape marketing effectiveness. Marketing efforts center on digital channels, including paid search, display, social media, email, and Search Engine Optimization (SEO) – with more than one billion impressions and millions of clicks per month. We continue to leverage traditional channels, including radio and print (ranging from our large catalog to smaller more targeted mailings). Sourcewell will be supported by an experienced marketing team that keeps pace with advances and innovation to drive relevance, competitiveness, and clarity of Sourcewell's value. The following technology and digital tools anticipate and provide relevant products and solutions direction to Sourcewell Members: • Paid Search captures customer traffic reflecting purchase intent in Google, Bing and Yahoo. Sourcewell Members are targeted with text and product listing ads. Paid search is highly scalable with over 100 billion searches placed on Google per month and large-scale automation. It is highly measurable with prompt indicia of trends as to how Member needs evolve. • Search Engine Optimization (SEO) focuses on increasing visibility in non-paid search engine results. Through technical design and content, SEO improves accessibility and relevancy of Grainger.com and Grainger.ca for Sourcewell Members. Grainger North America leverages third party tools to track performance metrics including keyword ranking, traffic, and revenue to provide better Member experience. • Interactive Media uses data driven technology to optimize delivery of relevant digital ads to targeted customers. Grainger North America leverages online user data to serve Members with relevant messages. Interactive Media supports multiple businesses and marketing objectives. In other channels such as direct mail, catalog, and tradeshows, we use statistical models to target Members with relevant offers and solutions and customer research and demographic data to engage Members.	*
38	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	Grainger North America anticipates continuing its strong relationship with Sourcewell and leveraging its expertise, reputation, credibility and insight to markets. Via collaboration, we anticipate Sourcewell promoting the contract's values as follows: • Promotional Campaigns- Alignment to Grainger capabilities (e.g., supply chain expertise and efficiencies, product depth, ecommerce innovation, pervasive customer service, comprehensive programs including sustainability, safety and inventory management). • Advertising and Marketing- Cobranding Sourcewell and Grainger North America opportunities • Sourcewell Digital Prominence- Links between Sourcewell and Grainger North America • Event and Conference Sponsors- Coordination via in person or video at trade shows and conferences and customer events Integration of Contract into Grainger North America Sales Team Initiatives Grainger North America will prepare and present a comprehensive implementation plan to its Sales Team structured around state, province, local, educational, and non-profit agencies. Sourcewell's assistance and advice, particularly specific efforts to promote, plan, measure and reinforce the contract, will enhance the initiative. Assistance as to Member-specific execution plans focusing on key initiatives or emerging requirement will also be valued.	*

39	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	Grainger North America is well-positioned to provide an ecommerce platform solution to Sourcewell state, province, local, educational, and non-profit Members. Grainger has experience with more than 100 eProcurement platforms providing end-to-end integration capability. A scoping call with the Grainger e-Business integration team can determine specific need and customization. Our experience with numerous customer platforms provides capability to drive streamlined processes to achieve cost savings through productivity enhancements and reducing direct ordering cost. Grainger Order Management System: Grainger's Order Management functionality on Grainger.com® allows Sourcewell Members to quickly set up an online workflow that is easy to use and that simplifies their purchasing process. Customers can set up spend and order approval limits based on company requirements to help ensure they have the right control over their MRO spend. Grainger's OMS enables agencies to enhance productivity availability and improve efficiency while retaining control over spend and what products are purchased: Grainger Value- Order Management System (OMS) City Fire Department (TX) 2022: Recognizing the critical need to maintain inventory levels of key supplies at over 50 stations, Grainger assisted the fire department with implementation of the Grainger.com Order Management System (OMS). With the Department requiring control over replenishment, Grainger's OMS helps maintain inventory levels while adhering to departmental policy. Supply orders are presented through an electronic approval process for placement and delivery. The Grainger Team created a custom catalog on Grainger.com enabling the Department to purchase only pre-approved products. Grainger's OMS and the custom catalog assist the Department in controlling spend for supplies that are compliant & approved. Electronic marketplaces: Grainger North America connects to customers through electronic marketplaces, exchanges, or enterprise purchasing software systems using universal technology standards, such as cXML and EDI. Customers can "Punch-Out" to Grainger's online catalog, create a requisition and return the shopping cart back to the marketplace for review and approval. Direct connections to customers' Enterprise Resource Planning (ERP) systems: Grainger North America offers ability to integrate its General Catalog and buying process with customers' purchasing and ERP systems. Customers seeking to "Punch-Out" directly from their ERP can access Grainger's online catalog and return the shopping cart back to their purchasing system to manage the order workflow. Grainger's supports ERP and Supply Chain/Procurement Networks include SAP, Coupa, SciQuest, GHX, Oracle and Info. Supported eProcurement Transactions: Grainger supports custom non-standard transactions on a per request basis, in addition to the following standard transaction sets: * Invoice - 810 ANSIx12, cXML , xCBL * Payment (CTX Format ONLY) - 820 ANSIx12 * Remittance Advice - 824 ANSIx12 * Purchase Order - 850 ANSIx12, cXML, xCBL * Purchase Order Acknowledgement - 855 ANSIx12, cXML, xCBL * Ship/Bill Notice - 856 ANSIx12 * Functional Acknowledgement - 997 ANSIx12 Please see "Driving Efficiency with eProcurement" in the Additional Documents zip.	*

Table 8: Value-Added Attributes

Line Item	Question	Response *	
40	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	Grainger North America offers extensive product training and instruction that is summarized below. These expansive solutions, fee and non-fee based, apply to both industry specific and value-add categories, and deliver numerous benefits. We will assist Sourcewell Members in working with manufacturers, suppliers and third parties as to product, equipment, maintenance, safety and related training and contract administration. Provided below is Grainger's core training services. Additional training services are detailed in Question 69. Not all programs may be available in Canada. Programs involving third parties may be subject to a fee agreement. Sourcewell Contract Training Grainger's North America National Government Sales Team, led by the Senior National Government Sales Manager for Sourcewell, will continue to provide contract and ordering training, and refresher courses, at no additional cost for Member's staff. Training will also be provided to new users throughout the contract term via virtual and video sessions. If awarded, Grainger will implement a Joint Planning Session with each Member to align on	

milestones and timeframes to train users on the new contract.

Grainger.com Training
Grainger North America supports Sourcewell Members via training that addresses the integration of Grainger.com with an agency's search, compare, product identification and order processes. The training endeavors to ensure agency processes and approval protocols are adhered to and that accurate P.O. number and Contract Number are present on an invoice; it reinforces how the Order Management System enables effective and efficient approval flow.

Grainger.com Value Training
City (VA) Agency Employee Training, Fall 2020: Grainger worked with a Sourcewell Member that sought employee training addressing effective e-procurement purchasing practices. Grainger coordinated training for new city employees on Grainger.com and the punchout's best practices, including eQuotes, Search & Filter, Order Management System, and creating Shopping Lists. Grainger also conducted Grainger.com refresher training. The initiative, presented by Grainger's Advanced Grainger.com Team, provided City priority users with the expertise to purchase the MRO product required.

Technical Skill Training

ENVIRONMENTAL, HEALTH & SAFETY
Grainger's Environmental, Health & Safety Services are designed to help Sourcewell Members protect their people, their facilities, and the environment. Through our network of qualified, insured, and licensed service providers, we can provide comprehensive solutions that help Members meet their EH&S goals.

Within each area Grainger Services can assist with training addressing:
- Program, procedures, plans & policies
- Installations, repairs, certifications & permitting
- Specialty services, such as workshops, rentals etc.

Safety Services:
- Arc Flash/Electrical Safety Services
- Confined Space Services
- Emergency Planning and Response Services
- Fall Protection/Working at Elevated Heights Services
- Fire Protection/Life Safety Services
- Lockout/Tagout Services
- Machine Guarding Services
- Material Handling/Lifting Services
- Safety Consultant Services
- Turnarounds/Safety Product Services
- Technician Skill Training Services

Technician Skill & Safety Training - Instructor-LED/Live or Virtual:
- Compliance – Electrical: Multiple courses covering NFPA, NEC, NICET and more
- Compliance – Mechanical: Multiple courses covering Confined Space, DOT, Chemical Safety, HAZWOPER, and more
- Electrical – More than 30 Electrical Skills & Safety Courses
- HVAC – Multiple HVAC Technical Skills Courses
- Mechanical – Multiple Courses covering Hydraulics, Pneumatics, Pumps, Machine Tools, Welding, and more

Grainger Training Values

County Parks, Corrections, and Transportation and Natural Resources Facilities (TX)– Ongoing, 2019-2022: This Sourcewell Member secured Grainger's value-added training sessions to address various Environmental Health and Safety subjects including Fall Protection, Power Tool Safety, Stop the Bleed, and Safe Welding trainings. The availability of these training resources enabled the County to provide needed education to team members while focusing its internal resources on other initiatives.

City Warehouse Facilities (TX) - March 2022: Ongoing: Grainger introduced this Sourcewell Member to Grainger's Fee-based Forklift training as its leadership encountered difficulty finding a supplier with expertise in the subject. The Sourcewell cooperative contract secured the training as it was within the scope of a competitively solicited and awarded contract. *

County Water Treatment Plant (VA) – 2022: Grainger facilitated training on powered air purifying respirator (PAPR) units and forklift operation to assist the Water Treatment plant maintain employee and visitor safety.

County Vehicle Services (VA) – Spring 2022: Vehicle Services was challenged to provide core training opportunities for employees. Grainger coordinated Fall Protection and Aerial Lift Training onsite with Honeywell, which are fee-based services offered under Grainger's

Sourcewell Facility MRO cooperative agreement.

Environment & Health
We offer a wide range of EHS training courses your employees need to help them effectively perform their jobs safely. Training offerings are available through an online experience or through an on-site instructor.

- AED Inspection
- Active Shooter
- Aerial Lift
- Competent Person
- Confined Space
- Fire Extinguisher
- First Aid/CPR/AE
- Forklift
- Lockout Tagout
- Machine Guarding
- NFPA 70E
- Occupational Noise Exposure
- Respirator

Grainger Safety Team Value

County (OH) Audiology Test Summer 2022 Fee-Based Service: Grainger's Account Manager and Field Safety Specialist collaborated with the County to provide a fee-based service for critical audiology testing for county employees exposed to noise levels above 85 dB. The service was accessed via Sourcewell's Facility MRO cooperative contract. Grainger assisted the County in evaluating the provider and developing a service engagement while conserving expenditures.

Food Safety Training – Instructor-LED/Live or Virtual:

- Food Program and HACCP Courses – HACCP FDA/FSMA, FSSC22000, GFSI, GMPs, SQF

Health Services:

- Airborne Contaminants & Noise Services
- Ergonomics Services
- Medical/First Aid Services
- Occupational Health Services

EHS Digital Services: A suite of online subscription tools, EH&S Digital Services helps improve EH&S tracking and management while increasing productivity. These tools make it easier to maintain critical EH&S and facility activity and information:

- Save time and money while creating a safer workplace
- Reduce injuries, illnesses, and exposure to fines
- Increase productivity with automated EH&S tracking tools managed right from your PC or mobile device
- Ensure compliance and drive standardization

Manufacturer Technical Training- Examples include:

- Proto Tools Hand Tool Safety Seminar
- Dewalt Power Tools Safety Seminar
- Fire-Resistant Workwear Training
- Fall Protection Training
- Hearing Protection & Conservation Training
- Gas Detection Equipment Training
- Arc Flash Awareness Seminar
- Fuses & Power Distribution Training
- Spill Containment Training
- Climbing Pro Ladder Training

Grainger's KnowHowSM Center: Grainger's KnowHowSM provides insights and information to customers who are looking for ways to save time and money, increase productivity and engage in Safety Thought Leadership that will assist with keeping people safe and maintaining compliance. Key topics covered include inventory management, facility maintenance, emergency preparedness, occupational safety and health solutions and regulatory compliance, among others.

For a detailed listing of available, fee-based Technician Training, please refer to “Technician Training” guide attached in the Additional Documents zip file.

For a comprehensive listing of Grainger’s complimentary and fee-based training programs, please refer to “Grainger Services” guide attached in the Additional Documents zip file.

41	Describe any technological advances that your proposed products or services offer.	Grainger North America's product and ecommerce teams continually review Member requirements to secure innovative technologically advanced products and services. Examples include: Sustainability: Grainger's product knowledge library, Grainger KnowHow, addresses the customer demand for trash bags that reliably deteriorate over a time span. When a trash bag is certified as compostable, it means a third party confirmed it will break down completely in the conditions found in a commercial composting facility. In the United States, the most prominent certification organization is the Biodegradable Products Institute (BPI). Grainger's product information presents distinctions to assist customers in finding the right product. Battery Powered Tools: Legacy cordless tools require different battery platforms that vary with the voltage needed. A drill may get all the torque it needs from a 6-amp motor while a miter saw requires a 15-amp motor to perform well. A higher voltage platform was previously incompatible with the lower voltage system. Dewalt Tools provides a more universal platform called the Flexvolt™, where the battery automatically changes its voltage with each tool it is used with. The tool tells the battery which mode to operate in; it is completely automatic for the user. PURELL Surface Disinfecting Wipes- GOJO Industries' portfolio of surface disinfecting products now includes durable canisters for mobile and portable applications where routine and fast disinfection of surfaces is needed. The EPA category IV toxicity rating of PURELL Surface Disinfecting Wipes, which has no harsh fumes, addresses particular applications such as vehicles and mobile infrastructure where regular disinfecting is performed. Fenix PD36R Rechargeable Flashlight- The newly upgraded handheld Fenix PD36R rechargeable flashlight is a high-performance LED rechargeable flashlight delivering a maximum 1600 lumens to a distance of 928ft (283m), all on a high capacity 21700 li-ion battery. The Fenix PD36R, with a 21700 li-ion battery, extends battery runtimes by twice the standard li-ion battery. The high-capacity 5000 mAh battery can be charged through the USB-C port on the flashlight Catalog Search by Image (US only): Grainger's mobile app enables customers to use a visual search tool to find and purchase product from Grainger's 1.5 million products. With the tool, products can be searched and located within 3 seconds. Available on Android or Apple devices, customers can scan a bar code, enter an item number, or upload a photo to find a product and complete a purchase. Grainger search also allows customers to send a photo to Grainger's technical advisors who will assist in recommending a product. A voice search tool is also available.	*
42	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	Grainger North America is committed to conducting business in an environmentally responsible manner while working to reduce energy use, minimize waste, conserve water and improve air quality in our operations. To do so, we focus on the environmental challenges within the material parts of our business: our operations, products and supply chain. Green Initiative Focus We work to improve our environmental performance across our value chain from our suppliers through our operations and our customers. We encourage stewardship in our operations and share our lessons with others. We partner with third party sustainability organizations, such as the CDP (formerly known as the Carbon Disclosure Project), the GreenBiz Executive Network, the US Environmental Protection Agency, SmartWay® Program, UL Inc. (formally Underwriter's Laboratories, Inc.) and the US Green Building Council to help us align our environmental investments with our stakeholders' expectations. OPERATIONS Grainger recognizes the urgency of climate change action and supports greenhouses gas (GHG) reduction targets consistent with the net-zero climate goals of the Paris Climate Agreement. Since 2009, Grainger has disclosed to the CDP, the organization administering the global disclosure system, details on business risks and opportunities related to climate change. This initiative to reduce CHG is pursued companywide. Since 2011, Grainger has reduced absolute scope 1 and scope 2 emissions by 37 percent. Our target to reduce emissions further follows the medium-term goals of the Paris Climate Agreement. This approach relies in part upon increasing use of rooftop solar at Grainger facilities, investment in renewable energy credits, including wind and hydroelectric energy and improved technology and efficiency in building management systems. Specific efforts include: • Expanding solar footprint across key facilities- In 2021, Grainger completed rooftop installation of an additional 1.1 MW of solar panels at the NE US Distribution Center (DC). • More efficient Building Management Systems (BMS)- In 2021, new energy efficient	

building or retrofits were completed across 29 facilities, representing 40% of our North America footprint.

- LEED -Grainger has 7.0 million square feet of LEED certified space throughout 18 North American facilities, representing 28.8 percent of Grainger's total square feet in North America.
- Recycling- Recycling rates in US DCs have increased by standardizing recycling processes and sharing best practices across our network. Teams are trained to use a color-coded system to separate and bale materials such as cardboard, plastic wrap and metal. In 2021, our US DCs recycled 92 percent of all waste leaving the facility.
- Water Usage- We monitor and measure our water footprint and pursue opportunities to reduce usage, such as installing water-efficient fixtures at our largest facilities

Grainger's supplier engagement program is the cornerstone of the broader effort to reduce GHG. Via quarterly calls and active feedback channels, Grainger engages the top 80 percent of suppliers by revenue to understand how to approach this effort. *

Details of Grainger's commitment to clean energy and sustainability are found at pages 31-38 of our 2022 Corporate Social Responsibility Report, Sustainability and Stewardship, https://invest.grainger.com/home/default.aspx.

Green Products and Services
Grainge North America environmentally preferrable product (EPP) portfolio helps customers maintain sustainable facilities via efficient energy management, water conservation, waste reduction and improved indoor air quality. Grainger's online filtering capability screens any product search to evaluate environmentally preferable alternatives. Grainger also maintains a growing portfolio of sustainability-related services which include site audits, payback analysis, utility rebate assistance and recycling of replaced product.

Customers can easily identify EPP products on Grainger.com by our Green Leaf icon. It indicates that the select product has a UL validated certification and/or attributes.

Grainger receives ongoing verification of its environmentally preferable SKU designation from UL Environment (ULE). For a product to be classified as environmentally preferable, it must maintain one or more environmentally preferable attributes or third-party certifications such as WaterSense(r), ENERGY STAR(r) or Green Seal. These verifications are provided on the individual product page.

The following are examples of sustainable and environment products and services available to customers:

- Grainger US currently offers 100,000 green products.
- Grainger works with customers to identify and implement environmental conservation programs. Examples include lamp recycling programs, LED lighting conversions, using aerators on faucets to reduce water consumption, and Air Filter studies to reduce energy usage on HVAC units.
- Similarly, Grainger works with a customer's recycling and sustainability office to identify and implement environmental conservation programs. The initiative includes refilling stations to reduce plastic bottle waste, green product utilization, a lamp recycling program and LED lighting installment.
- Grainger, through a network of third-party service providers, offers a range of sustainability-related services, including HVAC optimization upgrades, water conservation upgrades, utility rebate incentives and lighting retrofit solutions. For example, Grainger can facilitate a free energy audit for customers, consisting of a site walk-through, fixture count, energy audit, return on investment, payback analysis, utility rebate assistance and applications (photo metrics).

In 2021, EPP sales totaled more than $875 million, a 23 percent increase from 2020. Program growth is driven by increased customer demand for products. Merchandising our portfolio to add green certifications and environmental information to existing products also contributed to growth and helps customers with their sustainability goals.

43	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	Grainger US EPP portfolio of approximately 100,000 products comprises one of the largest green SKU counts in the industrial distribution market. EPP products fall into two categories — those certified by independent organizations and those with green environmental attributes. Green certification indicates that a product has met certain environmental and/or social standards. These are designated with a green leaf icon on Grainger.com® and explained in the compliance section for each product (e.g., EnergyStar®, DLC® Approved). Green environmental attributes narrow the gap between certified products and responsible products where third-party certifications are not yet available or where they meet industry standards (e.g., ASTM standard test methods, LEED criteria, minimum percent of post-consumer recycled content). Each attribute is carefully considered and reviewed annually both internally and with our third-party partner for relevancy based on customer sustainability questions as well as U.S. federal and state sustainable purchasing considerations. GREEN ATTRIBUTES FOUND ON GRAINGER.COM FOR OFFERED PRODUCTS INCLUDE: Ecologo, GREENGUARD, GREENGUARD Gold, ECVP 2799 Zero Waste to Landfill Facility, Energy Star, WaterSense, Safety Choice, Green Seal, Certified Biobased, Carbonfree, Sustainable Forestry Initiative, Forest Stewardship Council, SMaRT Certified, DLC Quality Products Listing, DLC Premium, NEMA Premium, Energy Aware, HVI, Biodegradable Product Institute Certified, CRI Green Label, OMRI Listed, and VOC Levels Meet SCAQMD Requirements. We continuously evaluate available product certifications based on emerging certifications, customer demand, and to reflect new or remerchandised products already in Grainger's portfolio. Our existing portfolio of more than 100,000 products currently cover 27 product categories.	*
44	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	Grainger recognizes the importance of supplier diversity. As responsible corporate citizens, Grainger is committed to supporting the growth of diverse businesses and giving these companies opportunities. Grainger has more than 20 years of successful experience offering diverse companies' opportunities through two core programs: • Tier 1: Authorized Grainger Reseller Program • Tier 2: Grainger's Supplier Diversity Program GRAINGER'S TIER 1 AUTHORIZED GRAINGER RESELLER PROGRAM Program Overview: The Authorized Grainger Reseller program includes a network of more than 100 certified Diverse Business Enterprise (DBE) resellers authorized to resale Grainger MRO products. The DBE resellers have access to Grainger's full product offering and, since 2006, they have helped state, local, education, corporate and federal customers meet their diversity procurement goals. These DBE resellers include historically underutilized business zones (HUBs), minority-, woman-, and veteran-owned businesses. The reseller program enables MRO resellers and customers greater access to products and services and provides reach to segments and contracts typically mandated or prioritized for small businesses/diverse business enterprises (DBEs). The program allows Grainger resellers to offer niche, value-added services and a broader selection of products. The cooperation and coordination of Grainger and its resellers is a win-win for customers looking to achieve procurement goals and ESG/diversity mandates. DBE Responsibilities: DBE resellers are responsible for the procurement process, sales calls, order processing, invoicing, and troubleshooting. The DBE will engage with customers, represent itself in the marketplace, and be the first point of contact for customer service. DBEs often provide other services such as installation, kitting, product assembly, stenciling/engraving/labeling, delivery, and barcoding. Grainger's investment in the Authorized Grainger Reseller Program includes the following: • Dedicated Channel Business team which includes Sales and Operations Teams as well as leadership focused on flawless program execution. • As part of Grainger's investment, the Channel Business team provides on-going mentorship and support of the DBE resellers. Specific examples of this resource investment include: o Dedicated e-Commerce Solution Managers charged with ensuring seamless implementation of customer e-commerce programs. o Grainger Consulting Services support to help refine the reseller administrative processes. o Business development and expansion support through customer match-making activities. o Focused on-boarding and MRO specific training which includes direct access to key manufacturers and suppliers. o Government/Healthcare ethics and compliance training led by Grainger in-house counsel. o Marketing support for the reseller end-customer marketing and sales collaterals.	

o Detailed reporting capabilities to support end-customer productivity and cost savings initiatives.

• In addition to these resources, Grainger's Channel Business team leads the Authorized Grainger Reseller Program and helps manage the resellers to ensure contract execution, compliance, and overall performance management.

GRAINGER'S TIER 2 SUPPLIER DIVERSITY PROGRAM
Grainger's Tier 2 Supplier Diversity Program affords our customers with access to diverse manufacturers and suppliers through its catalogs and distribution channels. Started in 1999, this program is designed to grow this sector of the economy while helping customers get their jobs done with quality products from diverse business enterprises (DBEs).

The economic impact of this program continues to increase. As of 2021, Grainger's Tier 2 Supplier Diversity program features:

• More than 720,000 products from more than 2,800 key small and/or diverse suppliers
• More than 6,600 small businesses, and over 680 minority-, woman-, veteran-, disabled-person- and LGBT-owned businesses for goods and services

This model affords DBEs the ability to concentrate on what they do best and leave product logistics and distribution to Grainger.

Through this program, our customers have access to DBE products through all ordering options (including Grainger.com, KeepStock, the catalog, phone, fax, and walk-ins) and distribution channels. Our customers benefit from one-stop shopping and supplier diversity reporting upon request.
• Products from diverse manufacturers and suppliers are identified with this diversity symbol on Grainger.com and in the catalog and index.
• On Grainger.com, customers can use the search keywords "Supplier Diversity" or use the Supplier Diversity filter to shop for products from diverse suppliers.

Supplier recruitment is a continuous activity for Grainger.
• Certified businesses that register through Grainger's supplier diversity registration portal on Grainger.com can be referred to buying decision makers when product review, request for proposal (RFP), or spot buying opportunities occur.

Grainger focuses on increasing the number of products acquired from diverse companies in several ways:
• Corporate member of the Women's Business Enterprise National Council (WBENC).
• Participates in conferences and seminars to help establish or strengthen diverse businesses.
• Grainger.com invites diverse suppliers to consider doing business with Grainger.

Grainger also pursues outreach opportunities with diverse organizations to understand their member offerings and to promote opportunities with Grainger. These organizations include:
• National Minority Supplier Development Council (NMSDC)
• Women's Business Enterprise Council (WBENC)
• Small Business Administration (SBA)
• National Gay and Lesbian Chamber of Commerce (NGLCC)
• Vets First
• Disabled Veteran's Business Alliance
• National Veteran Business Development Council (NVBDC)
• Disability: IN

45	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	Confidential Trade Secret Information North America Grainger's core business is a high-touch, high-service model where we provide value, including dedicated salespeople and technical support experts, to assist customers with information to identify the products they need. Sourcewell's Facility MRO, Industrial, and Building-Related Supplies and Equipment portfolio is a prominent illustration of how Grainger strives to distinguish itself from the competition. Grainger team members work to understand the mission of each state, province, local, educational, and non-profit Sourcewell Member and the individuals who carry out its responsibilities. By knowing the customer in detail, including the challenges encountered, Grainger anticipates need and pursues how best to fulfill it. As a result, our offer addressing Sourcewell's Facility MRO RFP continues to expand to meet the evolving needs of Sourcewell members. By embedding itself within customers across the US and Canada, Grainger North America is able to focus on how best to assist effective emergency response: • An advanced supply chain infrastructure driven by customer need for breadth and depth Facility MRO, Industrial, and Building-Related Supplies and Equipment-related inventory and a distribution network centered on next day delivery. • An investment in eCommerce and digital platforms yielding advanced product search ease, meaningful product comparison, product availability and delivery clarity, all supported by an efficient and accountable ordering process. • Employees with expertise to assist with product selection and to assure availability and timely delivery whether the need is ordinary or critical. • Technology experts who design and innovate information systems and digital platforms to be customer centric. • Decades of experience connecting agencies to the products and services supported by a stronger compliance regime. Detailed throughout our response are the range of products and services focusing on government and education customers. The breadth of these items, their availability and the expeditious delivery to the customer replicates Grainger's categories addressing commercial and industrial markets. The competitive market leveraged by Sourcewell's comprehensive solicitation encompassing Facility MRO requirements assures reasonable pricing for all product and service categories.	*

Table 9: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
46	Do your warranties cover all products, parts, and labor?	Products sold by Grainger to US and Canadian customers is covered under the following warranty terms: For Grainger US. Grainger warrants products against defects in materials and workmanship under normal use for a period of one (1) year after the date of invoice from Grainger, unless otherwise stated. Additional product specific warranty information either is shipped with the product to the Member or can be obtained by Grainger if requested by the Member. For Grainger Canada. All products sold by Grainger are warranted only to the extent of the manufacturer's/supplier's warranty, and only to purchasers for resale or for use in their business in Canada. Products are warranted against defects in workmanship or materials only in accordance with the individual manufacturer's warranty policy. Manufacturers of certain Products, such as fasteners, do not provide a warranty period. Any part which is determined by Grainger to be defective in material or workmanship and returned to a Grainger branch or authorized service location as Grainger designates, shipping costs prepaid, will be repaired or replaced, at Grainger's sole option, as the purchaser's exclusive remedy.	*

47	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	Except as set forth herein and where applicable, no warranty or affirmation of fact or description, express or implied, is made or authorized by Grainger. Grainger disclaims any express or implied warranties of merchantability, fitness for a particular purpose or noninfringement of intellectual property rights. Grainger also disclaims any liability for claims arising out of product misuse, improper product selection, improper installation, product modification, mis-repair, or misapplication. Grainger expressly disclaims any liability for consequential, incidental, special, exemplary, or punitive damages to the extent permissible. Grainger's liability in all events is limited to the purchase price paid for the product that gives rise to any liability.	*
48	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Grainger products listed in Grainger's North America's General Catalogs are warranted by the manufacturer to the final user. Grainger may, at its option: (i) repair; (ii) replace; or (iii) refund the amount paid by a Member. As a distributor of commercial off the shelf product, manufacturer warranties either accompany the product purchased or can be obtained by Grainger if requested by the Member. The scope of warranty service offered such as travel is scenario specific and will be defined and/or addressed by the respective manufacturer of the product subject to a warranty claim.	*
49	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	Grainger products sold are warranted by the manufacturer to the final user. Upon request, the manufacturer of a given product sold by Grainger will address any unique geographic limitations that may impact a warranty claim. Grainger stands behind the product we sell by offering a one (1) year product warranty. We are committed to making each Grainger customer whole in any warranty scenario by either: (i) repairing; (ii) replacing; or (iii) refunding the amount paid by a customer.	*
50	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	Grainger products listed in Grainger North America's General Catalogs are warranted by the manufacturer to the final user. Although Grainger does not manufacturer the product it warranties, it will assist its customers with product specific warranty matters. For example, upon request, Grainger will obtain copies of manufacturers' consumer warranties and will furnish them to the Member. Such requests must include the Grainger's stock number and the manufacturer's model number (if shown) of each product for which a copy of the warranty is requested. Grainger may also furnish sales brochures and other literature of the manufacturer. Grainger North America assumes no responsibility for the content or coverage contained in any manufacturer's warranty or sales literature by providing this service. For Grainger US: Grainger warrants products against defects in materials and workmanship under normal use for a period of one (1) year after the date of invoice from Grainger, unless otherwise stated. Provided that Grainger accepts the product for return during the limited warranty period, Grainger may, at its option: (i) repair; (ii) replace; or (iii) refund the amount paid by Participating Entity. Grainger 's repair, replacement, or refund of amounts paid by Participating Entity for the product, shall be Participating Entity's sole and exclusive remedy. For Grainger Canada: All products sold by Grainger are warranted only to the extent of the manufacturer's/supplier's warranty, and only to purchasers for resale or for use in their business in Canada. Products are warranted against defects in workmanship or materials only in accordance with the individual manufacturer's warranty policy. Manufacturers of certain Products, such as fasteners, do not provide a warranty period. Any part which is determined by Grainger to be defective in material or workmanship and returned to a Grainger branch or authorized service location as Grainger designates, shipping costs prepaid, will be repaired or replaced, at Grainger's sole option, as the purchaser's exclusive remedy.	*

51	What are your proposed exchange and return programs and policies?	Grainger US Exchange and Return Policy: GRAINGER 30-DAY SATISFACTION GUARANTEE. Participating Entity can return product purchased for any reason for exchange or refund up to thirty (30) days from the date of invoice unless otherwise noted. Proof of purchase from Supplier is required for all returns. Supplier's 30-day satisfaction guarantee does not apply to "Sourced Products" and products sold on a "Final Sale" basis. RETURNS AFTER 30 DAYS. Unless otherwise noted, Participating Entity can also return product for up to one (1) year from date of invoice provided that product is in its original packaging, unused, unexpired, undamaged, and in salable condition. Proof of purchase from Supplier is required in all instances. Products sold on a "Final Sale" basis as defined below cannot be returned. "Sourced Product" (defined below) is subject to the manufacturer's return policy and may not be returnable. Some product returns may be denied or made subject to restocking fees and other charges by Supplier. FINAL SALE ITEMS. Items sold on a "Final Sale" basis include: (i) Custom items; (ii) purchases made under the Custom Product Center on grainger.com; (iii) special-order items; (iv) emergency response items; (v) items marked in Sourced Product quotations or invoices as "Non-Cancellable" or "Non-Returnable" and (vi) any other items that Supplier may designate as a "Final Sale" from time to time. Grainger Canadian Exchange and Return Policy: Any cancellation or return must be approved by Grainger (at its discretion), be accompanied by proof of purchase, and may be subject to restocking or other charges. Any returns due to shipping errors, damage or loss must be reported to Grainger immediately. For returns not related to damage or loss during shipping, product must be returned within 30 days of shipment and be in original package and re-saleable condition. Returns can be made to Grainger; however, Grainger will only accept returns on products purchased through Grainger. Returns of custom sourced products may not be permitted.	*
52	Describe any service contract options for the items included in your proposal.	In addition to our product line offering, Grainger North America offers select service contracts either directly or via our supplier/service provider/manufacturer network, in support of our product offer. Grainger North America will work with Members to review and assess which service opportunity is best suited to satisfy the Member's operational needs.	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
53	Describe your payment terms and accepted payment methods.	Grainger North America's payments terms are NET 30. Grainger North America customers typically have an open account that is invoiced for orders according to their contract. Grainger also offers Sourcewell Members the following payment options: • Credit card or cash – At the time of purchase or pickup. • Electronic payment (ACH/EFT) – Grainger uses the Corporate Trade Exchange-820 (CTX-820) ACH/EFT format to process electronic payments. The remittance detail included with the payment file helps Grainger reconcile (Customer)'s payment promptly and accurately. • Procurement cards – Grainger accepts all types of VISA, MasterCard, Discover, and American Express cards. Check – Checks can be mailed to the "Remit To:" address on the invoice.	*
54	Describe any leasing or financing options available for use by educational or governmental entities.	Grainger North America does not offer leasing or financing options at this time.	*
55	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	Please see Grainger's Sourcing Terms and Conditions as well as a "Sample Quote_Sourcewell 091422-WWG" and "Sample Invoice_Sourcewell 091422-WWG" in the "Standard Transaction Document" samples zip.	*
56	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Grainger North America accepts VISA, MasterCard, Discover Card and American Express cards as a means of payment. There is no additional cost to Members for this process.	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *	
57	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Grainger North America's pricing model is a most comprehensive, robust and competitive Sourcewell offer to date and provides Members numerous cost savings opportunities: • Category Discounts • Facility MRO Supplies & Equipment Hot List • Member Market Basket • General Catalog Discount • Large Order and Volume Discounts • Customer Specific Pricing (CSP) • Access to all Grainger-Sourcewell Contract Awards and the Pricing Benefits of each CATEGORY DISCOUNTS: Our North American offer encompasses significant discounting across multiple MRO categories. These category discounts are applied to Grainger North America's Contract Reference Price (CRP). CRP is market-based. When evaluating pricing, it is important to compare "final" product prices, as a larger discount percentage offered by a competitor who has not adopted market-based pricing may not yield a lower final product price. Differences between the U.S. and Canadian supplier base vary across all product categories so not all Grainger US products, catalog or sourced, are available in Canada. Grainger continues its efforts to enhance its online search and purchasing experience by incorporating new technology and functionality to its online offering. Accordingly, and at Grainger's sole discretion, product categorization may be modified from time to	

time to promote clarity and product alignment. Additionally, there are products that, because of their volatile nature in context of supply, including pricing, demand and availability, are not eligible for any, including general, category discount.

- Abrasives 7%
- Adhesives, Sealants, and Tape 10%
- Air Filters 40%
- Cleaning 22%
- Electrical Supplies 23%
- Electronics, Appliances, Batteries 19%
- Fasteners 32%
- Hand Tools 14%
- HVAC Supplies 17%
- Lab Supplies 15%
- Lighting 22%
- Lubrication 10%
- Material Handling, Storage, Packaging 15%
- Motors 19%
- Outdoor Equipment 12%
- Paint, Equipment, & Supplies 10%
- Pneumatics 11%
- Pumps 7%
- Power Tools 11%
- Power Transmission 19%
- Safety 19%
- Security 15%
- Test Instruments 7%
- Welding, Machining, Cutting 10%
- All other Categories 5%

For Sourcewell Members, CRP is found on Grainger.com and Grainger.ca when Members log into their account. The CRP at the time of purchase will be the price to which any contract discounts will be applied. The offered category discounts are fixed through the life of the contract across the specified MRO categories.

FACILITY MRO SUPPLIES & EQUIPMENT HOT LIST: Grainger North America, through decades of serving government customers, has captured purchasing data reflecting current and relevant product needs to compile its Hot List offer. Grainger North America presents the attached Facility MRO Supplies & Equipment Hot List to all US and Canada Sourcewell Members who complete the Grainger affiliation process to access, if awarded, the Sourcewell Facility MRO Supplies & Equipment #091422. contract. This offer is comprised of the highest volume and most frequently purchased products across a broad mix of government agencies.

Grainger North America analyzed usage and procurement data of Facility MRO Supplies & Equipment related products from its largest states, provinces, local government, education, and non-profit customers across North America and combined it with all Sourcewell Members' prior 48 month purchasing analytics. Data points such as the number of times an item was purchased, when and how often, how many individual agencies purchased the item, including those items added into an inventory management solution, were scrutinized to prepare the Hot List. *

The Hot List encompasses 852 items specific to Sourcewell state, province, local, educational, and non-profit agency customers. Due to variances between our catalog offerings and supplier base in the US and Canada, not all items in the Hot List are available to our Canadian customers. The items in the Hot List available to both US & Canadian Sourcewell customers have been priced in both USD and CAD respectively in our submission.

The Facility MRO Supplies & Equipment Hot List pricing is competitive and will be held firm for 12 months from date of award.

To keep the Facility MRO Supplies & Equipment Hot List meaningful throughout the life of this contract, Grainger North America will evaluate the product selection and update it each year to ensure relevant product mix.

MEMBER MARKET BASKET:

		In addition to the Grainger Facility MRO Supplies & Equipment Hot List, we offer the ability for each affiliated Member to create a custom Market Basket of up to 300 items. To drive additional cost savings and predictability, Members can select a custom Market Basket consisting of the Facility MRO Supplies & Equipment products the individual Member most frequently purchases. The Grainger North America Sales Team will work with Members seeking to consolidate, standardize, and identify a product list and price. GENERAL CATALOG DISCOUNT: All items in Grainger's General Catalog are included within this Sourcewell offering. Grainger recognizes the operational importance to provide Members access to products beyond those covered by Defined Category Discounts, Hot List, Member Market Basket and products aligned to a specific category. Grainger North America provides a 5% discount off of CRP on these products except for items identified as volatile which are not eligible for a discount. LARGE ORDER AND VOLUME DISCOUNTS: Grainger has years of experience working with Sourcewell Members on individual projects and discounted pricing. Grainger North America will continue to work with Sourcewell Members to leverage additional discounts for large, single orders, based on size and scope. CUSTOMER SPECIFIC PRICING (CSP): Grainger North America recognizes the importance of providing Members with relevant pricing for specific products in special circumstances. Deeper discounted pricing can be sought in the form of Customer Specific Pricing (CSP) as it relates to specific opportunities. Grainger North America reserves the right to adjust pricing to reflect market conditions, as provided in Section 4 (Sourcewell's Vendor Price & Product Change Request Form, referenced in RFP #091422). These adjustments may include unforeseen significant increases in supplier's costs resulting from changes in laws or regulations, impositions of tariffs, currency fluctuations, increases in commodity prices, or other changes in conditions not reasonably foreseeable to Grainger North America. ACCESS TO ADDITIONAL GRAINGER-SOURCEWELL CONTRACT AWARD BENEFITS: Upon affiliating with the Sourcewell Facility MRO Supplies & Services Agreement # 091422, a Sourcewell Member may also affiliate with any other Grainger-Sourcewell Agreement and access the benefits under that agreement, so long as each agreement remains valid. Upon expiration or termination of any other agreement, Grainger will extend the benefits provided in any successor agreement associated with the Member so long as that agreement remains valid. Differences between the U.S. and Canadian supplier base vary across all categories so that not all products are available in Canada. A Member may contact Grainger at sourcewell@grainger.com or via the local Grainger Account Manager, to learn how to adopt additional Grainger-Sourcewell awarded contracts and access value-added service and pricing benefits through your Grainger account.	
58	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	The discount range in this offer, noted in response # 57, represents 5% - 40% off Grainger North America's CRP and addresses the general catalog discounts and the discounts applied to the Hot List prices.	*

59	Describe any quantity or volume discounts or rebate programs that you offer.	Sourcewell “Enhanced Discount” Incentive Program: Grainger North America proposes a 3% increased discount on the defined MRO categories as described below for the following contract year for members who: • Purchase at least $25,000.00 in Total Member Purchases* during the Contract Year and • Grow Total Member Purchases* at least 12% over the preceding Contract Year * Total Member Purchases" refers to the net invoice price of the Product purchased by Member under Grainger's Sourcewell Contract Awards using the Member's Sourcewell-affiliated, eligible Grainger account numbers, less freight, taxes, returned Products and credits during each contract year for which a Rebate or Incentive is being actively calculated and paid. Product Category: CRP Discount/Enhanced Discount: • Abrasives: 7%/10% • Adhesives/Sealants/Tape: 10%/13% • Air Filters: 40%/43% • Cleaning: 22%/25% • Electrical Supplies: 23%/26% • Electronics/Appliances/Batteries: 19%/22% • Fasteners: 32%/35% • Hand Tools: 14%/17% • HVAC Supplies: 17%/20% • Lab Supplies: 15%/18% • Lighting: 22%/25% • Lubrication: 10%/13% • Material Handling/Storage/Packaging: 15%/18% • Motors: 19%/22% • Outdoor Equipment: 12%/15% • Paint, Equipment, & Supplies: 10%/13% • Pneumatics: 11%/14% • Pumps: 7%/10% • Power Tools: 11%/14% • Power Transmission: 19%/22% • Safety: 19%/22% • Security: 15%/18% • Test Instruments: 7%/10% • Welding, Machining, Cutting: 10%/13% ♦The increase in Category Discount will be automatically applied to defined MRO Grainger North America categories (excluding the General Catalog Discount), commencing 60 days after contract period ends for a duration of 12 months ♦ Purchases by a Sourcewell Member under any Sourcewell Agreement with Grainger, are eligible to qualify for the Enhanced Discount Incentive Program for a maximum of 3% increase in discount overall. Member qualification for the Enhanced Discount will be re-evaluated each contract year. ♦ Sourcewell Plus Program: In lieu of the “Enhanced Discount" Incentive Program, Grainger North America may propose a Sourcewell Plus Program and creation of a custom incentive and rebate program, defined through a participating addendum and approved by Sourcewell. A customer may participate in either the Enhanced Discount Incentive Program or Sourcewell Plus Program, but not both. ♦ Purchases made through Grainger’s Authorized Reseller Program vendors aligned to Member’s account and receiving Sourcewell Agreement pricing are not eligible for inclusion in Total Member Purchases.	*
60	Propose a method of facilitating “sourced” products or related services, which may be referred to as “open market” items or “nonstandard options”. For example, you may supply such items “at cost” or “at cost plus a percentage,” or you may supply a quote for each such request.	Grainger's Sourcing Team acquires Facility MRO products and services not found in the Grainger General Catalog. Through this “special order” capability, Grainger provides quick access to over 6,500 suppliers and offers a total cost solution for acquiring infrequent, low demand or hard-to-locate items. Additionally, this channel offers line extensions (non-Grainger General Catalog product	

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		and related services from Grainger General Catalog and third-party suppliers and service providers) and discontinued product catalog lines. Quotes for “sourced” products and related services will be supplied for each such request. Pricing for sourced items is based on current market conditions and is negotiated on a per-order basis. Sourced product and related service opportunities are subject to the following terms and conditions: TERMS AND CONDITIONS FOR SOURCED PRODUCT AND SERVICE Grainger will source products and services not available through the Grainger’s General Catalog or website (“Sourced Products” or “Sourced Services”). The pricing model for Sourced Products and Sourced Services is based on current market conditions and is competitive for spot buy situations on a per order basis. Upon request, Grainger will provide Member a quotation which shall include the price, freight, and the warranty terms provided by the vendor of the Sourced Product or Sourced Service. 1. SOURCED PRODUCTS a. Unless otherwise agreed to in writing between Grainger and Member, Sourced Products are shipped with all costs imposed by the carrier related to the shipment paid by Grainger and charged to Member on Member’s invoice. If Member chooses to ship freight collect, shipments will be made to Member freight collect, using carrier designated by Member. C.O.D. shipments are not permitted. Receipts for freight charges will not be furnished. Title and risk of loss pass to Member upon tender of the shipment to carrier. b. The product warranty provided by the Manufacturer and/or Supplier of the sourced product will be Member’s sole remedy. Grainger’s standard limited warranty terms included in this agreement or Grainger’s website terms and conditions, to the extent applicable, do not apply to sourced products. . c. Warranty Disclaimer. Except as expressly set forth herein, no warranty or affirmation of fact or description, express or implied, is made or authorized by Grainger. Grainger disclaims any express or implied warranties of merchantability, fitness for a particular purpose or noninfringement of intellectual property rights. Grainger also disclaims any liability for claims arising out of product misuse, improper selection, improper installation, product modification, mis-repair or misapplication. . d. A RGA (Returned Goods Authorization) must be issued by Grainger prior to returning Sourced Products; the RGA is good for thirty (30) days after issuance. Returns will be sent directly to the sourced supplier, and not to a Grainger location, unless otherwise instructed in the RGA. Returned Sourced Products may incur a restocking fee based upon the Sourced Product sell price, plus freight paid by Grainger and added to the invoice, unless the shipment of Sourced Products was the result of Grainger or manufacturer error or the Sourced Products are defective. Special manufactured and custom engineered products are sold on a “FINAL SALE” basis only and no changes, cancellation, returns or refunds are allowed, except if Sourced Products are defective. e. In the event that Grainger agrees to stock an agreed upon quantity of Sourced Products for Member, upon expiration or termination of the Agreement, Member agrees to purchase all remaining stocked Sourced Product. Grainger will invoice Member within (30) days of expiration, cancellation or termination of the Agreement. 2. SOURCED SERVICES a. Performance of Sourced Services will be governed by the following additional terms and conditions (“additional service terms”). Sourced Services may be performed by: (i) Grainger, its subsidiaries, affiliates, or subcontractors (“Grainger”); or third-party	*

service providers engaged by Service Grainger ("third-party providers"). For purposes of this section, “service provider” refers to either Grainger or a third-party provider depending upon which of them is performing services, and “service provider personnel” refers to personnel of such service provider.

b. The terms and conditions contained in this section are extended solely by the specific service provider performing services, and any obligations contained in this section do not apply to any other service provider referenced in the foregoing paragraph. A third-party provider may require Member via Grainger to execute additional contractual documents prior to the performance of Sourced Services, which documents may modify the terms between Member and Grainger as set forth in this section.

c. In the event of a conflict between the standard terms and conditions in this Agreement and the additional service terms in this section, the additional service terms in this section shall prevail for the performance of services.

d. Limited services warranty. All services will (i) be performed in a workmanlike manner; (ii) conform to the specifications (if any) provided by the service provider in a statement of work; and (iii) be warranted for a period of ninety (90) days after performance of services (“limited warranty period”). If services are improperly performed and Member notifies Grainger of the improperly performed service during the limited warranty period, then Grainger will coordinate with the service provider to re-perform those services, in whole or in part, as necessary to cure the particular breach, or at the service provider’s sole option, refund the amount paid by Member for the services directly attributable to the particular breach. The service provider’s re-performance or refund of amounts paid by Member for the service directly attributable to the particular breach shall be Member’s sole and exclusive remedy.

e. Warranty disclaimer and waiver for services. To the maximum extent permitted by applicable law, the express warranties set forth in this section for services are in lieu of all other warranties, express or implied, and the service provider disclaims, and Member waives, all other warranties for services, including, but not limited to, any implied warranties of non-infringement, fitness for a particular purpose and merchantability. The warranties set forth in this section are expressly conditioned upon the use of the services for their intended purpose and shall not apply to services which have been subject to modification by Member or any third party.

f. Limitation of Liability. Grainger and Third-Party Providers expressly disclaim any liability for consequential, incidental special, exemplary or punitive damage in the performance of services. The liability of Grainger or any third-party provider performing services in all circumstances is limited to, and shall not exceed, the purchase price for the performance of the portion of services that gives rise to any particular liability

Grainger Sourcing Values

City (AL) – Fall, 2021: The City’s Police Department needed tactical robots but struggled to locate a vendor who had supply on hand. Grainger assisted the Police Department with sourcing tactical robots for public safety use.

County Corrections & Public Works (NY): Summer-Fall 2022: The Correctional Facility recognized risk to visitors, inmates, and officers as tables and chairs in the Visitor Wings were not bolted down. Grainger identified specialty correctional tables through its Sourcing Team and secured corrections approved furniture.

City Sewers & Water (OH) – Spring 2022: Addressing a specific project, Sewers & Water’s Safety Unit recognized the need for equipment able to operate within a confined space. Grainger worked with supplier partners to assist the agency identify fall protection and supplied air equipment, with harnesses, gas meters, and oxygen tanks to equip and promote worker safety and successful completion of critical tasks.

		County Schools System (MD)- Summer 2021: Return of staff and teachers to buildings encountered challenges to locate the KN95 masks. The Schools EHS manager and the Grainger Account Manager worked together to identify the appropriate product and source to fulfill this critical need.	
61	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	Grainger North America discloses all costs associated with the product and/or services sold to a Member prior to purchase. Elements of the total cost of acquisition not included in product and/or service pricing may vary based on the product or service procured. To this end, Grainger does not have a fixed firm list of like costs. If, however, additional charges are assessed, for example required services to train employees on how to operate a product, the additional charge and identity of the third-party performing the service will be provided to the customer prior to performance of the underlying service.	*
62	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	Grainger North America offers the Sourcewell Member pre-paid freight on standard ground shipments. Title transfers to Sourcewell Members at time of delivery, FOB Destination. Additional freight charges and shipping fees may apply for sourced products and/or service orders as well as orders that include expedited delivery, carrier special handling, oversized product, air freight, freight collect, export orders, hazardous materials, customer's carrier, shipments originating within the US and shipping outside the contiguous US, and shipments originating in Canada and shipping outside Canada. The Member will be informed of any additional freight charges and/or shipping fees prior to purchase or as otherwise agreed by the Member.	*
63	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	Grainger North America offers Sourcewell Members pre-paid freight on all standard ground shipments originating in Canada and shipped to a Canadian address. Product shipped from the Continental US to Alaska and Hawaii also receive pre-paid freight on standard ground shipments. Sourced products may be subject to additional terms, charges or fees that place the cost to ship on the Member. Charges and fees incurred for additional services, such as expedited delivery, carrier or special handling by the carrier, air freight, freight collect, export orders, hazardous materials, customer's carrier, or other special handling and oversized product will be paid by Member. The Member will be informed of any additional freight charges and shipping fees prior to purchase.	*
64	Describe any unique distribution and/or delivery methods or options offered in your proposal.	Grainger North America's advanced technology and multiple distribution channels delivers product to Members where and when they need it. The unique combination of broad on-hand inventory strategically located across North America in distribution centers and branches provides unrivaled product availability: • On-hand Inventory $1 billion and more than 1.5M products • Technology Investment and Supply Chain Expertise that forecasts Member needs to ensure product availability by locating inventory near the Member throughout the distribution network • Product ordered by 4PM, most customers receive next day Grainger North America provides the best combination of product selection, depth of inventory locally available, speed of delivery and ordering simplicity through a network of 284 branches and 17 distribution centers across North America. Grainger Branch Network Solutions help with product selection, shipping, labeling and emergency orders. TECHNICAL EXPERTISE: Grainger Branch Sales Specialists have the training and experience: • CUSTOMIZED INVENTORY: Grainger will stage critical or never out items at a local branch. • LABELING: Grainger will assist in custom label regarding hazards, inventory, PO reconciliation, warehousing, maintenance inspections, and specialized products. • SHIPPING AND WILL CALL CONSOLIDATION: For large orders or multiple orders, Grainger will ensure that goods are consolidated for delivery or pickup in a single shipment. • EMERGENCY ORDERS: Grainger after-hours emergency service is available at: call 1.800.CALL.WWG. Grainger will to open a branch anytime (a $50 fee may apply). *Subject to market availability. • KITTING OFFER: From safety, janitorial, filter, and new employee readiness kits, the Grainger branch provides kitting services across any product line.	

		• SAME DAY DELIVERY: Grainger offers Same Day Delivery* in select markets for unexpected purchases. Shipping charges will apply. INVENTORY MANAGEMENT SOLUTIONS A critical facet of distribution and delivery is anticipating and understanding Member needs. Inventory Management is a unique delivery solution moving high usage items close to point of use and maintaining critical product availability. Through its KeepStock® Program, Grainger North America provides multiple inventory management solutions reducing Member's total cost of inventory ownership. Effective inventory management reduces on-hand inventory, improves purchasing efficiencies, and ensures availability of critical product all while providing secure and efficient access. Grainger North America's KeepStock® portfolio of inventory management solutions help Members manage their inventory and reduce costs. Beyond industry-standard vending machines, Grainger North America's portfolio provides both customer-managed (CMI) and Grainger vendor-managed (VMI) inventory options, including vending. Solutions range from simple to complex serving Member needs and can be combined within their facility to provide a custom service. KeepStock® can be integrated with Member purchasing systems or connected with Grainger.com. or Grainger.ca. VENDOR MANAGED INVENTORY (VMI) SOLUTIONS KEEPSTOCK WEB: is control central for managing your Grainger inventory. It seamlessly integrates your KeepStock® program, Mobile App and Grainger.com to provide convenient, web-based inventory management. (Customer) can leverage KeepStock® web functionality across all installation types — Vending, CMI, Replenish and Onsite, to provide you with total visibility to your entire inventory. • Dashboard: View your orders and program summary snapshot, receive notifications to manage discontinued items, access KeepStock® Web instructions and more. • User Management: Leverage User Management to add users to help you manage inventory and set varied levels of access rights. • Program Management: Set and easily adjust your program settings. Add, adjust, delete items, and set min/max levels. Automatic reorder provides inventory level assurance and minimizes stock outs of critical items. • Order Status: Place orders, check order status and track all your orders in real time. • Label Printing: Use the label capabilities to print barcode labels, including multiple labels at once. KEEPSTOCK® VENDING: Grainger offers a variety of KeepStock® Vending machines to include Coil, Carousel, Lockers, Cabinets and Drawers. Each machine is customized and configured for Member needs and supplies requirement: KEEPSTOCK® REPLENISH: is a vendor-managed inventory (VMI) solution that helps manage, streamline ordering and stock commonly used Grainger items and support spot buy urgent needs. Your dedicated Grainger representative will work with you to determine the products and levels that need managing, as well as setting approvals for orders if required. The more complex your needs, the more you'll benefit from our scheduled visits and support our scheduled visits and supply chain expertise. On a pre-determined schedule, your Grainger onsite resource will: • Reorder products based on min/max • Restock Grainger products in designated areas • Bar code and label Grainger managed products • Handle Grainger purchasing and purchase orders • Support spot buys • Expedite invoices and inquiries • Help find hard-to-find products • Cross-reference Grainger products to add KEEPSTOCK® ONSITE: KeepStock® Onsite is a VMI solution for larger, more complex customers who face multiple challenges managing critical MRO inventory. KeepStock® Onsite provides a dedicated, experienced resource on a daily basis plus a defined space—like a cage or crib—to support your Grainger product purchases. Key features of Grainger's Onsite solution include:	

• Dedicated onsite resource frees employee time to increase productivity.
• Desktop delivery and returns
• Spot buy and sourcing of product
• Optimized inventory delivers cost reduction by helping reduce on-hand inventory levels while minimizing stockouts
• Streamlined processes reduce overall handling costs
• Expanded scope to support product identification and recommendations, requisition creation, organization, product returns and warranty replacement
• Onsite expertise recommends stocking levels, driving product standardization and compliance

Please see attachments for further detail on Grainger's KeepStock Inventory Management Solutions.

KEEPSTOCK® STORE: This solution provides a fully stocked and staffed Grainger North America branch at your location especially helpful for high-volume, high-traffic needs. Grainger North America will work with the Member to determine which items to stock and overall scope of the solution.

CUSTOMER-MANAGED INVENTORY (CMI) SOLUTION
The KeepStock® CMI customer-managed inventory solution leverages mobile and desktop technology to give customers complete control of their Grainger inventory. Grainger offers this program to any customer interested in self-managing inventory.

Tech savvy tools and features of KeepStock® CMI solution include:
• Manage inventory across multiple devices, users, and locations
• Scan barcodes to order directly in the Grainger app
• This easy-to-use and powerful software solution offers visibility, flexibility, and control while managing product.
• Quickly edit and add items
• Adjust min/max levels and reorder points
• Manage users and approvals to control
• Print and scan labels
• View pending orders
• Access order history and purchase information to make informed inventory decisions

KEEPSTOCK MANAGED: Grainger's Managed Solution provides Members with daily onsite, expert, support services to maximize the value of Member's entire MRO inventory investment for both Grainger and non-Grainger product. Managed MRO is a fee-based service where our Inventory Specialists work at your facility to manage all indirect materials.

Grainger Inventory Management Value

County Corrections (TX) – January, 2022: The Corrections Department was challenged with frequent stock outs across high demand items as local vendors struggled to keep pace with requirements due to supply chain disruptions. Grainger collaborated with this Sourcewell Member to identify alternate products for specific, high-demand items and integrated an inventory management solution to ensure product availability. Product encompassed nitrile gloves, paper products, sanitizer, food trays, paper cups, and masks.

City Water Department (TX) Ongoing: Grainger facilitated inventory management of custom engraved specialty locks for utility use. Through this value-added service and support, Grainger houses this critical, custom item at a local branch to ensure the appropriate quantity is available and delivered when the customer calls.

Capital Regional District (CRD) (Canada)- McLoughlin Pt. Waste Water Treatment Plant -Ongoing: The CRD leverages the Grainger & Canoe / Sourcewell GPO to reduce cost and expedite the search or pricing of products and to streamline procurement processes. GRAINGER.CA (Sourcewell Landing Page) is its commonly used business channel. Order Lists for common consumables across many product categories are integrated. A KS CMI Inventory Management Program is provided onsite for fasteners. Grainger BC Field Safety Specialists partner with CRD Corporate Health and

Safety on a LOTO project; the Grainger Victoria branch team supports CRD Technician / Operator walk-in business.
Healthcare (Canada)- Ongoing: Canadian healthcare facilities and Grainger Canada have built integral partnerships across Canada. Notably, a facility in Central Canada transitioned its maintenance departments to an in-house managed model for all locations. Via local & national account managers, Grainger Canada has reorganized storerooms, identified, labeled, and organized products, and obtained fast and efficient delivery for all items required by the maintenance teams. Management and reporting capabilities have been meaningfully enhanced and overall cost savings for all locations obtained.

County Parks Department (TX) Keepstock- Summer, 2021: Recognizing the need to provide employees ready access to the safety and protective products, Grainger collaborated with the County's Parks Department to install KeepStock inventory management across multiple locations. Grainger assisted in identifying equipment and supplies, estimating appropriate stocking levels, and implemented ordering and replenishment protocols to ensure availability. The effort supported the Department's initiative to maximize productivity for employees needing safety gloves, goggles, glasses, hearing protection, electrolytes, sunscreen and poison ivy protection.

EMERGENCY RESPONSE INVENTORY AND DISTRIBUTION
A critical element of Grainger North America's distribution capability is assisting emergency response for the small and large incident. Expeditious and quality response in real time entails internal planning and preparation.

In an emergency, Grainger North America's Crisis Management Team first assesses the condition of Grainger branches and facilities to make sure they are available to distribute product. Frequently a pre-determined product list, coordinated with local emergency response agencies, is used to move supplies to the affected area. If additional products are required, Grainger North America moves products to the area from its 284-branch network and 17 regional Distribution Centers or directly from product suppliers.

A critical element in Grainger North America's expeditious response is its breadth of inventory, relationship with suppliers, capability to determine where inventory is located, and its transportation proficiency, personnel with expertise and experience and long-term relationships with state, local and federal agencies.

In severe emergency situations, Grainger works with First Responders to make sure they have priority access whether from Grainger or the product manufacturers. The Crisis Management Team and Grainger on-scene leadership works with emergency management agencies and others to ensure appropriate and fair distribution.

Emergency Response POC: Grainger's Primary Point of Contact in any emergency affecting a Sourcewell Member in the US is Allison Darling, Senior National Government Sales Manager who can be reached via call or text at mobile phone: 713.805.9845 or email: Allison.Darling@grainger.com and in Canada, Marty Luciw, Senior Government Sales Manager at phone number: 403.991.2727 or email: Marty.Luciw@grainger.ca

Grainger's US emergency phone number is 800-CALL-WWG. Other primary points of contact will be identified for Sourcewell member.

The local Grainger Account Management team will engage the Sourcewell member to address the circumstance within 60 minutes to understand the challenge and to commence response. Grainger provides emergency response services, whether the incident is small or large, at any time. Upon receiving a call, the Grainger representative contacts the Corporate Crisis Management Team leadership and/or communicates with the local Branch representative to open the nearest branch location.

Grainger commits to special services to Sourcewell members.

		Grainger will open a branch, deploy team members to take orders, assist customers, load trucks and to distribute supplies at the incident scene. Grainger's pricing and services does not change in an emergency, large or small. Sourcewell member product costs will mirror the contract.	

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
65	d. other than what the Proposer typically offers (please describe).	The pricing offer is premised upon detailed historic purchase history, trends within this market segment and customer evolving requirements, and based on this information, reflects a competitive offer for customers with purchasing needs in the state, province, local, education, and non-profit segments.

Table 13: Audit and Administrative Fee

Line Item	Question	Response *	
66	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell. Provide sufficient detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template.	Grainger performs monthly pricing reviews to ensure Sourcewell Members receive valid contract pricing. These reviews are automated and then confirmed accurate by team members versed in contract requirements. If inconsistencies are identified, Grainger performs an internal inquiry to track the origin of the inconsistency after which corrective action is taken to address the issue. Grainger ensures adjustments are made and the Member is informed of the issue, the corrective action taken and is credited. Flowing from the monthly pricing review, is a report provided to Sourcewell that documents Grainger's audit findings. This level of scrutiny is also applied to our review of overall contract sales and calculation of administrative fees, which is documented in Grainger's Direct Sales Administrative Fee report provided to Sourcewell following the end of each quarter. Grainger's customer facing compliance initiatives include assisting customers with their regulatory and policy driven audit requirements, which include performing audits up to three years beyond the order invoice date and/or provide purchase history reporting up to three years beyond the order invoice date. These actions allow the customer or a third party to perform a review of orders submitted to Grainger to ensure the accuracy of contract pricing.	*
67	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	Grainger offers a range of standard reports; the key metrics customers can expect include: • Tier: This workbook includes the Overall Purchase Analysis, Item Purchase History, Product Line Distribution, Purchase by Supplier, and Cost Savings Analysis reports plus a summary page. • KPI: Order summary with ship-complete rating, order accuracy, order adjustments, and on-time shipping. • Item Purchase History: This summary report shows items purchased by track code, sub-track code, and/or account4 number. Includes total sales and quantity per item. • Supplier Diversity: Reports sales by historically underrepresented partners.	*
68	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	Grainger will provide Sourcewell with a Direct Sales Administrative Fee ("DSAF") of Two Percent (2%) on all direct Product Purchases. Qualifying direct Product Purchases are those purchases made directly by a Sourcewell Member. Grainger will provide Sourcewell with a Direct Sales Administrative Fee ("DSAF") of One Percent (1%) on all Product Purchases made through a Member's participation in the Grainger Authorized Reseller Program. Grainger will provide Sourcewell with a Direct Sales Administrative Fee ("DSAF") of One Percent (1%) on all Product Purchases made through a Sourcewell Member affiliated to the Sourcewell Plus Program. Qualifying Product Purchases are those pursuant to the awarded contract and shall include total net invoice price less freight, taxes, returned products and credits. Grainger will calculate the DSAF amount quarterly and provide the DSAF payment to Sourcewell within forty-five (45) days from the end of the quarter. Grainger will provide a quarterly DSAF report to Sourcewell within forty-five (45) days from the end of the quarter.	*

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *
69	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	North America Grainger's offer encompasses the entire US portfolio of 1.5 million maintenance, repair, and operating supplies and 476,000 MRO products in Canada's portfolio across 36 categories provided by 6,500 suppliers. It is supplemented by sourcing proficiency and services that complement our product offer, along with the expertise of Grainger team members. It captures the routine to specialized MRO product or service and is continually enhanced to meet evolving Member needs. Grainger's ability to sell a service or solution within a specific US or Canadian jurisdiction may be limited by law and/or regulation. Product categories included in this proposal reflect the full spectrum of facility MRO, industrial, and building-related supplies and related equipment, accessories and services. Categories and solutions offered are complementary to the equipment, products, and services and provide Sourcewell Members with consolidated, efficient, and comprehensive cost-savings options: • Abrasives • Air Filters • Gloves and hand protection • Safety & Security • Lighting, Lamps and Ballasts • Electrical • Electronics, Appliances, and Batteries • Tools & Test Instruments • Cleaning & Janitorial • HVAC and Refrigeration • Metalworking, Machining, & Fabrication • Motors & Power Transmission • Pneumatics & Hydraulics • Material Handling • Packaging & Shipping • Paint • Tapes, Adhesives & Lubricants • Fleet & Vehicle Maintenance • Laboratory • Office, & Hospitality Supplies • Pipes, Hose, Tube, & Fittings • Plumbing & Pumps • Fasteners, Hardware, & Raw Materials • Building & Ground Maintenance SERVICES ACROSS FACILITY MRO, INDUSTRIAL, AND BUILDING RELATED SUPPLIES AND EQUIPMENT In addition to the Assessments and Training we offer, which are detailed in Response 40, Grainger provides customers with value-added support services which complement the facility MRO products we offer: • Grainger's network of installers provides turnkey and/or labor-only fixed fee installation and support services. • Turnkey service offerings include materials, labor, recycling, rebate administration. • Currently Grainger has identified 65 companies that have satisfied our vetting process. All companies used by Grainger are licensed, insured, qualified and capable of performing in accordance with Member service requirements. A Grainger team member will work with the Sourcewell member to secure the type of service and description or provide requirement details. Grainger's specialized team will examine and select the best supplier to fulfill needs, including determining lead time and competitive pricing. Once a supplier is selected, a quote will be provided and sent to the customer for review and approval. SERVICES OFFER: Services include inventory management solutions (including Grainger "Managed MRO" solution), installation, assembly, and consulting services, services addressing safety training, assessments and sustainability. Our technical experts assist agency operations and compliance responsibilities. Additional details pertaining to our services offer are provided below. Consulting Services Grainger Consulting engages customers using a proven methodology consisting of Analysis, Strategy Development, and Implementation. Consultants also help identify opportunities for efficiency that are often forgotten as to indirect materials management. Grainger's industry research and experience enables it to identify and monitor industry standards. This experience provides a starting point for cost drivers

like reducing waste in processing or demonstrating how a customer can reduce its inventory. We learn customer processes, recognize improvement opportunities, and develop a strategic plan of solutions. This includes a comprehensive data measurement package that demonstrates how to measure progress and sustain results. Our recommendations help improve service and efficiency for Sourcewell Members.
Please see Consulting Services Overview, along with documents detailing Grainger Consulting Services' "Inventory Baseline," "Procure to Pay," and "Storeroom Layout" service offerings in the "Additional Documents" Zip File.

FACILITY SERVICES
Grainger Facilities Services help prolong the life of a Member's buildings and structures and support safety initiatives. Backed by a network of qualified providers, these services keep facilities dry, safe and sustainable.
Services include:
- Air barrier audits
- Ceiling Tile Installation/Replacement**
- Inspection services
- Patch and repair services**
- Preventative maintenance contracts
- Restoration services
- Roof cleaning
- Roof Restoration**
- Rooftop safety installation**

FLOORING SERVICES
- Concrete Polishing
- Floor Design and Installation
- Floor Repairs
- Floor Striping

ENERGY SERVICES
The Grainger Energy Services team can identify and implement a wide range of efficient solutions* through its network of qualified, insured and licensed service providers. Our service providers help facilitate the installation of energy-saving and water conservation measures. Grainger can also help secure applicable incentives and rebates for energy and water-saving projects.

HVAC Filter Change-Out and Preventative Maintenance Services: To help ensure HVAC units are functioning properly and efficiently, Grainger's service providers will:
- Visually inspect all HVAC equipment
- Look over electrical and mechanical components for excessive wear or damage
- Change filters
- Check belts and startup

Assessments: Any mechanical or electrical issue within a system can reduce its efficiency. Grainger can help address these concerns with services including steam leak identification and mitigation, defective steam trap replacement and upgrades, infrared studies, and insulation upgrades. Adjustments to steam system can help immediately reduce operational costs.

ELECTRICAL SERVICES
- Electrical Emergency Services & Disaster Recovery
- Electrical Engineering Services: Arc Flash Analysis, Circuit Loading Study, Electrical Systems Analysis, Harmonics Assessment/Testing Services, Power Consulting, Power Quality Correction, Project Engineering/Custom Design, Project Management, Remote Power Management, Ungrounded to High Resistance Conversion
- Electrical Maintenance & Testing: Infrared Testing, Monitoring Systems, On-Site Preventative Maintenance, Relay and Metering Calibration, Service Agreements, Spare Parts
- Electrical Turnkey Installation Services: Infrared Viewing Window, Installation Coordination, On-Site Training, Project Management, Site Measurement Services, Start Up Services, Turnkey Capabilities
- Medium Voltage/Low Voltage Services: Circuit Breaker Conversion to Vacuum Starter, Direct Replacement Circuit Breakers, Industrial Electronic Repairs, Network Protectors, Reconditioning Program for Circuit Breakers, Relay and Metering Retrofits/Replacement, Remote Racking Systems, Retrofill Solutions, Switchgear Expansions and Upgrades, Trip Unit Retrofills

EMERGENCY PREPAREDNESS
Grainger assists in planning, response, and recovery across the range of

emergencies including:

• Experienced customer service professionals are available prior to any emergency and 24-hours a day, 7-days a week to provide assistance with urgent needs
• Emergency preparedness catalogs, capability guides, and hazard-specific emergency checklists are available for download online
• Products and technical expertise to help institutions develop both basic and advanced emergency response capabilities
• Grainger will also open a branch location at any time to assist response
• On-site containers filled with supplies can be provided
• In emergency situations Grainger branch hours may be extended to 24-hours a day
• Contract pricing remains consistent in emergency situations

ENVIRONMENTAL HEALTH & SAFETY SERVICES

Fee-Based Safety Assessments & Audits and Testing include:
• Gas Detection Service (Referral)
• Managed Footwear Program
• Prescription Eyewear Solutions
• Heat Stress Assessment (Hot & Cold)
• Hearing – Ear Fit Test, Hearing Loss Determinations (Work Related) – Audiologist reviewed
• Online Respirator Medical Clearance Testing
• Pulmonary Function Testing
• Rigging & Sling Inspections
• Respirator Fit Testing, Respirator Fit Testing
• Indoor Air Quality Assessments
• Industrial Hygiene Assessments
• Ladder Inspection Services
• Lockout Tagout Assessments, Machine Guarding Audits
• Silica Dust Exposure Compliance, Slips Trips and Falls Assessment*, Survey & Analysis of Building Water Systems, Turnkey Engineered
• Fall Protection System (Referral)*
• Vehicle Lift Inspection Service, Ventilation System Testing, Warehouse/DC Rack Inspections
• AED Inspection Services
• Emergency Eyewash Station Assessments & Inspections
• Emergency Light and Exit Lights Inspections & Service, Employee Exposure Monitoring
• Fall Protection Assessments/Audits, Fall Protection Equipment Inspections-Harnesses, etc.

FIRE SAFETY
• Fire Alarm System Design & Installation
• Fire Alarm System Inspection & Service
• Fire and Smoke Damper Inspection & Repairs**
• Fire and Smoke Door Inspection & Repairs**
• Fire Extinguisher Inspections and Service
• Fire Protection Awareness & Testing (sprinkler systems), Firestop and Fire Barrier Inspection & Repairs
• Special Hazard Fire Suppression System Design & Installation (Referral)

LAB SERVICES
• Lab Furniture Assembly & Installation**
• TV Furniture Assembly & Installation

ONLINE SAFETY SERVICES

EH&S Online Services & Training
Incident Inspection and Asset Management (iCertainty), Inspection Management (AuditPro), Learning Management System and Online EH&S Training Libraries, Online EH&S Training Libraries (Via Customer's LMS), Online Healthcare Compliance System (CRx),
Online Safety Training (Customer's LMS), Specialized Online Safety Training (OSHA 10/30, NFPA 70E), Online SDS Management System, Online Occupational Health Evaluations (Audio, Pulmonary, Respiratory).

EH&S Training – Instructor-LED/LIVE or Virtual
• Medical Gas Maintenance Personnel Certification Training (ASSE 6040)
• More than 30 Critical Topics: Electrical, BBP, Confined Space, Fire, Falls, HAZCOM, HAZMAT, LOTO and more
• RCRA Training – Solid and hazardous waste disposal
• Toolbox Talk Resources on Multiple Safety/EHS Critical Topics

		PROGRAM & PROCEDURE DEVELOPMENT Effective programs and procedures help ensure compliance and create a safe workplace for your employees. These programs are developed so that your business operations can be conducted safely, and are provided through online templates or custom on-site development • Arc Flash/Electrical Safety • Confined Space • Emergency Action Plans • Environmental Safety • Hazards • Food Safely • Inspection and Asset Management • Footwear/Benefit Management • Lockout/Tagout • Machine Guarding • Medical FirstAid • Online Safety Manager • SOS Management Some services require qualifying purchase. Additionally, due to various statutory and regulatory requirements, authorization to sell this service to some Government customers requires Grainger legal and compliance review. Please see attachment detailing Grainger's Value Add and Fee-Based Services in Additional Documents Zip. Sourcing Grainger's Sourcing Team procures Facility MRO, Industrial, and Building-Related Supplies and Equipment and services not found in the Grainger General Catalog. The Team leverages Grainger's buying power to provides customers with a total cost solution for infrequently ordered items via quick access to over 6,500 suppliers. Sourced products for Facility MRO include: CUSTOM KITTING CAPABILITIES Through a combination of supplier partners and Sourcing capabilities, Grainger North America provides agencies and departments with customized supply kits to assist with critical or essential departmental needs, mass casualty or disaster responses. Examples include shelter kits to prepare for disasters and deployment kits for first responders in preparation for an event. Grainger can also provide kitting for non-disaster circumstances. Grainger Kit Deployment Value County (NY) Road Maintenance Department - Spring 2019: To mitigate injuries and lost time, Grainger worked with the Sourcewell Member to assemble over 300 personal PPE kits for its crew members. Grainger identified and secured product samples with varying features and price points for the County's evaluation and selection. The Grainger Branch assembled the necessary boots, helmets and other items, inventoried the products, created individual kits inside a clear bag, labeled the bags with crew member names, and delivered to each of four garages. US Pandemic Assistance- 2020: Grainger and a supplier partner sourced product globally, air freighted in components, assembled and fulfilled requests for pandemic kits to each of the lower 48 states. The 50 million kits were distributed to States, Counties and local governments. Vaccination Support -2021: Working with a supplier partner, Grainger deployed drive-through testing and vaccination stations for multiple states and counties throughout the pandemic. The structures included a 2-lane inflatable drive through, ante room, and a 22x22 connected structure to house support staff and vaccine freezers. The units were packaged in trailers and pallet boxes based on customer preference. Afghanistan Refugee Support – 2021: To help support Afghan refugee relief efforts, Grainger and supplier partners quickly secured and assembled a hygiene kit with products including blankets, towels and washcloths. At its peak, 30,000 hygiene kits were provided to customers.
70	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	The following is a summary of current major subcategories in Grainger North America's Facility MRO, Industrial, and Building-Related Supplies and Equipment portfolio. In pursuing innovative and cost-effective products, Grainger frequently restructures product categories for clarity and product alignment. Grainger North America MRO Subcategories include:

		• Safety & Security: Arc Flash Protection, Asbestos Abatement, Confined Space Equipment, Emergency Eye Wash and Shower Equipment, Emergency Preparedness, Ergonomics, Eye Protection, Face Protection, Fall Protection, Firefighting Clothing and Accessories, Fire Protection, First Aid & Wound Care, Floor Mats, Footwear & Footwear Accessories, Gas Detection, Hand & Arm Protection, Head Protection, Hearing Protection, Lockout Tagout, Medical Supplies & Equipment, Noise Control, Portable Coolers and Beverages, Protective Clothing, Respiratory Protection, Safety Alarms and Warnings, Safety Storage, Signs & Facility Identification Products, Sorbents, Spill Control, and Spill Containment, Traffic Safety, Training, Water Safety, Workwear, Access Barriers and Crowd Control, Detectors, Scanners & Accessories, Door and Door Frames, Key Control & Identification, Locks, Mailboxes, Police & EMT Uniforms, Safes, Security Alarms and Warnings, Security Equipment Replacement Parts, Security Management and Law Enforcement, Security Seals, Self Defense, Two Way Radios and Police Scanners. • Lighting & Electrical: Ballasts & Drivers, Emergency & Exit Lighting, Flashlights, Hand & Portable Lamps, Job Site Lighting, Lamp & Light Bulb Disposal & Recycling, Light Bulbs & Lamps, Lighting Controls, Lighting Fixtures & Retrofit Kits, Lighting Replacement Parts, Outdoor Lighting, Task Lights, Conduit, Fittings & Strut Channel Framing, Electrical Boxes & Enclosures, Electrical Supplies, Extension Cords, Power Strips, & Cord Reels, Fuses, Circuit Breakers, & Safety Switches, Grounding Rods, Braids, and Connectors, Industrial Controls, Automation and Machine Safety, Motor Controls, Solar and Temporary Power, Transformers, UPS, & Power Supplies, Voice and Data, Wire and Cable Management, Wire, Cable & Cordsets. • Electronics, Appliances & Batteries: Appliances, Batteries & Battery Chargers, Communications, Electronic Equipment & Appliance Replacement Parts, Electronics, Intercoms & Speakers • Tools & Test Instruments: Hand Tools, Measuring & Layout Tools, Power Tools, Sockets & Bits, Tool Balancers, Retractors, and Accessories, Tool Storage, Tool Tethering & Dropped-Object Safety, Air Movement, Asphalt Testing, Automotive Testing, Combustion Testing, Concrete Testing, Data Recording, Electrical Power Testing, Electronic/Bench Testing, Indoor Air Quality, Nonelectrical Properties Testing, Pavement Quality, Pressure & Vacuum Measurement, Process Monitoring, Replacement Parts for Construction and Pavement Testing, Temperature and Environmental Measurement. • Cleaning & Janitorial: Cleaning & Janitorial Equipment & Replacement Parts, Cleaning Chemicals, Cleaning Supplies, Floor Cleaning Machines, Footwear Scrubbers and Sanitizers, Hand and Personal Care, Odor Control Chemicals & Supplies, Paper Product & Dispensers, Waste, Recycling, & Trash Supplies. • HVAC & Refrigeration: A/C Refrigeration & Supplies, Air Conditioners & Accessories, Air Filters, Air Treatment, Central Equipment, Cooling Fans, Fan Blades & Propellers, HVAC & Refrigeration Replacement Parts, HVAC Controls & Thermostats, HVAC Test Instruments, Heaters, Refrigeration Test Equipment, Ventilation Equipment. • Metalworking & Fabrication (Machining, Abrasives, & Welding): Clamping, Workholding & Positioning, Cutting Fluids & Coolant Systems, Drilling & Holemaking, Indexable Cutting Tools, Machine & Tool Maintenance, Machinery, Milling, Precision Measuring, Threading, Tool Blanks, Toolholding & Tooling, Turning, Boring, & Grooving, Abrasive Blasting, Abrasive Brushes and Wheel Kits, Abrasive Dressing Products, Abrasive Equipment Replacement Parts, Abrasive Rolls & Kits, Abrasive Sharpening Stones, Cut-Off and Grinding Wheels, Deburring, Flap Wheels, Mounted Points & Kits, Polishing, Sanding Belts & Kits, Sanding Discs and Kits, Sanding Hand Pads and Sponges, Sandpaper & Kits, Specialty Abrasives & Kits, Surface Conditioning Wheels, Tumblers & Media, Air Carbon Arc Cutting & Gouging, Arc Welding, Filler Metals, Fume Extractors & Accessories, Gas Equipment, Plasma Cutting, Plastic Welding, Soldering, Spot Welding, Stud Welding, Weld Cleaning, Welding Cable Grounds, and Accessories, Welding Chemicals, Welding Equipment Replacement Parts, Welding Safety Equipment, Welding Supplies, Welding Tables & Accessories. • Motors & Power Transmission: AC Motors, DC Motors, Motor Capacitors, Motor Drives & Speed Controls, Motor Maintenance & Accessories, Motor Mounting & Accessories, Motor Mounting Accessories, Motor Replacement Parts, Bearings, Belt & Chain Guides, Tensioners, & Tighteners, Belts & Pulleys, Brakes & Clutches, Bushings, Gearing, Gearmotors, Linear Motion, Power Transmission Equipment Replacement Parts, Roller Chains & Sprockets, Shaft Couplings, Collars and Universal Joints, Speed Reducers, Vibrators.	

		• Pneumatics & Hydraulics: Hydraulic Accumulators, Hydraulic Cylinders & Seals, Hydraulic Equipment Replacement Parts, Hydraulic Filtration, Hydraulic Fittings, Hydraulic Hose Sleeves, Hydraulic Motors, Hydraulic Oil Coolers, Hydraulic Power Tools, Hydraulic Power Units, Hydraulic Pumps, Hydraulic Rams & Tools, Hydraulic Tanks, Hydraulic Valves, Air Compressors, Vacuum Pumps, & Blowers, Cable Reels, Compressed Air Treatment, Pneumatic Equipment Replacement Parts, Pneumatic Motors, Pneumatic System Components, Pneumatic Tools, Pneumatic Tube Fittings, Pneumatic Valves, Vacuum System Components. • Material Handling: Access Ladders, Platforms, & Scaffolding, Dock Equipment, Lifting, Pulling & Positioning, Load Securing, Material Handling Replacement Parts, Scales and Scale Accessories, Storage & Workspace, Structural Framing Systems, Transporting. • Packaging & Shipping: Bags, Equipment, and Accessories, Carton Staples & Staplers, Edge & Corner Packaging Protection, Moving Blankets & Covers, Package Labels & Shipping Equipment, Packaging Tables & Accessories, Packaging Tapes, Dispensers & Machines, Pallets & Accessories, Protective Packaging, Shipping & Mailroom Scales, Shipping Boxes, Pads, and Tubes, Shipping Mailers & Envelopes, Shrink Wrap Films, & Equipment, Strapping, Stretch Wrap. • Tapes, Adhesives & Lubricants: Adhesive & Sealant Dispensing Equipment, Adhesive & Sealant Surface Preparation, Adhesives & Glues, Caulks, Sealants, & Fillers, Concrete and Asphalt, Potting Compounds & Protective Coatings, Putties, Tape, Threadlockers and Gasket Sealants, Anti-Seize Compounds, Fittings and Hose Systems, Grease Feeders and Precision Metering Pumps, Grease Guns, Greases, Lubricant Pumps, Lubricants & Penetrating Lubricants, Lubrication Equipment Replacement Parts, Lubricator Accessories, Mold Release Agents, Oilers Reservoirs, and Sprayers, Oils, Storage & Dispensing Systems. • Fleet & Vehicle Maintenance: Auto Body Repair, Brakes Tires, & Wheels Maintenance, Fleet & Vehicle Maintenance Replacement Parts, Storage, Lifting, Moving, and Protection, Towing & Trailer Equipment, Vehicle Accessories, Vehicle Cleaning Supplies, Vehicle Diagnostics & Inspection, Vehicle Electrical & Battery Power Maintenance, Vehicle Engine, Radiator, & Exhaust Maintenance, Vehicle Heating & Cooling, Vehicle Lighting, Vehicle Lubricants, Vehicle Specialty Tools, Vehicle Steering & Suspension, Vehicle Windshield Maintenance. • Lab, Office, & Hospitality Supplies: Flooring, Food Service and Food Processing, Furniture, Furniture, Hospitality & Food Service Equipment Replacement Parts, Hospitality, Sports & Recreational Equipment, Audio Visual Equipment, Binders & Clipboards, Boards & Easels, Business Cases, Calendars & Planners, Clips, Push Pins, and Rubber Bands, Clock and Time Clock Systems, Computer Supplies & Media, Document Covers, Displays, and Frames, File Folders and Boxes, Flags, Flag Poles, and Accessories, Ink Stamps & Ink Pads, Ink and Toner Cartridges, Laminating and Binding Equipment, Office Cleaners, Office Equipment Replacement Parts, Office Machines & Equipment, Office Organizers, Office Paper & Notebooks, Paper Shredders, Paper Cutters, and Paper Folding Machines, Retail Supplies, Staplers, Tape Dispensers, and Hole Punches, Transparent Office Tape, Writing & Correction, Books & Books Supplies, Classroom Supplies, Decoration, Incentive, Toys, Agricultural Testing, Chromatography, Lab Chemicals, Lab Consumables, Lab Diagnostics, Lab Education & Training, Lab Equipment, Lab Filtration, Lab Fume Hoods and Accessories, Lab Furniture, Lab Instruments, Lab Ovens, Heating and Refrigeration, Lab Storage and Transport, Lab Supply Equipment Replacement Parts, Lab Utensils, Labware, Material Testing Equipment, Microbiology and Molecular Biology Supplies, Particle Sizing, Physical Test Equipment and Accessories, Soil Testing, Water Quality and Purification, Water Testing Equipment and Meters. • Pipes, Hose, Tube, & Fittings: Hose Products, Pipe Products, Tube Products. • Plumbing & Pumps: Bathroom Hardware, Bathtubs, Showers, & Repair Parts, Ceiling Tiles & Accessories, Drains & Drainage, Drinking Fountains, Bottle Fillers, & Water Dispensers, Faucets, Fixtures, Garbage Disposals and Accessories, Gas and Water Line Connectors, Gaskets, Insulation, Liquid Level Gauges and Sight Indicators, Pipe, Tubing and Fittings, Plumbing Hoses, Plumbing Replacement Parts, Plumbing Valves, Sinks, Wash Fountains, & Repair Parts, Toilets, Urinals, and Repair Parts, Water Filtration & Purification Systems, Water Heaters, Water Softeners & Softening Salt, Aeration, Centrifugal Pumps, Chemical Pumps, Circulating Pumps, Flanges, Unions, & Controls, Condensate Pumps & Pan Switches, Condensate Return & Boiler Feed Systems, Coolant Pumps, Diaphragm Pumps, Drum Pumps, Electronics Cooling, Filtration, Flexible Impeller Pumps, Fuel and Oil Transfer Pumps, Machine Tool and Parts Washer Pumps, Marine Pumps, Plunger, Progressive Cavity & Roller Spray Pumps, Pool and Spa Pumps, Pump Accessories, Pump Controls, Pump Replacement Parts, Rotary Pumps, Sump,	*	

		Sewage, & Utility Pumps, Test Pumps, Well Pumps & Systems. • Fasteners, Hardware, & Raw Materials: Anchors, Bolts, Fastener Assortments, Hardware, Hooks, Key Stock, Lanyards, Manuals, Measuring Equipment, Nails, Nuts, Pins, Retaining Rings, Rivets, Safety Lockwire, Screws, Shim and Shim Stock, Socket Screws and Set Screws, Spacers and Standoffs, Staples, Thread Insert, Threaded Rods & Studs, Washers, Braces and Brackets, Door Hardware, Door Hardware Replacement Parts, Drawer and Cabinet Hardware, Garage Door Openers, Hardware Supplies, Hook and Loop Fasteners, Hooks, Magnets and Magnetic Strips, Mounts and Vibration Control, O-Rings & O-Ring Kits, Rubber Edge Trim Seals, Rubber Edging, Springs, Tarps & Tarp Accessories, Wall and Hand Rail Hardware, Window Hardware, Alloy Steel, Aluminum, Assortments, Brass, Bronze, Carbon Steel, Cast Iron, Ceramic, Copper, Cork, Fabrics, Felt, Fiberglass, Foam, Graphite, Plastics, Rubber, Stainless Steel, Tin, Titanium, Tool Steel, Wire Cloth. • Building & Ground Maintenance: Camping Equipment, Concrete Mixing & Preparation, Crop, Nursery, and Landscaping, Cutting & Pruning Tools, Electrical Generators, Engines, Fencing and Fencing Hardware, Forestry, Hoses and Sprinkler Systems, Insect and Pest Control, Lawn Mower Attachments, Lawn Mowers & Equipment, Outdoor Equipment Replacement Parts, Power Brushes, Yard Vacuums and Leaf Blowers, Pressure Washers and Steam Cleaners, Rakes and Cultivating Tools, Shovels, Tampers and Digging Tools, Snow and Ice Removal, Soil Treatment and Weed Control, Sprayers and Spreaders, Temporary Outdoor Structures, and Accessories, Water Diversion & Erosion Control, Wheelbarrows and Wheelbarrow Accessories, Automotive Paints and Coatings, Exterior Paints & Stains, Floor & Multi Surface Coatings, Interior Paints & Stains, Paint & Coating Applicators, Paint Booths & Accessories, Paint Mixers, Shakers, and Accessories, Paint Sprayers & Accessories, Paint Thinners, Removers, and Cleaners, Paint Trays & Buckets, Paint and Wallpaper Tools, Painting Equipment Replacement Parts, Rook & Leak Coatings, Specialized Paints & Coatings, Spray Paints & Primers, Striping & Marking Paints & Chalks, Surface Protection & Dust Barriers.	

Table 148: Depth and 8readth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments	
71	Facility MRO	(•) Yes ( ) No	North America Grainger provides a comprehensive product and service offering addressing this category.	*
72	Industrial supplies or building materials	(•) Yes ( ) No	North America Grainger provides a comprehensive product and service offering addressing this category.	*
73	Electric, mechanical, fluid, or pneumatic power transmission	(•) Yes ( ) No	North America Grainger provides a comprehensive product and service offering addressing this category.	*
74	Electrical service or lighting	(•) Yes ( ) No	North America Grainger provides a comprehensive product and service offering addressing this category.	*
75	Plumbing or waterworks	(•) Yes ( ) No	North America Grainger provides a comprehensive product and service offering addressing this category.	
76	Services related to the offering of the solutions in Lines 71-75 above	(•) Yes ( ) No	North America Grainger provides a comprehensive service offering addressing categories referenced in Lines 71-75.	

Exceptions to Terms, Conditions, or Specifications Form

Only those Proposer Exceptions to Terms, Conditions, or Specifications that have been accepted by Sourcewell have been incorporated into the contract text.

Documents

Ensure your submission document(s) conforms to the following:

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.

2. Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.

3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.

4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."

- Pricing - Pricing-091422.zip - Tuesday September 13, 2022 10:49:00
- Financial Strength and Stability - Financial Strength.zip - Tuesday September 13, 2022 09:02:00
- Marketing Plan/Samples - Marketing Plan.zip - Tuesday September 13, 2022 09:02:38
- WMBE/MBE/SBE or Related Certificates (optional)
- Warranty Information - Table 9_Q46 Sourcewell Grainger Warranty .pdf - Tuesday September 13, 2022 09:02:51
- Standard Transaction Document Samples - Standard Transaction Documents.zip - Tuesday September 13, 2022 09:03:01
- Upload Additional Document - Additional Documents.zip - Tuesday September 13, 2022 09:03:12

Addenda, Terms and Conditions

PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.

2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.

3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.

4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.

5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.

6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.

7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.

8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.

9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.

10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.

11. Proposer its employees, agents, and subcontractors are not:
    1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: https://www.treasury.gov/ofac/downloads/sdnlist.pdf;

    2. Included on the government-wide exclusions lists in the United States System for Award Management found at: https://sam.gov/SAM/; or

    3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated

by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☑ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Allison Darling, Senior National Government Sales Manager, W.W. Grainger, Inc.

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

○ **Yes** ◉ **No**

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "**I have reviewed this addendum"** below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_5_Facility_MRO_Supplies_RFP_091422 Wed August 24 2022 02:50 PM	☑	1
Addendum_4_Facility_MRO_Supplies_RFP_091422 Wed August 17 2022 02:11 PM	☑	2
Addendum_3_Facility_MRO_Supplies_RFP_091422 Mon August 1 2022 09:35 AM	☑	1
Addendum_2_Facility_MRO_Supplies_RFP_091422 Fri July 29 2022 03:22 PM	☑	2
Addendum_1_Facility_MRO_Supplies_RFP_091422 Thu July 28 2022 04:35 PM	☑	1

CITY OF

NEWPORT BEACH

City Council Staff Report

March 25, 2025
Agenda Item No. 7

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Mark Vukojevic, Utilities Director - 949-644-3011, mvukojevic@newportbeachca.gov
PREPARED BY:	Joshua Rosenbaum, Senior Management Analyst - (949) 644-3011 jrosenbaum@newportbeachca.gov
TITLE:	Amendment to Professional Services Agreement with Sampson Oil Company for Oil Well Management Services

ABSTRACT:

The Utilities Department oversees the operation of the City of Newport Beach's 16 oil wells. A specialty service contractor is responsible for the daily maintenance, repair and operation of the oil wells and production tank facility. This includes coordinating regulatory agency inspections and compliance, purchasing materials, and managing subcontractor repairs. The Utilities Department is requesting City Council approval to amend and extend the existing agreement with Sampson Oil Company.

RECOMMENDATIONS:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and

b) Approve Amendment No. Seven to the Professional Services Agreement with Sampson Oil Company for Oil Well Management Services, which extends the contract to June 30, 2026, and increases the contract amount by $750,000, and authorize the Mayor and City Clerk to execute the Agreement.

DISCUSSION:

Sampson Oil Company (Sampson) has managed and operated the City's oil fields in West Newport since the 1980s. Its operations and services include daily maintenance, repair, operation and regulatory compliance of the City's 16 oil wells, including one injection well, a production tank facility, and pipelines. Sampson also coordinates regulatory agency inspections, prepares compliance reporting, procures materials, and manages subcontractors for as-needed repairs. With decades of experience, Sampson has the expertise and familiarity necessary for the effective management and operation of the City's oil field.

Over the last three years of the current agreement, the City and Sampson have made significant oil well repairs to increase oil production and maintain compliance with California's new idle well program requirements. During the previous and current fiscal years, expenditures were necessary for regulatory compliance with idle wells and injection wells, replacement of tubing and inner liners, casing repairs, pump and motor replacements, cementing, haul-offs, zone abandonments, rehabilitations, and investigations into underperforming wells. As a result of these efforts, oil well production significantly increased, reaching over 22,000 barrels sold during calendar year 2024; a level not seen since 2017.

In June 2024, the California Geologic Energy Management Division issued new regulatory requirements under Senate Bill No. 1137, effectively prohibiting major rehabilitation of existing oil wells, although some maintenance can still be performed. While operations can continue into the near future, without rehabilitation options, cost effectiveness may become negative. Operators, including the City, are encouraged to consider abandoning or decommissioning oil wells. Staff is considering several factors, including public opinion of oil operations, oil operations as legacy (not a core) function for the City, and the slim profit margins. Therefore, staff recommends planning for a systematic and cost-effective shutdown of oil operations.

Staff planned to issue a formal request for proposals to hire a new operator, anticipating the near-future retirement of the owner of Sampson. However, based on recent changes in State regulations and discussions with Sampson, staff is now recommending an extension of the existing agreement. Over the next several months, staff will study the best options for abandoning or decommissioning the well field, starting with idle or underperforming wells. Retaining the stability and cost effectiveness of the existing operator, Sampson, is recommended at this time. Staff will return to the City Council for further approvals on a planned shutdown program and changes to the Capital Improvement Program.

Sampson will continue the routine management and operations of the City's wells. Sampson's staff and contractors will continue to perform routine repairs, and the contract includes allowances for the purchase of materials and unforeseen repairs performed by subcontractors. Additionally, all necessary time needed by Sampson's administrative and office staff to maintain compliance with State regulations is included.

Staff recommends City Council approval of Amendment No. Seven to the Professional Services Agreement with Sampson Oil Company for Oil Well Management Services, extending the contract to June 30, 2026, and increasing the total contract amount by $750,000.

FISCAL IMPACT:

Sufficient funding for this agreement is included in the adopted Fiscal Year 2024-25 budget and will be drawn from operating funds in the Tidelands Fund (Fund 100). Additional funding has been allocated in the Capital Improvement Program.

Revenues from oil sales help offset expenditures, with net proceeds from oil operations deposited into the Tidelands Fund and the Oil Well Abandonment Fund. Despite increased oil production, profit margins remain limited. Preliminary full-year net revenues for FY 2024-25 are estimated to range between $300,000 and $350,000.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENT:

Attachment A – Amendment No. Seven to Professional Services Agreement

AMENDMENT NO. SEVEN TO PROFESSIONAL SERVICES AGREEMENT WITH SAMPSON OIL COMPANY, INC. FOR OIL WELL MANAGEMENT SERVICES

THIS AMENDMENT NO. SEVEN TO PROFESSIONAL SERVICES AGREEMENT ("Amendment No. Seven") is made and entered into as of this 25th day of March, 2025 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and SAMPSON OIL COMPANY, INC., a California corporation ("Consultant"), whose address is 301 Ultimo Avenue, Long Beach, CA 90814, and is made with reference to the following:

RECITALS

A. On July 11, 2017, City and Consultant entered into a Professional Services Agreement ("Agreement") for oil well management services ("Project").

B. On July 12, 2020, City and Consultant entered into Amendment No. One to the Agreement ("Amendment No. One") to reflect additional services not previously included in the Agreement, to extend the term of the Agreement to July 31, 2022, to increase the total compensation, to update the City's Administration of the Agreement, and to update insurance requirements.

C. On June 14, 2022, City and Consultant entered into Amendment No. Two to the Agreement ("Amendment No. Two") to extend the term of the Agreement to July 31, 2023, and to increase the total compensation.

D. On March 14, 2023, City and Consultant entered into Amendment No. Three to the Agreement ("Amendment No. Three") to extend the term of the Agreement to July 31, 2024, and to increase the total compensation.

E. On October 24, 2023, City and Consultant entered into Amendment No. Four to the Agreement ("Amendment No. Four") to extend the term of the Agreement to September 30, 2024, and to increase the total compensation.

F. On June 18, 2024, City and Consultant entered into Amendment No. Five ("Amendment No. Five") to increase the total compensation.

G. On July 23, 2024, City and Consultant entered into Amendment No. Six ("Amendment No. Six") to reflect additional Services not included in the Agreement, as amended, to extend the term of the Agreement to March 31, 2025, and to increase the total compensation.

H. The parties desire to enter into this Amendment No. Seven to extend the term of the Agreement to June 30, 2026, to allow time for the City to go out to bid for these services, and to increase the total compensation to cover the extension.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

Section 1 of the Agreement is amended in its entirety and replaced with the following: "The term of this Agreement shall commence on the Effective Date, and shall terminate on June 30, 2026, unless terminated earlier as set forth herein."

2. SERVICES TO BE PERFORMED

Exhibit A to the Agreement shall be deleted in its entirety and replaced with the attached Exhibit A incorporated herein by reference ("Services" or "Work"). The City may elect to delete certain Services within the Scope of Services at its sole discretion.

3. COMPENSATION TO CONSULTANT

Exhibit B to the Agreement shall be supplemented to include the Schedule of Billing Rates, attached hereto as Exhibit B and incorporated herein by reference, which shall be effective and supersede all prior versions as of the Effective Date of this Amendment No. Seven. Exhibit B to the Agreement, Exhibit B to Amendment No. One and Exhibit B to Amendment No. Seven shall collectively be known as "Exhibit B."

Section 4.1 of the Agreement is amended in its entirety and replaced with the following: "City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Six Million Four Hundred Eleven Thousand Nine Hundred Sixty Eight Dollars and 00/100 ($6,411,968.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City."

The total amended compensation reflects Consultant's additional compensation for additional Services to be performed in accordance with this Amendment No. Six, including all reimbursable items and subconsultant fees, in an amount not to exceed **Seven Hundred Fifty Thousand Dollars and 00/100 ($750,000.00)**.

4. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment No. Seven to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 3/14/25

By: _____
Aaron C. Harp
City Attorney

MS 3/13/25

ATTEST:
Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: _____

By: _____
Joe Stapleton
Mayor

CONSULTANT: SAMPSON OIL COMPANY, INC., a California corporation
Date: _____

By: _____
Renick Sampson
Chief Executive Officer, Chief Financial Officer, Secretary

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services
Exhibit B – Schedule of Billing Rates

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT A
SCOPE OF SERVICES

- **DESCRIPTION OF PROJECT**

  - Perform all work necessary to manage, operate, produce, protect and maintain the City owned tideland wells, tank farm, pipelines and related oil production facilities in accordance with good oil field practice and federal, state and local laws, including but not limited to:

    - Provide qualified, licensed and available staff to complete the Scope of Work
    - Recommend, schedule, coordinate and inspect the work of all oil field service contractors.
    - Keep accurate, daily records of all production, treatment of oil, cut and temperature of oil, deliveries, shipments and field testing; and immediately make available to the City upon request.
    - Schedule, supervise and coordinate the transfer of all oil and gas sold and properly gauge and measure the quantity of oil and gas produced, saved and shipped
    - Keep detailed records and submit signed invoices for all materials, equipment and services that will be reimbursed by the City.
    - Perform individual well tests at least every six months, indicating rate of production, quantity of oil, and water produced.
    - Furnish all tools required for normal operations.
    - Complete monthly reporting tasks to the Department of Conservation as well as potential annual reporting with the County of Orange.

- **CORRESPONDENCE**

  - All correspondence shall be addressed to Municipal Operations Director, Municipal Operations Department, City of Newport Beach, 100 Civic Center Drive, PO Box 1768 Newport Beach, California 92660.

- **STANDARD OF CARE**

  - All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances.

  - All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws, and legally recognized professional standards.

- Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.
- Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

- **RESPONSIBILITY FOR DAMAGES OR INJURY**

  - City and all officers, employees and representatives thereof shall not be responsible in any manner for any loss or damage to any of the materials or other things used or employed in performing the Project or for injury to or death of any person as a result of Consultant's performance of the Services required hereunder; or for damage to property from any cause arising from the performance of the Project by Consultant, or its subcontractors, or its workers, or anyone employed by either of them.

  - Consultant shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects, obstructions or from any cause arising from Consultant's Work on the Project, or the Work of any subcontractor or supplier selected by Consultant.

  - To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Consultant's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, contractors, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

- **RECORDS**

  - Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

- **WORKING HOURS**

  - The Consultant will submit a work schedule for regularly scheduled and monitored tasks. The work schedule will include the names and contact phone numbers for any Consultant employee that will be working at the City's facilities.

Technical Maintenance Requirements

- **MANAGEMENT TASKS**

  - Perform all work necessary to manage, operate, produce, protect and maintain the City owned tideland wells, tank farm, pipelines and related oil production facilities in accordance with good oil field practice.
  - Respond to all emergencies and provide for personnel to safely and continuously operate the oil facilities 24 hours a day, 7 days a week.
  - Provide qualified, licensed and available staff to complete the Scope of Work
  - Provide the City with detailed recommendations, estimates and technical advice to maintain and improve production, maintenance and security for the oil facilities.
  - Recommend, schedule, coordinate and inspect the work of all oil field service contractors.
  - Keep accurate, daily records of all production, treatment of oil, cut and temperature of oil, deliveries, shipments and field testing; and immediately make available to the City upon request.
  - Schedule, supervise and coordinate the transfer of all oil and gas sold and properly gauge and measure the quantity of oil and gas produced, saved and shipped.
  - Keep detailed records and submit signed invoices for all materials, equipment and services that will be reimbursed by the City.
  - Perform individual well tests at least every six months, indicating rate of production, quantity of oil, and water produced.
  - Furnish all tools required for normal operations.

- **OPERATIONS TASKS**
  - Take & record tank gauge readings daily.
  - Plan tank management/shipping arrangements and prepare crude for shipping.
  - Batch treat wells (approximately 40 treatments per week) for mineral buildup and saltwater corrosion.
  - Perform production well tests to determine water/oil ratios for each well.
  - Program and maintain pump off controllers.
  - Manage the water treatment system including, but not limited to:
    - Order chemicals,
    - Maintain chemical rates,
    - Fill day pots,
    - Keep chemical pumps pumping,
    - Maintain chemical lines and fittings,
    - Maintain the Wemco,
    - Change filter bags when necessary, and
    - Skim the skim tank daily.
  - Maintain all daily records including, but not limited to:
    - Gage records,
    - Chemical usage,
    - Pump off controller daily runs times, and
    - Injection well rates and volumes.
  - Manage water injection system.
  - Manage natural gas system and vapor recovery system.
  - Check wells and tank farm a minimum of three times a day.
  - Generate spreadsheet on a monthly basis that tracks production curve and depletion rate.
- **SUPERVISION AND RELATED ISSUES**
  - Supervise all production rig (repair) work including, but not limited to:
    - Tubing, rod and pump repair,
    - Casing and liner repair,
    - Inner liner installation,
    - Well packer setting,
    - Cementing, and

        - Fishing.
    - Supervise all drilling rig work.
    - Supervise all construction work.
    - Prepare for and attend all meetings related to, but not limited to:
        - Wells,
        - Tank farm,
        - Pipelines,
        - Natural gas,
            - Hoag hospital
            - Cogeneration
        - Bitter Point sewage lift station (County Sanitation District of Orange County),
        - Annual AQMD inspections,
        - DOGG (Department of Oil, Gas and Geothermal Resources} inspections, and
        - Fire Department inspections.
    - DOGG permitting and reporting including, but not limited to:
        - Permit to drill new, redrill, and/or abandon wells, and alter casing.
- **DESIGN AND ENGINEERING DUTIES**
    - Tank farm alteration including, but not limited to:
        - Crude oil system,
        - Water injection system,
            - Wemco
            - Pump sizing
            - Pipe sizing
        - Natural gas system,
            - Gas sales
                - Chart changing
                - Maintain gas odorant
            - Cogeneration
        - Vapor recovery system.
    - Design pump sizes and rod strings.
    - Design all electrical loads:
        - Motor sizes,

        - Disconnect sizes,
        - Starter sizes, and
        - Wire sizes.
    - Design and engineer any new wells including, but not limited to:
        - Casing design,
        - Liner size,
        - Well head design, and
        - Pumping unit size.

- **MAINTENANCE**
    - Inspect oil levels (weekly):
        - Air balance pumping units,
        - Air compressors,
        - Vapor recovery compressor, and
        - Injection pump.
    - Grease:
        - Wemco (weekly), and
        - Plug valves (semi-annual).
    - Check high level switches on all tanks (monthly).
    - Replace odorant (when needed).
    - Check pressure/vacuum relief valves on all tanks (monthly).
    - Maintain injection pump: replace packing when needed, add oil when needed, check belts and grease.
    - Clean Wemco (when needed).
    - Maintain vapor recovery compressor.
    - Maintain filter system.
    - Maintain all air compressors.
    - Perform minor pipefitting.
- **REPAIRS**
    - Minor pipe fitting jobs.
    - Repair minor leaks.
    - Repair or replace rod rotator cables.
    - Replace belts on small equipment.
- **PROJECT MANAGEMENT OF SUBCONTRACTORS**

- Provide the City with detailed recommendations, estimates and technical advice to maintain and improve production, maintenance and security for the oil facilities.
- Consultant, at the City's request or approval of Consultant's recommendation, may be required to subcontract with other contractors, consultants, vendors, or delivery companies for the purchase of services and/or goods.
- The Consultant shall receive invoices for all work at the Oil Fields and process the payments following the guidelines in the below section "Authorization of Work and Invoices".
- All subcontractors are required to maintain City approved insurance documents before any work is to be completed at the property. A list of the necessary insurance limits can be found at the bottom of the Scope.
- It is the responsibility of the Consultant to ensure that all subcontractors meet the Insurance requirements.
- Consultant shall be entitled to reimbursement for the cost of Additional Services performed as set forth, plus a fee not to exceed 10% of the invoice amounts paid by Consultant to subcontractors, consultants; vendors and delivery companies, subject to the annual limit for subcontractors.
    - All original receipts and invoices from the subcontractors, consultants, vendors and delivery companies must be included in the Consultant's invoices. The City reserves the right to not pay for any purchases or work not previously approved by the City.

- **AUTHORIZATION OF WORK AND INVOICES**
    - Consultant must adhere to the following parameters for authorizing work to subcontractors.
    - The approval of services to be performed by subcontractors outside of the Scope of the services for this agreement will be based on proposed cost of project.
        - If the proposed project is between $0 to $10,000, the Consultant shall notify the Utilities General Manager or designee.
        - If the proposed project is between $10,001 to $25,000, the Consultant shall be required to submit a minimum of three proposals or a sole source document including the projected cost of the project. No work shall begin until written approval is provided by the Utilities General Manager.
        - If the proposed project is over $25,000, the Consultant shall be required to submit a minimum of three proposals or a sole source document including the projected cost of the project. No work shall begin until written approval is provided by the Municipal Operations Department Director.
- **PAYMENT FOR INVOICES**
    - Reimbursement for invoices must be submitted to the City within 30-days of Consultant's receipt.
    - Consultant's invoice must include an itemized list of services including:

- Subcontractor, if applicable,
- Well number,
- Work Performed, and
- Overhead costs will be a separate item with maximum charge of 10%.

- **INSURANCE REQUIREMENTS FOR SUBCONTRACTORS**
  - All subcontractors will provide General Liability with endorsements as outlined in the contract with the following limits according to the type of service they provide:

Pump Unit Repair	$1,000,000 Occurrence
Well Maintenance, Well Pulling	$5,000,000 Occurrence
Misc. Electrical Work	$1,000,000 Occurrence
Clean Up and Removal of Oil Waste	$2,000,000 Occurrence
Motor Repairs	$1,000,000 Occurrence
Tank Repairs	$1,000,000 Occurrence
Welding, Misc.	$2,000,000 Occurrence
Testing of Tubes	$1,000,000 Occurrence

  - Clean up and removal of oil waste vendors must also carry Pollution Liability
  - For all of the above, Aggregate limits should be twice the Occurrence limit or apply specifically to this contract.
  - All subcontractors will provide Automobile Liability and Workers Compensation with endorsements as outlined in the contract.

EXHIBIT B
SCHEDULE OF BILLING RATES

Sampson Oil Yearly Fee Schedule

Effective April 1, 2025

Sampson Oil Company presents the following fee schedule to manage and operate the City of Newport Beach's oil field. This schedule is based on a 365-day work year.

Pumper	$51,608	Per Year
Design and Engineering	$6,838	Per Year
Rig Supervision	$17,602	Per Year
Construction Supervision	$16,582	Per Year
Special Insurance Charges	$21,754	Per Year
Total Annual Fee for Monthly Service	**$115,224 per year,** (inclusive of pumper and all other services above) ***($144,030 for 15-months April 1, 2025, to June 30, 2026)***	(Equates to $9,532 per month + $70 monthly for production State reports = **$9,602 total per month**) ***April 1, 2025, to June 30, 2026***
Total Allowance for Professional Services, Ongoing Maintenance & Repairs	***$605,970**	***April 1, 2025, to June 30, 2026***

*Consultant shall be entitled to reimbursement for the cost of unforeseen maintenance, repairs, and professional services performed as set forth herein, plus a fee not to exceed ten percent (10%) of the invoice amounts paid by Consultant to subcontractors, subconsultants, sub-vendors, and sub-delivery companies, as set forth herein subject to the annual limit for subcontractors.

CITY OF

NEWPORT BEACH

City Council Staff Report

March 25, 2025
Agenda Item No. 8

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Seimone Jurjis, Assistant City Manager/Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov
PREPARED BY:	Joselyn Perez, Senior Planner – 949-644-3312, jperez@newportbeachca.gov
TITLE:	Professional Services Agreement with Environmental Science Associates for Environmental Services Related to Proposed Improvements at Back Bay Landing and Bayside Village Marina (PA2024-0135)

ABSTRACT:

For the City Council's consideration is a Professional Services Agreement (PSA) with Environmental Science Associates for the preparation of a supplemental Environmental Impact Report (EIR) related to private improvements proposed for Back Bay Landing and Bayside Village Marina, located at 100 East Coast Highway, and the replacement and realignment of a City of Newport Beach water main. Although the City is entering into the PSA, the entire cost of the services will be paid by the applicant.

RECOMMENDATIONS:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and

b) Authorize the Mayor and City Clerk to execute a Professional Services Agreement with Environmental Science Associates for Supplemental EIR Related to Back Bay Landing and Bayside Village Marina Improvement Project in an amount not-to-exceed $426,100, in a form substantially similar to the agreement attached to this staff report.

DISCUSSION:

The project site is generally located northwest of the intersection of East Coast Highway and Bayside Drive, adjacent to the Upper Newport Bay. The site encompasses approximately 31 acres of both land and water, across multiple parcels. These parcels include Back Bay Landing (BBL), Bayside Village Marina (BVM), and a portion of undeveloped land south of the Coast Highway bridge. The City's BC-09 water main (BC-09) is located north of the Coast Highway bridge, with its western end running through Lower Castaways Park and its eastern end running through the BBL site.

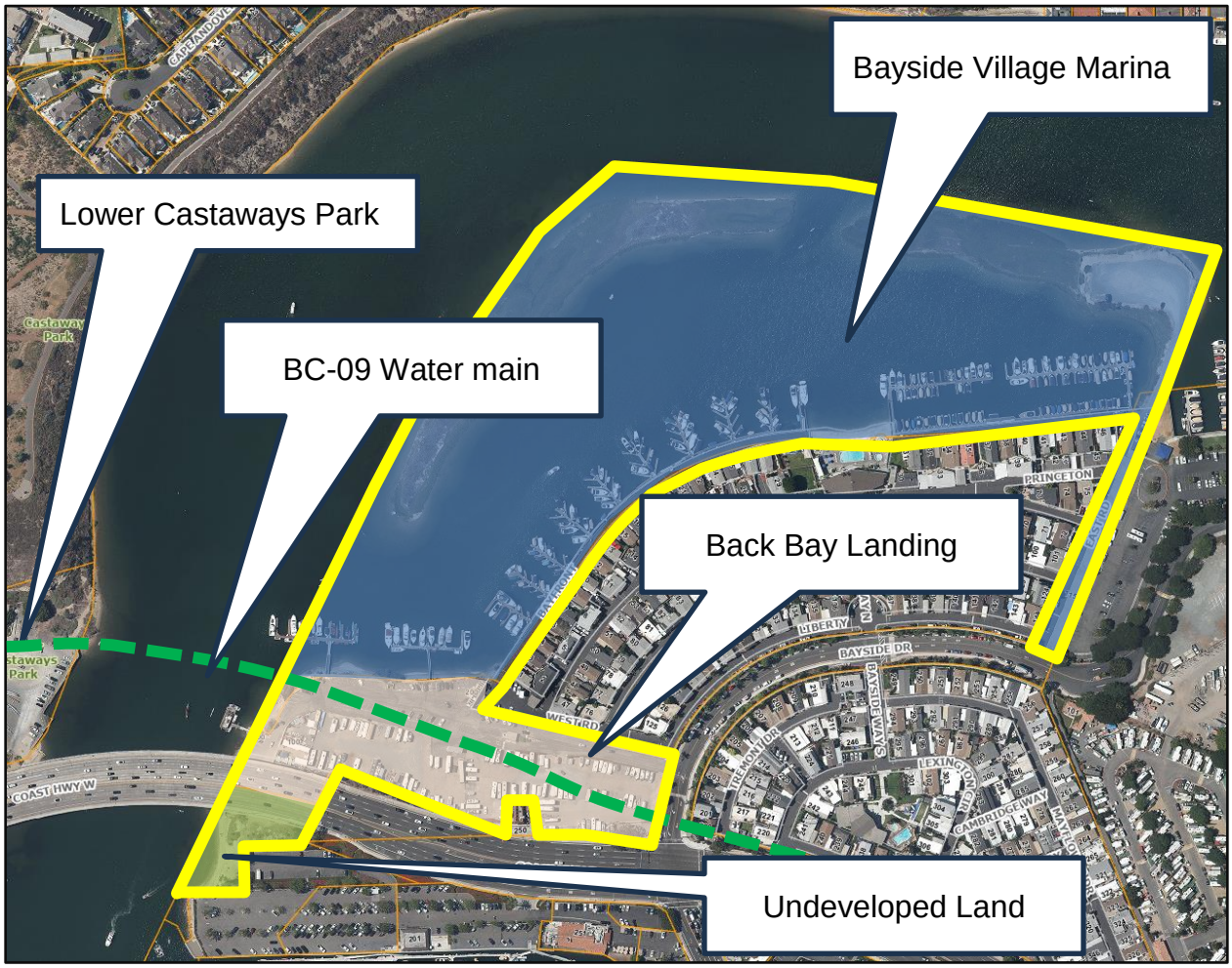


Figure 1: Project site outlined in yellow

In 2014, the City approved the necessary legislative approvals filed under PA2011-216 to allow for the future redevelopment of the 31-acre site into an integrated, mixed-use, waterfront village. An EIR was prepared and certified for the land side improvements associated with the mixed-use project (State Clearinghouse No. 2012101003). Subsequent submittal of a site development review application is still required for review and approval of the future mixed-use development project. Preparation of precise plans and submittal of the site development review application for development of the mixed-use project envisioned by PA2011-216 has been delayed due to various factors including the redevelopment and expansion of an existing Orange County Sanitation District (OCSD) pump station within the footprint of the BBL site.

Project Overview

In the meantime, Anchor QEA on behalf of Bayside Village Marina, LLC (Applicant) has submitted an entitlement application proposing various landside improvements, waterside improvements, and the replacement and realignment of the BC-09 water main. These improvements can be completed ahead of the mixed-use development buildout.

The current project proposes the following:

- New seawall and upland soil stabilization at BBL to address erosion issues, protect existing development, and support the future mixed-use project.
- New gravity wall at the undeveloped land south of the Coast Highway bridge.
- Seawall replacement and upland soil stabilization at BVM to replace an existing failing seawall and protect existing development.
- Public walkway/promenade improvements at BVM.
- Dock extension at BVM by adding 67 additional boat slips to the existing 220 slips.
- BC-09 water main replacement and realignment.
- Maintenance dredging of the marina.
- Eelgrass planting and other mitigation.

This supplemental EIR is required because the current project proposes seawall and water side improvements that were not studied in the original BBL EIR.

Request for Proposals

Based on Purchasing Policy (AP-001), staff released a Request for Proposals (RFP) seeking responses from qualified consultants interested in assessing the potential environmental impacts of the project and preparing a supplemental EIR in compliance with CEQA. The RFP was posted on the City's public procurement system (PlanetBids.com) on October 2, 2024, and distributed directly to a short list of planning firms. The response deadline was November 5, 2024, and two responses were received: Bowman Consulting Group Ltd. (Bowman) and Environmental Science Associates (ESA).

The City employed a two-step process to evaluate the proposals and select a consultant. The steps included a technical review and a cost-ratio analysis. Two City staff members and one representative of the Applicant participated on the rating panel.

Step 1 (Technical Review) did not consider cost, rather, the proposals were evaluated based on the qualifications and experience of the firm, the qualifications and experience of key personnel, and the method of approach. The proposals had to earn a minimum of 70% of the available points to advance to Step 2 (Cost-Ratio Analysis). Bowman did not earn the minimum points necessary to progress beyond Step 1 and only ESA advanced to Step 2. ESA's cost was deemed appropriate and acceptable to the Applicant, and ESA was selected to prepare the EIR. A full scope of work is available as part of the draft PSA, which is included with this staff report as Attachment A.

ESA Work Plan

The work plan submitted by ESA includes preparation of necessary technical studies, peer review of technical studies prepared by the Applicant, preparation of the EIR, publishing and distributing the EIR, responding to public comments on the EIR, providing support to City staff with conducting tribal outreach, hosting public meetings as required by CEQA, attending public hearings required for project approval (such as Planning Commission, City Council, and Airport Land Use Commission) as necessary, and coordinating with City staff.

Project Schedule

The proposal assumes the EIR will take approximately one year to prepare. Public hearings for project approvals are anticipated to take approximately four weeks post completion of the EIR. The contract's term would be for one year with extensions available as contingency.

FISCAL IMPACT:

There is no fiscal impact related to this item. Although the City is entering into the PSA with ESA, the entire cost of this consulting service, $426,100, will be paid for by the Applicant.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENT:

Attachment A – Professional Services Agreement

Attachment A

Professional Services Agreement with Environmental Science Associates

PROFESSIONAL SERVICES AGREEMENT WITH ENVIRONMENTAL SCIENCE ASSOCIATES FOR SUPPLEMENTAL EIR RELATED TO BACK BAY LANDING AND BAYSIDE VILLAGE MARINA IMPROVEMENT PROJECT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 25th day of March, 2025 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and ENVIRONMENTAL SCIENCE ASSOCIATES, a California corporation ("Consultant"), whose address is 575 Market Street, Suite 3700, San Francisco, CA 94015, and is made with reference to the following:

RECITALS

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.

B. City desires to engage Consultant to provide supplemental Environmental Impact Report ("EIR") related to Back Bay Landing and Bayside Village Marina Improvement Project ("Project").

C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.

D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on March 31, 2026, unless terminated earlier as set forth herein. The City shall have the option to renew this Agreement upon written notice to Consultant for up to two (2) additional one (1) year terms, upon the same terms and conditions set forth herein, with each additional term commencing upon the expiration of the immediately preceding term.

2. SERVICES TO BE PERFORMED

Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). City may elect to delete certain Services within the Scope of Services at its sole discretion.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit A. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.4 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by hand-delivery or mail.

4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including the initial term and all additional terms, and all reimbursable items and subconsultant fees, shall not exceed **Four Hundred Twenty Six Thousand One Hundred Dollars and 00/100 ($426,100.00),** without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.2 Consultant shall submit monthly invoices to City describing the Work performed the preceding month. Consultant's bills shall include the name of the person who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Consultant only for those costs or expenses specifically identified in Exhibit B to this Agreement or specifically approved in writing in advance by City.

4.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

5. PROJECT MANAGER

5.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated David Crook to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

5.3 If Consultant is performing inspection services for City, the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. The Project Manager's cellular phone number shall be provided to City.

6. ADMINISTRATION

This Agreement will be administered by the Community Development Department. City's Senior Planner or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Consultant in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

8. STANDARD OF CARE

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably

competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws, and legally recognized professional standards.

8.2 Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

8.3 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. HOLD HARMLESS

9.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Consultant's presence or activities conducted on the Project (including the negligent, reckless, and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them).

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Consultant or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Consultant on the Project.

12. CITY POLICY

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

Consultant is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

14. INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any

of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or co-tenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

16. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

17. OWNERSHIP OF DOCUMENTS

17.1 Each and every report, draft, map, record, plan, document and other writing produced, including but not limited to, websites, blogs, social media accounts and applications (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Additionally, all material posted in cyberspace by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents, including all logins and password information to City upon prior written request.

17.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant, and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

17.3 All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

18. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

19. INTELLECTUAL PROPERTY INDEMNITY

Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement or alleged infringement of any United States' letters patent, trademark, or copyright, including costs, contained in Consultant's Documents provided under this Agreement.

20. RECORDS

Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

21. WITHHOLDINGS

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue Work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

22. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

23. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

City reserves the right to employ other Consultants in connection with the Project.

24. CONFLICTS OF INTEREST

24.1 Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

24.2 If subject to the Act and/or Government Code §§ 1090 et seq., Consultant shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

25. NOTICES

25.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

25.2 All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Senior Planner
Community Development Department
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

25.3 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attn: Ruta Thomas
Environmental Science Associates
633 West 5th Street, Suite 830
Los Angeles, CA 90071

26. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Consultant shall submit to City, in writing,

all claims for compensation under or arising out of this Agreement. Consultant's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Consultant in writing as unsettled at the time of its final request for payment. Consultant and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Consultant shall be required to file any claim Consultant may have against City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.).*

27. TERMINATION

27.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

27.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. STANDARD PROVISIONS

28.1 Recitals. City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

28.2 Compliance with all Laws. Consultant shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

28.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

28.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

28.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

28.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

28.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

28.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

28.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

28.10 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

28.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

28.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 3/5/25

By: Jose Montoya for
Aaron C. Harp
City Attorney
3.5.25 AF

CITY OF NEWPORT BEACH,
a California municipal corporation
Date:_____

By:_____
Joe Stapleton
Mayor

ATTEST:
Date:_____

By:_____
Leilani I. Brown
City Clerk

CONSULTANT: ENVIRONMENTAL SCIENCE ASSOCIATES, a California corporation
Date:_____

By:_____
Ruta Thomas
Senior Vice President

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services
Exhibit B – Schedule of Billing Rates
Exhibit C – Insurance Requirements

EXHIBIT A
SCOPE OF SERVICES

Scope of Work:

Task 1: Project Kick-Off Meeting

Consultant shall identify a project manager(s) who will participate in an in-person meeting with the City and project proponent to kick-off study efforts. Consultant will be responsible for creating an agenda and providing meeting minutes.

Task 2: Review of City Documents and Data Collection

Consultant team shall review the applicable General Plan elements, Coastal Land Use Plan, Zoning Code (Title 20), Local Coastal Program Implementation Plan (Title 21), Harbor Code (Title 17), Back Bay Landing Planned Community Development Plan, (https://www.newportbeachca.gov/PLN/MAP_DOCUMENTS/PC_TEXT/PC_09_Back_Bay_Landing.pdf) Back Bay Landing Environmental Impact Report, https://www.newportbeachca.gov/government/departments/community-development/planning-division/projects-environmental-document-download-page/environmental-document-download-page, the California Coastal Act, and other relevant documents required for Environmental Analysis. Consultant team shall also review plans and documents submitted by applicant owner ("Applicant") https://ecms.newportbeachca.gov/WEB/Browse.aspx?id=3040825&dbid=0&repo=CNB, including the draft Initial Study/Mitigated Negative Declaration prepared for the Newport Bay Crossings project. This project involved the consideration of replacing existing pipelines under the Bay which included the BC-09 pipeline which is now part of the current project. This project did not move forward because the City decided to install liners instead of replacing the water lines, except for the BC-09 pipeline. The project involves realigning the BC-09 water main to allow land uses associated with the PCDP (PC 9) as the line currently transects the site. Consultant team shall coordinate with City staff and those of any other relevant agency or agencies for data collection.

Task 3: Technical Studies

Applicant's submitted documents include a "Shoreline Management Plan" ("Plan") which contains a Water Quality Monitoring Plan and a soil report as appendices to the Shoreline Management Plan (see link above) . The Environmental Supplemental Document submitted by the Applicant (see link above) provides technical data regarding all of the proposed improvements on the site.

Consultant shall scope for providing peer review of all Applicant provided materials and shall also scope for preparing any additional technical studies needed for the environmental analysis not prepared by the Applicant.

Task 4: AB 52 Consultation

Consultant shall support the City with tribal consultation. Staff will be responsible for completing the consultation process however the Consultant shall provide guidance as necessary and consultation letter templates.

Task 5: Environmental Impact Report (EIR)

Task 5.1: Public Notices

Consultant shall prepare, mail, post, and file all notices required for the EIR including the Notice of Preparation (NOP), Notice of Availability (NOA), Notice of Completion (NOC) and

Notice of Determination (NOD). This shall include posting the notices with the State Clearing House and County Clerk; as well as mailing said notices to the distribution list provided by the City, which will include responsible and trustee agencies, reviewing agencies, adjacent cities and interested parties.

Task 5.2: Scoping Meeting
Consultant shall: (1) provide necessary graphics and an informational handout summarizing the proposed Project and potential environmental impacts as well as sign-in sheets and comment cards for use at the scoping meetings; (2) conduct one scoping session during evening hours for members of the public; and (3) prepare a summary of the verbal and written comments made at the scoping sessions as well as the written comments submitted in response to the notices.

Task 5.3: Preparation of Administrative Draft EIR (DEIR)
Consultant shall prepare an Administrative DEIR analyzing the project's potential environmental impacts. The DEIR shall reflect the scope of issues determined by the Initial Study, additional relevant issues raised within NOP comments, and City consensus for approaching key environmental issue areas. The DEIR shall include all statutory sections required by CEQA, including an Executive Summary, Project Description, Environmental Setting, and impact analyses for each environmental issue to be addressed, including mitigation measures where required and an analysis of cumulative effects. The DEIR will also address areas of controversy, effects found not to be significant, growth inducement, alternatives, significant irreversible environmental effects, significant and unavoidable environmental effects, references, organizations and persons consulted, and response to comments received during the NOP comment period.

Task 5.4: Preparation of Public DEIR
Upon approval of the Administrative DEIR, Consultant shall prepare a Public Draft EIR, which shall be provided to the City in digital and print formats. Consultant shall coordinate with the City to determine the number of printed copies.

Task 5.5: Final EIR (FEIR)
Upon completion of the public review period, Consultant shall prepare a FEIR, including the following chapters: Response to Comments, Clarifications to the Draft EIR, and Mitigation Monitoring and Reporting Plan (MMRP). The Response to Comments chapter shall include comments received on the Draft EIR, responses to those comments, and standard introductory material. If warranted, the FEIR shall also include a statement of overriding considerations for any significant and unavoidable impacts.

Task 6: Public Hearing Attendance

Consultant shall attend and present at one (1) Planning Commission public hearing, one (1) Airport Land Use Commission public hearing, and one (1) City Council public hearing.

Task 7: Project Management and Coordination

Consultant shall coordinate closely with the City to ensure that the EIR is legally defensible, accurate, and useful. Consultant shall have responsibilities that include scheduling tasks and assignments, managing resources, monitoring costs, and coordinating between their staff and the City to ensure compliance with all applicable policies. Consultant should anticipate hosting 30-minute biweekly coordination calls with City staff throughout the preparation of the EIR.

Task 8: Site Visit

Consultant shall scope for a minimum of one (1) visit to the project site. Visit to be coordinated with the City and the Applicant.

EXHIBIT B
SCHEDULE OF BILLING RATES

PROPOSED PRICING FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT

TASKS	COST
Task 1: Project Kick-Off Meeting	$ 6,190
Task 2: Review of City Documents and Data Collection	$ 8,994
Task 3: Technical Studies	$ 128,900
Task 4: AB 52 Consultation	$ 4,656
Task 5: Environmental Impact Report (EIR)	$ 237,534
Task 6: Public Hearing Attendance	$ 8,998
Task 7: Project Management and Coordination	$ 27,338
Task 8: Site Visit	$ 3,490
Total Cost:	$ 426,100

EXHIBIT C

INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1. Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.

2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

3. Coverage Requirements.

   A. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars ($1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

   Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement.

   B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than two million dollars ($2,000,000) per occurrence, four million dollars ($4,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

   C. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Consultant arising out of or in connection with Work to be performed under this

Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars ($1,000,000) combined single limit each accident.

D. Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of two million dollars ($2,000,000) per claim and four million dollars ($4,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.

B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement shall be included as insureds under such policies.

C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

5. Additional Agreements Between the Parties. The parties hereby agree to the following:

A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.

C. Right to Review Subcontracts. Consultant agrees that upon request, all agreements with subcontractors or others with whom Consultant enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.

D. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.

E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be

entitled to coverage for higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.

G. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.

H. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

I. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

CITY OF

NEWPORT BEACH

City Council Staff Report

March 25, 2025
Agenda Item No. __

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Seimone Jurjis, Assistant City Manager/Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov
PREPARED BY:	Lauren Wooding Whitlinger, Real Property Administrator - 949-644-3236, lwooding@newportbeachca.gov
TITLE:	Concession Agreement with Kit at the Library, Inc. for Use of the Concession Facility at the Central Library Located at 1000 Avocado Avenue

ABSTRACT:

In 2013, as part of the Newport Beach Civic Center project, the Central Library was expanded to include a small retail concession space. When the last tenant vacated the concession space in 2023, it was advertised for lease and the City of Newport Beach collected proposals from interested food-service operators. After evaluating the proposals, Kit Coffee, a local coffee and tea house was determined to meet the needs of the site. For the City Council's consideration is a new Concession Agreement (Agreement) (Attachment A) with Kit at the Library, Inc. (Tenant), for operation of the concession space in the Central Library for an initial term of 5 years, including a request to waive City Council Policy F-7.

RECOMMENDATIONS:

a) Find this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing facilities) and Section 15302 (Replacement or Reconstruction) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because this project has no potential to have a significant effect on the environment;

b) Authorize the City Manager and City Clerk to execute the Concession Agreement between the City of Newport Beach and Kit at the Library, Inc., for use of the concession facility at the Central Library, located at 1000 Avocado Avenue, in a form substantially similar to the agreement attached to the staff report; and

c) Approve a waiver of City Council Policy F-7 – *Income and Other Property* based on the findings contained in this staff report and the Agreement, that charging less than fair market rent promotes the City's goals to provide essential or unique services to the community, that cannot otherwise be provided if full market rates were charged.

DISCUSSION:

The Newport Beach Civic Center project was completed in 2013 and included an approximately 17,000-square-foot expansion of the Central Library located at 1000 Avocado Avenue (Library). The expansion area, on the north side of the library closest to the new city hall building, included a small, ancillary retail space on the second floor intended to accommodate a concession. The 757-square-foot concession space is made up of a ground floor receiving and storage area and a second floor "grab-and-go" style cafe (Space).

The Space must operate consistent with the library's days and hours of operation, including closing on public holidays. The location on the second floor provides the operator the opportunity to place seating and furniture in the atrium area, as well as customers using the outdoor patio area furniture. The kitchen does not have a hood or grill for cooking and limits the menu items at the Space to re-heated items, pre-packaged, or cold foods. The concession is intended to serve library patrons, Civic Center and park visitors, event attendees, and City staff.

Selection Process

In consideration of the target tenant for the concession, the Space was listed for lease on the commercial real estate listing platforms. The listing showcased the unique location, convenient parking, and local demographics. Staff hosted an open house on November 8, 2023, and toured dozens of interested parties through the Space. Seventeen proposals were received and evaluated by staff, with emphasis on the proposers' prior experience operating a similar concession or café, menu offerings with broad appeal that included high quality items at reasonable price points, and the proposed operating and administrative structure. The proposers' ability to independently drive foot traffic and business to the Space was also considered by evaluating their marketing and social media plans. The proposal from KIT Coffee stood out as meeting the needs of the Space and was selected as the most qualified to operate the concession.

Kit Coffee

Kit Coffee (operating under Kit at the Library, Inc.) is a locally owned coffee shop with existing locations in Newport Beach and Irvine. Kit Coffee offers high quality coffee and tea-based drinks, and a limited menu focused on brunch items like toasts, burritos and pastries. The Tenant proposes to operate the Space, given the size and cooking limitations, with a focused food menu that includes avocado toasts, sandwiches and several salads (Attachment B). The menu may change seasonally and based on customer feedback.

The Tenant proposes to make limited cosmetic tenant improvements to the Space, in keeping with the modern architecture and design of the Central Library and Civic Center as shown below and in Attachment C. The proposed tenant improvements and equipment needed to operate the Space will be provided by the Tenant, at no cost to the City.



City Council Policy F-7, Income and Other Property

Due to the unique services provided to the community, and the operational limitations of the Space, only percentage rent is to be paid by the Tenant under the Agreement with no base rent due, as typically required by City Council Policy F-7, *Income and Other Property* (Policy) (Attachment D).

Staff believes the following findings can be made, as required by the Policy, when less than fair market value rent is received, and a waiver is requested:

1. The Tenant provides an essential or unique service to the community that might not otherwise be provided were full market value of the property required; and

2. With the proposed rent charged at less than fair market value, the use provides an important amenity to the City and might not otherwise be provided were full fair market value of the property required.

Concession Agreement

The proposed terms of the Agreement, for use of the Space, are summarized below:

1. The initial term is 5 years, with two 5-year extension options, for a total possible term of 15 years, unless terminated earlier as provided by the Agreement.

2. Percentage rent equal to 5% of the gross revenues up to $300,000, and 6% of the gross revenues over $300,001 per calendar year shall be paid by the Tenant, with payments submitted to the City each month.

3. In consideration of the Tenant's proposed capital improvements to the Space, the Tenant shall have 12 months from the effective date of the Agreement to construct the improvements and begin operating the concession. Should the Tenant not

commence operations before such time, base rent of $500.00 per month shall be due to the City until the Tenant opens for business.

4. Percentage rent shall be abated during the first 12 months of the term for construction of the tenant improvements, however, should the Tenant commence operations during the first 12 months of the Agreement, the amount of percentage rent abatement shall not exceed $25,000.

5. The Tenant shall operate the Space consistent with the library's hours of operation, including closing on City-observed holidays.

6. Due to the land use restrictions on the Civic Center and Central Library properties, the Tenant must comply with the limitations on exterior signage and marketing of the Space.

7. Tenant shall pay its prorated share of the utilities serving the Space.

8. The Tenant must keep the Space, including the seating areas in the library atrium and patio, free of food waste, trash and debris, and in good condition at its sole cost and expense.

9. The Tenant shall provide certificates of insurance to the satisfaction of the City's risk manager, naming the City as additional insured.

The Agreement has been reviewed by the City Attorney's Office and has been approved as to form. The Tenant has reviewed and approved the terms of the Agreement.

California Surplus Land Act

Assembly Bill 1486 was signed into law in 2019, went into effect in 2020, and made significant changes to the California Surplus Land Act (SLA) (Government Code §54220, et seq.). With further updates to the legislation in 2024, and in compliance with the updated SLA, the Agreement is not subject to the SLA as its terms are limited to 15 years total, is less than half an acre in size, and does not provide for a "disposition of surplus land" as the Tenant is limited to tenant improvements and no development or demolition of the Premises shall occur.

FISCAL IMPACT:

Revenues collected pursuant to the proposed Agreement will be posted to the General Fund (01050505) accounts in the Community Development Department and will be included in future years' budgets.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing facilities) and Section 15302 (Replacement or Reconstruction) of the CEQA Guidelines, California Code

of Regulations, Title 14, Chapter 3, because this project has no potential to have a significant effect on the environment.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Concession Agreement
Attachment B – Proposed Menu
Attachment C – Proposed Tenant Improvements
Attachment D – City Council Policy F-7 - *Income and Other Property*

Attachment A

Concession Agreement

CONCESSION AGREEMENT

by and between

CITY OF NEWPORT BEACH,
a California municipal corporation and charter city

"City"

and

Kit at the Library, Inc.,
a California stock corporation

"Concessionaire"

Dated_____, 2025

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2025 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and KIT AT THE LIBRARY, INC., a California stock corporation ("Concessionaire"). City and Concessionaire are at times individually referred to as "Party" and collectively as "Parties" herein.

RECITALS

A. City is the owner of the Central Library located at 1000 Avocado Avenue, Newport Beach, California, Assessor's Parcel Number 988-801-27 ("Property"). The Property includes a seven hundred fifty-seven (757) square foot concession facility as depicted in Exhibit "A," which is attached hereto and incorporated herein by this reference ("Premises").

B. In October 2023, City conducted an informal solicitation seeking proposals for operation of a concession at the Property. After reviewing the proposals, City selected Concessionaire to operate a coffee and tea shop ("Concession") at the Premises.

C. Although no appraisal was conducted, Percentage Rent, as defined herein, is comparable to current market rates. While it is anticipated the Concession will generate revenue to the City equivalent to the open market value of the highest and best use of the Premises and the highest financial return, pursuant to City Council Policy F-7, Base Rent is not being charged and less than open market rent may be received by the City because the property provides an essential or unique service to the community that may not otherwise be provided were full market value of the property be required.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. DEFINITIONS

1.1 General Definitions. As used in this Agreement, the following words and phrases shall have the following meanings:

1.1.1 Alteration – any improvements, additions, alterations, changes, or modifications of the Premises made by Concessionaire including, but not limited to fixtures and signage, and including Concessionaire Improvements.

1.1.2 Authorized City Representative - the City Manager or his/her designee.

1.1.3 Common Area - the areas within the Property which are available for non-exclusive use by City, Concessionaire, the public, and other tenants and/or users.

1.1.4 Delivery Date - the date the City provides Concessionaire access to the space prior to Rent Commencement, in order for Concessionaire to prepare space for operation.

1.1.5 Expiration - the lapse of the time specified as the Term of this Agreement, including any extension of the Term resulting from the exercise of an option to extend.

1.1.6 Good Condition - neat and broom-clean, and is equivalent to similar phrases referring to physical adequacy in appearance and for use.

1.1.7 Law - any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, administrative order, or other requirement of any municipal, county, state, federal, or other government agency or authority having jurisdiction over the parties hereto or the Premises.

1.1.8 Maintenance or Maintain - repairs, replacement, maintenance, repainting, and cleaning.

1.1.9 Person - one (1) or more natural persons, or legal entities, including, without limitation, partnerships, corporations, trusts, estates, associations, or a combination of natural persons and legal entities.

1.1.10 Provision - any term, covenant, condition, or clause in this Agreement that defines, establishes, or limits the performance required or permitted by either party.

1.1.11 Rent - includes Base Rent, Percentage Rent, taxes, and other similar charges payable by Concessionaire under the provisions of this Agreement.

1.1.12 Rent Commencement - date Concessionaire begins paying Rent, commencing twelve (12) months from Agreement execution. For purposes of Rent Commencement, Concessionaire's catering activities that occur prior to the first day of operation from the Premises shall be included in the calculation and payment of Percentage Rent (this provision is intended to allow Concessionaire to cater events prior to conducting operations from the Premises).

1.1.13 Successor - assignee, transferee, personal representative, heir, or other Person succeeding lawfully, and pursuant to the provisions of this Agreement, to the rights or obligations of either Party.

1.1.14 Termination - the termination of this Agreement, for any reason, prior to Expiration.

1.1.15 Other Definitions. - The following additional terms are defined in the following sections of this Agreement:

(1)	Base Rent	§4.2
(2)	Claim or Claims	§11.1
(3)	Concession	Recital B
(4)	Concessionaire Improvements	§9.1
(5)	Gross Sales	§4.6
(6)	Hazardous Materials	§17
(7)	Indemnified Parties	§11.1
(8)	Percentage Rent	§4.3
(9)	Property	Recital A
(10)	Premises	Recital A
(11)	Rent	§4
(12)	Term	§3

2. PREMISES

City finds it to be in the public interest and consistent with public facility uses to grant an exclusive right to operate a concession at the Premises. Therefore, pursuant to the terms and conditions set forth herein, City hereby grants to Concessionaire the exclusive right, privilege and concession to conduct a business at the Premises as described in Section 6 of this Agreement. Concessionaire acknowledges that City has delivered the Premises in an "as-is" condition and accepts the Premises in such condition. Concessionaire agrees that City has made no representations or warranties with respect to the condition or suitability of the Premises or any construction or improvements except as specifically set forth in this Agreement. Concessionaire acknowledges that City, or unrelated third parties occupying the Premises prior to Concessionaire, may have constructed improvements and installed fixtures, furniture, and equipment on the Premises, and Concessionaire agrees it is relying solely on its own inspections and

investigations regarding the condition of the Premises, including fixtures, furniture, and equipment, the surrounding area and other matters related thereto.

3. TERM

3.1 Initial Term. The Term of this Agreement shall be five (5) consecutive years from the Commencement Date (the "Initial Term"), unless extended as provided in Section 3.2 below, or terminated in accordance with the other provisions of this Agreement.

3.2 Option Term. Provided Concessionaire is not then in default beyond applicable notice and cure periods, upon Concessionaire's written notice, and upon written approval of City, Concessionaire may extend the Term of this Agreement for two (2) additional successive terms of five (5) years each ("Option Term" or "Option Terms"), on the same terms and conditions as contained in this Agreement. Concessionaire shall give City its written notice of intention to extend the Term at least six (6) months prior to expiration of the current Term.

3.3 Terms of Agreement. The "Term" is defined as the Initial Term and, if exercised, any Option Terms.

3.4 Hold Over. Should Concessionaire, with City's consent, hold over and continue in possession of the Premises after the Initial Term or any Option Term, Concessionaire's continued occupancy of the Premises shall be considered a month-to-month tenancy subject to all the terms and conditions of this Agreement, except the provisions of Sections 3.1 and 3.2.

4. RENT

4.1 General. Subject to Section 4.2, Concessionaire shall only pay Percentage Rent. Concessionaire's payment of Percentage Rent to City shall commence on the earlier of: (i) twelve (12) months from the Effective Date of this Agreement, or (ii) the first day of operation of the concession on the Premises, subject to the rent abatement provisions outlined in Section 13.

4.2 Base Rent. Base Rent shall only be paid by Concessionaire in the event that Concessionaire has not completed the Concessionaire Improvements (as defined in Section 9) within twelve (12) months from the Effective Date of this Agreement, at which point Base Rent shall be established at **Five Hundred Dollars and 00/100 ($500.00)** per month. Base Rent shall be paid, in advance, on the first day of each month. Base Rent for any partial month shall be prorated in accordance with the actual number of days in that month and shall be due on the first day of that month that falls within the Term.

4.3 Percentage Rent.

4.3.1 Payment. "Percentage Rent" shall be determined each calendar month and shall be calculated by multiplying the percentage of Gross Sales, as indicated by the table below, made in, upon, or from the Premises and/or otherwise attributable to catering from the Premises for the calendar year. Gross Sales is defined in Section 4.6. Payment of Percentage Rent is due no later than twenty-five (25) days after the end of the month.

Percentage Rent of Gross Sales from Premises:
All Years, including Option Terms:
Gross Revenues of $0 to $300,000 – 5%
Gross Revenues of $300,001 or above– 6%

4.3.2 Accounting and Payment. Within twenty-five (25) calendar days after the end of each calendar month for the term hereof, as may be extended as provided herein, commencing with the twenty-fifth (25th) day of the month following the Rent Commencement Date, and ending with the twenty-fifth (25th) day of the month next succeeding the last month of the term, as may be extended as provided herein, Concessionaire shall furnish to City a statement in writing, certified by Concessionaire to be correct, showing the total Gross Sales made in, upon, or from and/or otherwise attributable to the Premises or any catering authorized under Section 6.6 during the preceding calendar month (or fractional month at the beginning of the term if the Rent Commencement Date is other than the first day of a month). The Percentage Rent payment to City shall be due and payable the following month (for example, the Percentage Rent statement for the month of January is due on February 25th, and the Percentage Rent payment for the month of January is due on March 1st).

4.4 Revenue from Premises Use in Film, Television, and/or Advertising. Concessionaire may allow the Premises to be used for film, television production, advertising production, or other media vehicle only upon written approval from City and in compliance with the Newport Beach Municipal Code. One-half (1/2) of all monetary revenue received by Concessionaire as compensation or other payment for the use of the Premises in a film, television production, advertising production, or other media vehicle shall be paid to City no later than thirty (30) days after Concessionaire receives this compensation or other payment.

4.5 Payment Location. Rent shall be payable at the office of City's Revenue Division at 100 Civic Center Drive, Newport Beach, California, or at such other place or places as City may from time to time designate by written notice delivered to Concessionaire; or by electronic delivery if mutually agreed upon by City and Concessionaire at www.newportbeachca.gov. Concessionaire assumes all risk of loss

and responsibility for late charges and delinquency rates if Rent is not timely received by City regardless of the method of transmittal.

4.6 Gross Sales.

4.6.1 The term "Gross Sales" means:

(1) All money, cash receipts, assets, property or other things of value, including but not limited to gross charges, sales, rentals, fees and commissions made or earned by Concessionaire and/or any assignees, licensees, permittees or concessionaires thereof, whether collected or accrued from any business, use or occupation, or any combination thereof, originating, transacted or performed in whole or in part, on the Premises, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares or merchandise, whether wholesale or retail, whether for cash or credit, or otherwise, and including the value of all consideration other than money received for any of the foregoing, without, except as expressly provided in Section 4.6.2, deduction from gross receipts for any overhead or cost or expense of operations, such as, but without limitation to salaries, wages, costs of goods, interest, debt amortization, credit, collection costs, discount from credit card operations, insurance and taxes. Gross Sales shall include the amount of all sales or orders taken, received, including mail, catalog, telephone, telegraph, electronic communication (including without limitation orders received through the internet), video, computer, cell phone, smart phone, iPad, tablets, mobile technology, or other technology-based system whether existing now or developed in the future, that are taken at or made from the Premises or other orders received at the Premises. Each installment or credit sale shall be treated as a sale for the full price in the month during which such sale is made, irrespective of whether or when Concessionaire receives payment therefor. Gross Sales shall include any amount allowed upon any "trade in," the full retail price of any merchandise delivered or redeemed for trading stamps or coupons and all deposits not refunded to customers;

a. A "Sale":

Shall be deemed to have been consummated at the Premises for purposes of this Agreement, and the entire amount of the sale price shall be included in gross sales, at such time as (i) where the orders originate at or is attributable to the Premises whether or not fulfilled by the Concessionaire or another related entity/delivery partner and are accepted by Concessionaire in the Premises but delivery or performance thereof is made from or at any place other than the Premises, or rendered at, in, on, from or fulfilled by the Premises by Concessionaire or another related entity/delivery partner (ii) the transaction is initially reflected in the books or records of Concessionaire, including any related entity/delivery partner, or (iii) Concessionaire or such other entity receives all or any portion of the sales price, or (iv) the applicable goods or services are delivered to the customer or picked up at the curb or store, whichever first occurs, irrespective of whether payment is made in installments, the sale is for cash or credit or otherwise, or all or any portion of the sales price has actually been paid at the time of inclusion in gross sales or at any other time.

(2) Orders taken in or from the Premises, even if the orders are filled elsewhere, and sales by any third-party delivery service provider in or from the Premises;

(3) Gross receipts of all coin-operated devices that are placed on the Premises by Concessionaire or pursuant to any rent concession, percentage or other arrangement (but excluding revenue from telephones that are collected by a public and/or private utility); and

(4) Rentals of any equipment, furniture, goods, wares or merchandise.

4.6.2 Exclusions from Gross Sales. Gross Sales shall not include, or if included shall be deducted (but only to the extent they have been included), the following:

(1) Sales and use taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes, and other similar taxes now or in the future imposed on the sale of merchandise or services, but only if such taxes are added to the selling price and collected from customers and paid directly by the Concessionaire to the governmental authority;

(2) The amount of returns to shippers or manufacturers;

(3) The amount of any cash refund or credit refund made upon transactions included within gross sales, not exceeding the selling price of merchandise returned by the purchaser and accepted by Concessionaire which were previously reported to the City, (except that Tenant shall not deduct from Gross Sales any refund or credit for merchandise returned by customers who did not originally purchase the merchandise from the Premises, including, but not limited to, refund or credits for sales that originated from catalog, mail order, internet sales or electronic communication; unless the sale was reported previously to Landlord). The amount of said refund shall be considered an exclusion from Gross Sales in the month during which such refund is provided by Concessionaire to the customer. The corresponding sale (whether paid in full or partial), shall be treated as a sale for the full price in the month during which such sale was consummated, irrespective of the time when Concessionaire shall receive payment (whether in full or partial) from its customers;

(4) Sales of trade fixtures or personal property to be replaced by Concessionaire that are not considered stock in trade;

(5) Sums and credits received in the settlement of claims for loss of or damage to merchandise;

(6) Meals provided for officers or employees without charge;

(7) Meals, goods or products provided for promotional or publicity purposes without charge;

(8) Value added taxes ("VAT") or other taxes added to the selling price of products and other similar taxes now or hereafter imposed upon the sale of merchandise or services, whether such taxes are added to, or included in the selling price, but only if collected from customers separately from the selling price and paid directly by the Concessionaire to the governmental authority;

(9) Discounted sales to employees of Concessionaire, who are employed at the Premises, not to exceed two percent (2%) of the monthly Gross Sales;

(10) Uncollectible credit accounts and other bad debts, not to exceed two percent (2%) of the monthly Gross Sales;

(11) Amounts paid to charge card or credit card issuers, not to exceed one percent (1%) of the monthly Gross Sales; and

(12) Any type of tips from customers given to employees of Concessionaire, provided the amount is separately stated, and actually paid in full to the employees of Concessionaire.

4.6.3 Annual Statements of Gross Sales. Within thirty (30) days after the end of each calendar year during the Term hereof and within thirty (30) days of Termination of this Agreement, Concessionaire shall furnish to City a statement in writing, certified by Concessionaire and a Certified Public Accountant to be correct, showing the total Gross Sales made in, upon, or from and/or otherwise attributable to the Premises during the preceding calendar year (or fractional year when applicable).

4.6.4 Sales and Charges. All sales and charges shall be recorded by point of sale (POS) systems that display the amount of the transaction certifying the amount recorded. The POS systems shall log daily sales totals and keep records of the transaction numbers and sales details.

4.6.5 Production of Statement, Records and Audit. Concessionaire shall keep at the Premises (and shall require any permitted third-party delivery service provider to keep at the Premises) full, complete and proper books, records and accounts of its daily Gross Sales, both for cash and on credit, at any time operated in the Premises. Concessionaire agrees to make available for inspection by City at the Premises, a complete and accurate set of books and records of all sales of goods, wares, and merchandise and revenue derived from the conduct of business or activity in, at or from the Premises from which Gross Sales can be determined. Concessionaire shall also make available, upon City request, all supporting records. Concessionaire shall also furnish City copies of its quarterly California sales and use tax returns at the time each is filed with the State of California. Concessionaire shall retain and preserve for at least three (3) years all records, books, bankbooks or duplicate deposit books and other

evidence of Gross Sales. City shall have the right, upon reasonable notice, during the Term and within one hundred eighty (180) days after Expiration or Termination of this Agreement to inspect and audit Concessionaire's books and records and to make transcripts to verify the Rent due to City. The audit may be conducted at any reasonable time during normal business hours. Concessionaire shall cooperate with City in making the inspection and conducting the audit. The audit shall be limited to the determination of Gross Sales and shall be conducted during usual business hours in a manner that minimizes any interference with the conduct of Concessionaire's regular business operations. Any deficiency in payment of Rent and any overpayment of Rent shall be paid or refunded, as applicable, within twenty (20) days after the completion of the audit. City shall bear its costs of the audit unless the audit shows that Concessionaire understated Gross Sales by more than two percent (2%), in which case Concessionaire shall pay all City's reasonable costs of the audit. City shall not disclose financial information received in confidence and pursuant to this Agreement except to carry out the purposes of this Agreement unless disclosure is required (rather than permitted) by law. However, City may disclose the results of any audit in connection with any financing arrangements, the sale or transfer of City's interest in the Premises, pursuant to order of a court or administrative tribunal, or to collect any outstanding Rent.

4.6.6 Concessionaire's Gross Sales Audit. In the event of any audit by City in accordance with this Agreement, Concessionaire may contest the results of City's audit by performing a confirming audit, at Concessionaire's expense, within sixty (60) days of receipt of City's audit results and supporting evidence, using an independent Certified Public Accountant reasonably acceptable to City.

4.6.7 Acceptance. The acceptance by City of any money paid to City by Concessionaire as Percentage Rent for the Premises, as shown by any statement furnished by Concessionaire, shall not be construed as an admission of the accuracy of said statement, or of the sufficiency of the amount of the Percentage Rent payment.

4.7 Late Payment. Concessionaire hereby acknowledges that the late payment of Rent or other sums due hereunder will cause City to incur costs not contemplated by this Agreement, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, any sum owed by Concessionaire that is not paid within five (5) days of its due date shall be subject to a ten percent (10%) late charge. City and Concessionaire agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to City for its loss suffered by such late payment by Concessionaire.

4.8 Interest on Unpaid Sums. Unpaid sums due to either City or Concessionaire under this Agreement shall bear interest at the rate of ten percent (10%) per annum on the unpaid balance, including but not limited to late payment penalties, from the date due until paid.

5. SECURITY DEPOSIT

5.1 Security Deposit. Upon execution hereof, Concessionaire shall also pay to City a security deposit ("Security Deposit") as security for faithful performance of Concessionaire's obligations hereunder. Such Security Deposit shall not be in lieu of any Rent. Said Security Deposit in the sum of Five Thousand Dollars ($5,000.00) shall be provided to City by Concessionaire. City may, at its option, claim from the Security Deposit such amounts as are reasonably necessary to remedy Concessionaire's monetary defaults hereunder, to repair damages to the Premises, or any combination thereof caused by Concessionaire or agents of Concessionaire, exclusive to normal wear and tear. In the event the Security Deposit or any portion thereof shall be applied as provided herein, Concessionaire agrees to deposit with City within ten (10) calendar days after written demand from City, an amount sufficient to restore said Security Deposit to its original amount, and failure to do so shall constitute a breach of this Agreement. City may, only to the extent as permitted by law, comingle the Security Deposit with other funds of Concessionaire's account with the City. No interest shall accrue or be paid with respect to the Security Deposit.

6. BUSINESS PURPOSES AND USE OF PREMISES

6.1 Business Purposes. The Premises are to be used by Concessionaire for the operation of a concession selling food and non-alcoholic beverages, and catering events held within the Property. Alcoholic beverages may be sold/provided by Concessionaire at catered events held at the Property with the prior written consent of the Authorized City Representative and subject to Concessionaire obtaining all required permits, licenses and insurance. The Concessionaire shall be responsible for obtaining all required permits and licenses for the provision of alcoholic beverages, including, but not limited to, Alcoholic Beverage Control license(s). Concessionaire's proposed menus are attached as Exhibit "B," and incorporated herein by reference. Pricing for these products will be comparable to prices at nearby concession facilities.

6.2 Operation of Premises. Concessionaire shall operate and manage the Premises in a manner comparable to other high-quality businesses providing similar food and services. Deliveries shall be made and completed only between 7 a.m. and 6 p.m. on non-holiday weekdays. The loading zone designated for use by Concessionaire for deliveries, as depicted in Exhibit "C," which is attached hereto and incorporated herein by reference, is shared with the Central Library and priority shall be given to deliveries for the Central Library.

6.3 Prohibited Uses. Concessionaire shall not sell or permit to be kept, used, displayed or sold in or about the Premises (a) pornographic or sexually explicit books, magazines, literature, films or other printed material, sexual paraphernalia, or other material which would be considered lewd, obscene or licentious, (b) any article which may be prohibited by standard forms of fire insurance policies, or (c) any alcoholic beverages not otherwise permitted and licensed under this Section 6 of the Agreement. Vending machines, gaming machines or video or arcade games shall not be used or installed on

the Premises unless expressly permitted by this Agreement. Concessionaire shall not use or permit the use of the Premises in any manner that (a) creates a nuisance or (b) violates any Law. Concessionaire shall not offer entertainment or broadcast music or entertainment through exterior speakers or other form of transmission without the written approval of City. In this event, Concessionaire shall obtain all required City permits and approvals.

6.4 No Smoking. No smoking or vaping is permitted on the Property and Premises. "Smoking" means and includes inhaling, exhaling, burning, or carrying any lighted smoking equipment for tobacco or any other weed or plant. "Vaping" means and includes inhaling or exhaling any vaporized liquid or solid, usually from a battery-operated electronic device.

6.5 Food Packaging and Debris. Concessionaire shall use food packaging consistent with good environmental practices, including prohibiting polystyrene (also known as Styrofoam) from the Premises, minimizing the use of PVC plastics (especially plastic bags for carrying food), and providing both trash receptacles and places for customers to dispose of recyclable products.

6.6 Catering. Concessionaire shall be listed on the approved caterer list for the Civic Center Community Room at Concessionaire's request.

6.7 Outdoor Dining. Concessionaire shall be permitted to use tables, in a non-exclusive manner, within the entry atrium adjacent to the Premises, and on the paved area outside of the Premises as depicted in Exhibit A. Concessionaire's use of the outdoor dining area shall be in accordance with any applicable City zoning codes and State requirements. The layout of the tables is subject to approval by the City. Concessionaire may not expand into the Library area, or place any temporary furniture or objects in the public areas of the Property without prior written approval of the City. All furniture and associated equipment shall be capable of being moved or relocated to provide adequate circulation and paths of travel around the Premises.

6.8 Operation. Concessionaire shall keep the Premises in operation and open to the public for business in accordance with the following schedule:

Monday through Thursday from 7:00 a.m. to 4:00 p.m. (but in no event earlier than

6:30 a.m., and no later than 9:00 p.m.)

Friday from 7:00 a.m. to 4:00 p.m. (but no earlier than 6:30 a.m.)

Saturday from 8:00 a.m. to 4:00 p.m.

Sunday from 12:00 p.m. to 4:00 p.m. (but no earlier than 11:00 a.m.)

Concessionaire shall be closed on all City observed holidays, including but not limited to New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, 4th of July, Labor Day, Veteran's Day, Thanksgiving Day and Friday following, Christmas Day, and

any other day the Central Library may be closed as designated by the City Manager or the Library Services Director.

Concessionaire may close the Concession during periods of remodeling, reconstruction, inventory, and emergencies or to comply with Laws with prior written approval from the City.

6.9 Notice to Public Temporary Change in Operation. Concessionaire shall, at least thirty (30) calendar days in advance of any closures for construction, or change in hours of operation, notify City in writing and post notices in and upon the Premises, and to Concessionaire's website and social media pages, informing customers of the changes. Concessionaire shall immediately, or whenever reasonable at least forty-eight (48) hours in advance, post notices in and upon the Premises, and to its website and social media pages informing customers of any temporary change in hours of operation due to early closures of the Central Library.

6.10 Food Preparation. Concessionaire shall install, at Concessionaire's own expense, fire protective systems which are required by City, County, and state fire ordinances. Concessionaire shall also install adequate ventilation systems to operate the Premises. Concessionaire shall install, at Concessionaire's own expense, additional equipment as listed in Exhibit "D," which is attached hereto and incorporated herein by reference, required to prepare foods included on the proposed menu, which may be necessary to operate Concessionaire's business. Concessionaire shall ensure that additional equipment is installed properly pursuant to the manufacturer's specifications, does not exceed the electrical or other utility loads designated for the Premises, and is in compliance with all applicable local and state building codes and health department regulations.

6.11 Advertising Display. Concessionaire may, at its own expense, place unlit signs in or upon the Premises and Property subject to the prior written consent of City as to the size, type, number, design and method of installation and in compliance with City's sign code regulations. All signage placed by Concessionaire on, in or about the Premises and Property shall remain the property of Concessionaire and shall be removed by Concessionaire upon Termination or Expiration of this Agreement at Concessionaire's expense; and any damage caused by removal shall be repaired at Concessionaire's expense.

6.12 Marketing. Concessionaire may, at its own expense, promote KIT at the Library, Inc. and distribute marketing materials consistent with the marketing plan attached hereto as Exhibit "E," and incorporated herein by reference, subject to the written approval of the City and the conditions and restrictions of the Agreement of Mutual Understanding Regarding Declaration of Special Land Use Restrictions, Right of First Refusal, Mortgage Lien and Option to Repurchase recorded on May 8, 1992 as Instrument No. 92-304757 by and between The Irvine Company LLC and the City of Newport Beach, which is attached hereto as Exhibit "F," and incorporated herein by reference.

6.13 Personnel. Concessionaire shall be responsible for hiring the necessary personnel to conduct the daily operation of Concession. Concessionaire shall comply with all federal, state, and local Laws related to minimum wage, social security, nondiscrimination, ADA, unemployment compensation, and workers' compensation. If required by City, employees shall wear a uniform and/or identification badge.

6.14 Independent Contractor. It is understood that Concessionaire is an independent contractor and not an agent or employee of City. The manner and means of operating the Premises are under the control of Concessionaire, except to the extent they are limited by statute, rule or regulation and/or the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Concessionaire's employees. Nothing in this Agreement shall be deemed to constitute approval for Concessionaire or any of Concessionaire's employees or agents, to be the agents or employees of City. City shall have no interest in the business of Concessionaire.

6.15 No Distress Sales. No auction, fire, bankruptcy, "going out of business" or other distress sales of any nature may be conducted on the Premises without the prior written consent of an Authorized City Representative, which approval will not be unreasonably withheld but may be conditioned.

6.16 Restroom Facilities for Employees. Concessionaire, its employees and customers shall have full use of restroom facilities located within the Central Library as called out on Exhibit "C". Restroom facilities are shared with the Central Library employees and visitors, and are considered Common Area.

6.17 Parking for Employees. Concessionaire may use up to three (3) non-exclusive parking spaces for Concessionaire and its employees' vehicles, located within the parking structure at the Project on level two (2) or above.

7. TAXES, LICENSES AND OTHER OBLIGATIONS

7.1 Payment of Taxes. Concessionaire shall pay directly to the appropriate taxing authorities all taxes applicable to this Agreement, fixtures and Concessionaire's personal property on the Premises, that are levied or assessed against Concessionaire during the Term. Taxes shall be paid at least ten (10) days before delinquency and before any fine, interest or penalty is due or imposed by operation of law. Concessionaire shall, upon request, promptly furnish to City satisfactory evidence of payment. Concessionaire acknowledges that this Agreement may create a possessory interest subject to property taxation and that Concessionaire may be subject to the payment of property taxes levied on such interest. Concessionaire shall pay, before delinquency all taxes, assessments, license fees and other charges ("Taxes") that are levied or assessed against Concessionaire's interest in the Premises or any personal property installed on the Premises.

7.2 Payment of Obligations. Concessionaire shall promptly pay, when due, any and all bills, debts, liabilities and obligations incurred by Concessionaire in connection with Concessionaire's occupation and use of the Premises.

7.3 Challenge to Taxes. Concessionaire shall have the right in good faith, at its sole cost and expense, to contest the amount or legality of any Taxes on or attributable to this Agreement, the Premises, Concessionaire's personal property, or Concessionaire's occupation and use of the Premises, including the right to apply for reduction. If Concessionaire seeks a reduction or contests such taxes, Concessionaire's failure to pay the taxes shall not constitute a default as long as Concessionaire complies with the provisions of this Section. City shall not be required to join in any proceeding or contest brought by Concessionaire unless the provisions of any Law require that the proceeding or contest be brought by or in the name of City or any owner of the Premises. In that case, City shall join in the proceeding or contest or permit it to be brought in City's name as long as City is not required to bear any cost. If requested by Concessionaire, City shall execute any instrument or document necessary or advisable in connection with the proceeding or contest. Concessionaire, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered, together with all related costs, charges, interest and penalties. Concessionaire shall indemnify, defend and hold harmless City, including its City Council, appointed and elected officers, boards and commissions, employees, Authorized City Representatives, agents and volunteers, from and against any liability, claim, demand, penalty, cost or expense arising out of or in connection with any contest by Concessionaire pursuant to this Section.

8. UTILITIES

Concessionaire shall be responsible for paying their pro-rata share of utilities furnished to or used on the Premises, including, without limitation, gas, electricity, sewer, water, refuse collection, telephone service, internet, and cable TV. Concessionaire's pro-rata share shall be included on base rent invoices each quarter. Concessionaire may use City's trash enclosures or public trash cans, provided however, that City may, at City's discretion, require Concessionaire to arrange for its own refuse collection. Refuse collection shall occur between 7 a.m. and 6 p.m. on non-holiday weekdays.

9. CONCESSIONAIRE IMPROVEMENTS; ALTERATIONS TO THE PREMISES

9.1 Concessionaire Improvements. Concessionaire acknowledges that City has delivered the Premises with the improvements depicted in Exhibit "A". Subject to all applicable laws, it shall be Concessionaire's responsibility to install or replace any improvements to the Premises as necessary for the Concessionaire to operate in a responsible, safe and lawful manner as described in Section 6 of this Agreement, including those improvements depicted in Exhibit "G," which is attached hereto and incorporated herein by reference ("Concessionaire Improvements"). Concessionaire shall submit plans, diligently pursue their approval, and complete construction of Concessionaire Improvements within twelve (12) months of the Effective Date of this Agreement. Final design of the Concessionaire Improvements shall be subject to the prior

written approval by City, as may be modified in order to obtain certain permits as may be necessary. The installation of Concessionaire Improvements shall be in strict compliance with the approved final design, and construction shall be performed between 7:00 a.m. and 6:00 p.m. on non-holiday weekdays.

9.2 Concessionaire's Architects and Contractors. All Concessionaire Improvements and any subsequent repairs, alterations, additions or improvements to any of the foregoing shall be designed, selected or constructed, as applicable, by qualified and licensed (where required) architectural, design, engineering, and construction firms selected by Concessionaire. Any contractors hired by Concessionaire shall be fully licensed and bonded. Concessionaire's contractors and any subcontractors shall obtain insurance in an amount and form to be approved by City's Risk Manager, including workers compensation insurance as required by law, general liability, automobile liability and builder's risk insurance covering improvements to be constructed, all pursuant to standard industry custom and practice. City, its elected or appointed officers, officials, employees, agents and volunteers shall be named as an additional insured on the contractors and any subcontractors policies.

9.3 Schedule for Required Improvements. Concessionaire shall submit plans, diligently pursue their approval, and begin construction of Concessionaire Improvements according to the following schedule:

Design Coordination, Preparation of Construction Documents, and Obtain Building Permits	Upon execution of this Agreement Concessionaire shall coordinate with City to coordinate all kitchen and dining area designs, delivery conditions, and construction drawings. Concessionaire shall obtain building permits no later than April 30, 2025.
Complete Construction	Within one hundred twenty (120) days of delivery of Premises from City.
Open for Business	Concessionaire shall be ready to open for business no later than August 1, 2025.

9.3.1 Construction Period. The period commencing the date on which the Concessionaire receives possession of the Premises from the City and ending on the Commencement Date (the "Construction Period"), Concessionaire shall be permitted to enter the Premises for the sole purpose of installing furniture, fixtures and equipment (including data and telephone lines and equipment), furnishings and decorations herein Concessionaire Improvements, provided that (a) prior to Concessionaire's entry in the Premises, Concessionaire shall furnish to City certificates of insurance satisfactory to City evidencing Concessionaire's compliance with the requirements of Section 11.3, and a schedule, for City's approval, which shall detail the timing and purpose of

Concessionaire's entry; and (b) Concessionaire's work in the Premises prior to the Commencement Date shall comply with the requirements of Section 9. Concessionaire's occupancy of the Premises during the Construction Period shall be subject to all of the terms, covenants and conditions of this Agreement, including, without limitation, Concessionaire's indemnity obligations set forth in Section 11.3, except that City agrees that Concessionaire's obligation to pay Base Rent and Percentage Rent (defined in Section 4) shall be waived. Concessionaire shall, however, pay the cost of all utilities and other services provided to the Premises prior to the Commencement Date that are required by reason of Concessionaire's early occupancy.

9.3.2 Construction Coordination. Concessionaire shall be responsible for coordinating with City to ensure that Concessionaire's proposed scope of Concessionaire Improvements to the Premises complies with the energy and resource efficient requirements, design guidelines for the project, points of connection with the utilities, during the development of Concessionaire's design and construction drawings, and coordination of trades and access to the Premises during Concessionaire's construction of the Concessionaire Improvements at Concessionaire's sole cost.

9.4 Permits. Unless restricted by law, Concessionaire shall obtain, and be responsible for the costs for all building permits, health department permits, alcohol licensing permits, and other required permits prior to commencement of Concessionaire improvements and operations. If applicable, Concessionaire shall be responsible, at its sole cost and expense, for compliance with the California Environmental Quality Act ("CEQA") and the California Coastal Act in connection with Concessionaire's operation and use of the Property.

9.5 Quality of Work Performed. All Concessionaire Improvements, alterations, maintenance and other work shall be performed in a good and workmanlike manner, shall comply with the plans and specifications submitted to City, and shall comply with all applicable governmental permit requirements and Laws in force at the time permits are issued.

9.6 Payment of Costs. Concessionaire shall pay all costs related to the construction of the Concessionaire Improvements and any alterations by Concessionaire or its agents.

9.7 Liens Prohibited. Concessionaire shall keep the Premises free from any liens and shall not permit to be imposed, recorded or enforced against the Premises or Property, any portion thereof or any structure or Concessionaire Improvement thereon, any mechanics, materialmen's, contractors or other liens arising from, or any claims for damages growing out of, any work or repair, construction or alteration of Concessionaire Improvements on the Premises.

9.7.1 Release/Removal of Liens. In the event any lien or stop notice is imposed or recorded on the Premises or Property, or a Concessionaire Improvement permanently affixed to the Premises or Property during the Term, Concessionaire shall

pay or cause to be paid all such liens, claims or demands before any action is brought to enforce the same against the Premises or Property or the Concessionaire Improvement. Notwithstanding the foregoing, if Concessionaire legitimately contests the validity of such lien, claim or demand, then Concessionaire shall, at its expense, defend against such lien, claim or demand provided that it provides City the indemnity in this Agreement and provided Concessionaire shall pay and satisfy any adverse judgment that may be rendered before any enforcement against City or the Premises or Property.

9.8 Costs of Construction. Concessionaire shall bear all costs and expenses associated with the design and construction of the Premises, which costs and expenses include without limitation all modifications, alterations and improvements to the Premises which are further described and depicted in Exhibit G.

9.9 Prevailing Wages. Pursuant to the applicable provisions of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages including legal holidays and overtime work for each craft or type of workman needed to execute the work contemplated under this Section shall be paid to all workmen employed on the work to be done according to this Section by the Concessionaire's contractors and any subcontractor. In accordance with the California Labor Code (Sections 1770 *et seq.*), the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the Concessionaire Improvements. A copy of said determination is available by calling the prevailing wage hotline number (415) 703-4774, and requesting one from the Department of Industrial Relations. Concessionaire's contractors and subcontractors are required to obtain the wage determinations from the Department of Industrial Relations and post at the job site the prevailing rate or per diem wages. It shall be the obligation of Concessionaire's contractors or any subcontractor under him/her to comply with all State of California labor laws, rules and regulations and the parties agree that the City shall not be liable for any violation thereof.

9.10 Disposition of Concessionaire Improvements at Expiration or Agreement Termination. Any Concessionaire Improvements or other alterations made to the Premises, as well as any City common area furniture (excluding Concessionaire's fixtures, equipment, furniture, and moveable decorations) shall remain on, and be surrendered with, the Premises on Expiration or Termination of this Agreement. Except in the case of termination for default as set forth under Section 15 of this Agreement, City may require Concessionaire to remove any Concessionaire Improvements or alterations that Concessionaire has made to the Premises by providing notice at least thirty (30) days prior to the Expiration or Termination of this Agreement. If City requires such removal, Concessionaire shall, at its cost, remove the Concessionaire Improvements or alterations and restore the Premises to Good Condition before the last day of the Term, or within thirty (30) days after notice is given, whichever is earlier. Prior to Expiration or within fifteen (15) days after Termination of this Agreement, Concessionaire may remove any moveable partitions, machinery, equipment, furniture, and trade fixtures previously

installed by Concessionaire, provided that Concessionaire repairs any damage to the Premises caused by removal.

10. MAINTENANCE OF PREMISES

10.1 Maintenance by Concessionaire. All furnishings, equipment, facilities, Concessionaire Improvements, Alterations, attachments and appurtenances provided by City or installed by Concessionaire, and required for concession operations, including all kitchen equipment and interior and exterior furnishings, including items under warranty, shall be maintained in Good Condition and repair by Concessionaire at its cost. Graffiti shall be called in to City's Graffiti Hotline for removal.

10.1.1 Atrium Maintenance. The City shall be responsible for the repair and maintenance of the areas of the Property immediately outside of and adjacent to the Premises ("Atrium"), as it is part of the Property, and will provide daily janitorial services to ensure the area remains clean and presentable. The Concessionaire shall be responsible for the upkeep of any furniture placed in the Atrium. During operational hours, Concessionaire's staff shall manage the cleanliness of the Atrium by clearing dishes, removing debris, disposing of trash, wiping down tables, cleaning the floors in Atrium, and performing any necessary spot-cleaning to maintain a welcoming environment. City may perform Maintenance or repairs in the event Concessionaire fails to commence required Maintenance or repairs within the time provided by City in the notice requesting such Maintenance or repair. The cost of any Maintenance or repairs by the City pursuant to this Section shall be payable as additional Rent. City may perform required cleaning and charge the costs to Concessionaire if the Concessionaire fails to perform within the time provided by City in the notice requesting the cleaning and continue to Maintain the area as required by this Agreement.

10.1.2 Water Heater. The Concessionaire shall be responsible for the cost of general maintenance, repair, and replacement of the water heater servicing the Premises to ensure it remains in proper working condition. The City will be responsible for performing or coordinating with a vendor to perform said maintenance and repair work with the cost of such work reimbursed to City by Concessionaire as additional Rent. The Concessionaire shall promptly notify the City of any issues or required repairs related to the water heater to facilitate timely maintenance. If the Concessionaire causes damage to the water heater, the cost of repairs will be borne by the Concessionaire, while the City will coordinate and carry out the necessary repairs.

10.2 Maintenance by City. City may perform maintenance in the event Concessionaire fails to commence required maintenance within three (3) business days after receipt of notice to do so. The cost of any maintenance by City pursuant to this Section shall be payable as additional Rent. City may perform required cleaning and charge the costs to Concessionaire if the Concessionaire fails to perform within five (5) days after notice to do so and continue to maintain the area as required by this Agreement.

10.2.1 Dumbwaiter. The City shall be responsible for the general maintenance, repair, and replacement of the dumbwaiter located within the Premises, as necessary to ensure it remains in safe and operable condition throughout the Term. The Concessionaire shall promptly notify the City of any issues or required repairs concerning the dumbwaiter to support timely maintenance. If the Concessionaire causes damage to the dumbwaiter, the cost of repairs will be borne by the Concessionaire, while the City will coordinate and carry out the necessary repairs.

10.2.2 Security Gate. The City shall be responsible for the general maintenance and repair of the security gate located within the Premises. The City agrees to ensure the security gate remains in safe and functional condition throughout the Term of this Agreement. The Concessionaire is responsible for promptly notifying the City of any issues with the security gate to allow for timely maintenance and repairs. If the Concessionaire causes damage to the security gate, the cost of repairs will be borne by the Concessionaire, while the City will coordinate and carry out the necessary repairs.

10.3 Entry by City. Upon twenty-four (24) hour notice to Concessionaire, City and its Authorized City Representatives may enter upon and inspect the Premises at any reasonable time for any lawful purpose. In case of emergency, City or its Authorized City Representative may enter the Premises by whatever force necessary if Concessionaire is not present to open and permit an entry. Any entry to the Premises by City shall not be construed as a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Concessionaire from the Premises or any portion thereof.

11. INDEMNITY AND EXCULPATION; INSURANCE

11.1 Hold-Harmless Clause. Concessionaire agrees to indemnify, defend and hold harmless City, its City Council, Boards, Commissions, officers, agents, volunteers, employees, and the State of California (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature

whatsoever (individually, a "Claim"; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to Concessionaire's possession, occupation or use of the Premises, specifically including, without limitation, any claim, liability, loss, or damage arising by reason of:

11.1.1 The death or injury to any Person or damage to personal property caused or allegedly caused by the condition of the Premises or an act or omission of Concessionaire or an agent, contractor, subcontractor, supplier, employee, servant, sublessee or concessionaire of Concessionaire;

11.1.2 Any work performed on the Premises or materials furnished to the Premises at the request of Concessionaire or any agent or employee of Concessionaire, with the exception of maintenance performed by City; and/or

11.1.3 Concessionaire's failure to perform any provision of this Agreement or to comply with any requirement of Law or any requirement imposed on the Premises by any duly authorized governmental agency or political subdivision.

Concessionaire's obligations pursuant to this Subsection shall not extend to any Claim proximately caused by the sole negligence, willful misconduct, or unlawful or fraudulent conduct on the part of the Indemnified Parties. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable.

11.2 Exculpation of City. Except as otherwise expressly provided in this Agreement, City shall not be liable to Concessionaire for any damage to Concessionaire or Concessionaire's property from any cause other than the sole negligence, intentional or willful acts of the Indemnified Parties. Except as otherwise expressly provided in this Agreement, Concessionaire waives all claims against the Indemnified Parties arising for any reason other than the sole negligence, intentional or willful acts of the Indemnified Parties. City shall not be liable to Concessionaire for any damage to the Premises, Concessionaire's property, Concessionaire's goodwill, or Concessionaire's business income, caused in whole or in part by acts of nature including, without limitation, waves, wind and ocean currents.

11.3 Insurance. In addition to insurance required of Concessionaire to be obtained, provided, and maintained during the construction of the Concessionaire Improvements, and without limiting Concessionaire's indemnification of City, Concessionaire shall obtain, provide and maintain at its own expense during the term of this Agreement, a policy or policies of liability insurance of the type and amounts specified in Exhibit "H," which is attached hereto and incorporated herein by this reference.

12. DAMAGE OR DESTRUCTION OF PROPERTY/PREMISES

12.1 Destruction of Premises. If the Premises are totally or partially destroyed, rendering the Premises or any portion thereof totally or partially inaccessible or unusable, Concessionaire shall restore the Premises to substantially the same condition as immediately prior to such destruction (including all trade fixtures, personal property, Concessionaire Improvements and Alterations as are installed by Concessionaire or its contractors or subcontractors, which shall be replaced by Concessionaire at its expense). Concessionaire may elect to terminate this Agreement by giving notice of such election to City within sixty (60) days after the date of the occurrence of any casualty if the cost of the restoration exceeds the amount of any available insurance proceeds, if the damage has been caused by an uninsured casualty or event, or if Concessionaire reasonably estimates that repairs of the Premises will take more than six (6) months. Upon such termination, insurance proceeds applicable to reconstruction of the Premises (excluding Concessionaire's personal property therein) shall be paid to City and Concessionaire shall have no further liability or obligations under this Agreement.

12.2 Replacement of Concessionaire's Property. In the event of damage or destruction of Concessionaire Improvements located on the Premises not giving rise to Concessionaire's option to terminate this Agreement, Concessionaire shall, at its own expense, replace and repair all Concessionaire's trade fixtures, equipment, machinery, furnishings, furniture and inventory as soon as reasonably possible to permit the prompt continuation of the Concession.

12.3 Destruction of the Property. In the event that all or a portion of the Property is damaged, and the Premises or a material portion becomes inaccessible or commercially unusable, and the damage or destruction cannot reasonably be repaired within twelve (12) months after the date of the casualty, City shall have the right to either:

12.3.1 Terminate this Agreement. City shall give Concessionaire written notice of termination within thirty (30) days following the date of the casualty, which shall be effective sixty (60) days after the date of the notice; or

12.3.2 Repair the damage at City's expense. City shall give Concessionaire written notice of its intention to repair such damage as soon as reasonably possible at City's expense, in which event this Agreement shall continue in full force and effect; however, Rent shall be abated in accordance with the procedures set forth in Section 13. If City fails to commence repairs within one hundred twenty (120) days after its notice of its intention to repair, then Concessionaire may terminate this Agreement by giving City written notice at any time prior to the commencement of repairs. In such event, this Agreement shall terminate as of the date of notice from Concessionaire to City, and City shall have no liability under this Agreement.

13. ABATEMENT OF RENT

13.1 Concessionaire Improvements; Approved Construction. Concessionaire's payment of Percentage Rent shall be abated during the construction of Concessionaire Improvements not to exceed twelve (12) months from the Effective Date of this Agreement. Concessionaire shall provide documentation of construction activity at least forty-five (45) calendar days prior to the commencement of the scheduled construction and the City's subsequent written approval. In no way shall abatement of Percentage Rent pursuant to this subsection: (a) exceed Twenty-Five Thousand Dollars ($25,000) in the aggregate during the Term of this Agreement, and (b) exceed twelve (12) months, whether consecutively or collectively. "Construction" shall mean the installation of Concessionaire Improvements in strict compliance with the design plans approved in writing by City.

13.2 Damage or Destruction. In the event of damage or destruction of the Premises or damage to the Property that impacts the Premises where this Agreement is not terminated, Concessionaire shall continue to utilize the Premises for the operation of its business as permitted in Section 6 to the extent it may be practicable and commercially reasonable. Concessionaire's obligation to pay taxes pursuant to this Agreement shall not be abated or reduced. Rent shall not abate if the damage or destruction to the Premises is the result of the negligence or willful conduct of Concessionaire or its employees, officers or agents.

13.3 No Abatement for Maintenance. Concessionaire shall not be entitled to any abatement of Base Rent or Percentage Rent for any temporary closures for general maintenance of the Premises to keep the Concession operating in a manner comparable to other high-quality concession businesses.

14. PROHIBITION AGAINST VOLUNTARY ASSIGNMENT, SUBLETTING AND ENCUMBERING

14.1 Prohibition of Assignment. City and Concessionaire acknowledge that City is entering into this Agreement in reliance upon the experience and abilities of Concessionaire. Consequently, Concessionaire shall not voluntarily assign or encumber its interest in this Agreement or in the Premises, or assign substantially all or any part of the Premises, or allow any other person or entity (except Concessionaire's authorized representatives) to occupy or use all or any part of the Premises without the prior written consent of City. City's consent to any assignment or other transfer is subject to Concessionaire providing City with evidence reasonably satisfactory to City that the proposed transferee has financial strength and restaurant or food service experience comparable to Concessionaire and the use of the Premises by the proposed transferee is consistent with the terms of this Agreement. Except as otherwise expressly provided herein, any dissolution, merger, consolidation, reorganization of Concessionaire, or the sale or other transfer resulting in a transfer of a controlling percentage of the capital stock of Concessionaire, shall be deemed a voluntary assignment; provided, however, that the sale or transfer of a controlling percentage of the capital stock of Concessionaire pursuant

to a public offering(s) of equity or debt instruments issued by Concessionaire, or other transfers of publicly traded capital stock or debt instruments shall not constitute a voluntary assignment and shall not require City's consent or approval. The phrase "controlling percentage" means the ownership of, or the right to vote, stock possession of at least fifty percent (50%) of the total combined voting power of all classes of Concessionaire's capital stock issued, outstanding, and entitled to vote for the election of directors, except for ownership of publicly traded shares, warrants or similar equity interests in Concessionaire traded on a national exchange or over-the-counter markets.

15. DEFAULT

15.1 Default by Concessionaire. The occurrence of any one (1) or more of the following events shall constitute a default and material breach of this Agreement by Concessionaire:

15.1.1 The vacating or abandonment of the Premises by Concessionaire for more than fifteen (15) consecutive days that was not otherwise expressly permitted under this Agreement or pre-approved in writing by City;

15.1.2 The revocation of any of Concessionaire's licenses issued by the State;

15.1.3 The failure by Concessionaire to make any payment of Rent or any other payment required by this Agreement, as and when due, when such failure shall continue for a period of ten (10) days after written notice of default from City to Concessionaire;

15.1.4 Except as specified in Subsection 15.1(2), the failure of Concessionaire to observe or perform any of the material covenants, conditions or provisions of this Agreement to be observed or performed by Concessionaire where such failure shall continue for a period of ten (10) days after written notice thereof from City to Concessionaire; provided, however, that if the nature of Concessionaire's default is such that more than ten (10) days are reasonably required for its cure, then Concessionaire shall not be deemed to be in default if Concessionaire commences such cure within said ten (10) day period and thereafter diligently prosecutes such cure to completion;

15.1.5 The making by Concessionaire of any general arrangement or assignment for the benefit of creditors;

15.1.6 Concessionaire becomes a "debtor" as defined in 11 U.S.C. Section 101 or any successor statute thereto (unless, in the case of a

petition filed against Concessionaire, the same is dismissed within ten (10) days);

15.1.7 The appointment of a trustee or receiver to take possession of substantially all of Concessionaire's assets located at the Premises or of Concessionaire's interest in this Agreement, where such appointment is not discharged within ten (10) days; and

15.1.8 The attachment, execution or the judicial seizure of substantially all of Concessionaire's assets located at the Premises or of Concessionaire's interest in this Agreement, where such seizure is not discharged within sixty (60) days.

15.2 Remedies.

15.2.1 Cumulative Nature of Remedies. If any default by Concessionaire shall continue without cure as required by this Agreement, City shall have the remedies described in this Section in addition to all other rights and remedies provided by law or equity, to which City may resort cumulatively or in the alternative.

15.2.2 Reentry without Termination. City may reenter the Premises, and, without terminating this Agreement, re-let all or a portion of the Premises. City may execute any agreements made under this provision in City's name and shall be entitled to all rents from the use, operation, or occupancy of the Premises. Concessionaire shall nevertheless pay to City on the dates specified in this Agreement the equivalent of all sums required of Concessionaire under this Agreement, plus City's expenses in conjunction with re-letting, less the proceeds of any re-letting or atonement. No act by or on behalf of City under this provision shall constitute a Termination of this Agreement unless City gives Concessionaire specific written notice of Termination.

15.2.3 Termination. City may terminate this Agreement by giving Concessionaire notice of Termination. In the event City terminates this Agreement, City may recover possession of the Premises (which Concessionaire shall surrender and vacate upon demand) and remove all Persons and property. City shall be entitled to recover the following as damages:

(1) The value of any Rent or other charges that are unpaid at the time of Termination;

(2) The value of the Rent and other charges that would have accrued after Termination less the amount of Rent and charges City received or could have received through the exercise of reasonable diligence as of the date of the award;

(3) Any other amount necessary to reasonably compensate City for the detriment proximately caused by Concessionaire's failure to perform its obligations under this Agreement; and

(4) At City's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time-to-time by applicable California law. City shall be entitled to interest at the rate of ten percent (10%) per annum on all Rent and other charges from the date due or the date they would have accrued. City shall also be entitled to an award of the costs and expenses incurred by City in maintaining or preserving the Premises after default, preparing the Premises for re-letting, or repairing any damage caused by the act or omission of Concessionaire.

15.2.4 Use of Concessionaire's Personal Property. City may use Concessionaire's personal property and trade fixtures located on the Premises or any of such property and fixtures without compensation or liability to Concessionaire for use or damage. In the alternative City may store the property and fixtures at the cost of Concessionaire. City shall not operate the Premises in any manner tending to indicate that the Premises are affiliated with, part of or operated in conjunction with Concessionaire's business.

15.3 City's Right to Cure Concessionaire's Default. Upon continuance of any default beyond applicable notice and cure periods, City may, but is not obligated to, cure the default at Concessionaire's cost. If City pays any money or performs any act required of, but not paid or performed by, Concessionaire after notice, the payment and/or the reasonable cost of performance shall be due as additional Rent not later than five (5) days after service of a written demand accompanied by supporting documentation. No such payment or act shall constitute a waiver of default or of any remedy for default or render City liable for any loss or damage resulting from performance.

16. WASTE OR NUISANCE

Concessionaire shall not commit or permit the commission of any waste on the Premises. Concessionaire shall not maintain, commit, or permit any nuisance as defined in Section 3479 of the California Civil Code on the Premises. Concessionaire shall not use or permit the use of the Premises for any unlawful purpose, including, but not limited to, any use that violates City's charter or Municipal Code.

17. NO CONFLICTS OF USE, HAZARDOUS MATERIALS

City represents and warrants that, to the best of City's knowledge, (i) Concessionaire's use of the Premises does not conflict with applicable Laws, and City knows of no reason why Concessionaire would be unable to obtain all required permits, licenses and approvals from the appropriate governmental authorities; (ii) the Property is not in violation of any environmental laws, rules or regulations and Concessionaire's contemplated uses will not cause any such violation; and (iii) the Property is free of any and all Hazardous Materials as of the date of this Agreement. In the event that the presence of any Hazardous Materials not caused by Concessionaire is detected at the Property at any time during the Term of this Agreement all remedial work shall be performed by City at City's expense. Concessionaire's obligation to open shall be delayed until the remedial work is completed if the remedial work is performed prior to

Concessionaire opening for business. Concessionaire's obligation to pay Rent shall be abated in direct proportion to the extent Concessionaire is unable to conduct its business upon the Premises as a result of any remedial work that is performed subsequent to Concessionaire opening for business. Concessionaire shall have the right (but not the obligation) to terminate this Agreement, upon thirty (30) days advance written notice to City in the event that Hazardous Materials are detected at the Property and the presence or the remediation materially affects Concessionaire's ability to conduct its business in the Premises. "Hazardous Materials" shall mean any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" under applicable federal, state and local laws, ordinances and regulations.

18. FORCE MAJEURE; EXTENSIONS OF TIME OF PERFORMANCE

18.1. Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes (hereinafter "Force Majeure"): acts of God, war, terrorist act, government-mandated quarantine restrictions, riot, natural catastrophes, Federal or state governmental acts or omissions, national strikes, fire, or explosion, provided that the Force Majeure is unforeseeable, beyond the control of, and not due to the fault or negligence of the Party claiming the Force Majeure. For the avoidance of doubt, Force Majeure shall not include (a) the novel coronavirus Covid-19 pandemic, which is ongoing as of the date of the execution of this Agreement; (b) financial distress or the inability of either Party to make a profit or avoid a financial loss, (c) changes in the market prices or conditions, or (d) a Party's financial inability to perform its obligations hereunder.

18.2. A Party's excuse in liability from failure or delay in performing an obligation under this Agreement due to Force Majeure shall only be to the extent caused by the Force Majeure and shall not be any longer than the period commencing from when the requisite written notice is given and ending when the Party is no longer delayed or prevented from performing on account of the Force Majeure. A Party claiming Force Majeure shall promptly notify the other Party in writing, no later than five (5) days after the commencement of delay or inability to perform, and the Party shall continue with commercially reasonable diligence in an effort to limit the period of nonperformance or delay. Time of performance under this Agreement may also be extended in writing by City and Concessionaire.

19. CITY'S DEFAULTS/CONCESSIONAIRE'S REMEDIES

City shall be in default if it materially interferes with Concessionaire's use of the Premises for its intended purpose and City fails to cure such default within ten (10) days after a second demand by Concessionaire.

20. EVENT OF BANKRUPTCY

20.1 If this Agreement is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Section 101 *et seq.* or any similar or successor statute ("Bankruptcy Code"), any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to City, shall be and remain the exclusive property of City and shall not constitute property of Concessionaire or of the estate of Concessionaire within the meaning of the Bankruptcy Code. Any and all monies or other consideration constituting City's property under this Section not paid or delivered to City shall be held in trust for the benefit of City and be promptly paid or delivered to City.

20.2 Any person or entity to which this Agreement is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Agreement on and after the date of such assignment, including the obligation to operate the business which Concessionaire is required to operate under this Agreement.

21. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give shall be in writing and shall be deemed given three (3) days after deposit into the United States registered mail, postage prepaid, by registered or certified mail, return receipt requested. Unless notice of a different address has been given in accordance with this Section, all notices shall be addressed as follows:

If to City, to:	CITY OF NEWPORT BEACH Attn: Real Property Administrator 100 Civic Center Drive Newport Beach, CA 92660
If to Concessionaire, to:	Eunice Hwang c/o KIT at the Library, Inc. 39 Blossom Irvine, CA 92620 (714) 606-3471

22. SURRENDER OF PREMISES

At the Expiration or earlier Termination of this Agreement, Concessionaire shall surrender to City the possession of the Premises. Concessionaire shall leave the surrendered Premises, required personal property and fixtures, in Good Condition, reasonable wear and tear excepted. All property that Concessionaire is not required to surrender, but that Concessionaire does abandon shall, at City's election, become City's property.

23. COMPLIANCE WITH ALL LAWS

Concessionaire shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all work prepared by Concessionaire shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of an Authorized City Representative.

24. WAIVERS

The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

25. SEVERABILITY

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

26. APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

27. ENTIRE AGREEMENT; AMENDMENTS

27.1 The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire agreement of the parties with respect to the subject matter of this Agreement.

27.2 This Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between Concessionaire and City.

27.3 No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

27.4 The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by Concessionaire and City.

27.5 If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

27.6 Any obligation of the parties relating to monies owed, as well as those provisions relating to limitations on liability and actions, shall survive termination or expiration of this Agreement.

27.7 Each party has relied on its own inspection of the Premises and examination of this Agreement, the counsel of its own advisors, and the warranties, representations, and covenants in this Agreement. The failure or refusal of either party to inspect the Premises, to read this Agreement or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.

28. TIME IS OF THE ESSENCE

Time is of the essence for this Agreement. Concessionaire agrees to proceed in an efficient and timely manner to obtain all necessary approvals, licenses and permits required to engage in the business services as described under Section 6.

29. SUCCESSORS

Subject to the provisions of this Agreement on assignment and subletting, each and all of the covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties.

30. INTERPRETATION

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

31. TABLE OF CONTENTS; HEADINGS

The table of contents of this Agreement and the captions of the various sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

32. GENDER; NUMBER

The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the neuter, and each includes corporation, partnership, or other legal entity whenever the context requires. The singular number includes the plural whenever the context so requires.

33. EXHIBITS

All exhibits to which reference is made in this Agreement are incorporated by reference. Any reference to "this Agreement" includes matters incorporated by reference.

34. MEMORANDUM OF CONCESSION AGREEMENT

A Memorandum of Concession Agreement, in a form and content similar to that contained in Exhibit "I," which is attached hereto and incorporated by reference, shall be recorded by the parties promptly upon execution of this Agreement. Upon execution by both parties, the Memorandum of Concession Agreement shall be recorded against the Premises in the office of the Orange County Clerk-Recorded, as required by Government Code Section 37393.

35. CITY BUSINESS LICENSE

Concessionaire shall obtain and maintain during the duration of this Agreement, a City business license as required by the Newport Beach Municipal Code.

36. NO ATTORNEYS' FEES

The prevailing party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, shall not be entitled to recover its attorneys' fees.

37. NONDISCRIMINATION

Concessionaire, for itself and its successors, agrees that in the performance under this Agreement, Concessionaire shall not discriminate against any person because of the marital status or ancestry of that person or any characteristic listed or defined in Government Code Section 11135.

38. NO THIRD PARTY BENEFICIARIES

City and Concessionaire do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

39. LAWS

It shall be the obligation of Concessionaire to comply with all laws, statutes, rules, and regulations including, but not limited to, State of California labor laws, rules and regulations and the parties agree that City shall not be liable for any violation by Concessionaire (or Concessionaire's agent, sublessee or any party affiliated with Concessionaire) thereof.

40. NO DAMAGES

Concessionaire acknowledges that City would not enter into this Agreement if it were to be liable for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) under, or relating to, this Agreement or any of the matters referred to in this Agreement, including, without limitation, any and all plans, permits, licenses or regulatory approvals, and CEQA documents. Accordingly, Concessionaire covenants and agrees on behalf of itself and its successors and assigns, not to sue City for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) or monetary relief for any breach of this Agreement by City or for any dispute, controversy, or issue between City and Concessionaire arising out of or connected with this Agreement or any of the matters referred to in this Agreement, including, without limitation, any and all plans, permits, licenses or regulatory approvals, CEQA documents, or any future amendments or enactments thereto, the parties agreeing that declaratory relief, injunctive relief, mandate and specific performance shall be Concessionaire's sole and exclusive judicial remedies.

41. GOVERNMENT CLAIMS ACT

Concessionaire and City agree that in addition to any claims filing or notice requirements in this Agreement, Concessionaire shall file any claim that Concessionaire may have against City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.*), or any successor statute.

42. COUNTERPARTS

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

Date: 3/13/25

By: _____
Aaron C. Harp 3/12/25 DS
City Attorney

CITY OF NEWPORT BEACH ("City"),
a California municipal corporation and charter city

Date: _____

By: _____
Grace K. Leung
City Manager

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CONCESSIONAIRE: KIT at the Library, Inc., a California stock corporation

Date: _____

By: _____
Eunice Hwang
Managing Member

Attachments:
Exhibit "A" – Premises
Exhibit "B" – Proposed Menus
Exhibit "C" – Loading Zone and Restroom Depiction
Exhibit "D" – Concessionaire Equipment List
Exhibit "E" – Marketing Plan
Exhibit "F" – Special Land Use Restrictions
Exhibit "G" – Concessionaire Improvements
Exhibit "H" – Insurance
Exhibit "I" – Memorandum of Concession Agreement

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Exhibit "H" – Insurance
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EXHIBIT "A"

PREMISES

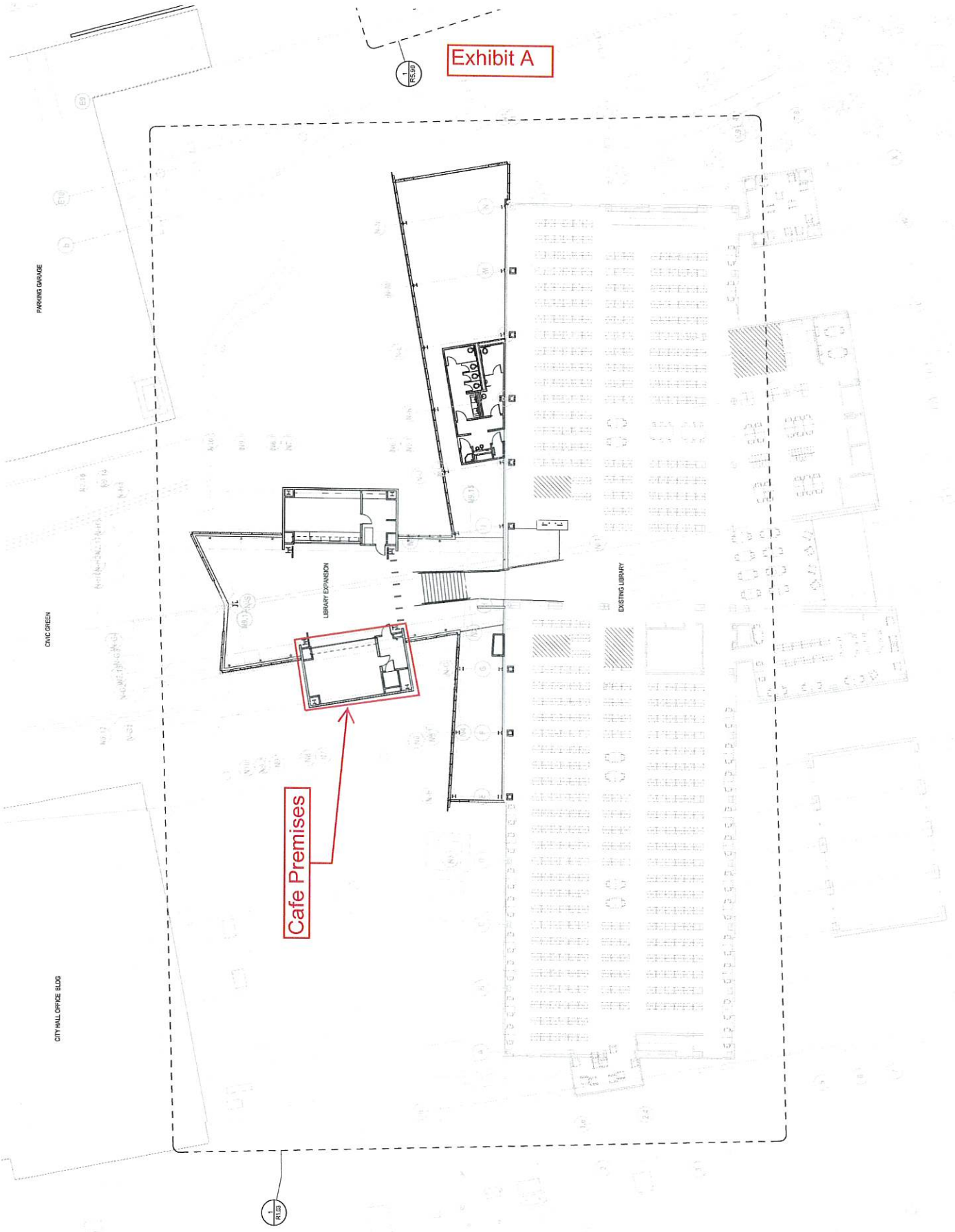

Exhibit A
PARKING GARAGE
CIVIC GREEN
CITY HALL OFFICE BLDG
LIBRARY EXPANSION
EXISTING LIBRARY
Cafe Premises

EXHIBIT "B"

PROPOSED MENUS

Exhibit B-1

ESPRESSO

LATTE	5.5
CORTADO	4.5
CAPPUCCINO	5
MACCHIATO	4.5
ESPRESSO	4
AMERICANO	4
VANILLA LATTE	6
CARAMEL LATTE	6
DARK CHOCOLATE MOCHA	6
CREME BRULEE LATTE	6.5

COFFEE

COFFEE	3/4
COLD BREW	5

SIGNATURE DRINKS

STRAWBERRY ALARM CLOCK *ESPRESSO + STRAWBERRY OAT MILK*	7
THANK YOU BERRY MATCHA *MATCHA + STRAWBERRY OAT MILK*	7
HORCHATA MATCHA *OAT MILK CINNAMON MATCHA WITH VANILLA*	7
PURPLE DREAM *UBE COCONUT OAT MILK TOPPED WITH SALTED COCONUT CREAM*	7.5
LAVENDER SKIES *ESPRESSO + BLUEBERRY LAVENDER MILK*	6
LAVENDER FIELDS *MATCHA + BLUEBERRY LAVENDER MILK*	6

TEA

LONDON FOG	5.5
MATCHA TEA LATTE	5.5
CHAI TEA LATTE	5.5
KOMBUCHA	6
LOOSE LEAF TEA	4
MATCHA GREEN ICED TEA	5
PASSION JASMINE ICED TEA	4

ORGANIC TEAS

ENGLISH BREAKFAST
EARL GREY
WUYI OOLONG
ASHWAGANDA PU-ERH

JASMINE GREEN
MATCHA
WHITE PEONY
ROSEHIPS HIBISCUS

GINGER LEMON
HERBAL MINT
CHAMOMILE

MILK ALTERNATIVES

OAT MILK	1
ALMOND MILK	1

KiT COFFEE

Exhibit B-2

AVOCADO TOASTS

CAPRESE AVOCADO TOAST..... 14
ARUGULA, MOZZARELLA CHEESE, CHERRY TOMATOES, BASIL, LEMON ZEST, BALSAMIC

SMOKED AVOCADO TOAST 15
BACON, CHERRY TOMATO, SMOKED PAPRIKA, LEMON ZEST & CHIVES

SPRING AVOCADO TOAST..... 14
ARUGULA, CUCUMBER, TOMATO, PICKLED ONION, GOAT CHEESE, LEMON GARLIC VINAIGRETTE

HOT' N SWEET AVOCADO TOAST..... 11
LEMON PEPPER, CHILI FLAKES, DRIZZLE OF HOT AND SWEET HONEY

LOX AVOCADO TOAST..... 18
ARUGULA, CHILI FLAKES, CUCUMBER, LEMON VINAIGRETTE, PICKLED ONION, SMOKED SALMON, EVERYTHING BUT THE BAGEL SEASONING, CAPER, CHIVES AND SIDE OF SLICED LEMON

SAVORY

BREAKFAST BURRITO..... 16
SCRAMBLED EGG, CILANTRO RICE, HASH BROWN, CHEDDAR JACK, GRILLED ONION, CHOOSE FROM BACON OR CHORIZO OR SOYRIZO (+1) OR NO MEAT

GRILLED CAPRESE PANINI.....12
HEIRLOOM TOMATOES, MOZZARELLA, BASIL, GARLIC AIOLI, BALSAMIC DRIZZLE

TURKEY PESTO SANDWICH.....14
TURKEY, PROVOLONE, GOUDA, SUN-DRIED TOMATOES, SPROUTS, MUSTARD AIOLI

B.L.T. SANDWICH.....14
BACON, LETTUCE, HEIRLOOM TAOMATOES, AVOCADO, GARLIC AIOLI

KIMCHI BACON GRILLED CHEESE.....14
BACON, KIMCHI JAM, MOZZERELLA, GARLIC BUTTER SPREAD

THE EGG SANDO.....10
JAPANESE EGG SALAD, KEWPIE MAYO, SOFT BOILED EGG, MUSTARD AIOLI

VEGGIE DELIGHT.....11
AVOCADO, HEIRLOOM TOMATOES, CUCUMBERS, RED ONION, LETTUCE, SPROUTS, RED WINE VINAIGRETTE

CLASSIC COBB SALAD.....14
CHICKEN, BACON, LETTUCE, AVOCADO, HARD BOILED EGG, RED ONION, BLUE CHEESE CRUMBLE RED WINE VINAIGRETTE

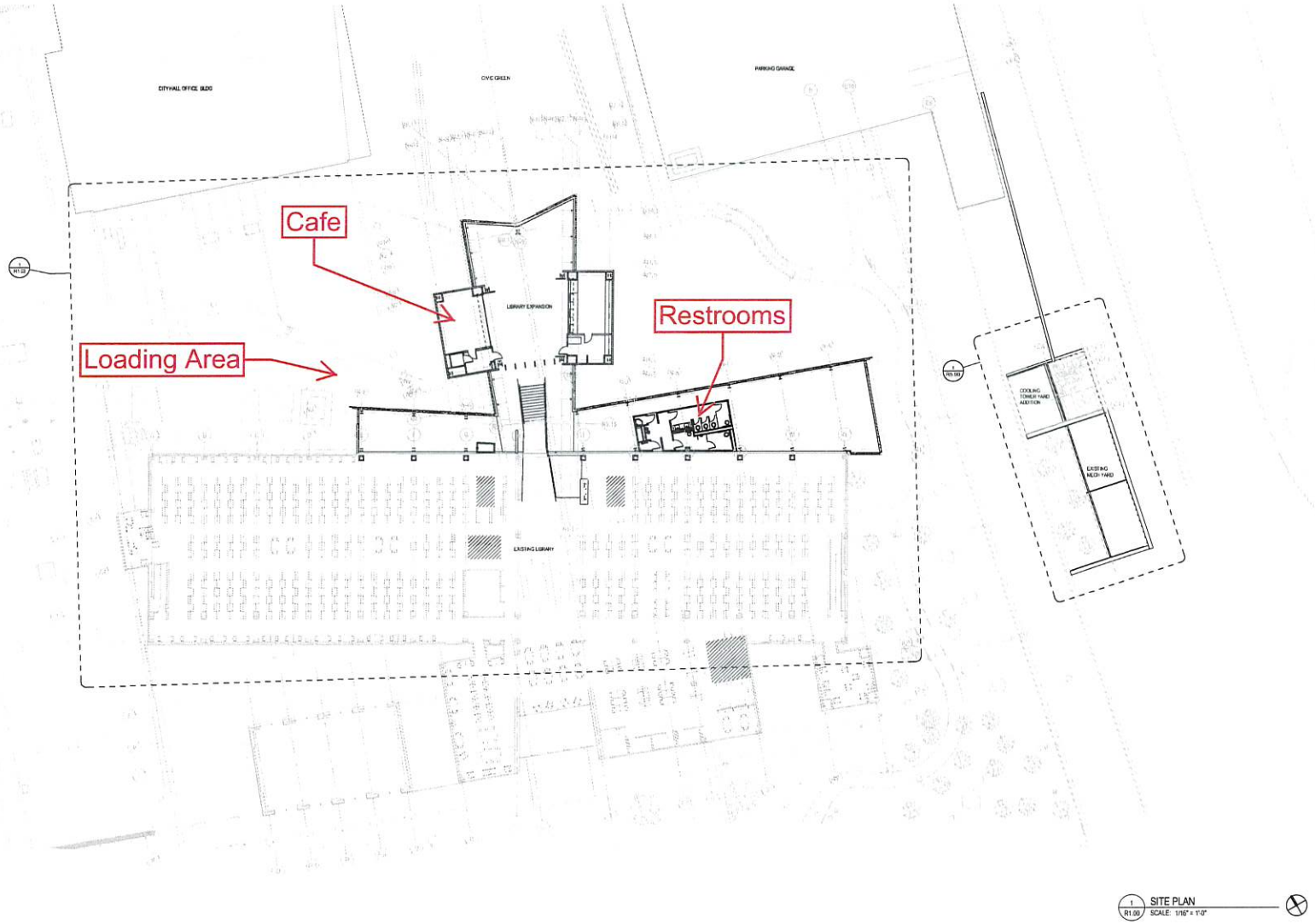
TWO EGGS ARUGULA SALAD..... 13
ARUGULA, CHERRY TOMATOES, AVOCADO, TWO SOFT BOILED EGGS, LEMON GARLIC VINAIGRETTE BALSAMIC DRIZZLE & CHIVES

SWEET

BRULEÉ TOAST 7
BRIOCHE TOAST BRULEÈD AND DUSTED WITH CHOICE OF CINNAMON / MATCHA / SOUR CHERRY

EXHIBIT "C"

LOADING ZONE AND RESTROOM DEPICTION



1 R1.00 SITE PLAN
SCALE: 1/16" = 1'-0"

Exhibit C

Bohlin Cywinski Jackson
Wilkes-Barre / Pittsburgh / Philadelphia / Seattle / San Francisco
49 Geary Street
Suite 300
San Francisco, CA 94108
415-589-2100

Landscape Architects
PWP Landscape Architecture
739 Allston Way
Berkeley, CA 94710
510-849-9494

Civil / Structural / Mechanical / Electrical / Plumbing / Telecomm
ARUP
560 Mission Street
7th Floor
San Francisco, CA 94105
415-946-9445

Audiovisual Consultants
Charles M. Salter Associates
130 Sutter Street
Suite 500
San Francisco, CA 94104
415-397-0442

Security Consultants
Trans Tech Systems
77 Lakeview Street
Irvine, CA 92604
949-262-2400

Food Service
HDA Pacific
3820 Cypress Drive #4
Petaluma, CA 94954
707-773-3303

Owner
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663
949-644-3309

KEY PLAN

Newport Beach Civic Center & Park
1100 Avocado Newport Beach CA 92660

CONFORMED SET
SITE PLAN

Seal: LICENSED ARCHITECT, Gary R. Handel, No. C-32234, STATE OF CALIFORNIA

NO	DESCRIPTION	DATE
2	BULLETIN #2	2/23/10

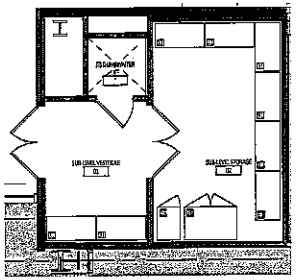
DRAWN BY: BCJ
SCALE: As Indicated
DATE: December 16, 2010
PROJECT NUMBER: 08519D
SHEET NUMBER: R1.00

2/26/2010 3:38:32 PM

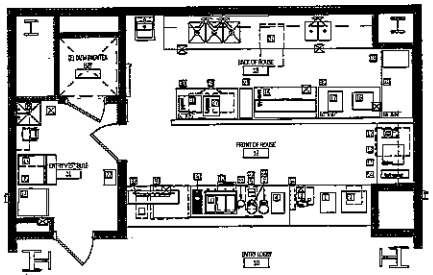
EXHIBIT "D"

CONCESSIONAIRE EQUIPMENT LIST

Exhibit D



SUB-LEVEL - EQUIPMENT LAYOUT | SCALE: 1/4" = 1'-0" | 6



CAFE LEVEL - EQUIPMENT LAYOUT | SCALE: 1/4" = 1'-0" | 3

EQUIPMENT SCHEDULE

* ALL POWER FOR EQUIPMENT TO BE ON SEPARATE CIRCUITS, U.O.
* REFER TO ELECTRICAL & PLUMBING DRAWINGS FOR SPECIFICATIONS AND HOOK-UP INFORMATION
* ALL EQUIPMENT MEETS MINIMUM UL, ETL, NAFEM OR CSA STANDARDS REQUIRED

E1	DROP-IN HAND SINK W/ KNEE VALVE SINK - MANUFACTURER: CAL, 10"W X 14"D X 5"H BASIN, 17"W X 10"D X 5"H BASIN OVERALL, 18" GOOSENECK FAUCET, 4" CENTERS, 1.2 GPM, 1/2" NPT, 3/4" OUTLET, 1/2" INLET, 1/2" P-TRAP, 1/2" TAILPIECE, 1/2" SUPPLY LINES, 1/2" ANGLE STOPS, 1/2" WRISTBLADE HANDLES, 1/2" DRAIN, 1/2" TRAP, 1/2" TAILPIECE, 1/2" SUPPLY LINES, 1/2" ANGLE STOPS, 1/2" WRISTBLADE HANDLES, 1/2" DRAIN, MOUNTED
E2	PREP SINK W/ FAUCET, 1 COMPARTMENT, 18"W X 18"D X 14"H BASIN, 18" GOOSENECK FAUCET, 4" CENTERS, 1.2 GPM, 1/2" NPT, 3/4" OUTLET, 1/2" INLET, 1/2" P-TRAP, 1/2" TAILPIECE, 1/2" SUPPLY LINES, 1/2" ANGLE STOPS, 1/2" WRISTBLADE HANDLES, 1/2" DRAIN, MOUNTED
E3	HAND SINK - MANUFACTURER: CAL, 10"W X 14"D X 5"H BASIN, 17"W X 10"D X 5"H BASIN OVERALL, 18" GOOSENECK FAUCET, 4" CENTERS, 1.2 GPM, 1/2" NPT, 3/4" OUTLET, 1/2" INLET, 1/2" P-TRAP, 1/2" TAILPIECE, 1/2" SUPPLY LINES, 1/2" ANGLE STOPS, 1/2" WRISTBLADE HANDLES, 1/2" DRAIN, MOUNTED
E4	MOBILE DROP-IN ICE BIN - MANUFACTURER: CAL, MODEL: CAL-IB-22, 22"W X 22"D X 30"H, 75 LB CAPACITY, 1/2" NPT DRAIN, 3/8" TUBE ICE DISPENSER

EXHIBIT "E"

MARKETING PLAN

Exhibit E

KIT COFFEE MARKETING STRATEGY

To effectively market Kit Coffee at the Library, we will focus on building a strong local presence both online and offline. On Instagram, we will showcase our signature drinks, cozy ambiance, and community events through high-quality photos, engaging stories, and user-generated content, encouraging followers to tag us and share their experiences. Additionally, we will distribute eye-catching fliers in permitted areas inside the library, nearby neighborhoods, local businesses, offering a special promotion like a discount or free drink with the purchase of a coffee, to drive foot traffic. Collaborating with the library and local events will further boost brand visibility and attract customers to the shop as well.

EXHIBIT "F"

SPECIAL LAND USE RESTRICTIONS

This Document was electronically recorded by
Fidelity National Major Accounts

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3300 Newport Beach Blvd.
P.O. Box 1768
Newport Beach, CA 92658-8915

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Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder
2011 JAN -3 AM 8:00
NO FEE
2010000634193 04:30pm 11/24/10
OFFICE OF
THE CITY CLERK
CITY OF NEWPORT BEACH
86 406 A12 6
0.00 0.00 0.00 0.00 15.00 0.00 0.00 0.00

725132038-DD

AGREEMENT OF MUTUAL UNDERSTANDING REGARDING DECLARATION OF SPECIAL LAND USE RESTRICTIONS, RIGHT OF FIRST REFUSAL, MORTGAGE LIEN AND OPTION TO REPURCHASE RECORDED ON MAY 8, 1992 AS INSTRUMENT NO. 92-304757

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(ADDITIONAL RECORDING FEE APPLIES)

Recorded Requested By
Fidelity National Title

RECORDED AT REQUEST OF,
AND WHEN RECORDED MAIL TO:

City of Newport Beach
Attn: City Clerk
3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92658-8915

WITH A CONFORMED COPY TO:

The Irvine Company LLC
Attn: Legal Department
550 Newport Center Drive
Newport Beach, CA 92660

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This document is exempt from filing fees per Govt. Code § 6103, recording fees per Govt. Code § 27383 and is exempt from Document Transfer Tax per Rev. & Taxation Code § 11922

Agreement of **Mutual Understanding Regarding Declaration of Special Land Use Restrictions, Right of First Refusal, Mortgage Lien and Option to Repurchase recorded on May 8, 1992 as Instrument No. 92-304757**

WHEREAS, The Irvine Company LLC, A Delaware Limited Liability Company ("Declarant") granted to City of Newport Beach, a California Municipal Corporation ("Grantee") via a Declaration/Exchange Agreement/Transfer Agreement (collectively, "Declaration") recorded May 8, 1992 as Orange County Document No. 92-304757 those certain properties identified as: (1) the southwesterly one-half of Parcel 2 as shown on Parcel Map No. 90-361, recorded in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of Orange County; and (2) the northwesterly one-half of Parcel 2 as shown on Parcel Map No. 90-361, recorded in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of Orange County (collectively, "Parcel 2, Parcel Map No. 90-361" or "Property").

WHEREAS, Grantee desires to construct a new Civic Center project on or adjacent to the Property pursuant to Newport Beach Charter Section 425.

WHEREAS, Declarant and Grantee both desire to confirm that the Declaration allows the development of the Civic Center project.

NOW THEREFORE, Declarant and Grantee agree as follows:

Pursuant to the terms, restrictions, or conditions contained in the Declaration, the Grantee is authorized to develop the Property with a City Hall Office Building, Community Room, City Council Chambers, Parking Structure, Library addition and related improvements, including an approximately 600 square foot Food Service Facility which will provide deli food servce and limited catering for employees, library visitors, special event visitors and receptions ("Project"), which is consistent with the use restriction in the Declaration that no portion of the Property is used for retail, commercial, quasi-retail or quasi-commercial facilities that materially compete with the retail and commercial facilities in the Newport Center development or is otherwise improved, developed, used, operated, or maintained with any facilities or for any purpose whatsoever except as set forth above unless expressly approved by Declarant, which approval may be granted or withheld by Declarant in its sole discretion. Therefore, the Grantee is authorized to take any and all actions necessary to develop, alter, and maintain the Project, including, but not limited to, entering into leases and financing agreements, including leasing the Property to the Newport Beach Public Facilities Corporation in connection with the refinancing of the Library and the financing of the Project. The loan-to-value ratio set forth in Section 2.8 of the Declaration is hereby waived in connection with such financing. The Grantee shall not materially expand or alter the use or square footage of the Food Service Facility unless expressly approved by the Declarant, which approval may be granted or withheld by Declarant in its sole discretion.

IN WITNESS WHEREOF, this instrument is duly executed this 29th day of October 2010.

DECLARANT:

THE IRVINE COMPANY LLC,
A Delaware Limited Liability Company

By: _____
Daniel H. Young
Its: Executive Vice President

By: _____
Brigid D. McMahon
Its: Assistant Secretary

GRANTEE:

CITY OF NEWPORT BEACH
A California Municipal Corporation

By: _____

Its: Mayor

Signed in Counterpart

WHEREAS, The Declaration places certain limitations on the Property and requires Grantee to obtain Declarant's consent for certain improvements.

WHEREAS, Declarant and Grantee both desire to confirm that the Declaration allows the development of the Civic Center project.

NOW THEREFORE, Declarant and Grantee agree as follows:

Pursuant to the terms, restrictions, or conditions contained in the Declaration, the Grantee is authorized to develop the Property with a City Hall Office Building, Community Room, City Council Chambers, Parking Structure, Library addition and related improvements, including an approximately 600 square foot Food Service Facility which will provide deli food servce and limited catering for employees, library visitors, special event visitors and receptions ("Project"), which is consistent with the use restriction in the Declaration that no portion of the Property is used for retail, commercial, quasi-retail or quasi-commercial facilities that materially compete with the retail and commercial facilities in the Newport Center development or is otherwise improved, developed, used, operated, or maintained with any facilities or for any purpose whatsoever except as set forth above unless expressly approved by Declarant, which approval may be granted or withheld by Declarant in its sole discretion. Therefore, the Grantee is authorized to take any and all actions necessary to develop, alter, and maintain the Project, including, but not limited to, entering into leases and financing agreements, including leasing the Property to the Newport Beach Public Facilities Corporation in connection with the refinancing of the Library and the financing of the Project. The loan-to-value ratio set forth in Section 2.8 of the Declaration is hereby waived in connection with such financing. The Grantee shall not materially expand or alter the use or square footage of the Food Service Facility unless expressly approved by the Declarant, which approval may be granted or withheld by Declarant in its sole discretion.

IN WITNESS WHEREOF, this instrument is duly executed this 22 day of November, 2010.

DECLARANT:	**GRANTEE:**
THE IRVINE COMPANY LLC, A Delaware Limited Liability Company	CITY OF NEWPORT BEACH A California Municipal Corporation
By: _____	By: _____
Its: Executive Vice President	Its: Mayor

Signed in Counterpart

By: _____

Its: Assistant Secretary

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

David R. Hunt
City Attorney
City of Newport Beach

ATTEST:

Leilani Brown
City Clerk
City of Newport Beach

STATE OF CALIFORNIA :
:
COUNTY OF ORANGE :

On November 22, 2010, before me, LILLIAN WASHINGTON, the undersigned Notary Public in and for said County and State, personally appeared KEITH D. CURRY who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

L. WASHINGTON
Commission # 1840150
Notary Public - California
Orange County
My Comm. Expires Mar 12, 2013

STATE OF CALIFORNIA :
:
COUNTY OF ORANGE :

On _____ 20___, before me, _____, the undersigned Notary Public in and for said County and State, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA :
:
COUNTY OF ORANGE :

On November 1, 2010, before me, Joni Grossman, the undersigned Notary Public in and for said County and State, personally appeared Daniel H. Young who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Joni Grossman
Notary Public

JONI GROSSMAN
Commission # 1736093
Notary Public - California
Orange County
My Comm. Expires Apr 30, 2011

STATE OF CALIFORNIA :
:
COUNTY OF ORANGE :

On November 1, 2010, before me, Joni Grossman, the undersigned Notary Public in and for said County and State, personally appeared Brigid D. McMahon who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Joni Grossman
Notary Public

JONI GROSSMAN
Commission # 1736093
Notary Public - California
Orange County
My Comm. Expires Apr 30, 2011

Recording Requested By
Fidelity National Title

This Document was electronically recorded by Fidelity National Major Accounts

Recorded In Official Records, Orange County
Tom Daly, Clerk-Recorder

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AND WHEN RECORDED MAIL TO:

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2010000634195 04:30pm 11/24/10
66 406 A17 6
0.00 0.00 0.00 0.00 15.00 0.00 0.00 0.00

City of Newport Beach
Attn: City Clerk
3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92658-8915

WITH A CONFORMED COPY TO:

The Irvine Company LLC
Attn: Legal Department
550 Newport Center Drive
Newport Beach, CA 92660

726732038-DF

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Amendment of Declaration of Special Land Use Restrictions, Right of First Refusal, Mortgage Lien and Option to Repurchase recorded on May 8, 1992 as Instrument No. 92-304757

THIS FIRST AMENDMENT TO DECLARATION OF SPECIAL LAND USE RESTRICTIONS, RIGHT AT FIRST REFUSAL, MORTGATE LIEN AND OPTION TO REPURCHASE ("Amendment") is made as of November 1, 2010 and shall be effective as of November 1, 2010 ("Amendment Effective Date") by and between The Irvine Company LLC, A Delaware Limited Liability Company ("Declarant") and the City of Newport Beach, a California Municipal Corporation ("Grantee").

RECITALS

WHEREAS, Declarant and Grantee entered into a Declaration of Special Land Use Restrictions, Right of First Refusal, Mortgage Lien and Option to Repurchase ("Existing Declaration") recorded May 8, 1992 as Orange County Document No. 92-304757 with respect to those certain properties identified as: (1) the southwesterly one-half of Parcel 2 as shown on Parcel Map No. 90-361, recorded in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of Orange County; and (2) the northwesterly

WHEREAS, Exhibit 2 to the Existing Declaration places certain limitations on the development of the Property.

WHEREAS, Declarant and Grantee both desire to amend Exhibit 2 to the Existing Declaration to allow the development of the Civic Center project.

NOW THEREFORE, Declarant and Grantee hereby amend the Existing Declaration as follows:

1. **Amendment to Exhibit B.** Exhibit B to the Existing Declaration is hereby amended as follows:

Maximum Gross Floor Area: 74,000 square feet

2. **Continuing Effect.** As amended hereby, the Declaration shall continue in full force and effect following the Amendment Effective Date. If there is any inconsistency between the provisions of this Amendment and the provisions of the Declaration, the provisions of this Amendment shall supercede and control.

IN WITNESS WHEREOF, this instrument is duly executed this 29th day of October, 2010.

DECLARANT:

THE IRVINE COMPANY LLC,
A Delaware Limited Liability Company

By: _____
Daniel H. Young
Its: Executive Vice President

By: _____
Brigid C. McMahon
Its: Assistant Secretary

GRANTEE:

CITY OF NEWPORT BEACH
A California Municipal Corporation

By: _____

Its: Mayor

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

_____
David R. Hunt
City Attorney
City of Newport Beach

Signed in Counterpart

ATTEST:

_____
Leilani Brown
City Clerk

one-half of Parcel 2 as shown on Parcel Map No. 90-361, recorded in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of Orange County (collectively, "Parcel 2, Parcel Map No. 90-361" or "Property").

WHEREAS, Grantee desires to construct a new Civic Center project on or adjacent to the Property pursuant to Newport Beach Charter Section 425.

WHEREAS, Exhibit 2 to the Existing Declaration places certain limitations on the development of the Property.

WHEREAS, Declarant and Grantee both desire to amend Exhibit 2 to the Existing Declaration to allow the development of the Civic Center project.

NOW THEREFORE, Declarant and Grantee hereby amend the Existing Declaration as follows:

1. **Amendment to Exhibit B.** Exhibit B to the Existing Declaration is hereby amended as follows:

Maximum Gross Floor Area: 74,000 square feet

2. **Continuing Effect.** As amended hereby, the Declaration shall continue in full force and effect following the Amendment Effective Date. If there is any inconsistency between the provisions of this Amendment and the provisions of the Declaration, the provisions of this Amendment shall supercede and control.

IN WITNESS WHEREOF, this instrument is duly executed this 22 day of November, 20 10.

DECLARANT:

THE IRVINE COMPANY LLC,
A Delaware Limited Liability Company

By: _____

Its: Executive Vice President

By: _____

Its: Assistant Secretary

GRANTEE:

CITY OF NEWPORT BEACH
A California Municipal Corporation

By: _____

Its: Mayor

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

David R. Hunt
City Attorney
City of Newport Beach

ATTEST:

Leilani Brown
City Clerk
City of Newport Beach

STATE OF CALIFORNIA :
:
COUNTY OF ORANGE :

On November 22, 2010, before me, LILLIAN WASHINGTON, the undersigned Notary Public in and for said County and State, personally appeared KEITH D. CURRY who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA :
:
COUNTY OF ORANGE :

L. WASHINGTON
Commission # 1840150
Notary Public - California
Orange County
My Comm. Expires Mar 12, 2013

On _____ 20___, before me, _____, the undersigned Notary Public in and for said County and State, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA :
:
COUNTY OF ORANGE :

On November 1, 2010 , before me, Joni Grossman, the undersigned Notary Public in and for said County and State, personally appeared Daniel H. Young who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Joni Grossman
Notary Public

JONI GROSSMAN
Commission # 1736093
Notary Public - California
Orange County
My Comm. Expires Apr 30, 2011

STATE OF CALIFORNIA :
:
COUNTY OF ORANGE :

On November 1, 2010, before me, Joni Grossman, the undersigned Notary Public in and for said County and State, personally appeared Brigid D. McMahon who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Joni Grossman
Notary Public

JONI GROSSMAN
Commission # 1736093
Notary Public - California
Orange County
My Comm. Expires Apr 30, 2011

RECORDING REQUESTED BY:

FIDELITY NATIONAL TITLE INSURANCE CO.

WHEN RECORDED MAIL TO:

City of Newport Beach
Attn: City Clerk
3300 Newport Beach Blvd.
P.O. Box 1768
Newport Beach, CA 92658-8915

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Tom Daly, Clerk-Recorder

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66 406 N12 6
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OFFICE OF
THE CITY CLERK
CITY OF NEWPORT BEACH

"2513271(-05

AGREEMENT OF MUTUAL UNDERSTANDING REGARDING AMENDED AND RESTATED GRANT DEED (PARCEL 3, PARCEL MAP 90-361-NEWPORT VILLAGE) RECORDED ON JUNE 2, 2008 AS INSTRUMENT NO. 2008000262433

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
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Fidelity National Title

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3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92658-8915

WITH A CONFORMED COPY TO:

The Irvine Company LLC
Attn: Legal Department
550 Newport Center Drive
Newport Beach, CA 92660

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Agreement of **Mutual Understanding Regarding Amended and Restated Grant Deed (Parcel 3, Parcel Map 90-361-Newport Village) recorded on June 2, 2008 as Instrument No. 2008000262433**

WHEREAS, The Irvine Company LLC, A Delaware Limited Liability Company ("Grantor") previously granted to the City of Newport Beach, a California Municipal Corporation ("Grantee") via a Grant Deed recorded November 28, 2007 as Orange County Document No. 2007000704013 ("Grant Deed") that certain property identified as Parcel 3 of Parcel Map 90-361, in the City of Newport Beach, County of Orange, State of California, as per Map filed in Book 270, Pages 15 to 18, inclusive, of Parcels, in the Office of the County Recorded of said County ("Property").

WHEREAS, Grantee desires to construct a new Civic Center project on the Property pursuant to Newport Beach Charter Section 425.

WHEREAS, The Grant Deed places certain limitations on the Property and requires Grantee to obtain Grantor's consent for certain improvements.

NOW THEREFORE, Grantor and Grantee agree as follows:

Pursuant to the terms, restrictions, and conditions contained in the Grant Deed, the Grantee is authorized to develop the Property with a City Hall Office Building, Community Room, City Council Chambers, Parking Structure, Library addition and related improvements, including an approximately 600 square foot Food Service Facility which will provide deli food servce and limited catering for employees, library visitors, special event visitors and receptions ("Project"), which is consistent with the use restriction in Grant Deed Section i(a) that the Property may be used by the Grantee only for open space and public facilities uses. Therefore, Grantee is authorized to take any and all actions necessary to develop, alter, and maintain the Project, including, but not limited to, entering into leases and financing agreements.

IN WITNESS WHEREOF, this instrument is duly executed this 29th day of October, 2010.

GRANTOR:

THE IRVINE COMPANY LLC,
A Delaware Limited Liability Company

By: _____
Daniel H. Young
Its: Executive Vice President

By: _____
Brigid D. McMahon
Its: Assistant Secretary

GRANTEE:

CITY OF NEWPORT BEACH
A California Municipal Corporation

By: _____

Its: Mayor

APPROVED AS TO FORM:

_____
David R. Hunt
City Attorney

ATTEST:

_____
Leilani Brown
City Clerk
City of Newport Beach

Signed in Counterpart

WHEREAS, Grantor and Grantee both desire to confirm that the Grant Deed allows the development of the Civic Center project.

NOW THEREFORE, Grantor and Grantee agree as follows:

Pursuant to the terms, restrictions, and conditions contained in the Grant Deed, the Grantee is authorized to develop the Property with a City Hall Office Building, Community Room, City Council Chambers, Parking Structure, Library addition and related improvements, including an approximately 600 square foot Food Service Facility which will provide deli food servce and limited catering for employees, library visitors, special event visitors and receptions ("Project"), which is consistent with the use restriction in Grant Deed Section i(a) that the Property may be used by the Grantee only for open space and public facilities uses. Therefore, Grantee is authorized to take any and all actions necessary to develop, alter, and maintain the Project, including, but not limited to, entering into leases and financing agreements.

IN WITNESS WHEREOF, this instrument is duly executed this 22 day of November, 2016.

GRANTOR:

THE IRVINE COMPANY LLC,
A Delaware Limited Liability Company

By: _____

Its: Executive Vice President

By: _____

Its: Assistant Secretary

GRANTEE:

CITY OF NEWPORT BEACH
A California Municipal Corporation

By: _____

Its: Mayor

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

David R. Hunt
City Attorney
City of Newport Beach

Signed in Counterpart

ATTEST:

Leilani Brown
City Clerk
City of Newport Beach

STATE OF CALIFORNIA :
:
COUNTY OF ORANGE :

On November 22, 2010, before me, LILIAN WASHINGTON, the undersigned Notary Public in and for said County and State, personally appeared Keith D. Curry who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

L. WASHINGTON
Commission # 1840150
Notary Public - California
Orange County
My Comm. Expires Mar 12, 2013

STATE OF CALIFORNIA :
:
COUNTY OF ORANGE :

On _____ 20___, before me, _____, the undersigned Notary Public in and for said County and State, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA :

COUNTY OF ORANGE :

On November 1, 2010, before me, Joni Grossman, the undersigned Notary Public in and for said County and State, personally appeared Daniel H. Young who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Joni Grossman

Notary Public

JONI GROSSMAN
Commission # 1736093
Notary Public - California
Orange County
My Comm. Expires Apr 30, 2011

STATE OF CALIFORNIA :

COUNTY OF ORANGE :

On November 1, 2010, before me, Joni Grossman, the undersigned Notary Public in and for said County and State, personally appeared Brigid D. McMahon who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Joni Grossman

Notary Public

JONI GROSSMAN
Commission # 1736093
Notary Public - California
Orange County
My Comm. Expires Apr 30, 2011

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3 Titles	$
01 3-	15-
31 Add.	$
Pg 38 3-	93-
Lien Ntc	$
04	
Other	$
Total Rec. Fees	$ 108-
D.T.T.	$
PCOR	$
SMF	$
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When Recorded Mail To:

THE IRVINE COMPANY
550 Newport Center Drive
Newport Beach, CA 92660

Attention: Lee Milligan

Recorded at the request of
FIRST AMER. TITLE INS. CO.
8:00 A.M. MAY 8 1992
Official Records
Orange County, California
Lee A. Branch, Recorder

Space above this line for Recorder's use

Fatco 1547479 RJR

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DECLARATION OF SPECIAL LAND USE RESTRICTIONS, RIGHT OF FIRST REFUSAL, MORTGAGE LIEN AND OPTION TO REPURCHASE

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DECLARATION OF SPECIAL LAND USE RESTRICTIONS, RIGHT OF FIRST REFUSAL, MORTGAGE LIEN AND OPTION TO REPURCHASE

THIS DECLARATION ("Declaration") is made as of March 11, 1992, by and between THE IRVINE COMPANY, a Michigan corporation ("Declarant"), and the CITY OF NEWPORT BEACH, a California municipal corporation ("Grantee"), with reference to the following facts:

A. Grantee and Declarant have entered into an Exchange Agreement and Escrow Instructions (the "Exchange Agreement") by which Grantee is acquiring from Declarant the following described real property (the "Exchange Land") situated in the City of Newport Beach, County of Orange, State of California:

> The southwesterly one-half of Parcel 2 as shown on Parcel Map No. 90-361, recorded in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of said County.

B. Grantee and Declarant have also entered into a Transfer Agreement and Escrow Instructions by which Grantee is acquiring from Declarant real property adjacent to and contiguous with the Exchange Land which real property is situated in the City of Newport Beach, County of Orange, State of California ("Transfer Land") and is described as follows:

> The northeasterly one-half of Parcel 2 as shown on Parcel Map No. 90-361, recorded in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of said County.

C. In connection with such acquisition, Grantee has represented to Declarant that it has acquired the Exchange Land and the Transfer Land as a single parcel described as all of Parcel 2 as shown on side Parcel Map No. 90-361 (the "Land") to improve and use the Land in accordance with the covenants, conditions, rights, restrictions and limitations as particularly set forth herein (collectively referred to as the "Restrictions"), and Declarant is granting the Land to Grantee on the basis of Grantee's continuing compliance with such Restrictions.

NOW, THEREFORE, in consideration of the foregoing (including the conveyance of the Land by Declarant to Grantee), and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1. GENERAL PROVISIONS.

1.1 Grantee's Representations and Warranties. GRANTEE REPRESENTS AND WARRANTS TO DECLARANT THAT GRANTEE IS ACQUIRING THE LAND TO IMPROVE THE SAME IN COMPLIANCE WITH THE RESTRICTIONS SET FORTH HEREIN AND FOR THE PARTICULAR USES AND PURPOSES AUTHORIZED HEREBY. GRANTEE ACKNOWLEDGES, AMONG OTHER THINGS, THAT: (a) GRANTEE IS EXPERIENCED AND KNOWLEDGEABLE IN THE CONSTRUCTION AND OPERATION OF PUBLIC FACILITIES, AND DECLARANT AND GRANTEE DESIRE TO PROVIDE A PUBLIC LIBRARY TO SERVE NEWPORT BEACH; (b) DECLARANT HAS CONVEYED AND GRANTEE HAS ACCEPTED FEE TITLE TO THE LAND FOR USE BY GRANTEE IN ACCORDANCE WITH THE PARTICULAR USES PROVIDED FOR IN THIS DECLARATION; (c) DECLARANT AND GRANTEE DO NOT EXPECT OR INTEND THE LAND TO BE USED AT ANY TIME FOR ANY PURPOSE NOT OTHERWISE PERMITTED HEREIN; (d) THE LIKELIHOOD THAT ANY BREACH WILL OCCUR AND THAT DECLARANT WILL EXERCISE ANY OF ITS RIGHTS AVAILABLE TO REMEDY ANY BREACH OR NONCONFORMITY WITH THE RESTRICTIONS CONTAINED HEREIN IS EXTREMELY REMOTE (e) WITHOUT THE RESTRICTIONS CONTAINED HEREIN, THE PURPOSES AND EXPECTATIONS OF DECLARANT IN THE DEVELOPMENT OF NEWPORT CENTER AND USE OF THE LAND COULD BE DEFEATED; (f) BUT FOR CONVEYANCE OF THE LAND, GRANTEE WOULD BE REQUIRED TO PAY SUBSTANTIAL SUMS TO ACQUIRE LAND FOR ITS USES; (g) DECLARANT AND GRANTEE HAVE ESTABLISHED THE FAIR MARKET VALUE OF THE LAND FOR PURPOSES OF THE OPTION TO REPURCHASE BASED UPON PRESENT ESTIMATES AND HAVE APPLIED ADJUSTMENT FACTORS TO TAKE INTO ACCOUNT SUBSEQUENT CHANGES IN VALUES; (h) DECLARANT AND GRANTEE ACKNOWLEDGE THAT MARKET FORCES COULD MAKE THE PRICE FOR REPURCHASE GREATER OR LESSER THAN THE VALUE ESTABLISHED FOR PURPOSES OF THE OPTION TO REPURCHASE AND HEREBY ASSUME THAT RISK.

BUT FOR SUCH REPRESENTATIONS BY GRANTEE, AND GRANTEE'S UNIQUE SKILLS, EXPERTISE AND SUITABILITY IN CONSTRUCTION AND OPERATION OF THE SPECIFIC FACILITIES DESCRIBED BELOW, DECLARANT WOULD NOT HAVE CONVEYED THE LAND TO GRANTEE, BUT WOULD HAVE RETAINED THE BENEFITS OF OWNERSHIP, INCLUDING FUTURE APPRECIATION OF THE LAND. ON THE BASIS OF SUCH REPRESENTATIONS AND WARRANTIES, DECLARANT HAS CONVEYED THE LAND TO GRANTEE.

1.2 Statement of Declarant's General Purposes. Declarant is the owner of a large and unique landholding, part of which has been developed as a master planned business, recreational, hotel, residential and retail Center, described below, in the City of Newport Beach (the "City"). Among the distinguishing characteristics of this masterplanned Center are the clear delineation of use areas throughout the Center, together with the strict exercise of architectural and occupancy controls over individual construction projects, so as to ensure the harmonious growth and development of the Center and the maximization of the value of Declarant's developed and undeveloped landholdings as well as the Land itself.

In addition to those general concerns, it is vitally important to Declarant that the intensity of development shall be limited on those parcels of property (including the Land) that Declarant from time to time elects to convey to third parties. Should the development limitations imposed by Declarant be exceeded, the roadways and the infrastructure improvements servicing the Center and its environs could be overutilized, resulting in undesirable traffic congestion and imbalances within the Center. Such conditions could in turn adversely affect the ability of Declarant to develop, own, operate, lease or sell its landownings, including without limitation the "Benefitted Property" as defined below.

It is to promote these purposes that this Declaration is made, and it is the intention of the parties that it will be in furtherance of said purposes that the Restrictions, and all other declarations supplemental hereto, will be understood and construed.

1.3 Definitions. As used herein, the following terms shall have the meanings given to them below:

(a) "Benefitted Property" shall mean the real property to which the benefit of the provisions of this Declaration inures, and as of the execution of this Declaration shall mean the real property described on EXHIBIT 1 attached hereto. Declarant shall have the right by a duly recorded amendment hereto executed solely by Declarant to substitute for or add to the Benefitted Property any real property owned by Declarant in the County of Orange, California. The Benefitted Property shall be the dominant tenement and the Land shall be the servient tenement for purposes of this Declaration.

(b) "Center" shall mean the office, hotel, recreational, retail and residential and other use area commonly known as Newport Center (including the shopping center known as Fashion Island) and generally lying within the area enclosed by Pacific Coast Highway, MacArthur Boulevard, San Joaquin Hills Road and Jamboree Road.

(c) "Declarant" shall mean The Irvine Company as identified above and its successors, assigns or designees who shall assume the obligation and to whom The Irvine Company shall specifically assign in writing the right to enforce these Restrictions, subject to the provisions of the Section entitled "Assignment by Declarant."

(d) "Effective Date" of this Declaration shall be the date this Declaration is recorded in the Official Records of Orange County, California.

(e) "Final Map" shall mean the final map covering the Land described as Parcel Map No. 90-361 as shown on a map recorded in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of Orange County, California.

(f) "Grantee" shall mean the Grantee identified above and each and every successor, assignee, owner, lessee, licensee or other occupant of the Land, the Specific Facilities, as defined below, or any portion thereof or interest therein, and each of them, during their ownership or occupancy thereof.

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However, such term shall not include any person having an interest in all or any portion of the Land or Specific Facilities merely as security for the performance of an obligation. Without limiting the generality of the foregoing, if Grantee leases all or any of its interest in the Land or the Specific Facilities, both the lessor and lessee under such lease shall be responsible as principals (and not sureties) for compliance with all the terms and provisions of this Declaration.

(g) The "Gross Floor Area" shall mean the aggregate number of square feet of floor space on all floor levels of any building, including mezzanines, measured from the interior face of all exterior walls. No deductions or exclusions shall be made by reason of columns, stairs, elevators, escalators, or other interior construction or equipment.

ARTICLE 2. SPECIFIC RESTRICTIONS.

2.1 Specific Facilities.

(a) Improvement and Continued Use. Grantee represents and agrees that Grantee shall cause the Land to be improved only with the specific facilities described on EXHIBIT 2 attached hereto (the "Specific Facilities") and the other improvements described on EXHIBIT 2 attached hereto (the "Other Improvements") and in full accordance with all of the terms of this Declaration, and that Grantee shall cause the Land, the Specific Facilities and the Other Improvements to be used solely for a public library with related parking and no other use, notwithstanding that other uses may be permitted under applicable zoning ordinances, and in full accordance with all of the terms of this Declaration. Use as a public library may include all uses and activities commonly associated with public libraries now and in the future including any form of information storage and retrieval such as video tapes, books, optical and magnetic disks or other technologies for information storage and retrieval. Grantee may charge fees, rentals and late charges for loan or use of information media provided that fees, rentals and charges do not exceed the cost of operation of the public library facility. No portion of the Land, or any improvements thereon, or any portion thereof, shall be used for retail, commercial, quasi-retail or quasi-commercial facilities that materially compete with the retail and commercial facilities in the Center or otherwise improved, developed, used, operated or maintained with any facilities or for any purpose whatsoever except as set forth above unless expressly approved by Declarant, which approval may be granted or withheld by Declarant in its sole discretion.

(b) Construction. Grantee shall improve the Land with the construction and installation of the Specific Facilities and the Other Improvements pursuant to the plans and specifications approved by Declarant pursuant to the Exchange Agreement and the Transfer Agreement. If Grantee desires to make any substantial alterations, modifications, additions or changes to the exterior elements of any plans and specifications previously approved by Declarant, then Grantee shall submit three copies of any Change Order to Declarant for its approval prior to obtaining approval of such Change Order by the governmental entity having jurisdiction and prior to incorporating such Change Order in the work. Declarant shall approve or disapprove such Change Order in accordance with the standards and procedures set forth in Section 2.2. Construction and installation shall be commenced and completed within the time periods set forth in the Section below entitled "Commencement and Completion."

(c) Commencement and Completion. Subject to extensions of time for unavoidable delays as provided under the provision entitled "Unavoidable Delay," (i) within the time period specified on EXHIBIT 2 as the "Commencement Date," measured from and after the Effective Date of this Declaration, Grantee shall have commenced construction of the Specific Facilities on the Land, and (ii) within the time specified on EXHIBIT 2 as the "Completion Date," measured from and after the Effective Date of this Declaration, Grantee shall have completed construction of the Specific Facilities on the Land in a manner consistent with plans and specifications approved in writing by Declarant pursuant to the Agreement. As used herein, the term "commenced construction" shall mean the completion of substantial grading of the Land and the pouring of all or a substantial portion of all of the footings and foundations for the entire Specific Facilities (which need not necessarily include the ground floor slabs). Grantee shall be deemed to have "completed construction" of the Specific Facilities only at such time as Grantee shall have obtained from the appropriate

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governmental entity or agency a valid Certificate of Use and Occupancy for the Specific Facilities. Grantee shall commence and complete construction of the Other Improvements prior to or contemporaneously with such Specific Facilities.

(d) Grading. Prior to the commencement of any grading or similar work on the Land, Grantee shall submit to Declarant for its approval two sets of plans and specifications for grading, terracing and filling of the Land and for construction of other similar improvements in, on or about the Land.

(e) Utilities, Streets and Public Improvements.

(i) Grantee shall cause all necessary facilities for water, drainage, sewage, telephone, electricity, cable television, and other utility service for the Land to be constructed and installed thereon and therato in the manner and within the time required by the Exchange Agreement.

(ii) In addition to any such facilities constituting a part of the Specific Facilities or the Other Improvements, Grantee shall construct and install or pay for construction and installation of all streets, street lights, driveways, curb cuts, entry ways, sidewalks and the like, perimeter walls and fences, irrigation and drainage systems, landscaping, monument, directional or other signs and all like improvements on the Land or between the Land and adjoining sidewalks or the curbs of adjoining streets, as required by the Exchange Agreement.

(f) Landscaping. In addition to the landscaping constituting a part of the Other Improvements, if any, Grantee shall landscape the Land as necessary to create a first class attractive condition, and in a manner consistent with the existing landscaping in the Center. Grantee shall submit to Declarant for its approval two sets of plans and specifications for the landscaping on the Land.

(g) Alterations and Additions. Grantee shall not make any substantial additions, alterations or other modifications ("alterations") of or to the exterior of the Specific Facilities or any additions, alterations or other modifications to the visible portions of the Other Improvements or other improvements from time to time located on the Land, without the prior written approval of Declarant. Declarant shall approve or disapprove of such alterations in accordance with the standards and procedures set forth in Section 2.2. All such alterations shall be subject to the provisions of Article 2 hereof. If Grantee desires to add additional structures to the Land other than those specified in EXHIBIT 2, then Declarant may impose additional restrictions, covenants and obligations as a condition to its approval. As used in this Section, the "exterior" of the Specific Facilities shall mean all roofs, outside walls and facades, structural foundation, entrance doors, windows, outside walkways, ramps and other accessways, and parking facilities.

2.2 Declarant's Approvals.

(a) Approvals Required. Except with respect to plans and specifications approved prior to the recordation of this Declaration, no construction, installation or alteration of the Specific Facilities, the Other Improvements, or any other landscaping, grading or other improvements in, about or on the Land shall be commenced unless the concept, plans and specifications for the exterior elements of such improvements have first received the written approval of Declarant exercising its sole and absolute discretion. The improvements constructed shall comply with the plans and specifications approved by Declarant pursuant to the Agreement or this Declaration. Grantee agrees that the Specific Facilities, the Other Improvements and all other landscaping and improvements on the Land shall be designed, constructed and installed to provide for a library with complementary landscaping and surrounding improvements which, in the sole discretion of Declarant, are in harmony with the plan and design of the Center.

(b) Time for Approvals. Declarant shall approve or disapprove any plans and specifications delivered to Declarant pursuant to this Article as soon as possible but no longer than thirty (30) working days after receipt of two copies thereof accompanied by such drawings, site plans, elevations, artists' conceptions, samples of materials, models, mock-ups, and color samples as from time to time required by Declarant to review such plans and specifications. If

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approved by Declarant, such approval shall be endorsed on such plans and specifications and one set of such documents bearing Declarant's approval shall be returned to Grantee within such thirty (30) working day period. If Declarant does not approve such plans and specifications, Declarant shall notify Grantee of its reasons for not approving such plans and specifications and Grantee shall, within forty five (45) working days after receiving notice of Declarant's disapproval, submit new plans and specifications for Declarant's approval. Failure of Declarant to approve or disapprove any plans and specifications within said thirty (30) working day period and Declarant's continued failure to approve or disapprove for five (5) working days after Grantee's written notice to Declarant that Declarant has failed to approve or disapprove as required herein shall be deemed approval thereof. The approval by Declarant of any plans and specifications pursuant to this Section shall only represent Declarants' satisfaction with the plans and specifications as to their general aesthetic elements. Such approval shall not be deemed to constitute any representation or warranty by Declarant as to the adequacy or sufficiency of such plans and specifications for architectural or engineering design or the feasibility or integrity of any grading, landscaping, improvement or construction contemplated thereby for any use or purpose. By approving such plans and specifications, Declarant assumes no liability or responsibility therefor or for any defect in any grading, landscaping, improvements or construction made pursuant thereto.

(c) As Built Plans. Upon completion of the grading, landscaping and construction of improvements, Grantee shall submit to Declarant two "as built" sepias and a Certificate of Compliance executed by Grantee's state licensed consultant (engineer, architect and/or landscape architect). The Certificate of Compliance shall warrant that the completed grading, landscaping and construction conforms to the plans and specifications therefor approved by Declarant.

2.3 Grantee's Cost. The Specific Facilities, the Other Improvements, and all other landscaping, grading and other improvements made or constructed in, about or on the Land as contemplated herein shall be constructed, installed and completed at the sole cost and expense of Grantee and without any cost, liability or expense to Declarant.

2.4 Fulfillment of Map Conditions. Certain map conditions dated November 21, 1991 (copies of which have been provided to Grantee) have been imposed in connection with the approval and recordation of the Final Map. Except as otherwise agreed in writing by Declarant and Grantee, Grantee shall comply with and/or fulfill all of those duties and obligations imposed by such map conditions on the "Applicant" and/or "Subdivider" attributable to Grantee's use or development of the Land, all at Grantee's sole cost and expense.

2.5 Compliance With Law.

(a) Grantee to Comply. The Specific Facilities, the Other Improvements and all other landscaping, grading and other improvements made or constructed in, about or on the Land, and the use thereof, shall comply at all times with all public laws, ordinances and regulations applicable thereto. Without limiting the generality of the foregoing, Grantee shall obtain, at its sole expense, all of its internal and external governmental approvals and permits and approvals of other governmental authorities with jurisdiction which may from time to time be required with respect to the performance contemplated under this Declaration, including, as applicable and without limitation, appropriate zoning, building permits, permits from the California Coastal Commission, operating and business licenses and permits and the like. In obtaining such approvals and permits, Grantee shall prepare, at its sole expense, as necessary and without limitation, all environmental impact reports, engineering studies and the like as necessary.

(b) Approvals of Applications. All requests or applications, together with all supporting documentation, for governmental approvals or permits which require discretionary action by discretionary bodies of Grantee or on the part of another governmental agency, shall be submitted to and coordinated and approved by Declarant prior to placing such approval on the agenda of Grantee's discretionary body or filing with any other governmental agency. Declarant shall have a period of forty five (45) days after receipt to disapprove any requests or applications so submitted by Grantee, and in the event of disapproval shall specify the reasons therefor. Failure to disapprove within such forty five (45)

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day period and Declarant's continued failure to approve or disapprove for fifteen (15) days after Grantee's written notice that Declarant has failed to approve or disapprove as required hereunder shall be deemed approval thereof. Grantee shall cause copies of all written communications between Grantee and other governmental agencies processing such requests or applications to be delivered to Declarant within five (5) business days after such communication has been delivered to the addressee.

2.6 Bonds. Before the commencement of any of the work required under this Article 2, Grantee shall furnish to Declarant true copies of any and all labor and material bonds and faithful performance bonds, if any, required of Grantee by any governmental agency concerning such work.

2.7 Transfers.

(a) Transfers Prohibited. For a period of not less than twenty-five (25) years after the Effective Date, Grantee shall not sell, lease, convey, exchange, encumber or otherwise transfer the Land or any portion thereof or facilities thereon, whether by agreement for sale or in any other manner (herein collectively referred to as a "transfer") without first giving Declarant at least sixty (60) days' prior written notice of all terms and conditions of such proposed transfer and the right to either (i) acting reasonably, approve or disapprove such transfer, (ii) exercise its option to repurchase set forth in Section 5.3 below, or (iii) exercise its right of first refusal set forth in Article 4 below. Declarant in its sole discretion may within such sixty (60) day period exercise any such right. Declarant's failure to so act within such sixty (60) day period shall be deemed to constitute approval of the transfer on the terms and conditions proposed by Grantee. Any time after the twenty fifth (25th) anniversary of the Effective Date, Grantee may transfer the Land without Declarant's approval under this Section and without regard to Declarant's option to repurchase set forth in Section 5.3 below or Declarant's right of first refusal set forth in Article 4 below. Grantee hereby acknowledges that it would be reasonable and appropriate for Declarant to disapprove a transfer and exercise its option to repurchase and/or right of first refusal if the proposed transferee is not adequately experienced, knowledgeable and financially capable to own and operate a public library.

(b) Permitted Transfers. Notwithstanding the foregoing, (i) Grantee may transfer the Land to any other governmental or quasi-governmental entity or agency which has as its primary purpose maintenance and operation of public libraries provided such entity shall be subject to all of the provisions of this Declaration or (ii) provided Grantee complies with the provisions of Section 2.8 below, Declarant shall consent to a transfer or encumbrance on the Land made in connection with an interim or permanent loan or loans or other form of private or public financing (including without limitation bonds, lease revenue obligations or certificates of participation) ("public obligations") made in good faith and for value by an institutional lender or by a public obligation, the proceeds of which are used only for the costs and expenses of such public obligations and construction of the Specific Facilities and Other Improvements or refinancing of a construction financing in an amount not to exceed the amount outstanding under the construction financing (collectively, "Permitted Transfers").

2.8 Subordination or Consent to Transfer for Public Financing. Subject to the following provisions and the provisions of Section 5.7 hereof, Declarant will either consent to a transfer described in Section 2.7(b) above, without exercise of Declarants right of first refusal contained in Article 4 and the option to repurchase contained in Section 5.3 (collectively, the "Enforcement Rights") or Declarant will subordinate its Enforcement Rights to any encumbrance referred to in Section 2.7(b) immediately above, (which Section 2.7(b) shall continue in effect even after Section 2.7 no longer has any application to this Declaration, for purposes only of describing the transfers and encumbrances to which Declarant will continue to consent or subordinate pursuant to this Declaration) provided that the principal amount of such a loan or public obligation does not, in combination with other loans and/or public obligations secured by or affecting the Land and/or the improvements constructed thereon do not exceed at any time ninety percent (90%) of the fair market value of the Land and any improvements thereon, valued taking into account the restrictions contained in this Declaration, and such loans and/or public obligations are at commercially reasonable interest rates and otherwise contain

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commercially reasonable terms and conditions. Grantee will provide Declarant with appraisal information from a reputable M.A.I. appraiser, from the Office of the Assessor of Orange County or from an institutional lender reasonably satisfactory to Declarant to verify that the total loan-to-value rate does not exceed ninety percent (90%). No foreclosure, trustee's sale or deed in lieu of foreclosure with respect to any such permitted encumbrance or exercise of any remedy to enforce a public obligation shall be deemed an "assignment" for purposes of Section 2.7, above. Within ten (10) working days after receipt of the following items, provided the foregoing requirements have been satisfied and provided there is no default under any provision of this Declaration or under any other obligation between Declarant and Grantee relating to the Land, Declarant shall execute, acknowledge and deliver to Grantee a subordination instrument in substantially the form attached hereto as EXHIBIT 3 or a consent to transfer pursuant to issuance of a public obligation:

(a) Copy of Loan Documents. A true and complete copy of all instruments executed by Grantee evidencing or securing the issuance of a public obligation or loan; any lease, mortgage, deed of trust or other interest or right created to enforce payment of any public obligation which affects the Land must not secure or relate to any obligation or indebtedness not related to improvement of the Land, and neither the note, the mortgage, deed of trust, lease nor any other document or instrument pertaining to a loan or public obligation pertaining to the Land shall contain any provision making it a default thereunder if the obligor or any other party defaults in any obligation not related to the acquisition or improvement of the Land;

(b) Title Report. A preliminary title report dated not earlier than fifteen (15) days prior to submittal showing no title exceptions other than those in existence at the time Declarant transferred the Land to Grantee, other utility easements reasonably necessary to serve the Land, and other matters approved by Declarant;

(c) Disbursement Instructions. A copy of the executed financing instruments, loan agreement or other agreement pertaining to the disbursement of funds, which must provide in a manner satisfactory to Declarant that the funds disbursed thereunder will be used only to purchase or improve and benefit the Land, or to refinance original financing made for such purpose (in an amount not to exceed the amount outstanding under the acquisition/construction loan refinanced); and

(d) Request for Notice of Default. Unless public obligations are issued which do not involve a standard mortgage lien to secure performance of a note, a copy of a Request for Notice of Default pursuant to Section 2942b of the California Civil Code prepared for execution and acknowledgment by Declarant which, when recorded at Grantee's expense, will entitle Declarant to the notices prescribed by said Section 2942b. If public obligations are issued, then the documentation for such financing shall require delivery of a notice of any default to Declarant prior to exercise of any remedies available upon such default.

2.9 Costs of Regional Development. Grantee understands that development of the Specific Facilities on the Land will be accomplished in conjunction with development of other real property in the Center by Declarant other private parties. Grantee hereby agrees to pay its share of infrastructure improvements made on, adjacent and off the situs of the Land. The infrastructure improvements shall include the improvements required to complete the items set forth in EXHIBIT I of the Exchange Agreement.

2.10 MacArthur Boulevard Dedication and Maintenance. Declarant and City agree that a land area along MacArthur Boulevard shall be designated on the Final Map to be used exclusively for future expansion of MacArthur Boulevard. Prior to construction of road and other improvements for such expansion, Grantee shall not use the area designated for any purpose other than installation and maintenance of landscaping. Grantee agrees to install landscaping within such area prior to completion of construction of the Specific Facilities pursuant to plans and specifications approved by Declarant in accordance with the standards and procedures set forth in Section 2.2 and to maintain such area in a first class condition, order and repair at all times prior to commencement of construction for expansion of MacArthur Boulevard.

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ARTICLE 3. GENERAL RESTRICTIONS.

3.1 Unapproved Development or Use. Unless expressly approved by Declarant, which approval may be withheld by Declarant in its sole discretion, Grantee shall not permit the construction, maintenance, operation or use of any structure or improvements on the Land not in full compliance with all requirements of the law, this Declaration and any other covenants, conditions and restrictions from time to time covering the Land.

3.2 General Maintenance. Prior to the completion of the Specific Facilities, Grantee shall maintain the Land in a clean, sanitary, orderly and attractive condition, free of weeds, debris and pests. Upon completion of the Specific Facilities as contemplated herein, Grantee shall at all times maintain the Specific Facilities, the Other Improvements and all other improvements from time to time located on the Land, including without limitation the landscaped areas, in first-class condition, order and repair. Grantee shall remove any graffiti on the Improvements, Other Improvements and all other improvements on the Land within three (3) business days after delivery of notice by Declarant.

3.3 Restoration. If any building or improvement on the Land, or any part thereof, or any landscaping installed upon the Land, shall be damaged or destroyed by fire or other casualty, Grantee shall at its cost and expense either (i) repair or restore the same according to the original plans thereof or to such modified plans as shall be previously approved in writing by Declarant as provided above, or (ii) demolish such damaged or destroyed improvements and leave the Land (or applicable portion thereof) in a clean and safe condition. Such repair, restoration or demolition shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed with due diligence but not longer than one (1) year after such work is commenced. The time periods specified in this subparagraph entitled "Restoration" shall be extended as provided in the Section of this Declaration entitled "Unavoidable Delay."

3.4 Drainage. Grantee shall not drain or discharge water from the Land (including but not limited to rain water and water from landscape sprinkler systems located on the Land) on to adjacent land except as follows: Grantee shall at all times cause the Land to be graded and drained so as to cause the discharge of all water from the Land onto the public street adjoining the Land or into an established drainage facility, if any, on or adjacent to the Land which has been designed to accommodate the water at the rate discharged.

3.5 Signs. Grantee shall not place or use any signs, banners, balloons, displays of other advertising media in, on, about or above the Land or on or in any improvements constructed or placed thereon unless it has first obtained the prior written consent of Declarant as to the number, size, location, height, illumination, color and design of such signs or other media. Declarant shall not unreasonably withhold such approval so long as such signs or other media (a) comply with (i) Declarant's sign program for the Land, the property surrounding the Land and the Benefitted Property, if any, and (ii) the statutes, ordinances or regulations of any governmental entity or agency having jurisdiction thereover including Grantee itself and (b) are in harmony and conformity with the existing or proposed improvements on or in the vicinity of the Land and with Declarant's general aesthetic and architectural plans and criteria for the Land, the Center and the general area in which the Land is located. Except as provided in this Section, no sign, banner, balloon, display or other advertising media which is visible from adjacent land or any public or private street shall be maintained in, on about or above the Land or on or in any improvements constructed or placed thereon.

3.6 Prohibited Operations and Uses. No trailer, camper, bus, automobile, motorcycle, boat or other vehicle or equipment ("vehicle") shall be permitted to remain upon the Land overnight after 11:15 p.m. or before 5:00 a.m. No use or operation shall be made, conducted or permitted on or with respect to all or any part of the Land or improvements thereon which is obnoxious to or out of harmony with the residential and/or commercial neighborhood in the vicinity of the Land. Included among the uses or operations which are prohibited and are deemed to conflict with the reasonable standards of appearance and maintenance required hereby, are uses or operations which produce or are accompanied by the following characteristics, which list is not intended to be all inclusive:

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(a) Any public or private nuisance;

(b) Any vibration, noise, sound or disturbance that is objectionable due to intermittence, heat, frequency, shrillness or loudness;

(c) Any direct lighting which is not shielded and confined within site boundaries;

(d) Any emission of odors, noxious, caustic or corrosive matter, whether toxic or nontoxic;

(e) Any litter, dust, dirt or ash in excessive quantities;

(f) Any use of a structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding except for such structures maintained on the Land during a period permitted for construction or reconstruction of improvements;

(g) Any service, maintenance, repair or washing of any vehicle on the Land at any time except for emergency service necessary to move a vehicle to a maintenance facility off of the Land;

(h) Any raising, breeding or keeping of animals, livestock or poultry of any kind;

(i) Fuel storage of any type;

(j) Any accumulation of rubbish, trash or garbage. All refuse containers, air conditioning devices, utility areas, storage areas and machinery and equipment shall be prohibited upon the Land unless screened from view from all adjoining lots and public and private streets; and

(k) Any exterior radio antenna, television antenna, "C.B." antenna, "satellite dish," microwave transmitting or receiving antenna or other antenna, transmitting or receiving device of any type unless it is screened from view from all adjoining lots and public and private streets.

Any screen required under this Section shall consist of permanent landscaping and/or improvements in harmony with other landscaping and improvements in the Center and approved in writing by Declarant. The provisions of this Section entitled "Prohibited Operations and Uses" shall not in any way supersede the other Restrictions.

3.7 No Subdivision. Grantee shall not effect any change or amendment to the Final Map covering the Land or record any further parcel or final map of the Land or any portion thereof or facilities thereon pursuant to the California Subdivision Map Act or any similar law and/or local ordinances adopted pursuant thereto, or file any tentative maps or applications with respect thereto with any governmental agency, nor shall Grantee file or record a condominium plan covering the Land or any portion thereof or any improvements thereon or any applications with respect thereto nor shall Grantee convey a portion consisting of less than all of the Land, unless expressly approved by Declarant which approval may be withheld by Declarant in its sole discretion.

3.8 Zoning. Grantee shall not use or develop or attempt to use or develop the Land or any portion thereof for any purpose other than those purposes expressly allowed under the zoning ordinance or ordinances of the governmental entity having zoning jurisdiction over the Land. Additionally, Grantee shall not at any time change or attempt any change in zoning, or obtain or apply for a conditional use permit, zoning variance or exception or other similar approval with respect to the use or development of the Land or any portion thereof not expressly allowed under such existing zoning ordinance, unless expressly approved by Declarant, which approval may be withheld in its sole discretion. Notwithstanding the foregoing, Declarant shall not unreasonably withhold its consent to Grantee's application for such conditional use permit as may be required for development of the Land with the Specific Facilities. Grantee shall obtain Declarant's consent prior to placing such application on the agenda of Grantee's discretionary body or submitting any such application or related documents to any other governmental agency and thereafter will submit copies of all such documents to Declarant for its review and information.

3.9 Indemnity. Declarant and Declarant's past and present employees, officers, directors, shareholders, agents and representatives and its and their respective successors and assigns (collectively, the "Indemnitees") shall not be liable for any loss, damage, injury or claim of any kind or character to any person or property arising from or caused by (a) the improvement, development, maintenance, use, lease or other conveyance of the Land or improvements thereon or any portion thereof or interest therein, including, without limitation, any loss, damage, injury or claim arising from or caused by or alleged to arise from or be caused by (i) any use of the Land or any part thereof, (ii) any defect in the design, construction of, or material in any structure or other improvement upon the Land, (iii) any defect in or contamination of soils or in the preparation of soils or in the design and accomplishment of grading, (including the existence of any contaminants or hazardous materials in or on the soil), (iv) any act or omission of Grantee or any of its agents, employees, licensees, invitees, or contractors, (v) any accident or casualty on the Land, (vi) any representations by Grantee or any of its agents or employees, (vii) any violation or alleged violation by Grantee, its employees or agents of any law now or hereafter enacted, (viii) any slope failure or subsurface geologic or groundwater condition, (ix) any work of design, construction, engineering or other work with respect to the Land, (x) any other cause whatsoever in connection with Grantee's use of the Land or Grantee's performances under this Declaration, or any other agreement with Declarant relating to the Land, or (b) the negligence or willful misconduct of Grantee or its employees or agents in the development, construction, grading or other work performed off the Land by Grantee pursuant to this Declaration, or (c) the breach by Grantee of any of its obligations under this Declaration. Furthermore, as a material part of the consideration of this Declaration, Grantee hereby waives on its behalf all claims and demands against Declarant for any such loss, damage, or injury of Grantee, and agrees to indemnify, defend and hold harmless Declarant and its property, and the other Indemnitees from all loss, liability, damage, costs and expenses (including attorneys' fees) arising from or related to any such loss, damage, injury or claim, whether incurred or made by Grantee or any other person(s). The foregoing waiver and indemnity shall apply to a claim or action brought by a private party or by a governmental agency or entity under any statute or common law now or hereinafter in effect and is intended to apply with respect to loss, damage, injury or claim arising before or after the lease, sale or other conveyance of any portion or all of the Land or any improvements thereon. With respect to design, construction methods, materials, locations and other matters for which Declarant has given or will give its approval, recommendation or other direction, the foregoing waiver, indemnity and agreement shall apply irrespective of Declarant's approval, recommendation or other direction. Notwithstanding anything to the contrary above, nothing contained in this Section shall operate to relieve Declarant or the other Indemnitees from any loss, damage, injury or claim ultimately established by a court of competent jurisdiction to have been caused by the sole negligence or willful misconduct of Declarant or the other Indemnitees. Grantee's covenants in this Section arising from or related to acts or occurrences during the time of Grantee's ownership shall survive the lease or other conveyance of all or any part of the Land or improvements thereon and shall be binding on said Grantee (as well as its successors to the Land) until such time as action against the Indemnitees is absolutely barred by an applicable statute of limitations.

ARTICLE 4. DECLARANT'S RIGHT OF FIRST REFUSAL. Except with regard to "Permitted Transfers" described in the Section above entitled "Transfers", if, at any time prior to the twenty fifth (25th) anniversary of the Effective Date, Grantee shall determine to transfer all or any part of the Land or the improvements thereon or any interest therein ("Interest"), Grantee shall notify Declarant of the price and the terms on which Grantee will be willing to transfer. If Declarant, within sixty (60) days after receipt of Grantee's notice, indicates in writing its agreement to purchase said Interest for the price and on the terms stated in Grantee's notice, then Grantee shall transfer and convey the Interest to Declarant for the price and on the terms stated in such notice. If Declarant does not indicate its agreement within such sixty (60) day period, then Grantee thereafter shall have the right to transfer and convey the Interest to a third party, but only for a price not less than the price offered to Declarant and on terms not more favorable than those stated in the notice. If Grantee does not so transfer and convey the Interest within one hundred eighty (180) days after Grantee's notice, then any further transactions (including a transaction on the same price and terms previously submitted to

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Declarant) shall be deemed a new determination by Grantee to transfer and convey said Interest, and the provisions of this Article shall again be applicable.

ARTICLE 5. REMEDIES.

5.1 Default and General Remedies. In the event of any breach, violation or failure to perform or satisfy any of the Restrictions which has not been cured within the applicable cure period as set forth below, Declarant at its sole option and discretion may enforce any one or more of the following remedies or any other rights or remedies to which Declarant may be entitled by law or equity, whether or not set forth herein. Unless a cure period is otherwise specifically designated, a cure period shall commence when written notice is given to Grantee of a violation hereunder and shall end ten (10) days thereafter in the case of a monetary default and thirty (30) days thereafter in the case of a nonmonetary default; provided, however, that if a nonmonetary default is not reasonably susceptible to cure promptly within the thirty (30) day period, then Grantee shall have a reasonable time to cure the same so long as Grantee has commenced such cure promptly within the thirty (30) day period and thereafter diligently prosecutes the cure to completion. To the maximum extent allowable by law, all remedies provided herein or by law or equity shall be cumulative and not exclusive; provided, however, that except as provided in the following sentence in the event Declarant elects to exercise any remedy provided for in Section 5.3 hereof based upon a particular violation of the Restrictions, such remedy shall be Declarant's sole and exclusive remedy for such violation of the Restrictions. Notwithstanding the foregoing, Declarant's remedies for a violation or breach of Section 3.10 (Indemnity) shall be cumulative with and in addition to its remedies for other violations or breaches under this Declaration.

(a) Damages. Declarant may bring a suit for damages for any compensable breach of or noncompliance with any of the Restrictions, or declaratory relief to determine the enforceability of any of the Restrictions.

(b) Equity. It is recognized that a particular or ongoing violation by Grantee of one or more of the foregoing Restrictions may cause Declarant to suffer material injury or damage not compensable in money damages (including, but not limited to, irreparable effects on the type and quality of development on and use of the Benefitted Property or portions thereof and/or frustration of Declarant's purpose for conveyance of the Land to Grantee), and that Declarant shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with the Restrictions or an injunction to enjoin the continuance of any such breach or violation thereof, whether or not Declarant exercises any other remedy set forth herein.

5.2 Inspection. Declarant or its authorized representatives may from time to time, at any reasonable hour, enter upon and inspect the Land, site or any portion thereof or improvements thereon to ascertain compliance with the Restrictions, but without obligation to do so or liability therefor.

5.3 Option to Repurchase the Land. Upon any proposed, attempted or actual "transfer" in violation of the provisions of Section 2.7 above and, in addition to the foregoing remedies described in Section 5.1, upon any violation of the Restrictions itemized in Sections 2.1(a) ("Improvement and Continued Use") or 2.1(c) ("Commencement and Completion"), Declarant, in its sole option and discretion, shall be entitled to repurchase the Land as provided below. (Declarant shall not be entitled to repurchase the Land unless a proposed, attempted or actual transfer in violation of Section 2.7 has been initiated, a violation of the restrictions in violation of 2.1(a) has occurred or construction has not been commenced or completed as required by Section 2.1(c).)

(a) Grant of Option. Grantee hereby grants to Declarant an exclusive option to purchase the Land subject only to:

(i) Current taxes not yet delinquent;

(ii) Matters affecting title existing at the Effective Date of this Declaration, excluding any mortgage, deed of trust or similar instrument to which Declarant has subordinated the Enforcement Rights pursuant to Section 2.8 above;

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(iii) Matters affecting title which are created, made, assumed, consented to or requested by Declarant, its successors or assigns, excluding any mortgage, deed of trust, any matter related to issuance of any public obligation or similar instrument to which Declarant has consented without exercise of the Enforcement Rights or to which Declarant has subordinated the Enforcement Rights pursuant to Section 2.8 above;

(iv) Matters shown as printed exceptions in the standard form California Land Title Association owner's policy of title insurance.

(v) Noninterfering easements for utilities used in connection with the improvements constructed on the Land.

(b) Exercise of Repurchase Option. Declarant may exercise its option to repurchase the Land by giving written notice to Grantee of Declarant's election to repurchase within (i) sixty (60) days after receipt of Grantee's notice of proposed "transfer" as provided in Section 2.7 (Transfers) above, (ii) within ninety (90) days after Declarant receives actual notice of any transfer or attempted transfer in violation of any provision in Section 2.7, (iii) within ninety (90) days commencing thirty (30) days after delivery of notice to Grantee of violation of the Restrictions itemized in Section 2.1(a) if such violation has continued unabated, or (iv) within one hundred eighty (180) days of the respective commencement or completion dates (as such dates may be extended pursuant to the terms of this Declaration) in the event of Grantee's violation of Section 2.1(c) above. For purposes of this Section 5.3, Declarant's actual notice shall mean notice to the person to whom notice may be addressed under Section 6.7 of this Declaration, and no other persons. No failure of Declarant to exercise its option upon Grantee's failure to commence construction as provided above shall constitute a waiver of its right to exercise the option upon Grantee's failure to complete construction by the appropriate date, as described above. No failure of Declarant to exercise its option in the event of any proposed, attempted or actual "transfer" (whether approved by Declarant or not) in violation of Section 2.7 above shall constitute a waiver of Declarant's rights to exercise the option upon any such transfer subject to Section 2.7 which might be proposed, attempted or consummated at a later time. No failure of Declarant to deliver a notice of violation of the Restrictions contained in Section 2.1(a) shall constitute a waiver of Declarant's rights to deliver such notice at any time and exercise the option. Rescission of any notice of violation of the Restrictions itemized in Section 2.1(a) prior to the option becoming exercisable, or if such violation is cured, after the option becoming exercisable shall not constitute waiver of Declarant's right to later notify Grantee of a new violation and exercise the option. Any rescission of notice of exercise of this option shall not constitute waiver of Declarant's right to exercise the option again if a later event causes the option to become exercisable.

(c) Expiration and Quitclaim. Unless exercised by Declarant, this option shall expire upon the twenty fifth (25th) anniversary of the Effective Date. After expiration and upon written request therefor by Grantee, Declarant shall execute and deliver to Grantee a quitclaim deed satisfactory to Declarant relinquishing all of its rights under the option to repurchase portion of this Declaration.

(d) Repurchase Price. Declarant's purchase price for the Land upon its exercise of the option provided above, shall be the greater of:

(i) An amount including the following:

[A] The price attributable to the Land equal to the lesser of (A) $4,400,000 increased or decreased by CPI adjustments which shall be limited to an annualized increase or decrease of five percent (5%) per annum or (B) the appraised fair market value of the Land with the use restricted to the use for which Declarant notifies Grantee at the time of exercise of the option that it intends to use the Land. Declarant shall notify Grantee that it intends to use the Land either for commercial office or retail use at the time of delivery of the notice of exercise or any time thereafter (Failure of Declarant to specify a use in conjunction with delivery of a notice of exercise of the option shall not invalidate or otherwise affect exercise of the option.). The CPI adjustment shall be the percentage increase or decrease in the CPI measured from the month which is two months prior to the Effective Date to the month which is two months before the date of delivery of the notice of exercise.

The CPI shall be the Consumer Price Index for All Urban Consumers Los Angeles-Anaheim-Riverside Metropolitan Area (all items) compiled by the United States Department of Labor, Bureau of Labor Statistics, based upon 1982-84 as 100; provided, however, that if the CPI is modified or changed, then the CPI shall be a converted or substituted index as determined by Declarant. Plus

[B] The fair market value of the Useable Improvements, if any, on the Land at the time the Option is exercised. The "Useable Improvements" shall be limited to those interior areas of buildings which can be used or converted for use as interior commercial or retail rentable space in accordance with the use which Declarant intends to put the Useable Improvements as designated by Declarant. Fair market value of such Useable Improvements shall be determined using an income method of appraisal based upon comparable rents determined on a useable square foot basis for the square footage of the Useable Improvements offset by the cost of any improvements required to convert the use of the building to the use which Declarant notifies Grantee that it intends to put the Usable Improvements. Less

[C] All costs, expenses, interest, fees, advances and other sums required to be paid by Grantee to Declarant hereunder, to the extent not reimbursed to Declarant by Grantee, shall reduce the amount of any repurchase price to be paid by Declarant under the terms of the repurchase option contained in this Declaration. Or

(ii) The unamortized principal amount, plus interest of, and expenses (including without limitation costs to redeem and discharge including any call premium provided that aggregate call premiums shall be limited to five percent (5%) of principal) incurred in connection with, any issue of public obligations where the proceeds have been used only for costs and expenses related to construction of the Specific Facilities on the Land provided that the original principal amount of such public obligations does not exceed $6,000,000.00 and provided that the amount payable to Grantee under this subparagraph (ii) shall be reduced and offset by any and all funds held for the benefit of any holders of public obligations other than funds held to pay the costs of issuance, if any.

(e) Repurchase Escrow Terms. Within five (5) days after Declarant's exercise of the option as provided above or as soon thereafter as possible, an escrow shall be created at First American Title Insurance Company or another escrow company selected by Declarant to consummate the purchase as specified herein, which escrow shall have a time limit of thirty (30) days extended by any period necessary to arbitrate any determination of fair market value as provided in Section 5.4 below. Said escrow shall be subject only to approval by Declarant of a then current preliminary title report. Any exceptions shown thereon created on or after the Effective Date hereof, and disapproved by written notice to Grantee through escrow, shall be removed by Grantee at its sole expense at or prior to closing of escrow. In the event that the Land or any portion thereof is encumbered by a mortgage or deed of trust, Declarant may unilaterally instruct the escrow agent to satisfy the indebtedness secured thereby out of the proceeds payable to Grantee through the foregoing escrow. Any additional amount necessary to satisfy such indebtedness shall be paid by Grantee. Grantee and Declarant shall each pay one-half of the escrow fees. Grantee shall pay for documentary tax stamps, for recording the deed, and for a California Land Title Association standard form owner's coverage policy of title insurance in the amount of the purchase price showing title to the Land vested in Declarant or its assigns free and clear of all liens, encumbrances or other title exceptions other than those set forth in this Declaration. Any other costs or expense shall be allocated between the parties in the manner customary in Orange County, California.

(f) Irrevocability. The option created hereby shall be irrevocable by Grantee, and shall be binding upon the representatives, successors and assigns of Grantee.

(g) Warranties, Plans and Specifications. In the event Declarant reacquires all or any portion of the Land, the Specific Facilities or the Other Improvements under this Section 5.3, Grantee shall assign and transfer to Declarant for no additional consideration, all warranties, plans and specifications relating to the Usable Improvements and any other improvements transferred by Grantee to Declarant hereunder.

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5.4 Arbitration Procedure. If Declarant and Grantee are not able to agree to the fair market value of the Land or the Useable Improvements within thirty (30) days after the date Declarant gives Grantee notice of exercise of the option, then the following arbitration procedure shall apply:

[A] Declarant shall within an additional thirty (30) days, at Declarant's cost, deliver to Grantee a written appraisal of the applicable highest fair market value with which Declarant agrees, prepared by an independent qualified appraiser ("Declarant's Appraisal"). The term "independent qualified appraiser" as used in this Section shall mean a professional independent appraiser who is a Member of the American Institute of Real Estate Appraisers (R.M. or M.A.I.), the Society of Real Estate Appraisers (S.R.A., S.R.P.A., or S.R.E.A.), the American Society of Appraisers (member or senior member A.S.A.), or another recognized association of appraisers, or a similar association of real estate appraisers that has adopted rules and regulations governing the professional conduct and ethics of its members requiring independent appraisals without bias to any party or to any result, or has such other education and experience so as to be considered qualified by both parties.

[B] If Grantee does not agree with Declarant's Appraisal, Grantee shall notify Declarant in writing of such disagreement in writing within ten (10) days after receipt of Declarant's Appraisal. Within thirty (30) days of such notice, Grantee shall at its cost deliver to Declarant a written appraisal of the applicable highest market value with which Grantee agrees, prepared by an independent qualified appraiser ("Grantee's Appraisal"). If Grantee fails to deliver Grantee's Appraisal within the time provided, or if Grantee's Appraisal of fair market value is lower than or equal to that contained in Declarant's Appraisal, then Declarant's Appraisal shall constitute the final and binding determination of the applicable fair market value.

[C] If Grantee's Appraisal is delivered to Declarant within the time provided and is higher, than Declarant's Appraisal, and if Declarant and Grantee cannot then agree as to the applicable highest fair market value within ten (10) days after delivery of Grantee's Appraisal to Declarant, then Declarant and Grantee shall within ten (10) days thereafter mutually agree on a third independent qualified appraiser acceptable to them to make an independent determination of the applicable highest fair market value (the "Final Appraisal"). Such Final Appraisal shall be delivered to Declarant and Grantee within thirty (30) days of the selection of the third appraiser. If Declarant and Grantee do not agree on a third independent qualified appraiser acceptable to them as specified above, then such third appraiser shall be appointed in accordance with the provisions of California Code of Civil Procedure Section 1281.6, or any successor statute, and in such event the independent determination of the highest fair market value made by the third appraiser so appointed shall be the "Final Appraisal." If the third appraiser must be appointed pursuant to the provisions of the California Code of Civil Procedure Section 1281.6, or any successor statute, Declarant shall file a petition to appoint the third appraiser with the Superior Court of Orange County, California ("Court"), and shall set the hearing on the petition on the earliest date permitted by the Court's calendar and by the applicable notice period required by law. Declarant and Grantee shall share equally the cost of the Final Appraisal. If the Final Appraisal states a fair market value between that of Declarant's Appraisal and Grantee's Appraisal, the Final Appraisal shall be the final and binding determination of the applicable market value. If the fair market value established in the Final Appraisal is higher than (1) the fair market value established in Grantee's Appraisal or is lower than (2) the fair market value established in Declarant's Appraisal, or equal to either, then the final determination of the applicable fair market value shall be (1) or (2) depending upon which one is equal or closer to the fair market value established in the Final Appraisal.

[D] The procedure set forth above for determining the applicable market value shall be the exclusive procedure therefor and shall be final, binding and nonappealable unless expressly waived by both parties in writing. It is the responsibility of Grantee to ensure that this procedure for determining highest fair market value is instituted in sufficient time to satisfy any commitments, agreements or needs of Grantee.

5.5 Waiver. No Waiver by Declarant of a breach of any of the Restrictions by Grantee and no delay or failure to enforce any of the

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Restrictions shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other of the Restrictions. No waiver of any breach or default of Grantee hereunder shall be implied from any omission by Declarant to take any action on account of such breach or default if such breach or default persists or is repeated, and no express waiver shall affect a breach or default other than as specified in said waiver. The consent or approval by Declarant to or of any act by Grantee requiring Declarant's consent or approval shall not be deemed to waive or render unnecessary Declarant's consent or approval to or of any subsequent similar acts by Grantee.

5.6 Costs of Enforcement. In the event any legal or equitable action or proceeding shall be instituted between Declarant and Grantee to enforce any provision of this Declaration, the party prevailing in such action shall be entitled to recover from the losing party all of its costs, including court costs and reasonable attorneys' fees.

5.7 Rights of Lenders. No breach or violation of the Restrictions shall defeat or render invalid the lien of any mortgage, deed of trust or similar instrument securing a loan made in good faith and for value with respect to the development or permanent financing of the Land or any portion thereof; provided, however, that this Declaration and all provisions hereof shall be binding upon and effective against any subsequent owner or other occupant of the Land or portion thereof whose title is acquired by foreclosure, trustee's sale or deed in lieu of foreclosure but (a) such subsequent owner shall have a reasonable time after acquiring title in which to cure any violations or correct and change any facts giving rise to Declarant's rights under this Declaration occurring prior to such transfer of title and which are reasonably capable of being cured or changed provided, that such subsequent owner diligently acts to effect such cure or change (and in the event of such diligent and timely cure, such subsequent owner shall have no further liability in connection with such prior violation or the continued existence of such violation until such cure is completed), and (b) Sections 5.1(a) (Damages) and 5.3 (Option to Repurchase the Land) shall not be applicable as to such subsequent owner with regard to any noncurable default occurring prior to the time such subsequent owner acquired title. Notwithstanding the foregoing, any such subsequent owner shall be required to use the Land in accordance with the restrictions set forth in Section 2.1(a) and diligently complete construction of any Specific Facilities and Other Improvements which are incomplete on the date such subsequent owner acquires title, all subject to the requirements contained in this Declaration, except the time periods referred to in Section 2.1(c) shall be reasonably extended. For purposes of this Section, the construction or installation of any improvement in violation of the requirements of this Declaration shall be deemed "curable" so long as reconstruction, repair or replacement in a manner consistent with the requirements of this Declaration is physically and legally possible (without respect to cost).

5.8 Advances. Declarant shall be entitled to advance any sums Declarant in its sole discretion deems necessary to protect and preserve the security for its rights and interest under this Declaration (including but not limited to sums for completion of construction of the Specific Facilities or any offsite improvements, any property taxes or assessments, insurance premiums, or amounts secured or represented by encumbrances or liens or other charges on any portion of the Land which appear to be prior to Declarant's rights and interest under this Declaration), all of which advances together with interest at the maximum contract rate then permitted by law shall be paid to Declarant upon demand.

ARTICLE 6. GENERAL PROVISIONS.

6.1 Unavoidable Delay. Any prevention, delay or stoppage in the work of building the Specific Facilities, the Other Improvements and any other related improvements or other work as provided for in this Declaration caused by acts of God, war, inability to obtain labor or materials or reasonable substitutes therefor, or other similar matters or causes beyond the reasonable control of Grantee shall extend the time within which this Declaration requires certain acts to be performed for a period or periods equal to any period of such prevention, delay or stoppage, but not to exceed in the aggregate one year; provided, however, that nothing in this Section shall excuse the prompt payment of any and all amounts due from Grantee to Declarant as required herein or the performance of any act rendered difficult because of the financial condition of

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Grantee or because of any inability of Grantee to obtain funding from any source. Without limiting the generality of the foregoing, in no event shall Grantee's inability to obtain construction or permanent financing for development of the Land, or a portion thereof, constitute an unavoidable delay pursuant to this Section. Furthermore, in no event shall any extension of any period of time be deemed to have occurred unless Grantee shall have given written notice to Declarant within fifteen (15) days following any such delay, setting forth the facts giving rise to such extension; and provided further that the period of time for exercise of Declarant's rights shall be commensurately extended.

6.2 Continuous Operations. Grantee shall proceed continuously and diligently in accordance with the terms and conditions of this Declaration. In the event Grantee does not proceed continuously and diligently, such failure to so proceed may, at the option of Declarant, be considered an event of default herein, except as such failure is excused by reason of any unavoidable delay as set forth in the Section hereof entitled "Unavoidable Delay."

6.3 Covenants to Run With the Land; Term.

(a) Covenants to Run With the Land. The Land shall be held, improved, developed, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the Restrictions set forth in this Declaration. The Restrictions are for the benefit of the Benefitted Property and are intended and shall be construed as covenants and conditions running with and binding the Land and equitable servitudes upon the Land and every part thereof. Furthermore, all and each of the Restrictions shall be binding upon and burden all persons having or acquiring any right, title or interest in the Land, or any part thereof, and their successors and assigns, and shall inure to the benefit of the Benefitted Property and the owners of the Benefitted Property, their successors and assigns, and shall be enforceable by Declarant and its successors and assigns, all upon the terms, provisions and conditions set forth herein.

(b) Term. All of the terms and provisions set forth in this Declaration shall continue in full force and effect in perpetuity, except that Declarant's "Enforcement Rights" (as described in Section 2.8 above) shall terminate twenty-five (25) years from the Effective Date hereof. (The provisions of this Declaration which shall survive in perpetuity shall include, without limitation Article 1, Sections 2.1 through 2.6, inclusive, 2.9, 2.10, Article 3, Sections 5.1, 5.2, 5.5 through 5.8, inclusive, and this Article 6.)

6.4 Assignment by Declarant. Declarant may assign any of its rights and powers under this Declaration to any fee owner of any portion of the Benefitted Property, so long as such person or entity in writing agrees to assume the duties of Declarant pertaining to the particular rights and powers assigned. Upon the recordation of such writing accepting such assignment and assuming such duties, such person or entity shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Without limiting the generality of the foregoing, Declarant may make such assignment as to the entire Land or to any portion thereof. Unless specifically assigned in writing as stated in this paragraph, Declarant alone shall have the right to enforce the Restrictions and the other provisions of this Declaration or to recover damages or other amounts for violation of the Restrictions or breach of Grantee's duties hereunder.

6.5 Amendments. Except as provided in this Declaration concerning (a) substitution of other real property as the Benefitted Property, (b) release of any portion or all of the Land from this Declaration, (c) reacquisition of the Land by Declarant and (d) assignment by Declarant of its rights under this Declaration, this Declaration may be terminated, extended or amended only by a writing executed by Declarant and Grantee and recorded against the Land.

6.6 Release.

(a) Release by Declarant. Declarant may release any portion of the Land from this Declaration at any time and for any reason without the approval of Grantee.

(b) Not Applicable to Declarant. Notwithstanding anything herein contained to the contrary, if Declarant reacquires title to the Land or any portion thereof at any time after the date hereof and record(s) a notice of

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termination of these Restrictions in the Office of the County Recorder of Orange County, California, these Restrictions shall cease and terminate and be of no further force or effect as to Declarant and such property, effective as of the date of such recordation.

6.7 Notice. All notices, consents, requests, demands and other communications provided for herein shall be in writing and shall be deemed to have been duly given if and when personally served or forty eight (48) hours after being sent by United States registered mail, return receipt requested, postage prepared, to the other party at the following respective addresses:

DECLARANT: THE IRVINE COMPANY
c/o IRVINE LAND MANAGEMENT COMPANY
Post Office Box I
Newport Beach, California 92658-8904
Attention: President/ILMC

GRANTEE: City of Newport Beach
3300 Newport Boulevard
Post Office Box 1768
Newport Beach, CA 92659-1768

or at such other address as Declarant or Grantee may designate to the other in writing in accordance with the provision of this Section.

6.8 Governing Law. This Declaration shall be governed by and construed under the laws of the State of California.

6.9 Severability. In the event that any portion of this Declaration shall become illegal, null or void or against any public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against any public policy, the remaining portions of this Declaration shall not be affected thereby and shall remain in force and effect to the full extent permitted by law.

6.10 Captions. The captions used herein are for convenience only and are not a part of this Declaration and do not in any way limit or amplify the terms and provisions hereof.

6.11 Entire Agreement. This Declaration, including Exhibits attached hereto which are incorporated herein by this reference, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. The forgoing sentence shall in no way affect the validity of the Agreement pursuant to which Grantee acquired the Land or any instruments executed in connection therewith.

6.12 Gender and Number. In this Declaration (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural include one another.

6.13 Time of the Essence. Time is of the essence of each provision of this Declaration in which time is an element.

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the date written below.

"DECLARANT"

THE IRVINE COMPANY,
a Michigan corporation

By: T. Patrick Smith

Its: Vice President

By: [signature]

Its: Assistant Secretary

"GRANTEE"

CITY OF NEWPORT BEACH,
a California municipal corporation

By: [signature]
Its: Mayor

ATTEST:

By: Wenda E. Leggio
Its: City Clerk

APPROVAL RECOMMENDED

By: Robert J. Wynn
Its: City Manager

APPROVED AS TO FORM:

By: [signature]
Its: City Attorney

STATE OF CALIFORNIA)
) ss
COUNTY OF Orange)

On this 20th day of March in the year 1992 before me, the undersigned, a Notary Public in and for said State, personally appeared T. Patrick Smith and Peter D. Zeughauser personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as Vice President and Assistant Secretary respectively, on behalf of THE IRVINE COMPANY and acknowledged to me that said corporation executed it.

WITNESS my hand and official seal.

R. M. Sweeney
Notary Public in and for said State

OFFICIAL SEAL
R. M. SWEENEY
Notary Public-California
PRINCIPAL OFFICE IN
ORANGE COUNTY
My Comm. Exp. Oct. 22, 1992

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STATE OF CALIFORNIA)
) ss:
COUNTY OF ORANGE)

On March 19, 1992, before me, the undersigned, a Notary Public in and for the State, personally appeared Phil Sanzone, known to me to be the Mayor, Robert L. Wynn, known to me to be the City Manager, and Wanda E. Raggio, known to me to be the City Clerk, on behalf of the CITY OF NEWPORT BEACH, which executed the within instrument pursuant to governing law and a resolution of its board of directors and acknowledge to me that the CITY OF NEWPORT BEACH executed it.

WITNESS my hand and official seal.



Notary Public in and for said State

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EXHIBIT 1
To Declaration of Special Restrictions

Legal Description of "Benefitted Property"

EXHIBIT "1"

LEGAL DESCRIPTION

BENEFITED PROPERTY FOR THE
CITY OF NEWPORT BEACH LIBRARY SITE

Parcel 1 (500 and 550 Newport Center Drive and Adjacent Land)

That portion of Block 93 of Irvine's Subdivision in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 1, Page 88 of Miscellaneous Records Maps in the Office of the County Recorder of said Orange County, described as follows:

BEGINNING at the easterly terminus of that certain course shown as having a bearing and length of "South 80°14'38" East 91.45 feet" in the northerly right-of-way line of San Nicolas Drive on a map of Tract No. 6015, filed in Book 239, Pages 28 through 41 of Miscellaneous Maps in said Office of the County Recorder; thence along said right line and along the easterly right-of-way line of Newport Center Drive East, the southerly right-of-way line of Santa Rosa Drive and the southwesterly right-of-way line of San Joaquin Hills Road, all as shown on said map of Tract No. 6015 through the following courses: North 80°14'38" West 91.45 feet to the beginning of a tangent curve concave northeasterly and having a radius of 25.00 feet; thence along said curve westerly and northwesterly 38.16 feet through a central angle of 87°26'49" to a point of reverse curvature with a curve concave westerly and having a radius of 1670.00 feet, a radial line of said curve from said point bears North 82°47'49" West; thence along said curve northerly 472.13 feet through a central angle of 16°11'54" to a point of reverse curvature with a curve concave southeasterly and having a radius of 25.00 feet, a radial line of said curve from said point bears North 81°00'17" East; thence along said curve northerly and northeasterly 38.16 feet through a central angle of 87°26'49"; thence tangent from said curve North 78°27'06" East 69.97 feet to the beginning of a tangent curve concave northwesterly and having a radius of 825.50 feet; thence along said curve northeasterly 444.81 feet through a central angle of 30°52'23"; thence tangent from said curve North 47°34'43" East 2.20 feet to the beginning of a tangent curve concave southerly and having a radius of 25.00 feet; thence along said curve northeasterly and easterly 38.96 feet through a central angle of 89°17'26" to a point of reverse curvature with a curve concave northeasterly and having a radius of 6072.50 feet, a radial line of said curve from said point bears North 46°52'09" East; thence along said curve southeasterly 329.29 feet through a central angel of 3°06'25"; thence tangent from said curve South 46°14'16" East 31.81 feet to the northerly corner of Parcel 1 as shown on a map filed in Book 13, Page 41 of Parcel Maps in said Office of the County Recorder; thence leaving said southwesterly right-of-way line of San Joaquin Hills Road and along the boundary of said Parcel 1 the following courses: South 44°06'14" West 140.00 feet; thence south 45°53'46" East 183.00 feet to the beginning of a tangent curve concave northerly and having a radius of 25.00 feet; thence along said curve southeasterly and easterly 39.27 feet through a central angle of 90°00'00"; thence tangent from said curve North 44°06'14" East 103.60 feet to the beginning of a tangent curve concave northwesterly and having a radius of 25.00 feet; thence along said curve northeasterly 13.23 feet through a central angle of 30°19'01" to a non-tangent intersection with said southwesterly right-of-way of San Joaquin Hills Road; thence leaving said boundary and along said right-of-way line South 46°14'16" East 48.72 feet to the northerly corner of Parcel 1 as shown on a map filed in Book 21, Page 18 of Parcel Maps in said Office of the county Recorder, said corner being a point in a non-tangent curve concave southeasterly and having a radius of 25.00 feet, a radial line of said curve from said point bears South 16°06'05" East; thence along the boundary of said Parcel 1 the following courses: along said curve southwesterly 13.00 feet through a central angle of 29°47'41"; thence tangent from said curve South 44°06'14" West 104.09 feet to the beginning of a tangent curve concave easterly and having a radius of 25.00 feet; thence along said curve southwesterly and southerly 39.27 feet through a central angle of 90°00'00"; thence tangent from said curve South 45°53'46" East 186.00 feet to the westerly corner of Parcel 1 as shown on a map filed in Book 54, Page 23 of Parcel Maps in said Office of County Recorder; thence leaving the boundary of Parcel 1 as shown

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on said map filed in Book 21, Page 18 of Parcel Maps and along the boundary of Parcel 1 as shown on said map filed in Book 54, Page 23 of Parcel Maps South 45°53'46" East 68.09 feet to the beginning of a tangent curve concave westerly and having a radius of 40.00 feet; thence continuing along said boundary and said curve southeasterly 36.39 feet through a central angle of 52°07'23" to the northwesterly corner of Parcel 3 as shown on Parcel Map No. 84-706 filed in Book 192, Pages 1 and 2 of Parcel Maps in said Office of the County Recorder, a radial line of said curve from said corner bears North 83°46'23" West; thence along the boundary of said Parcel 3 and Parcel 2 as shown on said Parcel Map the following courses: continuing along said curve southerly 26.44 feet through a central angel of 37°52'37"; thence tangent from said curve South 44°06'14" West 289.00 feet to the northeasterly corner of Parcel 1 as shown on a map filed in Book 27, Page 43 of Parcel Maps in said Office of the County Recorder, said corner being the beginning of a curve tangent to last said course, concave northerly and having a radius of 40.00 feet; thence leaving the boundary of said Parcel 2 and along the boundary of said Parcel 1 the following courses: along said curve southwesterly and westerly 62.83 feet through a central angel of 90°00'00"; thence tangent from said curve North 45°53'46" West 14.11 feet to the beginning of a tangent curve concave southerly and having a radius of 25.00 feet; thence along said curve northwesterly and westerly 39.27 feet through a central angle of 90°00'00"; thence tangent from said curve South 44°06'14" West 99.44 feet to the beginning of a tangent curve concave southeasterly and having a radius of 25.00 feet; thence along said curve southwesterly 13.46 feet to a non-tangent intersection with the northeasterly right-of-way line of said San Nicolas Drive as described in a Grant of Easement to the City of Newport Beach recorded in Book 8987, Page 836 of Official Records in said Office of the County Recorder; thence leaving said boundary of Parcel 1 and along said right-of-way line as described in said Grant of Easement and as shown on said map of Tract No. 6015 the following courses: North 46°44'00" West 92.34 feet to the beginning of a tangent curve concave southwesterly and having a radius of 950.50 feet; thence along said curve northwesterly 555.92 feet through a central angle of 33°30'38" to the POINT OF BEGINNING.

Parcel 2 (Fashion Island Shopping Center)

That portion of Tract 6015, in the City of Newport Beach, County of Orange, State of California, as per map filed in Book 239, pages 28 through 41, Miscellaneous Maps, records of said County, lying within the following described boundary:

Commencing at the center line intersection of Santa Rosa Drive with Newport Center Drive East as shown on said map; thence south 78°27'06" West 48.00 feet along the Westerly prolongation of the center line of said Santa Rosa Drive to a point on a non-tangent curve concave, Westerly and having a radius of 1557.00 feet, said point being the True Point of Beginning, a radial to said point bears North 78°27'06" East, said curve being concentric with the center line of said Newport Center Drive East; thence Southerly 1314.59 feet along said curve through an angle of 48°22'31" to the beginning of a compound curve concave Northerly and having a radius of 757.00 feet; thence Westerly 1464.87 feet along said curve through an angle of 110°52'24" to the beginning of a compound curve concave Easterly and having a radius of 1757.00 feet; thence Northerly 1248.07 feet along said curve through an angel of 40°41'58" to the beginning of a compound curve concave Southerly and having a radius of 897.00 feet; thence Easterly 2438.09 feet along said curve through an angle of 155°43'57" to the beginning of a compound curve concave Westerly and having a radius of 1557.00 feet; thence Southerly 117.38 feet along said curve through an angle of 4°19'10" to the True Point of Beginning.

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EXHIBIT 2
To Declaration of Special Restrictions

Requirements for Specific Facilities

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REQUIREMENTS FOR SPECIFIC FACILITIES

Description of Specific Facilities:

A free public library and related driveways, accessways and landscaping.

Permitted Use:

Public Library and related parking of private passenger automobiles during the hours from 6:00 a.m. to 11:30 p.m. daily.

Maximum No. of Buildings:	1	
Minimum Gross Floor Area:	10,000	square feet*
Maximum Gross Floor Area:	65,000	square feet*
Maximum Floor Area Ratio:	50	percent
Commencement Date:	12	months from Effective Date
Completion Date:	36	months from Effective Date

* By setting forth any required minimum or maximum gross foot area above, Declarant does not thereby represent or warrant that Buyer shall be able to develop the Land for such density.

REQUIREMENTS FOR OTHER IMPROVEMENTS

Those improvements required by Exhibit I to the Exchange Agreement.

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EXHIBIT 3

To Declaration of Special Restrictions

Subordination Agreement

When Recorded Mail To:

THE IRVINE COMPANY
550 Newport Center Drive
Newport Beach, CA 92660

Attention: President/ILMC

Space above this line for Recorder's use A.P. No._____

SUBORDINATION AGREEMENT

NOTICE; THIS SUBORDINATION AGREEMENT RESULTS IN YOUR RIGHTS AND INTERESTS AND YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

I. PARTIES AND DATE.

This Subordination Agreement ("Agreement") is made this ___ day of _____, 19__, by the CITY OF NEWPORT BEACH, a California municipal corporation ("Owner"), owner of the "Land" (as defined below), and THE IRVINE COMPANY, a Michigan corporation ("TIC"), declarant under the Declaration (defined below).

II. ACKNOWLEDGMENTS

Owner has executed a Declaration of Special Land Use Restrictions, Right of First Refusal, Mortgage Lien and Option to Repurchase (the "Declaration") dated _____, 19__, and recorded on _____ as Instrument No. _____ in the Official Records of Orange County California as an encumbrance on the title of the real property described as:

> Parcel ____ in the City of Newport Beach, County of Orange, State of California, as shown on a parcel map filed in Book ___, Pages___ to ___ inclusive, of Parcel Maps, in the office of the County Recorder of Orange County (the "Land").

Owner has executed, or is about to execute, certain loan documents ("Loan Documents") dated _____, 19__, with or in favor of _____, _____ ("Lender") to obtain and evidence a loan (the "Loan") from Lender in the amount of $_____. The Loan Documents have all been delivered to TIC and include, without limitation, a Deed of Trust (the "Deed of Trust") to be recorded concurrently with this Agreement as security for the obligations evidenced by the Loan Documents. Lender is incurring its obligations in connection with the Loan in good faith and for value pursuant to an agreement with Owner, on which TIC is relying and which is memorialized in the Loan Documents, that the proceeds of the Loan will be expended solely for financing or refinancing of construction of certain improvements on the Land, the plans and specifications for which have been, or will, prior to the commencement of construction, be approved by TIC, all in accordance with the provisions of the Loan Documents, and for no other purpose unless approved by TIC in writing in its sole discretion.

A condition precedent to Lender's agreement to make the Loan is that the Deed of Trust shall be and remain at all times a lien or charge upon the Land prior and superior to certain enforcement rights and remedies of TIC under the Declaration.

TIC and Owner agree that it is to their mutual benefit that Lender make the Loan to Owner. This Agreement is made in consideration of the mutual benefits

to TIC and Owner resulting from the Loan and for other valuable consideration, the receipt and sufficiency of which is acknowledged by TIC and Owner.

III. SUBORDINATION.

The Deed of Trust and any renewals or extensions thereof shall be and remain at all times a lien or charge on the Land prior and superior to Declarant's right of first refusal contained in Article 4 of the Declaration and the option to repurchase contained in Section 5.3 of the Declaration, (collectively, the "Enforcement Rights"); provided, however, that (1) the Declaration (including the Enforcement Rights) shall be binding upon and effective against any subsequent owner or other occupant of the Land or any portion thereof whose title is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise as provided in Section 5.7 of the Declaration, and (2) any subsequent owner shall have the cure rights as provided in Section 5.7. Notwithstanding anything to the contrary contained in this Agreement, Lender's foreclosure or similar or related proceeding under the Deed of Trust shall not extinguish the Declaration or TIC's Enforcement Rights, all of which shall survive such proceeding and shall be binding upon any subsequent owner acquiring title from Lender as stated above.

IV. MISCELLANEOUS

A. Entire Agreement.

This Agreement shall be the whole and only agreement between TIC and Owner with regard to the subordination of TIC's Enforcement Rights and remedies under the Declaration to the lien or charge of the Deed of Trust.

B. Attorneys' Fees.

The prevailing party in any litigation respecting this Agreement shall be entitled to reimbursement of attorney's fees and costs, whether or not taxable, incurred in the litigation.

"TIC"

THE IRVINE COMPANY,
a Michigan corporation

By:_____

Its:_____

By:_____

Its:_____

"OWNER"

CITY OF NEWPORT BEACH

By:_____

Its: Mayor

ATTEST:

By:_____

Its:

APPROVED AS TO FORM:

By:_____

Its: City Attorney

STATE OF CALIFORNIA)
).ss
COUNTY OF _____)

On _____, 19__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as _____ and _____ on behalf of THE IRVINE COMPANY, a Michigan corporation, and acknowledged to me that said corporation executed it.

WITNESS my hand and official seal.

_____
Notary Public in and for said State

STATE OF CALIFORNIA)
).ss
COUNTY OF _____)

On _____, 19__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Mayor, on behalf of City of Newport Beach, which executed the within instrument pursuant to governing law and a resolution of its board of directors and acknowledged to me that the City of Newport Beach executed it.

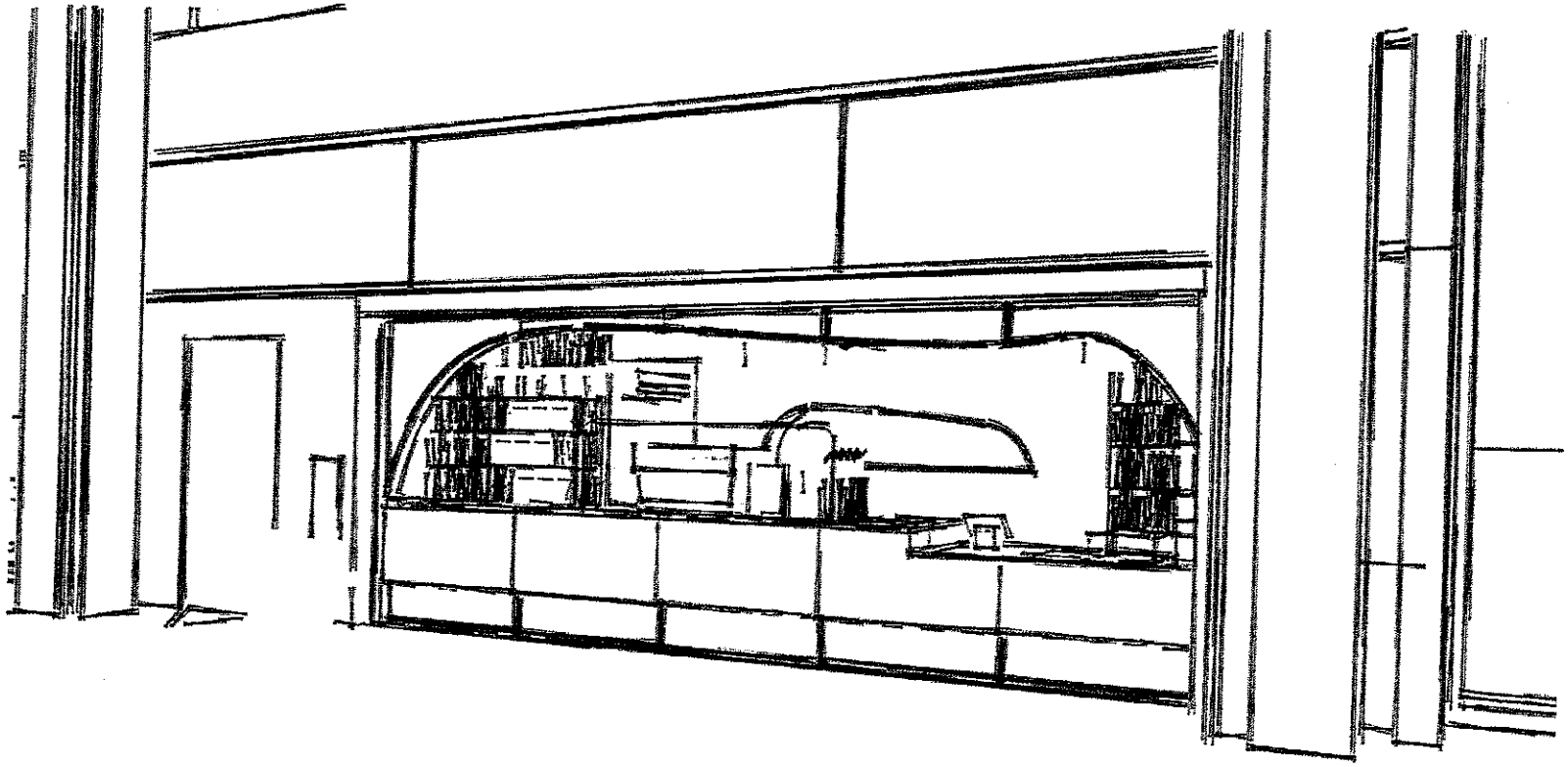
WITNESS my hand and official seal.

_____
Notary Public in and for said State

EXHIBIT "G"

CONCESSIONAIRE IMPROVEMENTS

Exhibit G

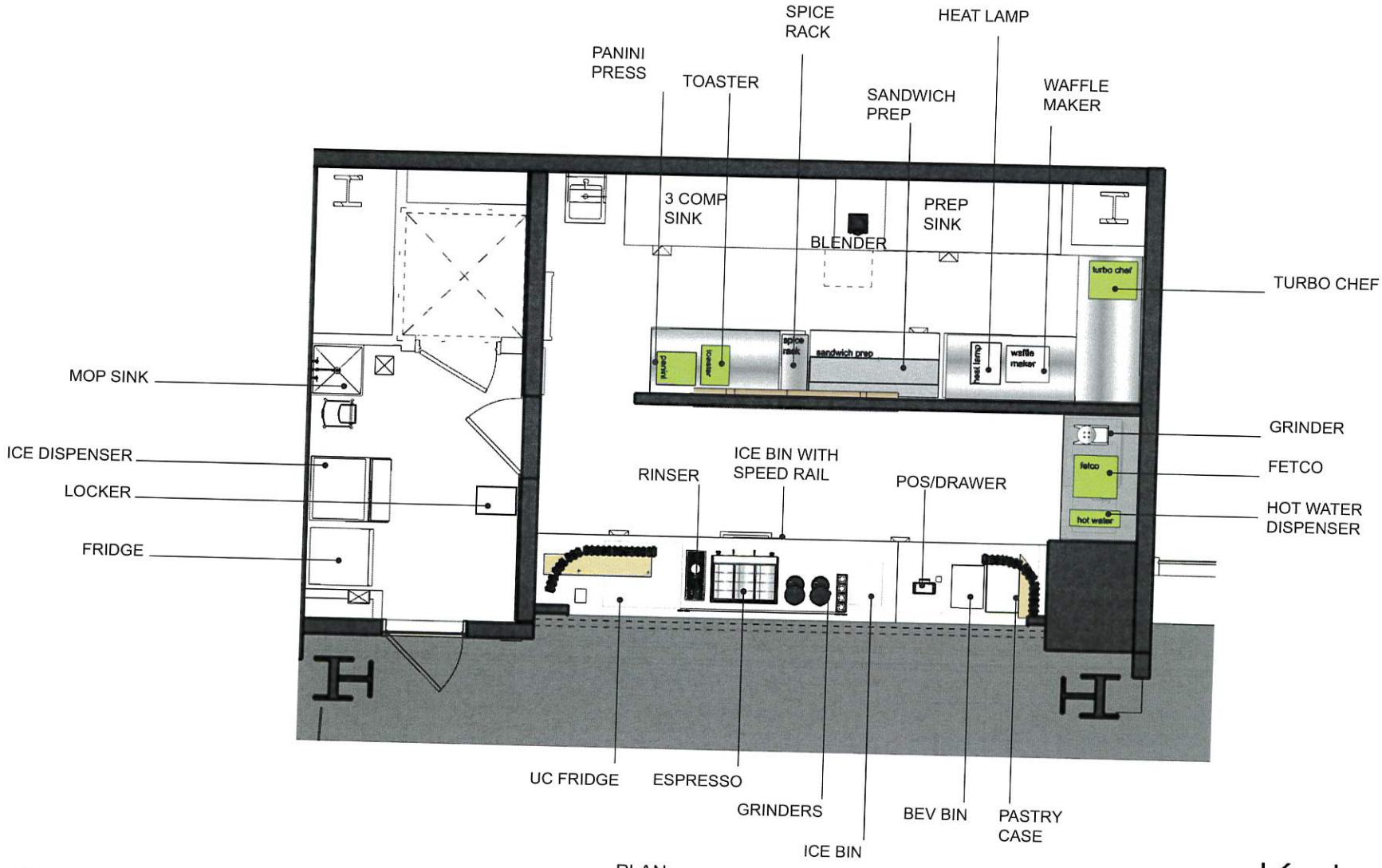


KIT @ the Library - Design Development Presentation

flt wrk shp studio

KIT

01


PANINI PRESS
TOASTER
SPICE RACK
SANDWICH PREP
HEAT LAMP
WAFFLE MAKER
3 COMP SINK
BLENDER
PREP SINK
TURBO CHEF
MOP SINK
ICE DISPENSER
LOCKER
FRIDGE
RINSER
ICE BIN WITH SPEED RAIL
POS/DRAWER
GRINDER
FETCO
HOT WATER DISPENSER
UC FRIDGE
ESPRESSO
GRINDERS
ICE BIN
BEV BIN
PASTRY CASE
turbo chef
panini
toaster
spice rack
sandwich prep
heat lamp
waffle maker
fetco
hot water

PLAN

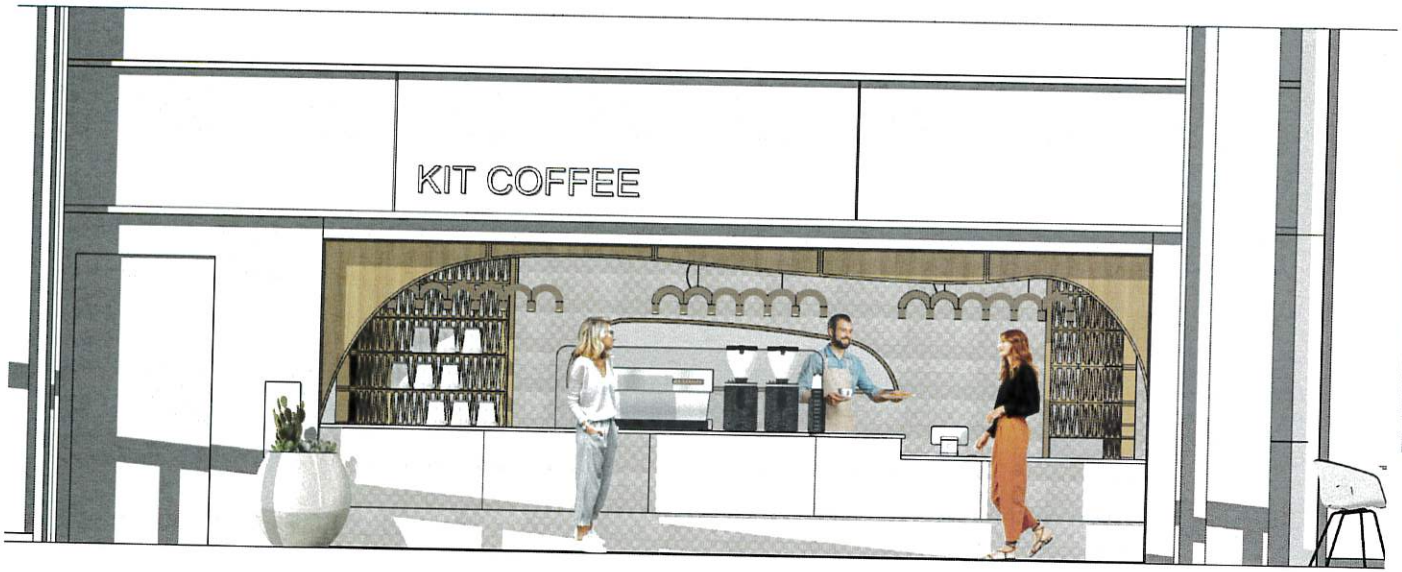
KIT

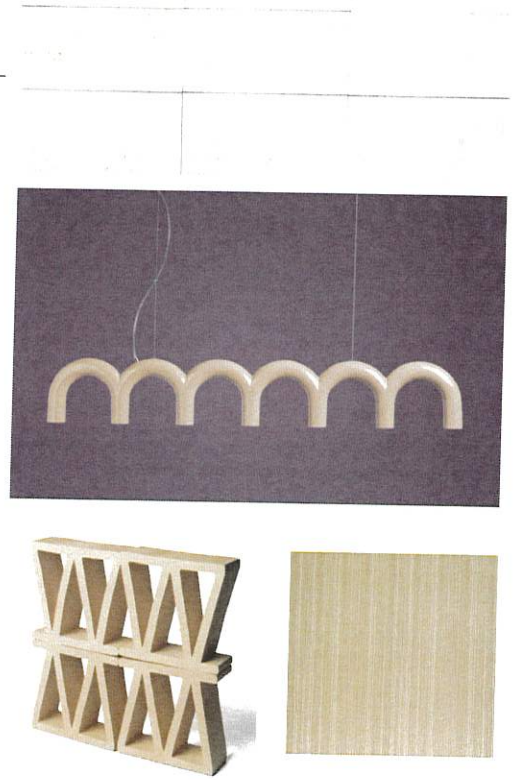


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STORAGE PLAN

KIT





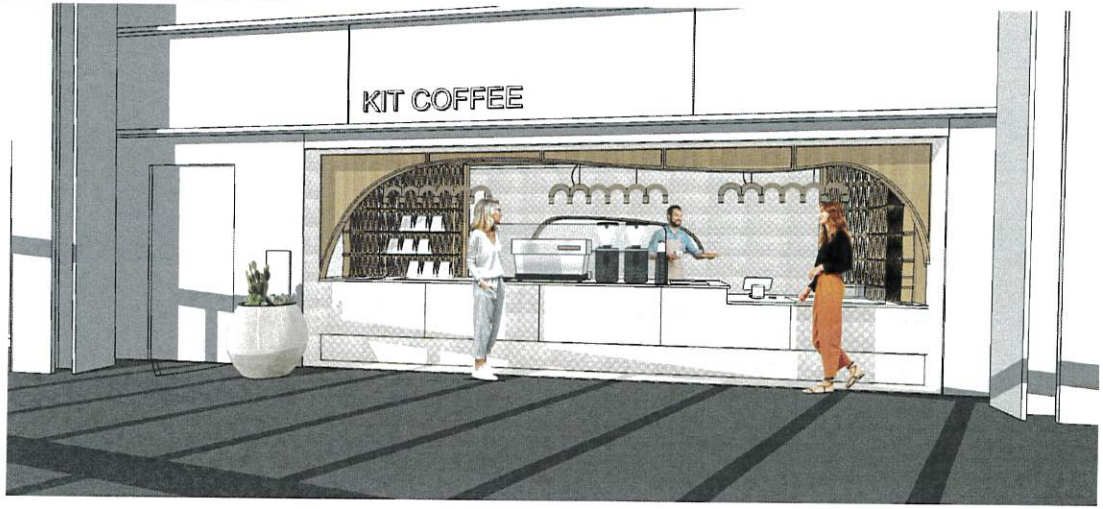
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VIEWS

KIT







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VIEWS

KIT

EXHIBIT "H"

INSURANCE

Provision of Insurance. Without limiting Concessionaire's indemnification of City and prior to commencement of work on Premises by Concessionaire or Concessionaire's agents, representatives, consultants, contractors and/or subcontractors, Concessionaire shall obtain, provide and maintain at its own expense during the term of this Agreement policies of insurance of the type and amounts described below and in a form satisfactory to City. Concessionaire agrees to provide insurance in accordance with requirements set forth here. If Concessionaire uses existing coverage to comply and that coverage does not meet these requirements, Concessionaire agrees to amend, supplement or endorse the existing coverage.

Signature. A person authorized by the insurer to bind coverage on its behalf shall sign certification of all required policies.

Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

1. Minimum Scope and Limit of Insurance.

   A. Workers' Compensation Coverage. Concessionaire shall maintain Workers' Compensation Insurance with statutory limits and Employer's Liability Insurance with a limit of at least one million dollars ($1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California.

      Concessionaire and Concessionaire's agents, representatives, consultants, contractors and/or subcontractors, shall submit to City, along with certificates of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees for all losses that relate in any way to this Agreement.

   B. General Liability Coverage. Concessionaire shall maintain commercial general liability insurance in an amount not less than two million dollars ($2,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, contractual liability. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement, or the general aggregate limit shall be at least twice the required occurrence limit.

C. Products Liability Coverage. Concessionaire shall maintain products liability insurance covering bodily injury and property damage for all activities of the Concessionaire arising out of or in connection with products and services sold by the Concessionaire under this Agreement, in an amount not less than two million dollars ($2,000,000) combined single limit for each occurrence.

D. Automobile Liability Coverage. Concessionaire shall maintain automobile insurance covering bodily injury and property damage for all activities of the Concessionaire arising out of or in connection with the services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars ($1,000,000) combined single limit for each occurrence.

E. Property Insurance shall be maintained on an "All Risk" basis, including collapse, equal to the full replacement cost of the property leased with no coinsurance clause. Concessionaire shall be solely responsible for the payment of any deductible.

F. Excess/Umbrella Liability Insurance shall be "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all the insurance requirements stated in this Agreement, including, but not limited to the additional insured, primary & non-contributory and waiver of subrogation insurance requirements stated herein. No insurance policies or self-insurance maintained by the City, whether primary, reinsurance or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until Concessionaire's primary and excess/umbrella liability policies are exhausted.

G. Liquor Liability Coverage. Concessionaire shall maintain liquor liability insurance in an amount not less than two million dollars ($2,000,000) per occurrence for bodily injury, personal injury, and property damage. Concessionaire shall obtain a liquor liability insurance policy that covers all alcohol sold or distributed under this Agreement. The policy shall specifically include assault and battery coverage as well as coverage for Concessionaire's employees and patrons.

H. Professional Liability (Errors & Omissions) Insurance. Concessionaire shall require that Concessionaire's consultants, contractors and/or subcontractors providing any design, engineering, surveying or architectural services for the Premises maintain professional liability insurance that covers the services to be performed, in the minimum amount of two million dollars ($2,000,000) per claim and four million dollars ($4,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Concessionaire shall require that Concessionaire's consultants, contractors and/or subcontractors agree to maintain continuous coverage through a period no less than three (3) years after completion of the services performed.

I. Builder's Risk Insurance. During construction, Concessionaire shall require that Concessionaire's construction contractors and subcontractors maintain Builders Risk insurance or an installation floater as directed by City, covering damages to the work for "all risk" or special causes of loss form with limits equal to one hundred percent (100%) of the completed value of the work, with coverage to continue until final acceptance of the work by Concessionaire and City. City shall be included as an insured on such policy, and Concessionaire shall provide City with a copy of the policy.

J. Pollution Liability Insurance. Concessionaire shall require that Concessionaire's construction contractors and subcontractors maintain a policy providing contractor's pollution liability ("CPL") coverage with a total limit of liability of no less than two million dollars ($2,000,000) per loss and in the aggregate per policy period dedicated to this project. The CPL shall be obtained on an occurrence basis for a policy term inclusive of the entire period of construction. If all or any portion of CPL coverage is available only on a claims-made basis, then a 10-year extended reporting period shall also be purchased. The CPL policy shall include coverage for cleanup costs, third-party bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by contracting operations. Coverage as required in this paragraph shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL shall also provide coverage for transportation and off- site disposal of materials. The policy shall not contain any provision or exclusion (including any so-called "insured versus insured" exclusion or "cross-liability" exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.

K. Fire and Extended Coverage. Concessionaire shall maintain fire and extended coverage insurance, together with insurance against vandalism, theft and malicious mischief, on the Concessionaire Improvements, trade fixtures, signs, equipment, personal property, inventory, and all other Alterations on or upon the Premises from loss or damage to the extent of their full replacement value.

L. Loss of Rent. Concessionaire shall maintain loss of rent insurance insuring that the Rent will be paid to City for a period up to six (6) months if the Premises are destroyed or rendered unusable or inaccessible for commercial purposes by a risk insured under a special form property coverage policy including vandalism and malicious mischief endorsements.

2. Endorsements. Insurance policies shall not be compliant if they include any limiting provision or endorsement contrary to this Agreement, including but not limited to restricting coverage to the sole liability of Concessionaire or excluding contractual liability. The following endorsements shall be provided to the City.

   A. Additional Insured Status. The City, its City Council, boards and commissions, officers, agents, volunteers and employees, are to be covered as additional insureds for the liability and defense of suits or claims arising out of Concessionaire's activities ongoing and completed operations related to this Agreement and with respect to use or occupancy of the Premises, except professional liability.

   B. Primary and Non-Contributory. This policy shall be considered primary insurance as respects to City, its City Council, boards and commissions, officers, agents, volunteers and employees as respects to all claims, losses, or liability arising directly or indirectly from the Concessionaire's operations or services provided to City. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.

   C. Liability Insurance. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

   D. Waiver of Subrogation. All insurance policies shall contain or be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, and employees. Concessionaire hereby waives its own right of recovery against City, its City Council, boards and commissions, officers, agents, volunteers, and employees and shall require similar written express waivers from Concessionaire's agents, representatives, consultants, contractors and/or subcontractors. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

   E. Loss Payee. Losses payable under the policy shall be paid to the City as its interests may appear.

3. Additional Agreements Between the Parties.

   A. General Obligations. In the event City determines that (i) the Concessionaire's activities on the Premises creates an increased or decreased risk of loss to the City, (ii) greater insurance coverage is required due to the passage of time, or (iii) changes in the industry require different coverage be obtained, Concessionaire agrees that the minimum limits of any insurance policy required to be obtained by Concessionaire or Concessionaire's consultants, contractors or subcontractors, may be changed accordingly upon receipt of written notice from City. With respect to changes in insurance requirements that are available

from Concessionaire's then-existing insurance carrier, Concessionaire shall deposit certificates evidencing acceptable insurance policies with City incorporating such changes within thirty (30) calendar days of receipt of such notice. With respect to changes in insurance requirements that are not available from Concessionaire's then- existing insurance carrier, Concessionaire shall deposit certificates evidencing acceptable insurance policies with City, incorporating such changes, within ninety (90) calendar days of receipt of such notice.

B. Use of Premises. Concessionaire agrees not to use the Premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance coverage for the Premises. Concessionaire further agrees not to keep on the Premises or permit to be kept, used, or sold thereon, anything prohibited by any insurance policy covering the Premises. Concessionaire shall, at its sole expense, comply with all reasonable requirements for maintaining the required insurance coverage on the Premises.

C. Evidence of Insurance. All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if approved in writing by the City. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Concessionaire shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

D. Notice of Cancellation. All insurance policies shall contain or be endorsed to provide that the insurance required by this Agreement shall not be suspended, voided, canceled, or reduced in coverage or in limits until thirty (30) days written notice has been served upon the City, except ten (10) days for non-payment of premium. It is Concessionaire's obligation to ensure that provisions for such notice have been established.

E. Self-Insured Retentions. Self-insured retentions (SIR's) must be declared to and approved by City. City may require Concessionaire to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the SIR. The policy language shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or City. Self-insured retentions shall be the sole responsibility of Concessionaire, or Concessionaire's agents, representatives, consultants,

contractors and/or subcontractors who procured such insurance. City may deduct from any amounts otherwise due Concessionaire to fund the SIR. The policy must also provide that defense costs, including the allocated loss adjustment expenses, will satisfy the SIR.

F. Contractual Liability. The policy shall cover liability assumed under an insured contract, including the tort liability of another assumed in a business contract, with no endorsement or modification limiting the scope of coverage for liability assumed under contract.

G. Reporting Requirements. Concessionaire shall give City prompt and timely notice of any claim made or suit arising out of or resulting from Concessionaire's or Concessionaire's agents, representatives, consultants, contractors and/or subcontractors' performance under this Agreement. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its City Council, boards and commissions, officers, agents, volunteers and employees.

H. Requirements Not Limiting. If Concessionaire, Concessionaire's agents, representatives, consultants, contractors and/or subcontractors maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by Concessionaire. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

I. Claims Made Policies. If coverage is written on a claims-made basis, the retroactive date of such insurance and all subsequent insurance shall coincide or precede the effective date of Concessionaire's initial Agreement with the City and continuous coverage shall be maintained, or an extended reporting period shall be exercised for a period of at least ten (10) years from termination or expiration of this Agreement.

J. Insurance For Subcontractors. Concessionaire shall be responsible for causing Concessionaire's agents, representatives, consultants, contractors and/or subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Agreement, including adding the City as an additional insured, providing primary and non-contributory coverage and waiver of subrogation to the policies. Concessionaire shall verify that all consultants, contractors and/or subcontractors maintain insurance meeting all the requirements stated herein, and Concessionaire shall ensure that City is an additional insured on insurance required from contractors, consultants and/or subcontractors.

EXHIBIT "I"

MEMORANDUM OF CONCESSION AGREEMENT

RECORDING REQUESTED AND
WHEN RECORDED RETURN TO:

Office of the City Clerk
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

[Exempt from Recordation Fee - Govt. Code §§. 6103 and 27383]

MEMORANDUM OF CONCESSION AGREEMENT

This Memorandum of Concession Agreement ("Memorandum") is dated _____ and is made between City of Newport Beach, a California municipal corporation and charter city ("City") and KIT at the Library, Inc., a California stock corporation ("Concessionaire"), concerning the Premises described in Attachment "A" attached hereto and by this reference made a part hereof.

For good and adequate consideration, City leases the Premises to Concessionaire and Concessionaire leases the Premises from City, for the term and on the provisions contained in the Concession Agreement ("Agreement") dated _____, including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of City in each instance, all as more specifically set forth in said Agreement, which said Agreement is incorporated in this Memorandum by this reference.

The term is five (5) years, beginning _____, 2025, and ending_____ _____, 2030, on the same terms and conditions contained in the Agreement.

This Memorandum is not a complete summary of the Agreement. Provisions in this Memorandum shall not be used in interpreting the Agreement's provisions. In the event of conflict between this Memorandum and the Agreement, the Agreement shall control. Execution hereof constitutes execution of the Agreement itself.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum as of the date first written above.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date:_____

By:_____
Aaron Harp
City Attorney

ATTEST:

Date:_____

By:_____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH ("City"),
a California municipal corporation and charter city

Date:_____

By:_____
Grace K. Leung
City Manager

CONCESSIONAIRE: KIT at the Library, Inc., a California stock corporation

Date:_____

By:_____
Eunice Hwang
Managing Member

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____} *ss.*
On _____, 20_____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature (seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____} *ss.*
On _____, 20_____ before me, _____,
Notary Public, personally appeared _____,
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

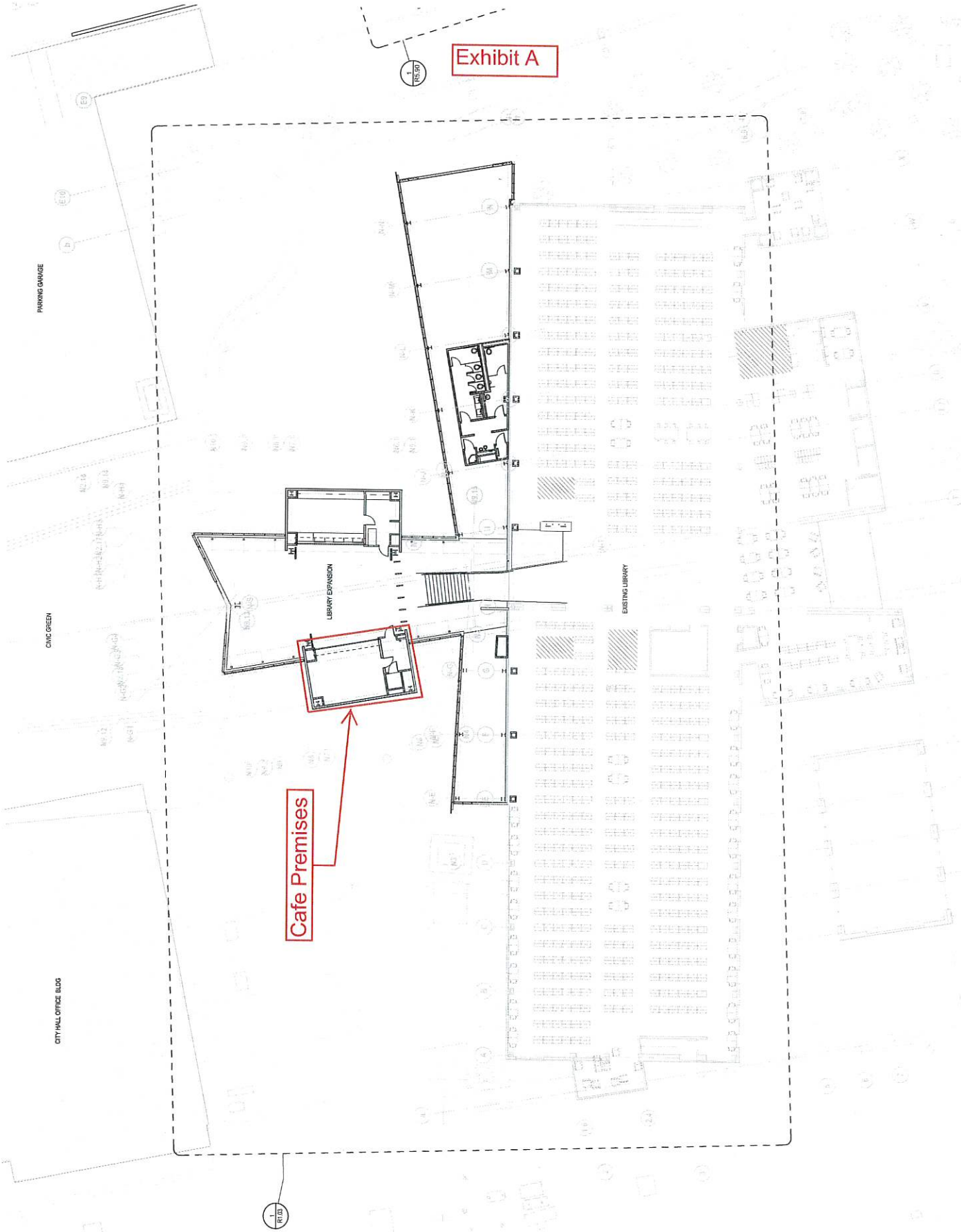
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature (seal)

ATTACHMENT "A"

PREMISES


Exhibit A
PARKING GARAGE
CIVIC GREEN
CITY HALL OFFICE BLDG
LIBRARY EXPANSION
EXISTING LIBRARY
Cafe Premises

Attachment B

Proposed Menu

ESPRESSO

LATTE	5.5
CORTADO	4.5
CAPPUCCINO	5
MACCHIATO	4.5
ESPRESSO	4
AMERICANO	4
VANILLA LATTE	6
CARAMEL LATTE	6
DARK CHOCOLATE MOCHA	6
CREME BRULEE LATTE	6.5

COFFEE

COFFEE	3/4
COLD BREW	5

SIGNATURE DRINKS

STRAWBERRY ALARM CLOCK 7
ESPRESSO + STRAWBERRY OAT MILK

THANK YOU BERRY MATCHA 7
MATCHA + STRAWBERRY OAT MILK

HORCHATA MATCHA 7
OAT MILK CINNAMON MATCHA WITH VANILLA

PURPLE DREAM 7.5
UBE COCONUT OAT MILK TOPPED WITH SALTED COCONUT CREAM

LAVENDER SKIES 6
ESPRESSO + BLUEBERRY LAVENDER MILK

LAVENDER FIELDS 6
MATCHA + BLUEBERRY LAVENDER MILK

TEA

LONDON FOG	5.5
MATCHA TEA LATTE	5.5
CHAI TEA LATTE	5.5
KOMBUCHA	6
LOOSE LEAF TEA	4
MATCHA GREEN ICED TEA	5
PASSION JASMINE ICED TEA	4

ORGANIC TEAS

ENGLISH BREAKFAST
EARL GREY
WUYI OOLONG
ASHWAGANDA PU-ERH

JASMINE GREEN
MATCHA
WHITE PEONY
ROSEHIPS HIBISCUS

GINGER LEMON
HERBAL MINT
CHAMOMILE

MILK ALTERNATIVES

OAT MILK	1
ALMOND MILK	1

KIT COFFEE

AVOCADO TOASTS

CAPRESE AVOCADO TOAST…….. 14
ARUGULA, MOZZARELLA CHEESE, CHERRY TOMATOES, BASIL, LEMON ZEST, BALSAMIC

SMOKED AVOCADO TOAST ……..……..……..……..…… 15
BACON, CHERRY TOMATO, SMOKED PAPRIKA, LEMON ZEST & CHIVES

SPRING AVOCADO TOAST..…….. 14
ARUGULA, CUCUMBER, TOMATO, PICKLED ONION, GOAT CHEESE, LEMON GARLIC VINAIGRETTE

HOT' N SWEET AVOCADO TOAST……..…… 11
LEMON PEPPER, CHILI FLAKES, DRIZZLE OF HOT AND SWEET HONEY

LOX AVOCADO TOAST…….……..…… 18
ARUGULA, CHILI FLAKES, CUCUMBER, LEMON VINAIGRETTE, PICKLED ONION, SMOKED SALMON,
EVERYTHING BUT THE BAGEL SEASONING, CAPER, CHIVES AND SIDE OF SLICED LEMON

SAVORY

BREAKFAST BURRITO…..…… 16
SCRAMBLED EGG, CILANTRO RICE, HASH BROWN, CHEDDAR JACK, GRILLED ONION, CHOOSE FROM
BACON OR CHORIZO OR SOYRIZO (+1) OR NO MEAT

GRILLED CAPRESE PANINI……..……..12
HEIRLOOM TOMATOES, MOZZARELLA, BASIL, GARLIC AIOLI, BALSAMIC DRIZZLE

TURKEY PESTO SANDWICH……..…….……..14
TURKEY, PROVOLONE, GOUDA, SUN-DRIED TOMATOES, SPROUTS, MUSTARD AIOLI

B.L.T. SANDWICH…….……..……..……..14
BACON, LETTUCE, HEIRLOOM TAOMATOES, AVOCADO, GARLIC AIOLI

KIMCHI BACON GRILLED CHEESE……..…..……..14
BACON, KIMCHI JAM, MOZZERELLA, GARLIC BUTTER SPREAD

THE EGG SANDO……..…….……10
JAPANESE EGG SALAD, KEWPIE MAYO, SOFT BOILED EGG, MUSTARD AIOLI

VEGGIE DELIGHT……..……..……..11
AVOCADO, HEIRLOOM TOMATOES, CUCUMBERS, RED ONION, LETTUCE, SPROUTS, RED WINE VINAIGRETTE

CLASSIC COBB SALAD……..……..14
CHICKEN, BACON, LETTUCE, AVOCADO, HARD BOILED EGG, RED ONION, BLUE CHEESE CRUMBLE
RED WINE VINAIGRETTE

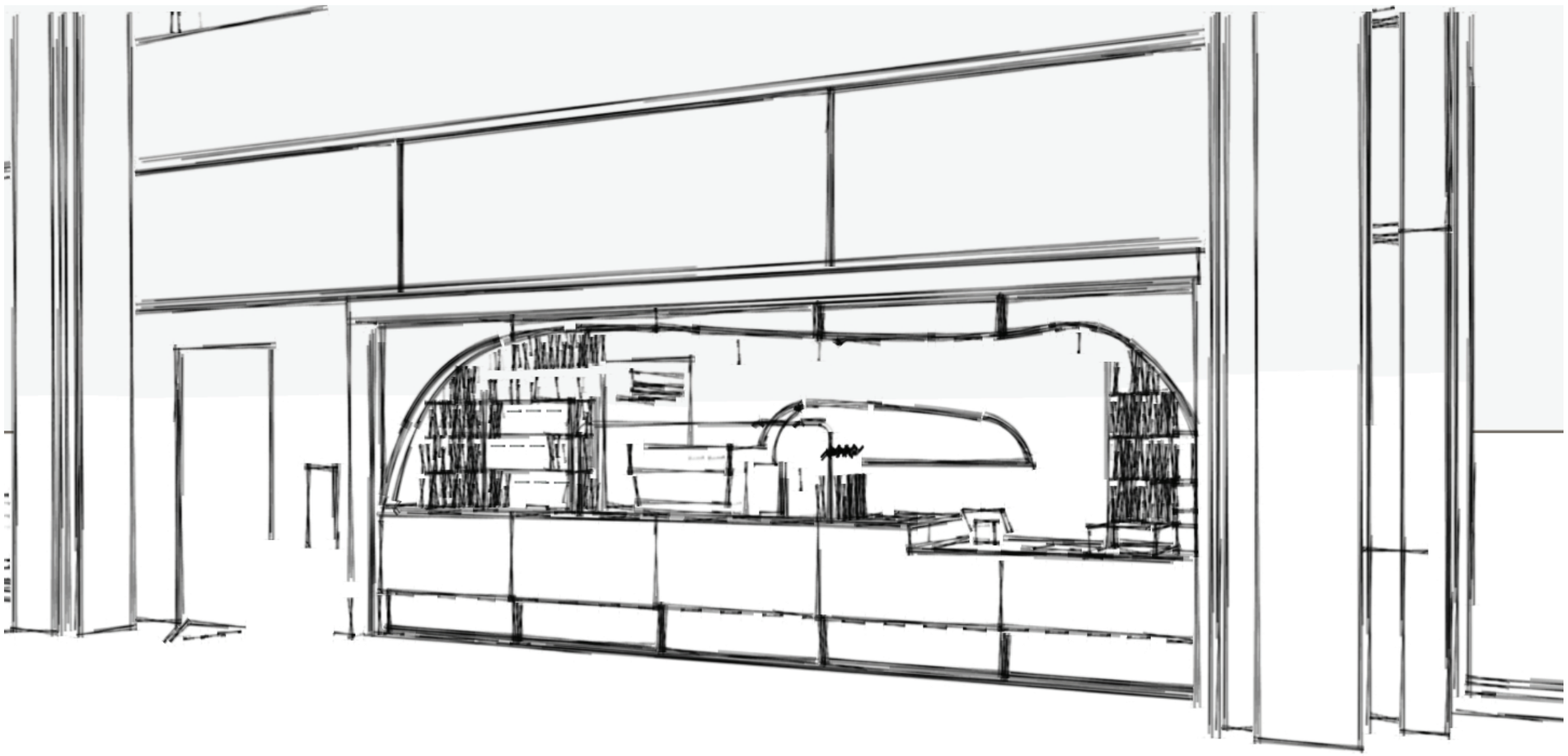
TWO EGGS ARUGULA SALAD……..……..…… 13
ARUGULA, CHERRY TOMATOES, AVOCADO, TWO SOFT BOILED EGGS, LEMON GARLIC VINAIGRETTE
BALSAMIC DRIZZLE & CHIVES

SWEET

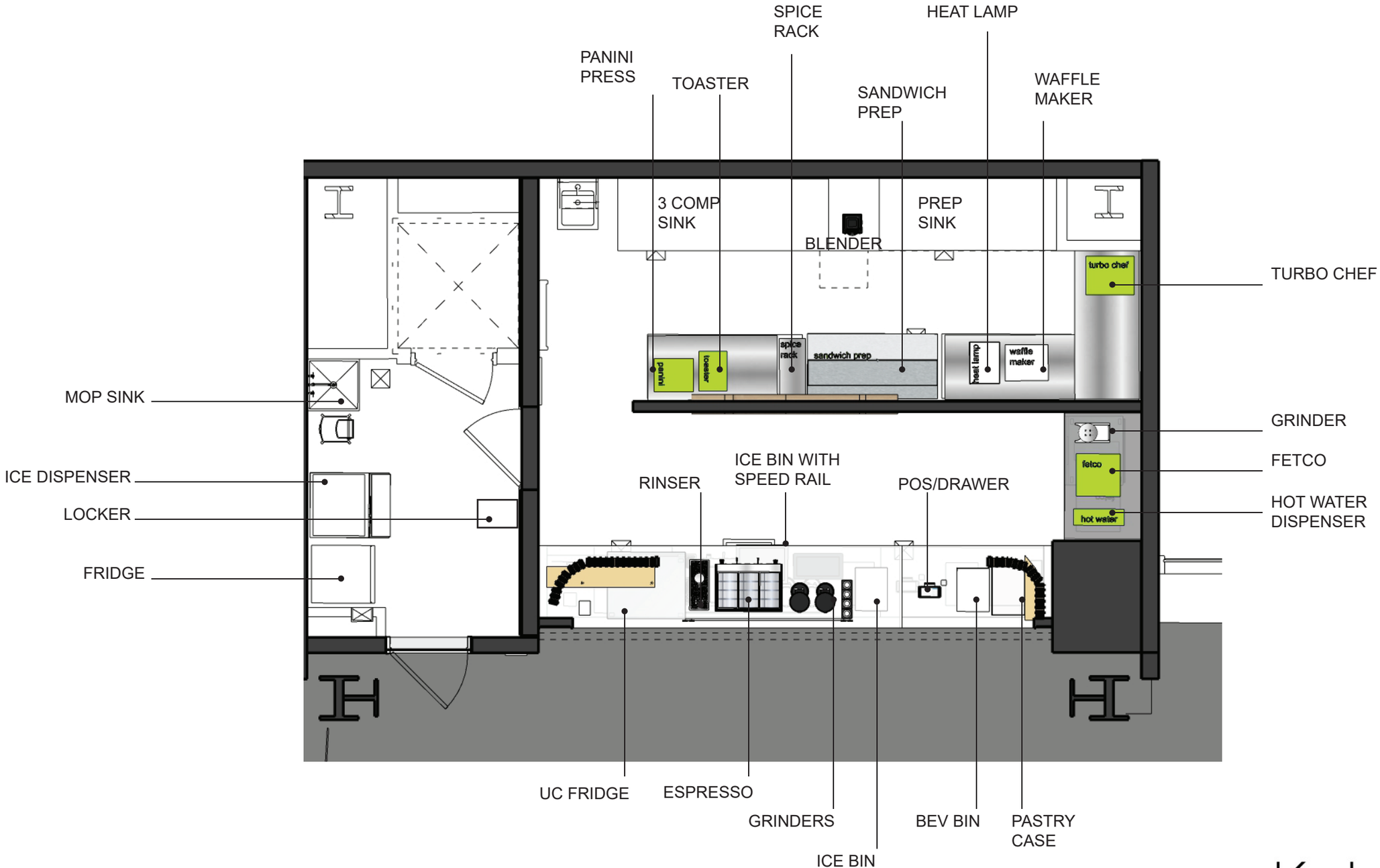
BRULEÉ TOAST ……..……..…… 7
BRIOCHE TOAST BRULEÈD AND DUSTED WITH CHOICE OF CINNAMON / MATCHA / SOUR CHERRY

Attachment C

Proposed Tenant Improvements



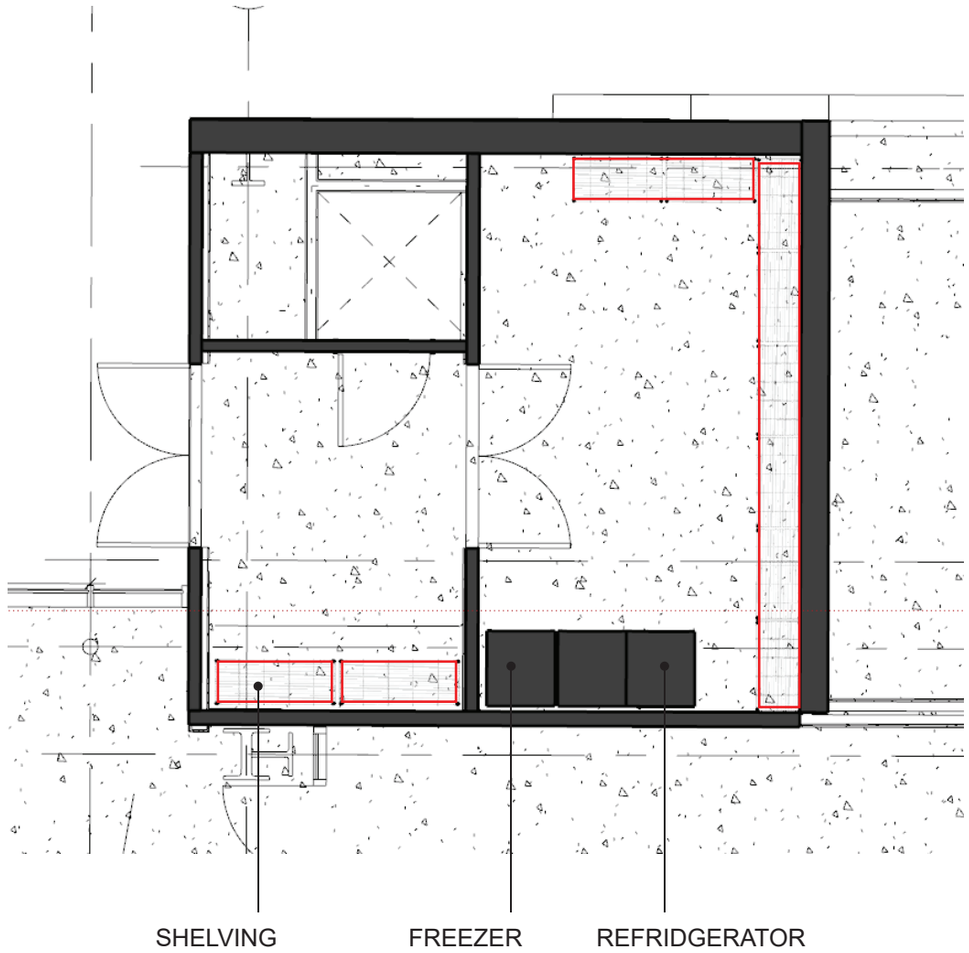
KIT @ the Library - Design Development Presentation



PLAN

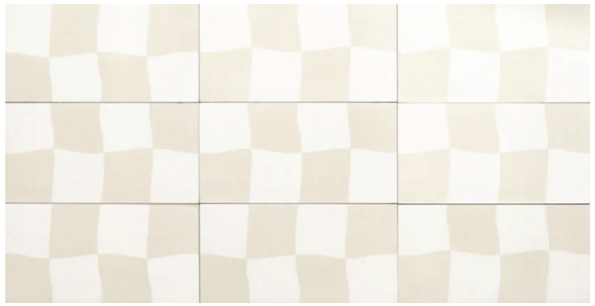
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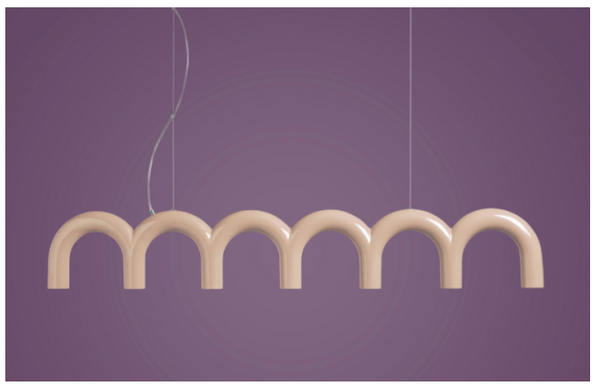
K I T



STORAGE PLAN


KIT COFFEE















VIEWS

KIT

Attachment D

City Council Policy F-7

INCOME AND OTHER PROPERTY

The City owns and manages an extensive and valuable assortment of property including streets, parks, beaches, public buildings and service facilities. The City also owns or ground leases and/or operates a yacht basin, resort hotel and apartment property, a luxury residential development and various other income-producing properties. Much of the income property is tidelands, filled tidelands or waterfront. Unencumbered fee value of income property is substantial.

As owner/manager of property, the City is the steward of a public trust, and state law requires the City to maximize its returns on state-managed property or be subject to a charge of making a gift of public funds. Nevertheless, the City Council recognizes the importance of this property not only as a revenue generator, but also as a means to provide otherwise financially less feasible uses and facilities that benefit the community.

In managing its property, the City will continually evaluate the potential of all City owned property to produce revenue. This may include leasing or licensing unused land, renting vacant space, and establishing concessions in recreation areas or other similar techniques. The City Council will evaluate the appropriateness of establishing new income generating opportunities on City controlled areas using sound business principles and after receiving input from neighbors, users and the public.

The policy of the City Council is that income and other property be held and managed in accordance with the following:

A. Whenever a lease, license, management contract, concession or similar action regarding income property is considered by the City, an analysis shall be conducted to determine the maximum or open market value of the property. This analysis shall be conducted using appraisals or other techniques to determine the highest and best use of the property and the highest income generating use of the property.

B. All negotiations regarding the lease, license, management contract, concession, or similar action regarding income property shall include review of an appraisal or analysis of the use being considered for the property conducted by a reputable and independent professional appraiser, real estate consultant, or business consultant.

C. The City shall seek, whenever practical and financially advantageous, both in the short and long term, to operate or manage all property and facilities directly with City staff or contractors, provided staff have the expertise needed to competently do so, or to oversee the work of contractors.

D. In most negotiations regarding the lease, license, management contract, concession, or similar action regarding an income or other property, the City shall seek revenue equivalent to the open market value of the highest and best use; and, whenever practicable the City shall conduct an open bid or proposal process to ensure the highest financial return.

E. However, in some circumstances the City may determine that use of a property by the public for recreational, charitable or other nonprofit purpose is preferred and has considerable public support, in which case the City may determine that non-financial benefits justify not maximizing revenue from such property. In such circumstances, the City has a vested interest in ensuring that the lessee of such property operates the activities conducted on or from the property in the manner that has been represented to the City throughout the duration of any lease or contract with the City.

F. Whenever less than the open market or appraised value is received or when an open bid process is not conducted, the City shall make specific findings setting forth the reasons thereof. Such findings may include but need not be limited to the following:

1. The City is prevented by tideland grants, Coastal Commission guidelines or other restrictions from converting the property to another use.

2. Redevelopment of the property would require excessive time, resources, expertise and costs, which would outweigh other financial benefits.

3. Converting the property to another use or changing the operator, manager, concessionaire, licensee, or lessee of the property would result in excessive vacancy, relocation or severance costs, real estate commissions, tenant improvement allowances, expenses or rent concessions which would outweigh other financial benefits.

4. Converting residential property to another use or opening residential leases to competitive bid would create recompensable liabilities and other inequities for long-term residents.

5. The property provides an essential or unique service to the community or a clearly preferred use that enjoys substantial support in the community that might not otherwise be provided were full market value of the property be required.

6. The property serves to promote other goals of the City such as affordable housing, preservation of open space, uses available to the public or marine related services.

G. Generally, lengths of licenses, leases, management contracts, concessions, or similar agreements will be limited to the minimum necessary to meet market standards or encourage high quality improvements and will contain appropriate reappraisal and inflation protection provisions. Also, all agreements shall contain provisions to assure complete audits periodically through their terms.

H. All negotiations regarding the license, lease, management contract, concession or similar action regarding income property shall be conducted by the City Manager or his/her designee under the direction of any appropriate City committees.

I. To provide an accurate accounting of actual net revenues generated by the City's income property, all costs directly attributable or allocable to the management of a specific income property shall be charged against the gross revenues collected on that property in the fiscal year the costs are incurred. Costs so chargeable include, but are not limited to, property repairs and maintenance, property appraisals, and consultant fees, as authorized by the City Council, City Manager, or by this Income Property Policy.

J. The City Manager or his/her designee is authorized to sign a license, lease, management contract, concession, or similar agreement or any amendment thereto, on behalf of the City. Notwithstanding the foregoing, the City Manager or his/her designee, or a City Council member, may refer any license, lease, management contract, concession or similar agreement or any amendment thereto, to the City Council for its consideration and/or action.

K. The City's portfolio of quality income producing properties adds an element of diversification to a portfolio otherwise invested primarily in financial assets. Certain of those income properties are restricted from sale by their terms of grant, state agency regulations or rules, other federal and state guidelines, private covenant or agreement or otherwise. For those properties not so restricted from sale, an analysis shall be prepared to determine the following prior to such income producing property being offered for sale:

1. The maximum open market value of the City's interest in the property in its as is condition.

2. If the property is in an important location, a determination of the possible future consequences of the City no longer controlling that property.

3. If the current rent is contractually low and significant rent increases are likely within a finite period.

4. The likelihood of significant increases in the ability of the property to generate income after the expiration of any current lease of the property.

5. The likelihood of a lease extension being requested by the tenant and the ability to substantially increase rents or require significant improvements to enhance the utility and the value of the property as consideration for granting such an extension.

6. The value of the revenue stream from (i) lease income over the life of an existing lease and/or (ii) likely lease revenue if an existing lease were to be renewed or the property re-let to a different tenant; and/or (iii) lease income from the property if it were to be converted to its highest and best use, compared with the financial benefits of the use of the proceeds of a sale and if, considering the totality of the circumstances, such use of the proceeds of a sale is preferable to retaining the property in question.

History

Adopted F-24 – 7-27-1992
Amended F-24 – 1-24-1994
Amended F-7 – 2-27-1995
Amended F-7 – 2-24-1997
Amended F-7 – 5-26-1998
Amended F-7 – 8-11-2009
Amended F-7 – 5-14-2013
Amended F-7 – 2-12-2019
Amended F-7 – 11-14-2023



On the Agenda: March 25 City Council Meeting

The next meeting of the Newport Beach City Council will be on Tuesday, March 25 at 4 p.m. The full agenda is available here.

Agenda items include:

- A 5-year agreement with Kit Coffee (operating under Kit at the Library, Inc.), to operate the retail concession facility at the Central Library, 1000 Avocado Ave. City staff is recommending Kit Coffee, a locally owned coffee shop with facilities in Newport Beach and Irvine, after evaluating proposals from interested food-service operators. Kit Coffee proposes to offer coffee and tea-based drinks and a limited food menu with items such as toasts, sandwiches and salads at the library location.
- 2024 General Plan annual progress report, including a Housing Element report. Under State law the City must prepare and submit an annual report on the status of the City's General Plan and implementation progress. The Council action would approve the report and authorize staff to submit the report to the California Department of Housing and Community Development.
- Amendment of a municipal ordinance related to the completion of residential home construction. In 2019, the City Council adopted a three-year time limit to complete construction of one-unit and two-unit family dwellings. In 2022, as the COVID-19 pandemic disrupted supply chains and delayed construction, the Council temporarily granted the City's building official authority to extend the time limit for up to one additional year. The Council will consider an amendment to remove a sunset provision from the ordinance and grant the building official authority to approve up to two, 180-day extensions for projects entering their fourth year. This amendment eliminates the public hearing requirement for these specific extensions, streamlining the process and reducing costs for permit holders. Requests for a third or fourth extension would require a public hearing with an administrative hearing officer. Additionally, the proposed ordinance introduces new requirements for applicants seeking extensions.

VIEW THE FULL AGENDA >>

March 25, 2025, City Council Agenda Comments

The following comments on items on the Newport Beach City Council agenda are submitted by:
Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item 1. Minutes for the March 11, 2025 City Council Meeting

The passage shown in *italics* below is from the draft minutes with a suggested correction shown in ***~~strikeout~~*** ***underline*** format. The page number refers to Volume 66.

> **Page 279**, Item X, Mayor Stapleton, end of last bullet: "*Attended the Newport Shores annual HOA meeting, the trash interceptor ribbon cutting, the OCIACC Nowruz Spring Festival, and the Fire Station 2 demolition party and extended congratulations to Bob* ***~~Olsen~~*** ***Olson***."

Item 3. Ordinance No. 2025-4: Amending the Newport Beach Municipal Code to Update Administrative Procedures Related to Good Cause Determinations and the Extension of Deadlines for Short-Term Lodging Permits

This matter involving who should be authorized to grant exceptions to STL permit deadlines, and for what reasons, is unusual in that parts of it have had fairly extensive Council discussion even though it has never been publicly announced on any agenda, including this one, as a matter for such discussion.

The proposal started as part of Item 3 on the October 8, 2024, consent calendar (along with an unrelated Finance Department matter about demolition debris hauling), from which it was pulled for a discussion that was continued to a future planning session.

That discussion was indeed continued (see video) at the Council's February 1, 2025, planning session, and a person hoping for relief from the STL deadlines was apparently even expected to plead their case to the Council. However, nothing on the agenda reminded the public that such a discussion by the Council was planned for that day.

In the February 1 discussion, Council members seemed to agree that what qualified as "good cause" needed to be defined (which it had not been in the October 8 offering). But curiously, the example of an aggrieved person, who turned out to be a professional asset manager who had apparently failed to properly manage his client's asset rather than a property owner who had innocently missed a deadline due to some special hardship, never explained the unusual circumstances that had caused him to miss a deadline (see video), nor did the Council discuss whether they would agree his circumstances constituted "good cause" for relief or, more generally, how they thought "good cause" should be defined.

The matter returned as Item 5 on the March 11 consent calendar, where a definition of "good cause" was proposed, but not discussed, although I provided extensive written comments.

As a policy matter, I think it is good for the City to have flexibility in the administration of its regulations. However, in the case of STL permits, since having one is a privilege rather than a right, and there is a long waiting list of people not presently having a permit, but hoping to get one, I would think leniency for those who have the permits but fail to follow the rules, including

failing to meet deadlines, should be very limited. I would also think that in evaluating whether a missed STL permit deadline should be excused, factors in addition to the existence of good cause should be considered, such as whether the property has been the subject of complaints or other enforcement actions. The Council might also want to include in the ordinance examples of circumstances which staff should *not* regard as "good cause" or limit how long after a missed deadline a request for extension can be entertained.

It is, therefore, disappointing that on March 11 the Council did not publicly discuss whether the rather broad definition offered by staff meets their expectations (and how it would be applied to the unknown circumstances of the asset manager at the February 1 Planning Session) – or whether there should be a very narrow definition provided for staff to use to which a mechanism could be added for more problematic claims to be referred on appeal to the Council.

Even assuming the Council members individually reviewed the proposed definition of "good cause" for missing an STL permit deadline, and found it met their expectations, I continue to think the proposed ordinance is defective for two reasons.

Making Definition Applicable to Entire Municipal Code is a Bad Idea

First, rather than placing the definition of "good cause" in the chapter of the Municipal Code regarding STL permits, to which it is intended to apply, staff proposes putting it in a section that will make it applicable to the entire Municipal Code.

This a bad recommendation, or, at the very least, a decision that needs further review.

As I pointed out in my March 11 written comments, the phrase "good cause" appears 27 times in 19 different chapters of the code, in each of which it may have been intended to be understood differently. Inserted after-the-fact a definition that may or may not have been intended is not wise.

A recent example of the problems this can cause was the entry of Pacaso fractional ownership homes into the Newport Beach market. As indicated in my comments on that subject on pages 12-44 & 45 of the March 14, 2023, Council agenda packet, since 1982, with adoption of Ordinance No. 82-14, Newport Beach had perfectly clear regulations in its Zoning Code (Title 20 of the Municipal Code) intended to prohibit such activity (time-share arrangements in residential areas). However, the original language used the phrases "time-share *projects*" and "time-share *development,*" which were explicitly intended to apply to conversion of existing residences to a time-share model, including fractional ownership, even though the terms "project" and "development" were not explicitly defined. However, without considering this, the Zoning Code was repeatedly rearranged and revised, and eventually, definitions of "project" and "development" applicable to the entire Zoning Code were added. And even though the introduction of those definitions was presumably not intended to alter the meaning of the time-share regulations, by the time Pacaso came to town, staff said they did, and they could not prohibit conversions of existing homes, only new construction.

One has to wonder if the Council members have reviewed the 18 Municipal Code chapters unrelated to STL permits in which "good cause" appears, and determined that applying to them

the definition proposed in the STL permit context does not alter the meaning of "good cause" that earlier Councils intended in those other contexts?

Placing Substantive Regulations in Uncodified Portions of Ordinances is a Bad Idea

Second, although neither the Council nor the public heard the circumstances of the speaker seeking relief at the February 1 Planning Session (only that "things come up"), it appears the intent of these code revisions is to allow staff to excuse people who have *missed* STL permit deadlines. Yet the proposed code revisions are written entirely in terms of *extending* deadlines, which implies a request to extend the deadline has been received before the deadline comes.

The fact that an "extension" can be granted retroactively, in effect *excusing* the missing of a deadline is relegated to an obscure reference in uncodified Section 7 of the proposed ordinance, on page 3-13 of the agenda packet.

Not only could the fact that a deadline can be extended retroactively have easily been included in the codified portion of the code, where all those reading the code would see it, but the code might even have limited how long after the fact a retroactive extension can be granted and how long such an extension can be.

The problems that can be created by not codifying substantive portions of regulations is illustrated by Item 12 on the current agenda. In that case, when enacting a Building Code revision in 2022, the Council only intended for it to be in effect until April 21, 2025, at which time the unrevised text would return. It would have been relatively easy to include this proviso in the code (the state legislature does this quite frequently). Instead, much like here, it exists only in an obscure uncodified section of the 2022 ordinance (see page 12-21 of the present agenda packet). Despite a subsequent ordinance reenacting the code section in question without any mention of an expiration, the proviso in the earlier ordinance seems to remain, like a zombie, completely unknown to those reading the existing code, which does not even mention the ordinance containing it in its revision history.

In the present case, the fact that STL deadline extensions can be retroactive will not only be unknown to readers of the code, but it may assume a similar zombie status if the code were subsequently revised without an intent to be retroactive but without explicitly repealing the present ordinance.

Item 4. Resolution No. 2025-12: Creating the Ad Hoc Refuse Committee

I think the idea of staff reaching out in considering its response to refuse regulations is a good one, and the present proposal is an improvement over the roll-out of the three-cart residential collection system, regarding which input seems to have been sought from a 3-member Council Ad Hoc Solid Waste Committee that was never formally appointed and which the public knew nothing about.

That said, I think it would be better for the Council to appoint a committee of affected residents and business owners from whom staff could seek input. The advantage of that, is that the Brown Act would require the discussions to be noticed and public.

The problem with Council-appointed ad hoc committees (and with ad hoc committees of the City boards and commissions in general, is that they are created precisely to avoid public visibility. Since the Brown Act does not require it, their discussions are rarely if ever public. As a result there is a complete lack of transparency as to how their recommendations were arrived at and what input was considered.

A happy recent, but still extremely rare, exception was the PB&R ad hoc committee seeking to make a recommendation about the proposed Aquatic Center at Lower Castaways, which held a noticed public workshop in the Community Room on February 12.

Item 5. Irrigation Controller Replacement Phase 2 – Award of Contract No. 9735-1

With a low bid of $472,186 to acquire(?) and install 37 controllers, that comes to nearly $13,000 per controller.

This contract is clearly for something more than a typical home controller, so it might have been helpful to provide a little more information on what is being contemplated. From the bid package, it looks like it is some version of the Toro 21-1196-IRC-DXi-Controller-SS.

Item 9. Concession Agreement with Kit at the Library, Inc. for Use of the Concession Facility at the Central Library Located at 1000 Avocado Avenue

Why is no information provided regarding the 16 other proposals that were received but rejected by City staff?

Why are “limited cosmetic tenant improvements to the Space” anticipated to take as much as 12 months to complete?

Libraries are known to attract children, and I seem to recall seeing them in the entry area adjacent to the concession. Does the menu contain any items that would appeal to young children?

Item 10. Amendment to Professional Services Agreement with Dudek, Inc. for Consulting Services on the Comprehensive General Plan Update (PA2022-080)

The City Council has, in my view, caused significant delay to the general plan update process by announcing its plan, in December, to dismiss all the GPAC and GPUSC members and make new appointments in the new year, which finally happened as Item 11 at the February 25, 2025, meeting.

I am grateful for my reappointment, and as chair of the subcommittee reviewing the existing Noise Element in the GPAC’s prior configuration, I have considerable interest in the current item, although I don’t yet know if I will be continuing that role in the new iteration.

I might note that at the time the subcommittee and full GPAC made our recommendation, we were unaware the traffic noise contours resulting from the addition of 6th Cycle RHNA units (for everything but the 73 freeway and toll road) had already been projected by a prior consultant as part of the recent Housing Implementation Program EIR (PA2022-0245), specifically in Chapter 4.11 and Appendix E. It appears Dudek is proposing to do something more supported by measurement.

In that regard, I am a little puzzled by proposed Task 1.2.b (agenda packet page 10-10), calling for Dudek to evaluate noise in the Airport Area "*based upon sound level contour mapping from the corresponding Airport Land Use Compatibility Plan (ALUCP)*." This seems to be a reference to what the County calls the John Wayne Airport Airport Environs Land Use Plan (AELUP).

Dudek seems not to have been informed that the contours in that plan were created in 1985, or before, and included projections, made then, to the anticipated contours in 2005. The City has an ongoing dispute with the OC Airport Land Use Commission as to whether the projections published in 1985 are still appropriate contours for planning purposes, and has, indeed, substituted a different set of contours in the November 14, 2023, Item 22 Noise Element revisions mentioned on page 10-2 of the staff report (prepared and adopted without GPAC input). The ALUC does not accept that change, and rejects submissions based on them. There is a particularly acute disagreement as to the noise impact of the small piston-powered planes that fly over what the City calls the "Airport Area" north of Bristol, yet no one seems to have any actual measurements to support their view of what the current situation there actually is.

Assuming this item is approved, I hope staff will instruct Dudek to perform some of its long-term monitoring (Task 1.1) in that area.

I am also a little concerned about the clarity of Task 2. Although entitled "GPAC Subcommittee Coordination," the unnumbered opening paragraph suggests Dudek feels it has more than fulfilled its obligation to attend meetings of the full GPAC, since the ones it has attended to date ran longer than the 1-hour anticipated (as future ones may also). Do Dudek and staff have a clear understanding of how many additional full GPAC and GPUSC meetings Dudek is expected to attend? Is there sufficient budget for them?

As to the GPAC subcommittees, the Council may wish to know there are six subcommittees, organized to review various combinations of general plan elements, as well as one for the Vision Statement. The proposed 12 meetings would mean Dudek attendance at at most 2 each to review their proposed revisions, none of which have yet been seen, before they go to the Planning Commission and Council. That seems possible, but minimal. Does staff anticipate the possibility of a need for additional GPAC subcommittee discussion meetings *without* Dudek present?

Item 12. Ordinance No. 2025-5: An Amendment to Section 15.02.095 of the Newport Beach Municipal Code Related to Timeframes for Completion of Construction

As noted in my comments when this item was first introduced (and then withdrawn) on March 11, it is unusual in that the current Municipal Code cites Ordinances No. 2023-22 § 693 and 2022-26 § 1 as the source of the language presently found in NBMC Section 15.02.095, and makes no mention of Ordinance No. 2022-8, where the sunset provision resides.

I concluded from this that no action was needed since neither of those ordinances makes any mention of the provisions they added being subject to sunsetting. But perhaps action is needed, since neither seems to have explicitly repealed the uncodified parts Ordinance No. 2022-8.

Assuming the April 21, 2025, sunsetting provision in Ordinance No. 2022-8 *is* still operative, it would appear the present ordinance repealing it will not be adopted until a second reading on April 15, and will not become effective until 30 days later, on May 15.

What will happen to projects that, under the prior code that staff believes will be restored for the 24 days from April 21 to May 15, would need to file for an extension during that time?

Item XIII.A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

This item involving three non-City-owned properties with no explanation of what the City's interest in them might be, also seems rather unusual.

One of the properties, the former Balboa Theatre at 707 E. Balboa Blvd., the City formerly owned and sold. What happened to that new owner's plans? Is the City considering buying it back?

Another, at 12 Corporate Plaza Drive, is the subject of an active Preliminary Application, PA2025-0017, for 38 residential units in an 85-foot high tower. Is the City contemplating becoming a partner in the development?

And the remaining one, at 3848 Campus Drive, has been the subject of prior closed session agendas, such as on January 28, and also seems to have a pending application, PA2023-0145, to construct a private self-storage facility on the site. What became of those?

CITY OF

NEWPORT BEACH

City Council Staff Report

March 25, 2025
Agenda Item No. 10

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Seimone Jurjis, Assistant City Manager/Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov
PREPARED BY:	Benjamin M. Zdeba, AICP, Planning Manager - 949-644-3253, bzdeba@newportbeachca.gov
TITLE:	Amendment to Professional Services Agreement with Dudek, Inc. for Consulting Services on the Comprehensive General Plan Update (PA2022-080)

ABSTRACT:

For the City Council's consideration is an amendment to the existing Professional Services Agreement with Dudek, Inc. for Consulting Services on the Comprehensive General Plan Update. The requested amendment would: (1) update the scope of work to include an update to the Noise Element, additional support for the General Plan Advisory Committee and its subcommittees, and an additional draft General Plan deliverable; (2) extend the term of the agreement to June 30, 2026; and (3) increase the total compensation by $128,479.99.

RECOMMENDATIONS:

a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and

b) Approve Amendment No. One to the Professional Services Agreement with Dudek, Inc. for Consulting Services on the Comprehensive General Plan Update, which augments the Scope of Work, extends the contract to June 30, 2026, and increases the contract amount by $128,479.99 for a total not-to-exceed amount of $1,606,509.74, and authorize the Mayor and City Clerk to execute Amendment No. One to the Agreement.

DISCUSSION:

With the City Council's authorization on June 27, 2023, the City of Newport Beach executed a professional services agreement with Dudek, Inc. (Dudek) for consulting services related to the comprehensive update of the General Plan (Agreement). It is noteworthy that the Scope of Work authorized under the Agreement did not include services on the General Plan's Circulation Element, Housing Element, or Noise Element.

Since the Agreement's execution, Dudek has been providing professional and technical support to City staff, including attending meetings of the General Plan Update Steering Committee (GPUSC) and the General Plan Advisory Committee (GPAC). To ensure efficiency and productive meetings, the GPAC formed multiple subcommittees to review individual General Plan elements for potential refreshing to align with the community's vision. The GPUSC has continuously overseen the work of and provided guidance to the GPAC while reporting back to the City Council on progress made.

As part of the GPUSC's bi-monthly update to the City Council on September 24, 2024, it was reported that the GPAC Noise Subcommittee received support from the GPAC and GPUSC to pursue the City Council's authorization for the technical work necessary to update Figures N1 through N6 related to existing and future noise contours, as well as a community noise survey to identify any major noise sources. Attachment B to this report is GPUSC Chair Nancy Gardner's memo updating the City Council on the progress made. As recommended in the staff report for that meeting, the City Council received and filed the bi-monthly update expressing initial support to consider an amendment to the Agreement for this work.

Proposed Additional Services

Dudek has prepared a supplemental work plan that includes additional services to update the Noise Element, which are listed and briefly described in Table 1 below. The full work plan is provided in Attachment A to this report. Importantly, there is no intention to change the revisions made with the City Council's adoption of a focused update to the Noise Element on November 14, 2023, related to housing in the Airport Area.

Table 1, Outline of Additional Work Plan Tasks

#	Task Title	Description and Subtasks
1	Noise Element Update	Dudek will provide the necessary professional and technical support to update the Noise Element, including its exhibits and figures as necessary. • 1.1 Establish Baseline Conditions • 1.2 Sound Propagation Modeling and Sound Contour Mapping • 1.3 Update Noise Element Policies • 1.4 Noise Element Amendment
2	GPAC Subcommittee Coordination	As the General Plan Update has progressed and with the addition of the Noise Element, it has become apparent that additional coordination with the ad hoc committees and the various GPAC Subcommittees is needed. • 2.1 GPAC Subcommittee Meetings and Support
3	General Plan Update Additional Draft	To accommodate the General Plan Update's iterative process with the community and ad hoc committees, Dudek recommends an additional draft of the General Plan. • 3.1 Additional Draft General Plan

Project Schedule and Amended Term

The Agreement's schedule has the General Plan Update being completed in early summer 2025. With the proposed amendment, the schedule will shift to accommodate the additional work needed to include an update to the Noise Element and pushes completion to fall 2025. Given the slight delay and the potential need for additional time to wrap up the project, the amendment includes extending the term expiration from December 31, 2025, to June 30, 2026.

Project Cost

To provide the required services, Dudek is requesting an additional $128,479.99, which includes adequate budget to allow for an additional draft of the General Plan, if necessary. Given the iterative process with significant input from the GPUSC, GPAC, and GPAC subcommittees, as well as the community, City staff believes planning for an additional draft is warranted and prudent.

With this additional cost, the total contract amount will increase from $1,478,029.75 to $1,606,509.74.

FISCAL IMPACT:

Given the General Plan Update will continue across fiscal years through the end of 2025, the current Capital Improvement Program (CIP) budget for Fiscal Year 2024-2025 (FY24-25) is not sufficient to complete it. Staff will request additional funds in the CIP budget for Fiscal Year 2025-2026 (FY25-26) such that sufficient funding for the amended Agreement is included as part of the General Plan Update project. All expenditures will be expensed to the General Fund Account No. 01201928-980000 (Project 20M11).

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Amendment No. One to the Professional Services Agreement with Dudek
Attachment B – September 24 City Council GPUSC Memo

Attachment A

Amendment No. One to the Professional Services Agreement with Dudek

AMENDMENT NO. ONE TO
PROFESSIONAL SERVICES AGREEMENT
WITH DUDEK FOR
CONSULTING SERVICES ON THE COMPREHENSIVE GENERAL PLAN UPDATE

THIS AMENDMENT NO. ONE TO PROFESSIONAL SERVICES AGREEMENT ("Amendment No. One") is made and entered into as of this 25th day of March, 2025 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and DUDEK, a California corporation ("Consultant"), whose address is 605 3rd Street, Encinitas, CA 92024, and is made with reference to the following:

RECITALS

A. On June 27, 2023, City and Consultant entered into a Professional Services Agreement ("Agreement") for consulting services on the comprehensive general plan update ("Project").

B. The parties desire to enter into this Amendment No. One to reflect additional Services not included in the Agreement, to extend the term of the Agreement to June 30, 2026 and to increase the total compensation.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

Section 1 of the Agreement is amended in its entirety and replaced with the following: "The term of this Agreement shall commence on the Effective Date, and shall terminate on June 30, 2026, unless terminated earlier as set forth herein."

2. SERVICES TO BE PERFORMED

Exhibit A to the Agreement shall be supplemented to include the Scope of Services, attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). Exhibit A to the Agreement and Exhibit A to this Amendment No. One shall collectively be known as "Exhibit A." The City may elect to delete certain Services within the Scope of Services at its sole discretion.

3. COMPENSATION TO CONSULTANT

Exhibit B to the Agreement shall be supplemented to include the Schedule of Billing Rates, attached hereto as Exhibit B and incorporated herein by reference. Exhibit B to the Agreement and Exhibit B to Amendment No. One shall collectively be known as "Exhibit B."

Section 4.1 of the Agreement is amended in its entirety and replaced with the following: "City shall pay Consultant for the Services on a time and expense not-to-exceed

basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **One Million Six Hundred Six Thousand Five Hundred Nine Dollars and 74/100 ($1,606,509.74)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City."

The total amended compensation reflects Consultant's additional compensation for additional Services to be performed in accordance with this Amendment No. One, including all reimbursable items and subconsultant fees, in an amount not to exceed **One Hundred Twenty Eight Thousand Four Hundred Seventy Nine Dollars and 99/100 ($128,479.99)**.

4. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment No. One to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 3/6/25

By: Jose Montoya for
Aaron C. Harp
City Attorney
3.6.25

ATTEST:
Date:_____

By:_____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation
Date:_____

By:_____
Joe Stapleton
Mayor

CONSULTANT: DUDEK, a California corporation
Date:_____

By:_____
Joseph Monaco
Chief Executive Officer

Date:_____

By:_____
Danielle Voss
Secretary

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services
Exhibit B – Schedule of Billing Rates

EXHIBIT A
SCOPE OF SERVICES

February 25, 2025

Ben Zdeba
City of Newport Beach

Subject: Add Service for the City of Newport Beach General Plan Update

Dear Ben Zdeba:

Dudek is pleased with the opportunity to continue and expand upon our work with the City of Newport Beach on the General Plan Update. As part of this update, Dudek has reviewed and provided a summary of our recommendations to the City for updates to the Noise Element (NE). Further, the original scope of work only anticipated meetings with the full General Plan Advisory Committee (GPAC), but did not include meetings and coordination with the GPAC Subcommittees. Below describes additional services to be added to the General Plan Update, including an update to the City's General Plan Noise Element, additional coordination with the GPAC's various subcommittees, and an additional draft of the General Plan.

Scope of Services

TASK 1 NOISE ELEMENT UPDATE

The following services are proposed for the update of the NE component of the GP. We understand that development of the Noise Section of the EIR has already been completed and is not needed within this scope.

Task 1.1 Establish Baseline Conditions

Dudek will conduct a sound monitoring survey that includes sound pressure level measurements and concurrent traffic volume counts, as appropriate, to determine the existing sound levels at representative locations throughout the City and to validate the sound model developed in Task 1.2. The sound monitoring survey will include up to twenty (20) short-term (15-minute duration) and up to three (3) long-term (24+-hour duration) measurement locations. Candidate survey locations will be selected in consultation with City planning staff. Sound pressure levels (SPL) will be measured using instruments that satisfy the American National Standards Institute (ANSI) standards for a Type 1 or Type 2 sound level meter (SLM).

Task 1.1 Cost ***$8,639.99***

Task 1.2 Sound Propagation Modeling and Sound Contour Mapping

a. Existing and Future Roadway Traffic Noise Levels – A City-wide traffic sound model will be developed using the Federal Highway Administration (FHWA) Traffic Noise Model algorithms, as implemented within

the CadnaA software. CadnaA is a three-dimensional sound mapping software that takes into account varying terrain, source spectral content, and a number of other factors that have an effect on sound attenuation and propagation. Inputs to the model will include roadway centerlines, terrain, ground type, and buildings, if desired. The sound model will be validated with data gathered from the sound monitoring survey conducted in Task 1.1. Following model validation, 24-hour Community Noise Equivalent Level (CNEL) contours will be developed for the 104 roadway segments included in the EIR and SR73, provided that the consultant is provided with roadway centerline and traffic volumes, for two scenarios: Existing and General Plan Buildout conditions. The sound level contours will be available for import into the City's GIS system and will be provided graphically within the Noise Element document. Traffic noise levels along these roadways will also be provided in tabular form. Traffic volumes, speed, and mix information will be utilized from the traffic study. This task assumes that the City will provide roadway centerlines, topographical information, and buildings, if desired, in a format suitable to be imported into the sound modeling software (i.e., ArcGIS or dxf format).

b. John Wayne Airport (JWA) – Sound levels from the John Wayne Airport will be evaluated based upon sound level contour mapping from the corresponding Airport Land Use Compatibility Plan (ALUCP). Sound level contours provided in the ALUCP will be reproduced for use within the Noise Element in a separate map than the ground transportation sources due to differences in mitigation strategies needed for these different types of sources.

c. Other Sound Sources – Dudek will assess any major newly identified (by the City) sound sources that may have been developed since the release of the adopted NE to determine the level to which these sources should be included in the sound modeling or measurement (Task 1.1) efforts. It is anticipated that sound levels generated from localized sources, such as water vehicles, recreational activities, mechanical equipment, landscape maintenance, etc., will be discussed qualitatively within the background section of the NE only, similar to how they are discussed in the adopted NE. However, Dudek's approach to newly identified sources will be on a case-by-case basis, depending on the source.

Task 1.2 Cost.....$14,690.00

Task 1.3 Update Noise Element Policies

Dudek will update the NE goals and policies following the previously made Dudek recommendations for relevance, completeness, and consistency of the NE with the Municipal Code and any recommendations made within the Nosie Section of the EIR to mitigate any identified significant impacts. This task assumes one 2-hour virtual meeting with the City to discuss City objectives, the development of draft updated goals and policies, and the response to one round of City comments. The Final updated goals and policies will be provided within the Updated Noise Element document.

Task 1.3 Cost.....$5,370.00

Task 1.4 Noise Element Amendment

Dudek will draft an updated noise element document to include background information on sound, a narrative describing existing background sound sources throughout the City that includes any newly identified noise sources that may have been developed since the release of the adopted NE, updated Community Noise Contour Maps for existing and future General Plan Buildout conditions for ground transportation sources, sound contour

maps from the ALUCP depicting John Wayne Airport (JWA) sound contours, and updated goals, policies, and implementation procedures following previously made recommendations. Sound levels generated from localized sources, such as water vehicles, recreational activities, mechanical equipment, landscape maintenance, etc., will be discussed qualitatively within the background section of the document only, similar to how they are described within the adopted NE. This task assumes our response for two total rounds of consolidated comments from the City, the GPAC, or other interested parties.

Task 1.4 Cost ***$14,330.00***

TASK 2 GPAC SUBCOMMITTEE COORDINATION

As the General Plan Update progresses and with the addition of the Noise Element Update, it has become apparent that additional coordination with the GPAC and its subcommittees is needed. The original scope of work anticipated 34 GPAC meetings up to 1-hour each, with Kearns and Wests participation at 6 meetings. However, to-date, the Dudek team has attended a total of 23 GPAC and subcommittee meetings, all of which have lasted between 1.5-2.25 hours. Further, Kearns and West has been in attendance at 12 of these meetings. To continue to engage with the GPAC and subcommittees throughout the General Plan Update process, the following scope of services is proposed as an add service to the existing contract.

Task 2.1 GPAC Subcommittee Meetings and Support

To support coordination with the various GPAC subcommittees, the Dudek team will attend 12 GPAC Subcommittee meetings including attendance by the Dudek project manager and up to 2 additional members of the Dudek team at each meeting. Additionally, in support of these meetings, Dudek will develop PowerPoint presentations, as well as meeting minutes following each meeting. Of the 12 GPAC subcommittee meetings, Dudek anticipates 8 will be in-person and 4 will be virtual. Staff attendance is anticipated in accordance with the following:

- Project manager attendance at 12 meetings (virtual and in-person)
- One Kearns and West representative attendance at 5 meetings (in-person)
- One Dudek Technical Representative (i.e. Coastal Planner, Acoustician, or similar role) at 12 meetings (virtual and in-person)

Task 2.1 Cost ***$35,450.00***

TASK 3 GENERAL PLAN UPDATE ADDITIONAL DRAFT

To accommodate the General Plan Update's iterative process, Dudek recommends an additional draft of the General Plan. The following services are proposed for the update to the General Plan.

Task 3.1 Additional Draft General Plan

To accommodate additional revisions through the various subcommittees of the General Plan Advisory Committee, Dudek will provide an additional draft of the General Plan for City review. This task assumes our response for one round of consolidated comments.

TASK 3 COST **$50,000.00**

TOTAL COST.....$128,479.99

The comprehensive breakdown of all costs is provided below. Our team looks forward to discussing the proposed add service. Should you have any questions, feel free to contact me at edickson@dudek.com or (760) 479-4846.

Sincerely,

Elizabeth Dickson

Elizabeth Dickson, AICP
Principal Planner

EXHIBIT B
SCHEDULE OF BILLING RATES

City of Newport Beach
Newport Beach NE Update and GPAC Subcommittee Coordination
DUDEK FEE ESTIMATE

2/25/2025

DUDEK

		Dudek Labor Hours and Rates														
	Project Team Role:	Senior Specialist V	Senior Specialist I	Analyst III	Project Director/Environmental	GIS Analyst III	Publications Specialist II	Specialist II	Analyst IV	Senior Specialist III	Specialist V	Specialist II			Subconsultant Fees attendance by 1 representative at 5 meetings (in-person)	
	Team Member:	Dana Lodico	Elizabeth Dickson	Carson Wong	Mark Storm	GIS Analyst III	Publications Specialist II	Janet Rodriguez	Joshua Baehr	Kelly Bray	Rose Newberry	Henry Eckold	TOTAL DUDEK HOURS	DUDEK LABOR COSTS	Kearns and West	OTHER DIRECT COSTS	TOTAL FEE
	Billable Rate:	$275.00	$185.00	$130.00	$300.00	$165.00	$120.00	$175.00	$140.00	$235.00	$185.00	$145.00			Fee		
Task 1.1	Baseline Conditions	8	8	36									52	$8,360.00		$279.99	$8,639.99
Task 1.2	Modeling and contour mapping	12		80		6							98	$14,690.00			$14,690.00
Task 1.3	GP NE Policies and Review	16	2		2								20	$5,370.00			$5,370.00
Task 1.4	Noise Element Amendment	36	12	8	2	2	2						62	$14,330.00			$14,330.00
Task 2.1	Meetings with GPAC / City (8 in-person and	12	90		12			10	20	10			154	$30,450.00	$5,000.00		$35,450.00
Task 3.1	General Plan Update, Additional Draft		65				24	61	60	12	40	40	302	$50,000.00			$50,000.00
	Total Hours	84	177	124	16	8	26	71	80	22	40	40	688				
	Total	$23,100.00	$32,745.00	$16,120.00	$4,800.00	$1,320.00	$3,120.00	$12,425.00	$11,200.00	$5,170.00	$7,400.00	$5,800.00		$123,200.00	$5,000.00	$279.99	$128,479.99
	Percent of Hours (Base)	12%	26%	18%	2%	1%	4%	10%	12%	3%	6%	6%					

Attachment B

September 24 City Council GPUSC Memo

REPORT TO COUNCIL

We are beginning Phase 2 of the outreach process. An important part of this will be joint sessions with various city commissions and committees to get their specialized perspectives. In addition, there will be workshops where we can begin to get more considered community reaction to various plan aspects.

Several analyses have been prepared by Dudek:

*The Implementation Program Analysis reviews implementation progress of the current General Plan. Overall, the implementation rate is good. There are some areas where nothing has been done, and part of the process will be to evaluate their current relevance and make suggestions to Council.

*The Diagnostic Memo provides brief descriptions of relevant legislation for each element to help GPAC in its efforts. The memo identified one area within the city as meeting the environmental justice classification, but this generated disagreement from many committee members who feel that the data relied on doesn't accurately reflect the area. The consultant will review this.

Noise Element: The subcommittee had a presentation by Code Enforcement and an acoustician as well as data from the police department as to types and numbers of noise complaints. On review of the subcommittee report, GPAC feels that because we are using noise contours from 2004 and earlier and because there are coverage gaps (no analysis of the 73 Freeway, for example), it is difficult to make good forecasts for the future. The committee would like the Council to consider authorizing new noise studies. As this is not in the current Dudek contract, staff will provide a cost estimate.

The Steering Committee is recommending Janine Padia and Virginia Anders-Ellmore to fill two vacancies on GPAC. Ms. Padia is a real estate consultant. Ms. Anders-Ellmore, a retired nurse, has been attending and participating in GPAC and GPAC subcommittee meetings regularly. We recommend Rita Goldberg as a back-up replacement if there is another resignation. Ms. Goldberg has a background in publishing, served as a city arts commissioner and is on the advisory board for the film festival.

March 25, 2025, City Council Agenda Comments

The following comments on items on the Newport Beach City Council agenda are submitted by:
Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item 1. Minutes for the March 11, 2025 City Council Meeting

The passage shown in *italics* below is from the draft minutes with a suggested correction shown in ***~~strikeout~~*** ***underline*** format. The page number refers to Volume 66.

> **Page 279**, Item X, Mayor Stapleton, end of last bullet: "*Attended the Newport Shores annual HOA meeting, the trash interceptor ribbon cutting, the OCIACC Nowruz Spring Festival, and the Fire Station 2 demolition party and extended congratulations to Bob* ***~~Olsen~~*** ***Olson***."

Item 3. Ordinance No. 2025-4: Amending the Newport Beach Municipal Code to Update Administrative Procedures Related to Good Cause Determinations and the Extension of Deadlines for Short-Term Lodging Permits

This matter involving who should be authorized to grant exceptions to STL permit deadlines, and for what reasons, is unusual in that parts of it have had fairly extensive Council discussion even though it has never been publicly announced on any agenda, including this one, as a matter for such discussion.

The proposal started as part of Item 3 on the October 8, 2024, consent calendar (along with an unrelated Finance Department matter about demolition debris hauling), from which it was pulled for a discussion that was continued to a future planning session.

That discussion was indeed continued (see video) at the Council's February 1, 2025, planning session, and a person hoping for relief from the STL deadlines was apparently even expected to plead their case to the Council. However, nothing on the agenda reminded the public that such a discussion by the Council was planned for that day.

In the February 1 discussion, Council members seemed to agree that what qualified as "good cause" needed to be defined (which it had not been in the October 8 offering). But curiously, the example of an aggrieved person, who turned out to be a professional asset manager who had apparently failed to properly manage his client's asset rather than a property owner who had innocently missed a deadline due to some special hardship, never explained the unusual circumstances that had caused him to miss a deadline (see video), nor did the Council discuss whether they would agree his circumstances constituted "good cause" for relief or, more generally, how they thought "good cause" should be defined.

The matter returned as Item 5 on the March 11 consent calendar, where a definition of "good cause" was proposed, but not discussed, although I provided extensive written comments.

As a policy matter, I think it is good for the City to have flexibility in the administration of its regulations. However, in the case of STL permits, since having one is a privilege rather than a right, and there is a long waiting list of people not presently having a permit, but hoping to get one, I would think leniency for those who have the permits but fail to follow the rules, including

failing to meet deadlines, should be very limited. I would also think that in evaluating whether a missed STL permit deadline should be excused, factors in addition to the existence of good cause should be considered, such as whether the property has been the subject of complaints or other enforcement actions. The Council might also want to include in the ordinance examples of circumstances which staff should *not* regard as "good cause" or limit how long after a missed deadline a request for extension can be entertained.

It is, therefore, disappointing that on March 11 the Council did not publicly discuss whether the rather broad definition offered by staff meets their expectations (and how it would be applied to the unknown circumstances of the asset manager at the February 1 Planning Session) – or whether there should be a very narrow definition provided for staff to use to which a mechanism could be added for more problematic claims to be referred on appeal to the Council.

Even assuming the Council members individually reviewed the proposed definition of "good cause" for missing an STL permit deadline, and found it met their expectations, I continue to think the proposed ordinance is defective for two reasons.

Making Definition Applicable to Entire Municipal Code is a Bad Idea

First, rather than placing the definition of "good cause" in the chapter of the Municipal Code regarding STL permits, to which it is intended to apply, staff proposes putting it in a section that will make it applicable to the entire Municipal Code.

This a bad recommendation, or, at the very least, a decision that needs further review.

As I pointed out in my March 11 written comments, the phrase "good cause" appears 27 times in 19 different chapters of the code, in each of which it may have been intended to be understood differently. Inserted after-the-fact a definition that may or may not have been intended is not wise.

A recent example of the problems this can cause was the entry of Pacaso fractional ownership homes into the Newport Beach market. As indicated in my comments on that subject on pages 12-44 & 45 of the March 14, 2023, Council agenda packet, since 1982, with adoption of Ordinance No. 82-14, Newport Beach had perfectly clear regulations in its Zoning Code (Title 20 of the Municipal Code) intended to prohibit such activity (time-share arrangements in residential areas). However, the original language used the phrases "time-share *projects*" and "time-share *development,*" which were explicitly intended to apply to conversion of existing residences to a time-share model, including fractional ownership, even though the terms "project" and "development" were not explicitly defined. However, without considering this, the Zoning Code was repeatedly rearranged and revised, and eventually, definitions of "project" and "development" applicable to the entire Zoning Code were added. And even though the introduction of those definitions was presumably not intended to alter the meaning of the time-share regulations, by the time Pacaso came to town, staff said they did, and they could not prohibit conversions of existing homes, only new construction.

One has to wonder if the Council members have reviewed the 18 Municipal Code chapters unrelated to STL permits in which "good cause" appears, and determined that applying to them

the definition proposed in the STL permit context does not alter the meaning of "good cause" that earlier Councils intended in those other contexts?

Placing Substantive Regulations in Uncodified Portions of Ordinances is a Bad Idea

Second, although neither the Council nor the public heard the circumstances of the speaker seeking relief at the February 1 Planning Session (only that "things come up"), it appears the intent of these code revisions is to allow staff to excuse people who have *missed* STL permit deadlines. Yet the proposed code revisions are written entirely in terms of *extending* deadlines, which implies a request to extend the deadline has been received before the deadline comes.

The fact that an "extension" can be granted retroactively, in effect *excusing* the missing of a deadline is relegated to an obscure reference in uncodified Section 7 of the proposed ordinance, on page 3-13 of the agenda packet.

Not only could the fact that a deadline can be extended retroactively have easily been included in the codified portion of the code, where all those reading the code would see it, but the code might even have limited how long after the fact a retroactive extension can be granted and how long such an extension can be.

The problems that can be created by not codifying substantive portions of regulations is illustrated by Item 12 on the current agenda. In that case, when enacting a Building Code revision in 2022, the Council only intended for it to be in effect until April 21, 2025, at which time the unrevised text would return. It would have been relatively easy to include this proviso in the code (the state legislature does this quite frequently). Instead, much like here, it exists only in an obscure uncodified section of the 2022 ordinance (see page 12-21 of the present agenda packet). Despite a subsequent ordinance reenacting the code section in question without any mention of an expiration, the proviso in the earlier ordinance seems to remain, like a zombie, completely unknown to those reading the existing code, which does not even mention the ordinance containing it in its revision history.

In the present case, the fact that STL deadline extensions can be retroactive will not only be unknown to readers of the code, but it may assume a similar zombie status if the code were subsequently revised without an intent to be retroactive but without explicitly repealing the present ordinance.

Item 4. Resolution No. 2025-12: Creating the Ad Hoc Refuse Committee

I think the idea of staff reaching out in considering its response to refuse regulations is a good one, and the present proposal is an improvement over the roll-out of the three-cart residential collection system, regarding which input seems to have been sought from a 3-member Council Ad Hoc Solid Waste Committee that was never formally appointed and which the public knew nothing about.

That said, I think it would be better for the Council to appoint a committee of affected residents and business owners from whom staff could seek input. The advantage of that, is that the Brown Act would require the discussions to be noticed and public.

The problem with Council-appointed ad hoc committees (and with ad hoc committees of the City boards and commissions in general, is that they are created precisely to avoid public visibility. Since the Brown Act does not require it, their discussions are rarely if ever public. As a result there is a complete lack of transparency as to how their recommendations were arrived at and what input was considered.

A happy recent, but still extremely rare, exception was the PB&R ad hoc committee seeking to make a recommendation about the proposed Aquatic Center at Lower Castaways, which held a noticed public workshop in the Community Room on February 12.

Item 5. Irrigation Controller Replacement Phase 2 – Award of Contract No. 9735-1

With a low bid of $472,186 to acquire(?) and install 37 controllers, that comes to nearly $13,000 per controller.

This contract is clearly for something more than a typical home controller, so it might have been helpful to provide a little more information on what is being contemplated. From the bid package, it looks like it is some version of the Toro 21-1196-IRC-DXi-Controller-SS.

Item 9. Concession Agreement with Kit at the Library, Inc. for Use of the Concession Facility at the Central Library Located at 1000 Avocado Avenue

Why is no information provided regarding the 16 other proposals that were received but rejected by City staff?

Why are “limited cosmetic tenant improvements to the Space” anticipated to take as much as 12 months to complete?

Libraries are known to attract children, and I seem to recall seeing them in the entry area adjacent to the concession. Does the menu contain any items that would appeal to young children?

Item 10. Amendment to Professional Services Agreement with Dudek, Inc. for Consulting Services on the Comprehensive General Plan Update (PA2022-080)

The City Council has, in my view, caused significant delay to the general plan update process by announcing its plan, in December, to dismiss all the GPAC and GPUSC members and make new appointments in the new year, which finally happened as Item 11 at the February 25, 2025, meeting.

I am grateful for my reappointment, and as chair of the subcommittee reviewing the existing Noise Element in the GPAC’s prior configuration, I have considerable interest in the current item, although I don’t yet know if I will be continuing that role in the new iteration.

I might note that at the time the subcommittee and full GPAC made our recommendation, we were unaware the traffic noise contours resulting from the addition of 6th Cycle RHNA units (for everything but the 73 freeway and toll road) had already been projected by a prior consultant as part of the recent Housing Implementation Program EIR (PA2022-0245), specifically in Chapter 4.11 and Appendix E. It appears Dudek is proposing to do something more supported by measurement.

In that regard, I am a little puzzled by proposed Task 1.2.b (agenda packet page 10-10), calling for Dudek to evaluate noise in the Airport Area "*based upon sound level contour mapping from the corresponding Airport Land Use Compatibility Plan (ALUCP)*." This seems to be a reference to what the County calls the John Wayne Airport Airport Environs Land Use Plan (AELUP).

Dudek seems not to have been informed that the contours in that plan were created in 1985, or before, and included projections, made then, to the anticipated contours in 2005. The City has an ongoing dispute with the OC Airport Land Use Commission as to whether the projections published in 1985 are still appropriate contours for planning purposes, and has, indeed, substituted a different set of contours in the November 14, 2023, Item 22 Noise Element revisions mentioned on page 10-2 of the staff report (prepared and adopted without GPAC input). The ALUC does not accept that change, and rejects submissions based on them. There is a particularly acute disagreement as to the noise impact of the small piston-powered planes that fly over what the City calls the "Airport Area" north of Bristol, yet no one seems to have any actual measurements to support their view of what the current situation there actually is.

Assuming this item is approved, I hope staff will instruct Dudek to perform some of its long-term monitoring (Task 1.1) in that area.

I am also a little concerned about the clarity of Task 2. Although entitled "GPAC Subcommittee Coordination," the unnumbered opening paragraph suggests Dudek feels it has more than fulfilled its obligation to attend meetings of the full GPAC, since the ones it has attended to date ran longer than the 1-hour anticipated (as future ones may also). Do Dudek and staff have a clear understanding of how many additional full GPAC and GPUSC meetings Dudek is expected to attend? Is there sufficient budget for them?

As to the GPAC subcommittees, the Council may wish to know there are six subcommittees, organized to review various combinations of general plan elements, as well as one for the Vision Statement. The proposed 12 meetings would mean Dudek attendance at at most 2 each to review their proposed revisions, none of which have yet been seen, before they go to the Planning Commission and Council. That seems possible, but minimal. Does staff anticipate the possibility of a need for additional GPAC subcommittee discussion meetings *without* Dudek present?

Item 12. Ordinance No. 2025-5: An Amendment to Section 15.02.095 of the Newport Beach Municipal Code Related to Timeframes for Completion of Construction

As noted in my comments when this item was first introduced (and then withdrawn) on March 11, it is unusual in that the current Municipal Code cites Ordinances No. 2023-22 § 693 and 2022-26 § 1 as the source of the language presently found in NBMC Section 15.02.095, and makes no mention of Ordinance No. 2022-8, where the sunset provision resides.

I concluded from this that no action was needed since neither of those ordinances makes any mention of the provisions they added being subject to sunsetting. But perhaps action is needed, since neither seems to have explicitly repealed the uncodified parts Ordinance No. 2022-8.

Assuming the April 21, 2025, sunsetting provision in Ordinance No. 2022-8 *is* still operative, it would appear the present ordinance repealing it will not be adopted until a second reading on April 15, and will not become effective until 30 days later, on May 15.

What will happen to projects that, under the prior code that staff believes will be restored for the 24 days from April 21 to May 15, would need to file for an extension during that time?

Item XIII.A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

This item involving three non-City-owned properties with no explanation of what the City's interest in them might be, also seems rather unusual.

One of the properties, the former Balboa Theatre at 707 E. Balboa Blvd., the City formerly owned and sold. What happened to that new owner's plans? Is the City considering buying it back?

Another, at 12 Corporate Plaza Drive, is the subject of an active Preliminary Application, PA2025-0017, for 38 residential units in an 85-foot high tower. Is the City contemplating becoming a partner in the development?

And the remaining one, at 3848 Campus Drive, has been the subject of prior closed session agendas, such as on January 28, and also seems to have a pending application, PA2023-0145, to construct a private self-storage facility on the site. What became of those?

CITY OF

NEWPORT BEACH

City Council Staff Report

March 25, 2025
Agenda Item No. 11

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Seimone Jurjis, Assistant City Manager/Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov
PREPARED BY:	Melinda Whelan, Assistant Planner - 949-644-3221, mwhelan@newportbeachca.gov
TITLE:	General Plan Annual Progress Report Including Housing Element Report for 2024 (PA2025-0008)

ABSTRACT:

State Government Code Section 65400 mandates that the City of Newport Beach prepare and submit an annual report on the status of the City's General Plan and progress in its implementation. The Planning Commission reviewed the 2024 Annual Progress Report (APR) at its meeting on March 6, 2025. For the City Council's consideration is the approval and authorization to submit the report to the State of California, Department of Housing and Community Development.

RECOMMENDATIONS:

a) Find the preparation, review and submission of the 2024 General Plan Progress Report not subject to the California Environmental Quality Act (CEQA) as the actions are not a project as defined by Section 15378(b)(2) of the Public Resources Code;

b) Approve the 2024 General Plan Progress Report, including the Housing Element Annual Progress Report; and

c) Authorize submittal of the 2024 General Plan Progress Report to the State Office of Land Use and Climate Innovation and the submittal of the Housing Element Annual Progress Report to the State Department of Housing and Community Development.

DISCUSSION:

2024 General Plan Annual Progress Report

Government Code Section 65400 and the City's General Plan Implementation Program Imp 1.3 require the preparation of an annual report on the status and progress of the General Plan implementation. Following City Council review, the report will be sent to the Office of Land Use and Climate Innovation (LCI), formerly the Office of Planning and Research (OPR), and the Department of Housing and Community Development (HCD), as required by State law. There is no standardized form or format for the preparation of the General Plan APR; however, the report format and content follows the guidance provided by the LCI Annual Progress Report Memo - 2024 Reporting Year and the HCD Housing Element APR Instructions (for Calendar Year 2018-2024), including the updated APR form for the Housing Element Report.

The report (Attachment A including Appendix A and Appendix B) reflects the status of the implementation measures between January 1, 2024, and December 31, 2024 (Reporting Period), and does not reflect changes or updates that may have been directed since. The Newport Beach General Plan was adopted in November 2006 pursuant to available guidelines provided by the State at that time pursuant to Government Code Section 65040.2 and consistent with Section 65400(a)(2). Since initial adoption, the City has updated the Housing and Circulation Elements in 2022, the Noise Element in 2023, and the Land Use Element in 2024. The report include a discussion of the status of each General Plan Implementation Program (Appendix A of Attachment A), a comprehensive status on each Housing Element Implementation Program (Appendix B of Attachment A), and an analysis on the degree to which the City's existing General Plan complies with criteria identified in LCI's General Plan Guidelines. Staff believes the City has achieved substantial progress in the implementation of the General Plan. Some of the progress is evident in completed tasks such as the comprehensive Zoning Code Update in 2010; however, most progress is illustrated through ongoing tasks and long-term coordination efforts, with updates highlighted for 2024. The report also summarizes identified priorities for land use decision making for the reporting period.

General Plan Update

The City embarked on a comprehensive update of the General Plan in 2019 but pivoted in 2020 to focus on preparing the 6th Cycle Housing Element (Housing Element), as well as an update to the Circulation Element.

The City continued to focus its efforts, which ultimately led to City Council's initial adoption of the Housing Element on February 8, 2022. After several reviews and revisions with HCD, the City Council re-adopted a refreshed Housing Element on September 13, 2022. The update is a comprehensive statement of the City's housing policies and serves as a guide for the implementation of these policies. As required by State law, the update examines current housing needs, estimates future housing needs, and establishes goals, policies, and programs pertaining to those needs while demonstrating capacity to accommodate the Regional Housing Needs Assessment (RHNA) allocation of 4,845 new housing units. Housing programs are responsive to current and future needs and established within the context of available community, state, and federal economic and social resources, realistic quantified housing objectives, and affirmatively furthering fair housing (AFFH). On October 5, 2022, HCD determined the City's Housing Element is in full statutory compliance.

On October 25, 2022, the City Council adopted an updated Circulation Element that included several refreshed policies that are compliant with State law. For example, the updated Circulation Element contains policies related to complete streets and vehicle miles traveled. The policies were reviewed by the community through extensive outreach and remain consistent with the community's vision.

Simultaneous with the efforts to update the Housing Element and Circulation Element, the General Plan Update Steering Committee (GPUSC) began meeting in July 2022 to restart the comprehensive update efforts. In November 2022, the City Council appointed a 30-member General Plan Advisory Committee (GPAC) to help represent the community and guide potential policy changes.

In July 2023, the City contracted with Dudek to provide consulting services on the comprehensive General Plan Update. "Phase One" outreach for the comprehensive update to the General Plan was conducted from March 2024 to June 2024. The following are highlights of this first phase of outreach:

- Used the City Manager's *The Week in Review*, as well as local papers and social media to reach residents, community members, and stakeholders;
- Launched a dedicated website on March 15, 2024 – Newport, Together including an online questionnaire and interactive map to collaboratively help shape the vision for Newport Beach; and
- Hosted "pop-up" booths at six community events to raise awareness through engaging and hearing from residents.

In addition to conducting outreach with the broader community, the City convened the GPAC subcommittees to review the "Existing Conditions and Background Analysis" reports prepared by the consultant team. The subcommittees met in January, March, April and May 2024.

"Phase Two" of outreach included four community workshops in November and December of 2024 designed to share the draft vision statement, draft guiding values, and discuss ideas to support each element. These workshops were held for the Recreation & Natural Resources; Coastal Resilience & Safety; Arts & Culture and Historical Resources; and Land Use; and Harbor, Bay and Beaches elements.

Information regarding the General Plan update efforts to date, including the initiation, evaluation, and overall process can be found on the City's website and at Newport, Together.

Housing Element Implementation

This comprehensive general plan update effort is on a parallel track alongside the City's implementation of the Housing Element. In November 2023, the City Council adopted an amendment to the Noise Element to adjust the policy framework surrounding housing proximate to John Wayne Airport. In July 2024, the City Council adopted an amendment to the Land Use Element to revise the necessary goals and policies to support housing production in the focus areas identified by the Housing Element. The Noise Element revisions can be found in Exhibit A of Resolution No. 2023-72 and the Land Use Element revisions can be found in Exhibit A of Resolution 2024-51.

Additionally, on September 24, 2024, the City Council adopted Zoning Code Amendments required to implement the Housing Element. These amendments included adding Housing Overlays into the Zoning Code (NBMC Section 20.28.050). The details are provided below in the ***Policy Actions 1A through 1G Related to Housing Implementation*** Section of this staff report.

2024 Housing Element Annual Progress Report

Government Code Section 65400 requires that each city, including charter cities, provide an annual progress report on the status of the Housing Element of its General Plan. HCD has provided mandatory forms (Excel spreadsheets) and definitions for the housing portion of the report. The forms include six large tables (Tables A through F). Due to the large size and format of the tables, only a summary of the contents of each table is provided in the attached Report. The complete forms will be made available online at www.newportbeachca.gov/APR and they will be submitted to HCD in electronic format.

The annual report requires the City to report all housing applications submitted in 2024 including building permits (Table A in Report) and all housing applications with a net increase in units approved and finalized in 2024 (Table A2 in Report). Table B includes the number of units for which permits were issued to demonstrate progress in meeting the City's RHNA goal. The Southern California Association of Governments (SCAG) prepared the RHNA for each jurisdiction within the SCAG region. SCAG, through the RHNA process, assigned Newport Beach a share of the region's new housing units needs for the 2021 - 2029 planning period to be a total of 4,845 new dwelling units further broken down by income category.

Housing production towards the 6th Cycle RHNA allocation is best summarized by Table B, which is included in the report and excerpted below.

Table B Summary: Regional Housing Needs Allocation Progress											
		Permitted Units Issued by Affordability									
Income Level	**RHNA**	**2021**	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**Total to Date**
Very Low	1,456	13	8	11	8						32
Low	930	21	14	18	23						53
Moderate	1,050	1	11	13	17						25
Above Moderate	1,409	31	7	1	33						72
Total RHNA	**4,845**										
Total Units Produced		66	40	43	81						230

Of the 81 permitted units contributing to RHNA, 46 units are accessory dwelling units including above-moderate, moderate- and lower-income units, and 32 of the above-moderate units and three of the very low-income units are from the 2510 West Coast Highway Mixed-Use Project that received building permits on February 22, 2024.

The Housing Element portion of the report also includes status and/or progress of implementing each Housing Element Policy Action for the Reporting Period (Appendix B of Report). Appendix B includes a detailed status report of each Housing Element Policy Action.

Efforts to Assist the Unhoused

The City continues to provide robust assistance to those who are unhoused in the community. For this reporting period, the following was accomplished:

- In 2024, the Be Well OC Mobile Crisis Team (Be Well) operated seven days a week for 12 hours per shift, from January to the end of August. Be Well responded to mental, behavioral, and substance use crises throughout the city. The team proactively engaged the unhoused population to provide resources, shelter placements, and program referrals. Be Well had 2,825 contacts with residents, visitors, and unhoused people. Be Well transported individuals 302 times to social service, medical, and other essential appointments, or intakes. Of the 302 transports, 56 were for shelter intake appointments, 34 to crisis stabilization units for treatment, and 45 to the Be Well campus sobering station for treatment. Be Well also reunified four people with their families.

- The City's homeless outreach and engagement team permanently housed one person from the streets to housing. In addition, one person was housed in assisted living and four were reunified with family, from the street.

- The Costa Mesa Bridge Shelter permanently housed 11 people and reunified one person with their family. In July 2023, the City Council approved an additional five beds in the Costa Mesa Bridge Shelter, with the option to use up to six more beds if the City of Costa Mesa has open beds. The daily cost for the additional six beds is $155 per bed per day including full wrap-around services. In 2024, the per six (per-diem) beds were used several times. There were 28 Newport Beach shelter guests for two weeks in October 2024.

- In February 2024, PATH (People Assisting the Homeless) became the City's social service contractor. PATH placed 34 people into shelters and provided 520 contacts with the unhoused population in Newport Beach.

- In December 2024, the City's Police Department reorganized to assign three additional officers as dedicated Homeless Liaison Officers (HLO).

- Trellis International is a Costa Mesa-based nonprofit organization that provides volunteer opportunities for individuals experiencing homelessness or housing insecurity to learn and/or rebuild job skills and a path forward to stable employment and housing. The Public Works Department manages projects with Trellis' Community Impact Team (CIT). CIT participants develop and refine job skills needed to re-enter the job market and remain employed. The projects may include beach cleanup, trash and graffiti removal, vegetation trimming and removal, and other duties. The CIT completed 114 projects in 2024.

The outreach and engagement team had three notable permanent housing placements in 2024. A man was unhoused for 34 years in Newport Beach. PATH and the City's homeless liaison police officer built a rapport with him within weeks of contacting him. The man had a housing voucher and was afraid to look for apartments on his own. PATH and the officer started showing him apartments online and their proximity to public libraries. He located an apartment he liked and moved into independent living in June 2024. PATH continues to check in with him to ensure stability and success. Additionally, a man who experienced homelessness, living in his vehicle for several months, stayed at the Costa Mesa Bridge Shelter after working with the Be Well OC team. He moved into permanent supportive housing in September 2024 and is now addressing his medical needs. A woman was also reunified with her family in another state in October 2024 after staying at the Costa Mesa Bridge Shelter. She had volunteered in the Newport Beach community for 10 years and did not want to end her service. She now lives with her daughter and is building a new community for herself.

Significant Residential Development Projects with Affordable Units

Another highlight is significant residential projects that include an affordable housing component on sites identified as underutilized. These projects, which are at different stages of review, include: Newport Crossings Mixed-Use Project, Residences at 4400 Von Karman, Residences at Newport Airport Village, Newport Village Mixed-Use Project, 2510 West Coast Highway Mixed-Use Project, Residences at 1300 Bristol Street, Residences at 1600 Dove Street, Residences at 1401 Quail Street, Residences at 1400 Bristol Street, Residences at 1500 Quail Street, and the Placentia Avenue Apartments. Cumulatively, these projects have the potential to add 266 lower-income housing units and 36 moderate-income housing units to the city. Each of these projects are detailed in the attached report.

Policy Actions 1A through 1G Related to Housing Implementation

Immediately after the Housing Element's adoption in September 2022, the City began efforts to implement the housing strategy. This predominantly included analyzing the General Plan Land Use Element for necessary amendments needed for consistency, drafting an overlay zoning text for the various focus areas, and creating objective design standards. The goal was to rezone the housing opportunity sites appropriately for housing development. The City worked with the General Plan Update Steering Committee and the General Plan Advisory Committee on this effort, held study sessions with the Planning Commission and City Council, and made draft documents available for public review and input to ensure a transparent process that is representative of the community's values.

- In July 2024, the City Council adopted an amendment to the Land Use Element to revise the necessary goals and policies to support housing production in the focus areas identified by the Housing Element. The Land Use Element's revised policies and goals can be found in Exhibit A of Resolution 2024-51.

- On September 24, 2024, the City Council adopted Zoning Code Amendments to implement the Housing Element by providing the necessary zoning. These amendments included adding a Housing Opportunity (HO) Overlay Zoning District (Overlay) to the NBMC, Section 20.28.050, which provides procedures and development standards for future housing projects. The Overlay provides allowed uses, maximum dwelling unit limits for each subarea, and appropriate development standards such as height, parking, setbacks, and open space requirements. The Overlay also provides a streamlined review process for projects that include a minimum of 20% of units reserved for very-low- and low-income residents, which serves to incentive the provision of affordable housing.

  Properties that are located within the Overlay are identified in the maps codified in Section 20.80.025 (Housing Opportunity Overlay Zoning Districts Maps) of the NBMC and provided below:

  HO-1 Airport Area Environs Area
  HO-2 West Newport Mesa Area
  HO-3 Dover-Westcliff Area
  HO-4 Newport Center Area
  HO-5 Coyote Canyon Area
  HO-6 Existing_5th_Cycle_Sites

- The Zoning Code Amendment also added Section 20.48.185 (Multi-Unit Objective Design Standards to provide a baseline standard for all new multi-unit development (See the Section **Policy Action 3A: Objective Design Standards**).

- Lastly, the City Council authorized the submittal of a Local Coastal Program Amendment to the California Coastal Commission (CCC) to amend the City's Coastal Land Use Plan and Title 21 (Local Coast Program Implementation Plan) to apply the new Overlay to applicable properties in the coastal zone. The City filed the amendment application on August 16, 2024, with the CCC, and received a letter from CCC staff on January 7, 2025, confirming the City's application is complete and pending a hearing date.

Policy Actions 1H, 1I, and 1J Related to Accessory Dwelling Units (ADUs)

In 2024, the City pursued several efforts related to revising the City's regulations pertaining to accessory dwelling units and incentivizing their development:

- *Code Amendment Related to State Law Updates and Additional Incentives:* In 2024, the City began to work on revising the ADU Ordinance to comply with SB 1211 for multi-family properties, which outlines additional parking allowances, adds a definition of livable space, and additional units allowed. Amendments related to the SAFE ADU program and compliance with AB 2533 are provided below.

- *Website Enhancements:* In Spring of 2023, the Community Development Department launched a comprehensive update to the Newport Beach ADU webpage. The webpage is intended to supplement the City's outreach and foster interest in constructing ADUs. The website now includes a downloadable guidebook, interactive activities and exercises to help homeowners plan their ADU, an online calculator to estimate costs, and standard plans. The website also includes resources to help the homeowner understand the different types of ADUs by providing links to development standards and processes. External resources are available for potential finance and grant opportunities for homeowners. Users can look up their property attributes including zoning and approximate lot size. An interactive mapping application is also included for residents to see the ADUs that are being constructed in their neighborhoods. The website is updated on a regular basis, for example in 2024, updates regarding the SAFE ADU program were added. The Newport Beach ADU website is accessible at https://www.newportbeachca.gov/adu.

- *ADU Standard Plans:* In late 2023 and early 2024, the City created its ADU Standard Plans program designed to offer property owners permit ready ADU plans at no charge. Use of the standard plans provide a substantial cost savings ($15k to $30k) for property owners by eliminating the need to hire a design professional to prepare custom set of architectural and structural plans. They also reduce permit processing times since the architectural and structural component of the plans have been pre-reviewed and approved for building code compliance. The City currently offers two separate types of studio designs, one one-bedroom design, and one-and-two-car-garage conversion plans. In 2024, staff worked on enhancing the standard plans page on the City's website to include a process for architects to submit their own drawings to be reviewed as standard plans/preapproval. This effort is also being completed to comply with AB 1332 (effective January 1, 2025).

- *SAFE ADU Program*: Efforts began towards the end of 2023 to implement the State's amnesty program to permit informal (unpermitted) units. The program became official in 2024, allowing concessions for qualifying units that were existing but unpermitted. Three safe ADUs were permitted, and one was in applied status (i.e. plan check) in 2024. Additionally, the City prepared for implementation of changes to the SAFE ADU Ordinance pursuant to AB 2533 (effective 2025) changing the year for qualified units from 2018 to 2020; and allowing JADUs for SAFE ADU. However, the City's Ordinance was a step ahead and already allowed JADUs to qualify for a SAFE ADU.

- *ADU Permit and Plan Check Fee Waiver:* On November 29, 2022, the City Council extended a pilot program to temporarily waive City plan check review fees, building construction permit review fees, and other City permit fees directly related to a project creating an ADU or a JADU. The fee waiver extension ran through the end of 2024 and complemented other City programs intended to promote and facilitate ADU development, including website enhancements and standard plans.

In 2024, 62 ADUs were submitted for review. There were 46 ADUs that received building permits and contributed towards the RHNA; and 28 that received final inspections.

Policy Action 3A: Objective Design Standards

The Zoning Code Amendment that approved the Housing Overlays also added Section 20.48.185 (Multi-Unit Objective Design Standards to provide a minimum baseline design standard for all new multi-unit development. The objective design standards are intended to result in quality design of multi-unit residential and mixed-use development. Review under the standards supports development that builds on context, contributes to the public realm, and provides high quality and resilient buildings and public spaces. These standards shall be applied uniformly and without discretion to enhance the built environment for both affordable and market-rate multi-unit residential development. The standards would apply to housing throughout the City that consists of a density of 20 dwelling units per acre or greater. Furthermore, the City prepared a Checklist for applicants to help streamline review of the objective design standards.

Policy Action 4A: Affirmatively Furthering Fair Housing

For Policy Action 4A (Affirmatively Furthering Fair Housing), the City intends to emphasize meaningful actions to overcome patterns of segregation and to foster inclusive communities free from barriers that restrict access to opportunity based on protective classes, as defined by State law. The City continues to maintain a contract for fair housing services with the Fair Housing Foundation and will participate in an update to the Orange County Regional Analysis of Impediments to Fair Housing when the next update occurs. The City is also collaborating with neighboring jurisdictions through the Orange County Council of Government (OCCOG) and its Regional Early Action Planning (REAP) on-call services bench, as there is an effort to streamline various housing element implementation program actions, including AFFH efforts, regionally.

FISCAL IMPACT:

There is no fiscal impact related to this item.

ENVIRONMENTAL REVIEW:

The General Plan Progress Report, including the Housing Element Progress Report, is not subject to CEQA, as the actions are not a project as defined in Section 15378(b)(2) of the Public Resources Code.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENT:

Attachment A – General Plan Annual Progress Report 2024

Attachment A

General Plan Annual Progress Report
2024

City of Newport Beach General Plan Annual Progress Report

2024 Calendar Year

Approved For Submission
DRAFT-PENDING

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Appendices

Appendix A – General Plan Implementation Program Status
Appendix B – Table D. Housing Element Implementation Program Status

1. Introduction

Consistent with Government Code Section 65400 and the City of Newport Beach (City) General Plan Implementation Program Imp 1.3, the General Plan Annual Progress Report (GP APR) was prepared using guidelines set forth by the California Office of Land Use and Climate Innovation (LCI) formerly Office of Planning and Research (OPR) and provides information for decision makers on the status of the General Plan and progress on implementation during the 2024 calendar year (Reporting Period). The current Newport Beach General Plan was last comprehensively updated and adopted in November 2006 pursuant to guidelines provided in Government Code Section 65040.2, and consistent with Section 65400(a)(2). There is no standardized form or format for the preparation of the General Plan Annual Progress Report; however, the report format and content follows the guidance provided by the APR Memo Reporting Year 2024 and the HCD APR Instructions for Calendar Year 2018-2024, including the updated APR form for the Housing Element Report.

2. Presentation and acceptance by local legislative bodies

The annual report was presented to the City's Planning Commission on March 6, 2025, and the City Council reviewed the report on March 25, 2025. At the conclusion of the review, which included receiving public comments, the City Council authorized the submission of the report to OPR and the State Department of Housing and Community Development (HCD), as required by State law.

3. General Plan Implementation

Included in the General Plan is Implementation Program (Chapter 13) that includes specific programs to carry out the goals and policies of the General Plan. Appendix A of this report evaluates and provides the status of the General Plan organized by each implementation program. The table below provides a quick status on each program:

Table 1 – Quick Status Update for Each Implementation Program

Programs		Ongoing	Complete	Pending	N/A
1.1	Ensure that Private Development and Capital Improvements are Consistent with the General Plan	✓			
1.2	Update and Revise the General Plan to Reflect Changing Conditions and Visions	✓			
1.3	Prepare Annual General Plan Progress and Housing Element Implementation Reports	✓		✓	
2.1	Amend the Zoning Code for Consistency with the General Plan			✓	
3.1	Preparation of New Specific Plans			✓	
4.1	New "Planned Community" Development Plans	✓			

Table 1 – Quick Status Update for Each Implementation Program					
Programs		**Ongoing**	**Complete**	**Pending**	**N/A**
5.1	Review and Revise Coastal Land Use Plan for Consistency with the General Plan	✓			
6.1	Review the Subdivision Ordinance for Consistency with the General Plan		✓		
7.1	Review Building and Construction Code for Consistency with General Plan	✓			
7.2	Revise Fair Share Traffic Contribution Ordinance	✓			
7.3	Review and Update Transportation Demand Ordinance		✓		
8.1	Review Codes and Ordinances for Consistency with the General Plan and Update Periodically	✓	✓		
8.2	Prepare New Codes, Ordinances, and Guidelines	✓			
9.1	Review City Council Policy Manual for Consistency with the General Plan	✓			
10.1	Maintain Up-to-Date Comprehensive Database (*Data such as built land use and traffic should be updated on a continuing basis, while data that is stable, such as seismic hazard zones, can be updated on a less frequent basis*)	✓			
10.2	Maintain Development Tracking and Monitoring Program	✓			
11.1	CEQA Review Development and Entitlement Applications	✓			
12.1	Evaluate Fiscal Benefits of Large Development Proposals and Annexations	✓			
12.2	Maintain and Update Fiscal Impact Model	✓			
13.1	Process Development Agreements	✓			
14.1	Adjoining Cities (*"Borders Committees" to collaborate with the cities of Irvine, Huntington Beach, and Costa Mesa*)	✓			
14.2	Coordinate with School Districts	✓			
14.3	Coordinate with Orange County	✓			
14.4	Coordinate with Orange County Transportation Authority (OCTA)	✓			
14.5	State of California Department of Housing and Community Development (HCD)	✓			
14.6	Coordinate with California Coastal Commission	✓			
14.7	Coordinate with the California Resources Agency, Department of Fish and Game (*now known as California Department of Fish and Wildlife*)	✓			
14.8	Coordinate with the California Department of Parks and Recreation	✓			
14.9	Coordinate with the California Department of Transportation ("Caltrans")	✓			
14.10	Transportation Corridor Agencies (TCA)	✓			
14.11	California Public Utilities Commission (CPUC)	✓			
14.12	Coordinate with United States Army Corps of Engineers ("Corps")	✓			

Table 1 – Quick Status Update for Each Implementation Program					
Programs		**Ongoing**	**Complete**	**Pending**	**N/A**
14.13	Coordinate with United States Fish and Wildlife Service	✓			
14.14	Coordinate with Environmental Protection Agency (EPA)	✓			
14.15	Coordinate with United States Postal Service (USPS) (*for the relocation of Mariners' Mile distribution facility*)		✓		
14.16	Other Agencies	✓			
15.1	Encourage Annexation of Banning Ranch Prior to Development	✓			
16.1	Improve Arterial Streets and Highways According to Classification	✓			
16.2	Monitor Traffic Conditions and Plan for and Fund Improvements	✓			
16.3	Construct Street and Highway Improvements	✓			
16.4	Monitor Roadway Conditions and Operational Systems	✓			
16.5	Maintain Consistency with Regional Jurisdictions (*Caltrans and Orange County to provide adequate roadway infrastructure plans and design standards such as the Orange County Master Plan of Arterial Highways*)	✓			
16.6	Local/Neighborhood Access Roads	✓			
16.7	Traffic Control	✓			
16.8	Provide Public Transportation	✓			
16.9	Manage Truck Operations	✓			
16.10	Improve Parking Supply and Management	✓			
16.11	Maintain Trails	✓			
16.12	Marine Transportation		✓		
17.1	Maintain and Implement Urban Water Management Plans and Encourage Conservation	✓			
18.1	Maintain and Implement Sewer Master Plan	✓			
19.1	Maintain Storm Drainage Facilities	✓			
20.1	Design, Fund, and Construct Streetscape Improvements	✓			
20.1	Design, Fund, and Construct Streetscape Improvements (*continued*)	✓			
20.2	Design, Fund, and Construct Waterfront Promenade	✓			
20.3	Fund and Construct Public View Sites	✓			
21.1	Review and Update Harbor and Tidelands Improvement Plans	✓			
21.2	Develop Harbor Area Management Plan (HAMP)		✓		
21.3	Events Management and Programs	✓			
21.4	Harbor Operations and Management	✓			
22.1	Maintain and Enhance Police and Fire Facilities	✓			
23.1	Maintain and Update Parks and Recreation Facility Plans	✓			
23.2	Maintain and Improve Parks and Recreation Facilities	✓			

Table 1 – Quick Status Update for Each Implementation Program					
Programs		Ongoing	Complete	Pending	N/A
23.3	Assess Recreation Needs	✓			
23.4	Maintain Recreation Programs for Newport Beach's Residents	✓			
23.5	Requirements for Residential Developers	✓			
24.1	Adopt and Implement Strategic Plan for Fiscal and Economic Sustainability	✓			
25.1	Implement Housing Element Programs	✓			
26.1	Enforce Codes and Ordinances	✓			
27.1	Seismic Compliance	✓			
28.1	Maintain Hazards Data Base	✓			
28.2	Maintain Emergency Preparedness, Response, and Recovery Programs	✓			
29.1	Educate the Community	✓			
29.2	Support of the Arts, Culture, and Historic Resources	✓			
29.3	Support Community Environmental and Recreation Initiatives	✓			
30.1	Maintain Annual Budgets for City Services and Improvements	✓			
30.2	Administer Impact and User Fees (*Development Impact Fees, Park Dedication and In-Lieu Fees, and Tideland Revenue Fees*)	✓			
31.1	Consider the Establishment of Community Facilities and Special Assessment Districts	✓			

4. Housing Element APR report requirements

Government Code Section 65400 requires that each city, including charter cities, prepare an annual progress report (APR) on the status of the General Plan Housing Element. The State Department of Housing and Community Development (HCD) has provided mandatory forms in an Excel workbook format and definitions for the reporting. The forms include 12 tables (Tables A, A2, B, C, D, E, F, F2, G, H, I, and J). A summary of the contents of each table is provided below. The complete forms are too large to include in this report and are available online at www.newportbeachca.gov/APR.The City's 6th Cycle Housing Element (Housing Element) was originally adopted by City Council in February 2022, subsequently revised and re-adopted on September 2022, and certified as being statutorily compliant by HCD in October 2022. Table D includes the Implementation Programs from the certified Housing Element 2021-2029. The complete Table D is provided in Appendix B of this report.

Table A Summary – Housing Development Applications Submitted

Table A provides a complete listing of all housing applications including discretionary and ministerial permits submitted during the Reporting Period. The following table is a summary of the net totals of Table A.

Table A Summary – 2024 Housing Development Applications Submitted					
Unit Type	**Affordability By Income**				**Total Submitted**
	Very Low	**Low**	**Moderate**	**Above Moderate**	
Accessory Dwelling Units	8	31	22	1	**72**
Single-Family	0	0	0	106	**106**
Multi-Family	6	2	0	1,824	**1,832**
Total	14	33	22	1,931	**2,000**

Table A2 Summary – Annual Building Activity Summary

Table A2 is a comprehensive table that includes data on net new housing units and developments that have received any one of the following forms of project readiness during the Reporting Period: 1) an entitlement approval, 2) a building permit issued, or 3) a certificate of occupancy issued. These projects are organized by affordability level. Projects that result in a net zero or decrease in number of units are not reported in this table.

Table A2 Summary - 2024 Building Activity Summary – Net New Units					
Approved Entitlements		**Building Permits Issued**		**Certificates of Occupancy Issued**	
Affordable	Above Moderate Income	Affordable	Above Moderate Income	Affordable	Above Moderate Income
66 Very Low-Income 2 Low Income	672	5 Very Low-Income (ADU) 3 Very Low-Income (Deed Restricted) 23 Low-Income (ADU) 17 Moderate-Income (ADU)	1 (ADU) 32 Units	3 Very Low-Income (ADU) 14 Low-Income (ADU) 10 Moderate-Income (ADU)	21 (ADU)

Table B Summary – Regional Housing Needs Allocation Progress

Table B reports the number of units for which permits were issued to demonstrate progress in meeting the City's Regional Housing Needs Allocation goal.

The Southern California Association of Governments (SCAG) prepared a Regional Housing Needs Allocation (RHNA) to identify the housing needs for each jurisdiction within the SCAG region. SCAG, through the RHNA process, assigned Newport Beach a share of the region's new housing units that should be constructed in the 2021 - 2029

planning period to satisfy housing needs resulting from projected growth in the region. To accommodate projected growth in the region, SCAG determined the City's share of RHNA to be a total of 4,845 new dwelling units. This includes 1,456 dwelling units affordable to very low-income households, 930 dwelling units affordable to low-income households, 1,050 dwelling units affordable to moderate-income households, and 1,409 dwelling units that are market rate or for above moderate-income households. It is important to note that the City adopted its Housing Element and received certification in September and October 2022, respectively.

In November 2023, the City Council adopted an amendment to the Noise Element to adjust the policy framework surrounding housing proximate to John Wayne Airport. In July 2024, the City Council adopted an amendment to the Land Use Element to revise the necessary goals and policies to support housing production in the focus areas identified by the Housing Element. The Noise Element revisions can be found in Exhibit A of Resolution No. 2023-72 and the Land Use Element revisions can be found in Exhibit A of Resolution 2024-51.

Additionally, the City Council adopted the necessary amendments to the Zoning Code required to implement the Housing Element's Housing Strategy. These amendments included adding Housing Overlays into the Zoning Code (Section 20.28.050). The amendments also added Section 20.48.185 (Multi-Unit Objective Design Standards to provide a minimum baseline design standard for all new multi-unit development.

Table B Summary: Regional Housing Needs Allocation Progress											
		Permitted Units Issued by Affordability									
Income Level	**RHNA**	**2021**	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**Total to Date**
Very Low	1,456	13	8	11	8						32
Low	930	21	14	18	23						53
Moderate	1,050	1	11	13	17						25
Above Moderate	1,409	31	7	1	33						72
Total RHNA	**4,845**										
Total Units Produced		66	40	43	81						412

Table C Summary - Sites Identified or Rezoned to Accommodate Shortfall Housing Need

As noted, the City successfully rezoned all opportunity sites listed in Appendix B of the Housing Element during the Reporting Period with exception of those located in the Coastal Zone. The City's Local Coastal Program Amendment application has been deemed filed by the California Coastal Commission's staff and is pending a hearing date. Table C largely reflects the data in the Housing Element's Appendix B.

Table D Summary - Program Implementation Status Pursuant to Government Code Section 65583

Table D provides the status and/or progress of implementing each Housing Element Policy Action for the Reporting Period. Appendix B includes a detailed status report of each Housing Element Program. Some highlights of the implementation in 2024 are excerpted below:

Efforts to Assist the Unhoused

The City continues to provide robust assistance to those who are unhoused in the community. For this reporting period, the following was accomplished:

- In 2024, the Be Well OC Mobile Crisis Team (Be Well) operated seven days a week for 12 hours per shift, from January to the end of August. Be Well responded to mental, behavioral, and substance use crises throughout the City. The team proactively engaged the unhoused population to provide resources, shelter placements, and program referrals. Be Well had 2,825 contacts with residents, visitors, and unhoused people. Be Well transported individuals 302 times to social service, medical, and other essential appointments, or intakes. Of the 302 transports, 56 were for shelter intake appointments, 34 to crisis stabilization units for treatment, and 45 to the Be Well campus sobering station for treatment. Be Well also reunified four people with their families.

- The City's homeless outreach and engagement team permanently housed one person from the streets to housing. One person was housed in assisted living and four were reunified with family from the street.

- The Costa Mesa Bridge Shelter services permanently housed eleven people and reunified one person with their family. In July 2023, the City Council approved an additional five beds in the Costa Mesa Bridge Shelter, with the option to use up to six more beds if the City of Costa Mesa has open beds. The daily cost for the additional six beds is $155 per bed per day including full wrap-around services. In 2024, the per six (per-diem) beds were used several times. There were 28 Newport Beach shelter guests for two weeks in October 2024.

- In February 2024, PATH (People Assisting the Homeless) became the City's social service contractor. PATH placed 34 people into shelters and provided 520 contacts with the unhoused population in Newport Beach.

- In December 2024, the City Police Department reorganized to assign three officers dedicated as Homeless Liaison Officers (HLO).

- Trellis International is a Costa Mesa-based non-profit organization which provides volunteer opportunities for individuals experiencing homelessness or housing insecurity to learn and/or rebuild job skills and a path forward to stable employment

and housing. The Public Works department manages projects with Trellis' Community Impact Team (CIT). CIT participants develop and refine job skills needed to renter the job market and remain employed. The projects may include beach cleanup, trash and graffiti removal, vegetation trimming and removal, and more. The CIT completed 114 projects in 2024.

- The outreach and engagement team had three notable permanent housing placements in 2024. A man was unhoused for 34 years in Newport Beach. PATH and the City's homeless liaison police officer built a rapport with him within weeks of contacting him. The man had a housing voucher and was afraid to look for apartments on his own. PATH and the officer started showing him apartments online and their proximity to public libraries. He located an apartment he liked and moved into independent living in June 2024. PATH continues to check in with him to ensure stability and success. A man who experienced homelessness, living in his vehicle for several months, stayed at the Costa Mesa Bridge Shelter after working with the Be Well team. He moved into permanent supportive housing in September 2024 and is now addressing his medical needs. A woman was reunified with her family in another state in October 2024 after staying at the Costa Mesa Bridge Shelter. She volunteered in the Newport Beach community for 10 years and did not want to end her service. She now lives with her daughter and is building a new community for herself.

Significant Residential Development Projects with Affordable Units

The City has significant projects on sites identified as underutilized with activity during the Reporting Period:

- **Newport Crossings Mixed-Use (1660 Dove Street)** – Located on a site identified as underutilized. The project was submitted in 2017 and approved by the Planning Commission on February 21, 2019. The project includes the development of 350 residential apartment units, including 78 units affordable to low-income households. The plan check for construction drawing review was submitted on November 17, 2020, and is approved and permit-ready. Permit issuance has been delayed due to pending private litigation.

- **Residences at 4400 Von Karman** – In 2020, the former Koll Center Residences project was actively reviewed under a new project submittal called The Residences at 4400 Von Karman. The request consists of rezoning nonresidential property to mixed-use land uses, including up to 260 residential units plus an allowance for density bonus units up to a total of 312 units (13 very low-income units). On November 5, 2020, the Planning Commission considered the project and recommended approval to the City Council. The City Council approved the project on February 9, 2021. The submittal for building permit plan check is pending. A final extension was granted until January 26, 2026.

- **Residences at Newport Airport Village (4540, 4570, 4600, and 4630 Campus Drive, 4525, 4533, and 4647 MacArthur Boulevard)** – A General Plan Amendment, Planned Community Development Plan (PCDP), and a Development Agreement that would allow for the future redevelopment of the 16.46-acre property with up to 444 dwelling units (329 base units and 115 density bonus units) and 202,989 square feet of retail, office, and other airport supporting uses. The legislative amendments were approved by City Council on September 22, 2020. The Site Development Review, AHIP and Parcel Map were submitted for the development of the 444 units in a six-story apartment building including 37 very low-income affordable units. Approved by the Planning Commission on April 18, 2024, and effective on May 3, 2024. The applicant intends to submit building permit plans in July 2025 and pull permits in early 2026.

- **Newport Village Mixed Use (2000-2244 and 2001-2241 West Coast Highway)** – Redevelopment of underutilized commercial sites for a new mixed-use development including 17 residential condominiums and 181 Apartments (including 9 very low-income units) on the North and South sides of West Coast Highway. The application was resubmitted in 2022 and deemed incomplete in August 2024. Project review by the Planning Commission is anticipated in calendar year 2025.

- **2510 West Coast Highway Mixed-Use**– In December 2019, an application was submitted for a new mixed-use development located at 2510 West Coast Highway to redevelop existing underutilized commercial sites. The project includes the development of 35 dwelling units, three of which would be restricted for Very Low-Income households. In exchange for providing the very low-income units, the developer has requested a density bonus of nine units (35% bonus), a development waiver for building height and a waiver regarding the unit mix. The project was approved by the City's Planning Commission on February 18, 2021, and called for City Council review. The project was approved by the City Council on July 27, 2021. The project was appealed to the California Coastal Commission (CCC) and on October 13, 2021, the CCC determined no substantial issue, approving the project. Permits were issued for the project on February 22, 2024, and is currently under construction.

- **Residences at 1300 Bristol Street** – Applied for on June 30, 2021, the project includes 24 affordable units (12 very low-income and 12 low-income). The developer has requested a density bonus of 39 units (50% bonus) for a total of 193 apartment units, and requested incentives including six development standard waivers related to park land dedication, building setbacks, building height, private open space for the studio-size rental units, common open space for the entire Project, as well as two development concessions related to the mix of affordable units and park in-lieu fee

payment. The project received entitlement approvals in March 2022, and is currently within the plan check process.

- **Residences at 1600 Dove Street** – Project includes the initial entitlements for future development of 282 units (inclusive of 94 density bonus and 49 units via GPA). 254 of the units would be market rate and 28 would be affordable (likely to be very low-income and will be confirmed with future AHIP). The project was approved by the City Council on September 9, 2024. The Applicant would apply for the project specific entitlements (e.g. site development review) sometime in the next few years.

- **Residences at 1401 Quail Street** –The residential condominium project consists of 67 units, including six very low- and two low-income units. The Site Development Review was submitted on February 14, 2023. The Planning Commission reviewed and recommended approval of the project on December 7, 2023. The City Council approved the project on April 9, 2024. The project is currently in plan check review.

- **Residences at 1400 Bristol Street** – A housing development project consisting of 229 apartment units (including 50% density bonus and 64 units via GPA). The project includes 23 affordable units for very-low income households. Planning Commission reviewed and recommended approval of the project on December 7, 2023. The City Council approved an override of the Airport Land Use Commission (ALUC) and final approval of the project on April 23, 2024. The demolition permit was approved and finaled in 2024, but no other plans submitted. Applicant is planning to submit building permit plans in March 2025 and pull permits by December 2025.

- **Residences at 1500 Quail Street** – A housing development project for 474 apartment units, including two (stacked) 50% density bonuses for a total of 100% density bonus in exchange for 36 moderate income units and 36 very low-income units. Project includes 5,077 sf of retail on the ground floor. The application was deemed incomplete in October 2024.

- **Placentia Avenue Apartments** (1526 Placentia Avenue) – On July 11, 2023, a housing development project was submitted for an 11-unit podium style apartment building with two floors of apartments over podium parking at the ground level. The project consists of seven base units and four density bonus units in exchange for providing one very low-income unit. The project was scheduled for the Zoning Administrator hearing in January 2025 and approved.

Policy Actions 1A-1G: Focus Area Amendments for Housing Implementation

Immediately after the Housing Element's adoption in September 2022, the City began efforts to implement the housing strategy. This predominantly included analyzing the

General Plan Land Use Element for necessary amendments needed for consistency, drafting an overlay zoning text for the various focus areas, and creating objective design standards. The goal was to rezone the housing opportunity sites appropriately for housing development. The City worked with the General Plan Update Steering Committee and the General Plan Advisory Committee on this effort, held study sessions with the Planning Commission and City Council, and made draft documents available for public review and input to ensure a transparent process that is representative of the community's values.

In July 2024, the City Council adopted a General Plan Amendment to revise the necessary goals and policies within the City's Land Use Element to support housing production in the focus areas identified by the Housing Element. The Land Use Element revised policies and goals can be found in Exhibit A of Resolution 2024-51.

On September 24, 2024, the City Council adopted Zoning Code Amendments to implement the Housing Element by providing the necessary zoning. These amendments included adding a Housing Opportunity (HO) Overlay Zoning District ("Overlay") to the NBMC, Section 20.28.050, which provides procedures and development standards for future housing projects. The Overlay provides allowed uses, maximum dwelling unit limits for each subarea, and appropriate development standards such as height, parking, setbacks, and open space requirements. The Overlay also provides a streamlined review process for projects that include a minimum of 20 percent of units reserved for very low- and low-income households, which serves to incentive the provision of affordable housing through certainty and streamlined review.

Properties that are located within the Overlay are identified in the maps codified in Section 20.80.025 (Housing Opportunity Overlay Zoning Districts Maps) of the NBMC and provided below:

HO-1 Airport Area Environs Area
HO-2 West Newport Mesa Area
HO-3 Dover-Westcliff Area
HO-4 Newport Center Area
HO-5 Coyote Canyon Area
HO-6 Existing_5th_Cycle_Sites

The Zoning Code Amendment also added Section 20.48.185 (Multi-Unit Objective Design Standards to provide a minimum baseline design standard for all new multi-unit development (See the Section **Policy Action 3A: Objective Design Standards**).

Lastly, the City Council authorized the submittal of a Local Coastal Program Amendment to the California Coastal Commission (CCC) to amend the City's Coastal Land Use Plan and Title 21 (Local Coast Program Implementation Plan) to apply the new Overlay to applicable properties in the coastal zone. The amendment is currently under review by the CCC.

Policy Actions 1H, 1I, and 1J: Accessory Dwelling Units

In 2024, the City pursued several efforts related to revising the City's regulations pertaining to accessory dwelling units and incentivizing their development:

- *Code Amendment Related to State Law Updates and Additional Incentives:* In 2024, the City began to work on revising the ADU Ordinance to comply with SB1211 for multi-family properties, which outlines additional parking allowances, adds a definition of livable space, and additional units allowed. Amendments related to the SAFE ADU program and compliance with AB2533 are provided below.

- *Website Enhancements:* In Spring of 2023, the Community Development Department launched a comprehensive update to the Newport Beach ADU webpage. The webpage is intended to supplement the City's outreach and foster interest in constructing ADUs. The website now includes a downloadable guidebook, interactive activities and exercises to help homeowners plan their ADU, an online calculator to estimate costs, and standard plans. The website also includes resources to help the homeowner understand the different types of ADUs by providing links to development standards and processes. External resources are available for potential finance and grant opportunities for homeowners. Users can look up their property attributes including zoning and approximate lot size. An interactive mapping application is also included for residents to see the ADUs that are being constructed in their neighborhoods. The website is updated on a regular basis, for example in 2024 updates regarding the SAFE ADU program were added. The Newport Beach ADU website can be reached at https://www.newportbeachca.gov/adu.

- *ADU Standard Plans:* In late 2023 and early 2024, the City created its ADU Standard Plans program designed to offer property owners permit ready ADU plans at no charge. Use of the standard plans provide a substantial cost savings ($15k to $30k) for property owners by eliminating the need to hire a design professional to prepare custom set of architectural and structural plans. They also reduce permit processing times since the architectural and structural component of the plans have been pre-reviewed and approved for building code compliance. The City currently offers two separate types of studio designs, one one-bedroom design, and one-and-two-car-garage conversion plans. In 2024, staff worked on enhancing the standard plans page on the City's website to include a process for architects to submit their own drawings to be reviewed as standard plans/preapproval. This effort is also being completed to comply with AB1332 (effective January 1, 2025).

- *SAFE ADU Program*: Efforts began towards the end of 2023 to implement the State's amnesty program to permit informal (unpermitted) units. The program became official in 2024, allowing concessions for qualifying units that were existing but unpermitted. Three safe ADUs were permitted, and one was in applied status

(i.e. plan check) in 2024. Additionally, the City prepared for implementation of changes to the SAFE ADU Ordinance pursuant to AB2533 (effective 2025) changing the year for qualified units from 2018 to 2020; and allowing JADUs for SAFE ADU. However, the City's Ordinance was a step ahead and already allowed JADUs to qualify for a SAFE ADU.

- *ADU Permit and Plan Check Fee Waiver:* On November 29, 2022, the City Council extended a pilot program to temporarily waive City plan check review fees, building construction permit review fees, and other City permit fees directly related to a project creating an ADU or a JADU. The fee waiver extension ran through the end of 2024 and complemented other City programs intended to promote and facilitate ADU development, including website enhancements and standard plans.

In 2024, 62 ADUs were submitted for review. There were 46 ADUs that received building permits and contributed towards RHNA; and 28 that received final inspections.

Policy Action 3A: Objective Design Standards

The Zoning Code Amendment that approved the Housing Overlays also added Section 20.48.185 (Multi-Unit Objective Design Standards to provide a minimum baseline designed standard for all new multi-unit development. The objective design standards are intended to result in quality design of multi-unit residential and mixed-use development. Review under the standards supports development that builds on context, contributes to the public realm, and provides high quality and resilient buildings and public spaces. These standards shall be applied uniformly and without discretion to enhance the built environment for both affordable and market-rate multi-unit residential development. The standards would apply to housing throughout the City that consists of density of 20 dwelling units per acre or greater. Furthermore, the City prepared a Checklist for applicants to help streamline review of the objective design standards.

Policy Action 6B: Repair Loans and Grant Programs for Seniors, Persons with Physical and Developmental Disabilities and Lower-Income Households

The City's Senior Housing Assistance Repair Program (SHARP) continues to successfully assist low-income seniors. In 2024, Habitat for Humanity and OASIS staff worked on four new projects and expended a total of $95,545.59. The project included accessibility modifications as well as mold abatement, wall and cabinet replacement, and roof repairs. To date, the program has used $ 476,222.96 for a total of 20 projects.

Table E Summary – Commercial Development Bonus Approved Pursuant to Government Code Section 65915.7

This table does not apply for this Reporting Period because the City did not approve any commercial development bonus in exchange for the development of affordable housing during the Reporting Period. Pursuant to State Density Bonus Law, a commercial developer may be eligible for an increase in floor area, height, or other development

standard exception if they partner with an affordable housing developer to provide affordable housing units.

Table F Summary – Units Rehabilitated, Preserved and Acquired for Alternative Adequate Sites Pursuant to Government Code Section 65583.1(c)(2)

This table does not apply for this Reporting Period because the City did not approve any eligible projects in 2024.

Table F2 Summary – Above Moderate Income Units Converted to Moderate Income Pursuant to Government Code Section 65400.2

This table does not apply for this Reporting Period because the City did not approve any eligible projects in 2024.

Table G Summary – Locally Owned Lands Included in the Housing Element Sites Inventory that have been sold, leased, or otherwise disposed of pursuant to Government Code Section 54230

This table does not apply for this Reporting Period because the City did not have any relevant transactions.

Table H Summary – Locally Owned or Controlled Lands Declared Surplus Pursuant to Government Code section 54221, or Identified as Excess Pursuant to Government Code Section 50569

Effective August 22, 2024, the City entered into an Exclusive Negotiating Agreement which establishes a period of time during which the City will cooperate with a selected developer to refine the scope and terms of a lease agreement for a proposed project to redevelop a portion of the City-owned property located at 829 Harbor Island Drive, Newport Beach [APN 050-210-02]. The anticipated lease premises contains approximately 17,500 square feet of land and was therefore declared “exempt surplus land” by the City Council of the City of Newport Beach at its regular meeting on July 23, 2024, in compliance with SS 54221(b)(4) of the California Surplus Land Act (Government Code SS54222).

Table J Summary – Student Housing Development for Lower Income Students for which was Granted a Density Bonus Pursuant to Subparagraph (F) of Paragraph (1) of Subdivision (b) of Section 65915

This table does not apply for this Reporting Period because the City did not approve any eligible projects in 2024.

Table K Summary - Local governments are required to inform HCD about any local tenant preference ordinance the local government maintains when the jurisdiction submits their annual progress report on housing approvals and production, per Government Code 7061 (SB 649, 2022, Cortese). Effective January 1, 2023, local

governments adopting a tenant preference are required to create a webpage on their internet website containing authorizing local ordinance and supporting materials, no more than 90 days after the ordinance becomes operational.

This table does not apply for this Reporting Period because the City does not have a local tenant preference.

5. General Plan compliance with OPR's General Plan Guidelines

Newport Beach General Plan Implementation Program 1.3 provides that the annual progress report must specify the degree to which the General Plan complies with the General Plan Guidelines published by the Governor's Office of Planning and Research (OPR) and the date of its last revision. The Newport Beach General Plan was last comprehensively updated in 2006. It has since been amended 53 times, including three major Housing Element updates (2007, 2014, and 2022). The OPR published General Plan Guidelines pursuant to Government Code Section 65040.2 in 2017 to reflect more recent changes to Government Code Section 65302.

In February 2019, the City Council initiated a comprehensive review and update of the General Plan with the goal to bring it up to date with the requirements of Government Code Section 65302 consistent with the City's changing vision to be identified through a robust public outreach process. In January 2020, after the release of the draft Regional Housing Needs Assessment (RHNA) allocations, the City pivoted its efforts away from a comprehensive update to focus on the Circulation Element and Housing Element. This re-focus was necessary to ensure the City was able to meet the statutory deadline for Housing Element Update adoption.

On September 13, 2022, the City Council re-adopted the 6th Cycle Housing Element. On October 5, 2022, the State Department of Housing and Community Development (HCD) determined the re-adopted Housing Element is statutorily compliant, including programs that affirmatively further fair housing. On October 25, 2022, the City Council also adopted an update to the Circulation Element mostly to refresh policy language for compliance with state law. This included addressing vehicle miles traveled (VMT) and complete streets.

Thereafter, the City began working with the community (1) to implement the Housing Element's plan, and (2) to consider updates to the balance of the General Plan. In July of 2023, the City entered into an agreement with Dudek for consulting services on the comprehensive General Plan Update.

The August 2024 General Plan Update Technical Diagnostic Memo, prepared by Dudek, analyzes the General Plan against State and Federal requirements. While it largely

complies, several required elements need updating. Two primary shortcomings are as follows:

- The Safety Element does not fully address Climate Change as required by Government Code Section 65302(g). The City will update the Safety Element as part of the comprehensive update to address Climate Change in concert with an update to the City's Local Hazard Mitigation Plan.

- The General Plan currently does not address Environmental Justice as specified by Government Code Section 65302(h). Including Environmental Justice policies or adding a new separate element is not required until the City revises two or more elements of the General Plan. Environmental Justice policy considerations will be included in the updated elements, as appropriate.

The City is currently undertaking a comprehensive General Plan update discussed more below in Section 6. of this report.

6. Established priorities for land use decision-making for 2024

In 2024, priorities on amendments and policies included the following and the status of each can be found in the referenced Implementation Programs in Appendix A:

Update and Revision to the General Plan to Reflect Changing Conditions and Visions (General Plan Implementation Program 1.2)

The General Plan was comprehensively updated in 2006. Staff reviews the General Plan on an ongoing basis to ensure it is maintained to reflect current conditions, issues, and visions.

As discussed in Section 5 of this report, the City embarked on a comprehensive update of the General Plan in 2019 but pivoted in 2020 to focus on preparing the Housing Element update, as well as an update to the Circulation Element.

The City continued to focus its efforts, which ultimately led to City Council's initial adoption of the Housing Element on February 8, 2022. After several reviews and revisions with HCD, the City Council re-adopted a refreshed Housing Element on September 13, 2022. The update is a comprehensive statement of the City's housing policies and serves as a guide for the implementation of these policies. As required by state law, the update examines current housing needs, estimates future housing needs, and establishes goals, policies, and programs pertaining to those needs while demonstrating capacity to accommodate the Regional Housing Needs Assessment (RHNA) allocation of 4,845 new housing units. Housing programs are responsive to current and future needs and established within the context of available community, state, and federal economic and social resources, realistic quantified housing objectives, and affirmatively furthering fair

housing (AFFH). On October 5, 2022, HCD determined the Housing Element is in full statutory compliance.

On October 25, 2022, the City Council adopted an updated Circulation Element that included several refreshed policies that are compliant with state law. For example, the updated Circulation Element contains policies related to complete streets and vehicle miles traveled. The policies were reviewed by the community through extensive outreach and remain consistent with the community's vision.

Simultaneous with the efforts to update the Housing Element and Circulation Element, the General Plan Update Steering Committee (GPUSC) began meeting in July 2022 to restart the comprehensive update efforts. In November 2022, the City Council appointed a 30-member General Plan Advisory Committee (GPAC) to help represent the community and guide potential policy changes.

In July 2023, the City contracted with Dudek to provide consulting services on the comprehensive General Plan Update. "Phase One" outreach for the comprehensive update to the General Plan was conducted from March 2024 to June 2024. The following are highlights of this first phase of outreach:

- Used the City Manager's *The Week In Review*, as well as local papers and social media to reach residents, community members, and stakeholders;
- Launched a dedicated website on March 15, 2024 – Newport, Together including an online questionnaire and interactive map to collaboratively help shape the vision for Newport Beach; and
- Hosted "pop-up" booths at six community events to raise awareness through engaging and hearing from residents.

In addition to conducting outreach with the broader community, the City convened the GPAC subcommittees to review the "Existing Conditions and Background Analysis" reports prepared by the consultant team. The subcommittees met in January, March, April, and/or May 2024.

"Phase Two" of outreach included four community workshops in November and December of 2024 designed to share the draft vision statement, draft guiding values, and discuss ideas to support each element. These workshops were held for the Recreation & Natural Resources; Coastal Resilience & Safety; Arts & Culture and Historical Resources; and Land Use; and Harbor, Bay and Beaches elements.

Information regarding the General Plan update efforts to date, including the initiation, evaluation, and overall process can be found on the City's website and at Newport, Together.

This effort is on a parallel track alongside the City's Housing Element implementation. In November 2023, the City Council adopted an amendment to the Noise Element to adjust the policy framework surrounding housing proximate to John Wayne Airport. In July 2024,

the City Council adopted an amendment to the Land Use Element to revise the necessary goals and policies to support housing production in the focus areas identified by the Housing Element. The Noise Element revisions can be found in Exhibit A of Resolution No. 2023-72 and the Land Use Element revisions can be found in Exhibit A of Resolution 2024-51.

On September 24, 2024, the City Council adopted Zoning Code Amendments to implement the 6th Cycle of the Housing Element by providing the necessary zoning. These amendments included adding a Housing Opportunity (HO) Overlay Zoning District ("Overlay") to the NBMC, Section 20.28.050, which provides procedures and development standards for future housing projects. The Overlay provides allowed uses, maximum dwelling unit limits for each subarea, and appropriate development standards such as height, parking, setbacks, and open space requirements. The Overlay also provides a streamlined review process for projects that include a minimum of 20 percent of units reserved for very low- and low-income residents, which serves to incentive the provision of affordable housing by providing certainty and streamlined review. See previous Section ***Policy Actions 1A-1G: Focus Area Amendments for Housing Implementation*** for additional details.

Title 20 (Zoning Code) Update Related to State Mandates (Implementation Program 8.2)

The City continues to closely monitor changes in state legislation and strives to keep the Newport Beach Municipal Code up to date. The following are three highlights that help substantiate this.

- In November 2024, as discussed in detail in the previous section, the City Council adopted Zoning Code Amendments required for implementation of the Housing Element. These amendments included adding Housing Overlays into the Zoning Code and objective design standards to provide a baseline standard for all new multi-unit development. See the previous section for more details.

- Additionally, Part A Amendment (update to the Accessory Dwelling Unit (ADU) provisions to further incentivize ADU construction and incorporate revisions necessary to comply with 2022 ADU legislation) of a three-part LCP Amendment (LCP-5-NPB-23-0019-1) was approved by the California Coastal Commission with suggested modifications on July 11, 2024, approved by City Council on November 12, 2024, and the Environmental Determination was submitted on November 18, 2024.

- Lastly, the City launched a comprehensive land use and mobility study (Study) to consider ways to enhance and improve the Corona del Mar (CdM) commercial corridor. When completed in Spring 2025, the Study will identify strategies and provide recommendations to help create a successful, vibrant, lively, walkable and connected "main street" destination. The objectives of the study include implementing parking solutions that balance all users. This includes identifying

parking solutions that balance the needs of visitors, employees, business owners, and residents while reducing the burden on individual businesses. The Study will consider opportunities to enhance access to existing parking lots, identify potential sites for new parking facilities, and explore new technologies that can assist in parking management and help anticipate future trends in transportation and mobility.

Title 20 (Zoning Code) and Title 21 (Local Coastal Program Implementation Plan) Update Related to Accessory Dwelling Units (Implementation Program 8.2)

Refer to the discussion on page 15 of this report regarding efforts related to revising the City's regulations pertaining to accessory dwelling units.

Title 17 (Harbor Code) Update (Implementation Program 8.1)

- Using funds from the CA State Vessel Turn In Program (VTIP) and Surrendered or Abandoned Vessels (SAVE) grant programs. More than 20 unwanted, abandoned, unsafe and unsightly vessels were removed from Newport Harbor. Three additional vessels were removed at the City's expense and the City is attempting to recover costs from the registered owners.
- A vessel abandoned in the harbor with significant liens on it was arrested and will undergo further disposition in 2025. The last time the City had to arrest a vessel was in 2016 before the Harbor Department was formed.
- The Southern California Unified Marine Working Group was established and convened by the Harbor Department. The group includes representatives from more than 20 harbors in Southern California as well as representatives from CA Division of Boating and Waterways and the CA Department of Fish and Wildlife. To date, the group has identified, recovered and returned one vessel reported as stolen and was able to more quickly respond to situations involving three other abandoned vessels.
- Code enforcement efforts continued to be a significant focus in the calendar year 2024 and specifically focused on the following:
    - Noise and other nuisance conditions during night and early morning hours;
    - Navigation lighting enforcement; and
    - Dye-tabbing of visiting vessels, live-aboard permittees, mooring sub-permittees.
- Continued monitoring, testing and repair when necessary, of the vessel sanitation system pump-out equipment at the five City-owned pump-out facilities.
- Conducted safety and water quality training drills independently as well as in collaboration with the California National Guard Marine Command and the CA Department of Fish and Wildlife Office of Spill Response.

Regulation and transfer of mooring permit applications and titles:

- The new Mooring License program was implemented. All 16 moorings in the program are licensed and there is a waiting list of more than 80 people. A seventeenth mooring was added to the program and has also been licensed.

- The application for a pilot project to reorganize and optimize the utilization of the C-Mooring Field was submitted and was deemed complete by the California Coastal Commission (CCC) on July 19, 2024. Staff worked extensively with CCC staff addressing concerns, and ultimately received a positive staff recommendation in support of the project. Unfortunately, the CCC denied the project at the February 2025 hearing due to public comments raised regarding safety and liability.

Maintaining Up-to-Date Comprehensive Database (Implementation Program 10.1)

The City's Geographical Information System (GIS) data is updated regularly to provide up-to-date, parcel-specific information including specific lot information, planning (zoning, land entitlements, building, code enforcement, environmental layers, general information [contours, assessor, easement, etc.]), general services, harbor, hazards including flood and seismic, fire, police, public works, parking, street and utilities. New layers are added whenever necessary and appropriate.

Maintaining Development Tracking and Monitoring Program (Implementation Program 10.2)

The City continues to fine-tune a parcel-specific database that accounts for all existing development. The database includes statistics for non-residential floor area and residential dwelling units. The database is used for site-specific information or compiled to provide information by any geography needed, from a single lot to a neighborhood, statistical area, and to citywide. The land use data is available by Statistical Area as directed by the General Plan. The data was used to update the land use inputs of the Newport Beach Traffic Analysis Model (NBTAM) consistent with the Orange County Transportation Analysis Model (OCTAM).

As required by Section 423 of the City Charter, the Planning Division tracks increases in development limits approved by General Plan amendments (GPA) for a period of 10 years. If a proposed amendment exceeds the established thresholds of 40,000 square feet of non-residential development, 100 dwelling units, 100 AM peak hour traffic trips or 100 PM peak hour traffic trips on its own or, when combined with 80% of previously approved General Plan amendment(s) located in the same Statistical Area, the amendment is considered a "major amendment." Approval or denial of a "major amendment" is determined by a vote of the electorate. The GPA/Charter Section 423 tracking tables are available for public review at the General Plan information page on Newport Beach's Community Development Department's Planning Division website at https://www.newportbeachca.gov/chartersection423.

Staff continues to update the database of all transfers of development rights in each statistical area, as they occur. Land Use Element policies LU4.3 (Transfer of

Development Rights) and LU6.14.3 (Transfers of Development Rights – Newport Center) allow development rights and intensity (e.g. square footage) to be transferred in certain circumstances without an amendment to the General Plan. The policies are implemented by Chapter 20.46 (Transfer of Development Rights) of the Newport Beach Municipal Code and the North Newport Center Planned Community Development Plan.

The transfer of development tables are located at the following webpage: https://www.newportbeachca.gov/developmenttransfertables.

APPENDIX A. General Plan Implementation Program Status

Programs		Status
1.1	Ensure that Private Development and Capital Improvements are Consistent with the General Plan	***Ongoing*** 1. All private development projects require consistency with the General Plan. Consistency is ensured through the application of zoning requirements. Discretionary applications require the adoption of a finding that the project is consistent with the General Plan based upon facts. 2. In June 2024, the City Council confirmed that the Fiscal Year 2024-25 Capital Improvement Program (CIP) was consistent with the General Plan when it approved the CIP with the adoption of the budget. For reference, in November 2012 the residents approved Measure EE, a City Charter amendment. Section 707 of the City's Charter was amended eliminating the need for the Planning Commission to recommend any proposed Public Works items to the City Council.
1.2	Update and Revise the General Plan to Reflect Changing Conditions and Visions	***Ongoing*** The General Plan was comprehensively updated in 2006. Staff reviews the General Plan on an ongoing basis to ensure it is maintained to reflect current conditions, issues, and visions. As discussed in Section 5 of this report, the City embarked on a comprehensive update of the General Plan in 2019, but pivoted in 2020 to focus on preparing the 6th Cycle Housing Element update, as well as an update to the Circulation Element. The City continued to focus its efforts, which ultimately led to City Council's initial adoption of the Housing Element on February 8, 2022. After several reviews and revisions with HCD, the City Council re-adopted a refreshed Housing Element on September 13, 2022. The update is a comprehensive statement of the City's housing policies and serves as a guide for the implementation of these policies. As required by state law, the update examines current housing needs, estimates future housing needs, and establishes goals, policies, and programs pertaining to those needs while demonstrating capacity to accommodate the Regional Housing Needs Assessment (RHNA) allocation of 4,845 new housing units. Housing programs are responsive to current and future needs and established within the context of available community, state, and federal economic and social resources, realistic quantified housing objectives, and affirmatively furthering fair housing (AFFH). On October 5, 2022, HCD determined the Housing Element is in full statutory compliance.

Programs		Status
		On October 25, 2022, the City Council adopted an updated Circulation Element that included several refreshed policies that are compliant with state law. For example, the updated Circulation Element contains policies related to complete streets and vehicle miles traveled. The policies were reviewed by the community through extensive outreach and remain consistent with the community's vision. Simultaneous with the efforts to update the Housing Element and Circulation Element, the General Plan Update Steering Committee (GPUSC) began meeting in July 2022 to restart the comprehensive update efforts. In November 2022, the City Council appointed a 30-member General Plan Advisory Committee (GPAC) to help represent the community and guide potential policy changes. In July 2023, the City contracted with Dudek to provide consulting services on the comprehensive General Plan Update. "Phase One" outreach for the comprehensive update to the General Plan was conducted from March 2024 to June 2024. The following are highlights of this first phase of outreach: • Used the City Manager's *The Week In Review*, as well as local papers and social media to reach residents, community members, and stakeholders; • Launched a dedicated website on March 15, 2024 – Newport, Together including an online questionnaire and interactive map to collaboratively help shape the vision for Newport Beach; and • Hosted "pop-up" booths at six community events to raise awareness through engaging and hearing from residents. In addition to conducting outreach with the broader community, the City convened the GPAC subcommittees to review the "Existing Conditions and Background Analysis" reports prepared by the consultant team. The subcommittees met in January, March, April, and/or May 2024. "Phase Two" of outreach included four community workshops in November and December of 2024 designed to share the draft vision statement, draft guiding values, and discuss ideas to support each element. These workshops were held for the Recreation & Natural Resources; Coastal Resilience & Safety; Arts & Culture and Historical Resources; and Land Use; and Harbor, Bay and Beaches elements. Information regarding the General Plan update efforts to date, including the initiation, evaluation, and overall process can be found on the City's website and at Newport, Together. Lastly, the City Council authorized the submittal of a Local Coastal Program Amendment to the California Coastal Commission (CCC) to amend the City's Coastal Land Use Plan and Title 21 (Local Coast Program Implementation

Programs		Status
		Plan) to apply the new Overlay to applicable properties in the coastal zone. The City filed the amendment application on August 16, 2024, with the CCC, and received a letter from CCC staff on January 7, 2025, confirming the City's application is complete and pending a hearing date.
1.3	Prepare Annual General Plan Progress and Housing Element Implementation Reports	***Ongoing – 2023 report completed and submitted; 2024 report pending*** The Annual Report for 2023 was reviewed by the City Council and submitted to the Governor's Office of Planning and Research (OPR) and State of California Department of Housing and Community Development (HCD) in April 2024. Implementation Program 1.3 also states that that the report must specify the degree to which the General Plan complies with the General Plan Guidelines published by OPR and the date of its last revision. The Newport Beach General Plan was last comprehensively updated in 2006. It has since been amended 69 times, including three major Housing Element updates (2007, 2014, and 2022). The OPR published General Plan Guidelines pursuant to Government Code Section 65040.2 in 2017 to reflect more recent changes to Government Code Section 65302. In February 2019, the City Council initiated a comprehensive review and update of the General Plan with the goal to bring it up to date with the requirements of Government Code Section 65302 consistent with the City's changing vision to be identified through a robust public outreach process. In January 2020, after the release of the draft Regional Housing Needs Assessment (RHNA) allocations, the City pivoted its efforts away from a comprehensive update to focus on the Circulation Element and Housing Element. This re-focus was necessary to ensure the City was able to meet the statutory deadline for Housing Element Update adoption. See Program 1.2 for update.
2.1	Amend the Zoning Code for Consistency with the General Plan	***Ongoing*** A Comprehensive Zoning Code Update, consistent with the 2006 General Plan, was adopted by City Council in October 2010. In July 2024, the City Council adopted a General Plan Amendment to revise the necessary goals and policies within the City's Land Use Element to support housing production in the focus areas identified by the 6th Cycle Housing Element. The Land Use Element revised policies and goals can be found in the Resolution 2024-51 in Exhibit A. On September 24, 2024, the City Council adopted Zoning Code Amendments to implement the Housing Element by providing the necessary zoning. These amendments included adding a Housing Opportunity (HO) Overlay Zoning District (Overlay) to the NBMC , Section 20.28.050, which provides procedures and development standards for future housing projects. The Overlay provides allowed uses, maximum dwelling unit limits for each subarea, and appropriate development standards such as height, parking, setbacks, and open space requirements. The Overlay also provides a streamlined review process for projects that include a minimum of 20 percent of units reserved for

Programs		Status
		very-low- and low-income residents, which serves to incentive the provision of affordable housing. Properties that are located within the Overlay are identified in the maps codified in Section 20.80.025 (Housing Opportunity Overlay Zoning Districts Maps) of the NBMC and provided below: HO-1 Airport Area Environs Area HO-2 West Newport Mesa Area HO-3 Dover-Westcliff Area HO-4 Newport Center Area HO-5 Coyote Canyon Area HO-6 Existing 5th Cycle Sites The Zoning Code Amendment that approved the Housing Overlays also added Section 20.48.185 (Multi-Unit Objective Design Standards to the NBMC, to provide a baseline set of objective standards that would apply to all new multi-unit development consisting of at least 20 dwelling units per acre. Furthermore, the City prepared a Checklist for applicants to help streamline review of the objective design standards. After the City completes its comprehensive update to the General Plan, the Zoning Code will be updated to ensure any inconsistencies between the updated General Plan and the Zoning Code are resolved.
3.1	Preparation of New Specific Plans	***Pending in 2024*** Within the Airport Area, Uptown Newport and Koll Center elected to meet their "regulatory plan" requirements (General Plan Policy LU 6.15.10) through a Planned Community Development Plan as allowed pursuant to Implementation Program 4.1. The streetscape improvements for West Newport and Balboa Village are intended to create a unified theme as public and private improvements are implemented in the area. The City has also launched a comprehensive land use and mobility study (Study) to consider ways to enhance and improve the Corona del Mar (CdM) commercial corridor. When completed in Spring 2025, the Study will identify strategies and provide recommendations to help create a successful, vibrant, lively, walkable and connected "main street" destination.

Programs		Status
4.1	New "Planned Community" Development Plans	***Ongoing*** The City will promote the establishment of planned community development plans when it is appropriate to do so for future development that is consistent with the General Plan.
5.1	Review and Revise Coastal Land Use Plan for Consistency with the General Plan	***Ongoing*** The Coastal Land Use Plan (CLUP) was amended to be consistent with the 2006 General Plan in 2009. When the City approves an amendment of the General Plan that affects property in the Coastal Zone, the City prepares necessary amendments to the CLUP. The General Plan amendment is held in abeyance until the corresponding CLUP amendment is certified by the California Coastal Commission (CCC) and accepted by the City Council. On August 16, 2024, the City Council authorized the submittal of a Local Coastal Program Amendment to the California Coastal Commission (CCC) to amend the City's Coastal Land Use Plan and Title 21 (Local Coast Program Implementation Plan) to apply the new Overlay to applicable properties in the coastal zone. The amendment is currently under review by the CCC.
6.1	Review the Subdivision Ordinance for Consistency with the General Plan	***Complete*** The Subdivision Code was reviewed and updated in 2009 and 2010 consistent with this program.
7.1	Review Building and Construction Code for Consistency with General Plan	***Complete and Ongoing*** The City of Newport Beach has adopted, with some local amendments, the 2022 edition of the building codes in late 2022. The adopted 2022 code became effective January 1, 2023. The next updates will be in 2025 and effective in 2026.
7.2	Revise Fair Share Traffic Contribution Ordinance	***Partially Complete and Ongoing*** The City continues to adjust the fee annually for changes in the Consumer Price Index, but the City will explore opportunities to revise the ordinance.

Programs		Status
7.3	Review and Update Transportation Demand Ordinance	***Complete*** The Transportation Demand Management Ordinance was reviewed and updated as a part of the comprehensive Zoning Code Update in 2010 (see Section 20.44 of the Zoning Code).
8.1	Review Codes and Ordinances for Consistency with the General Plan and Update Periodically	***Complete and Ongoing*** Codes and Ordinances are revised for consistency with the General Plan on an as-needed basis. The Zoning Code was comprehensively updated in 2010, and Subdivision Code was updated in 2009 and 2010 for consistency with the General Plan. The following are specifically recommended (sections from the Implementation Measure are italicized): A) *Requirements for live-aboard vessels pertaining to the integrity, quality, and safety of Harbor uses, environmental protection, and impacts on the public, waterfront owners/lessees, and adjoining properties*; • Using funds from the CA State Vessel Turn In Program (VTIP) and Surrendered or Abandoned Vessels (SAVE) grant programs, 20+ unwanted, abandoned, unsafe and unsightly vessels were removed from Newport Harbor. Three additional vessels were removed at the City's expense and the City is attempting to recover costs from the registered owners. • A vessel abandoned in the harbor with significant liens on it was arrested and will undergo further disposition in 2025. The last time the City had to arrest a vessel was in 2016 before the Harbor Department was formed. • The Southern California Unified Marine Working Group was established and convened by the Harbor Department. The group includes representatives from more than 20 harbors in Southern California as well as representatives from CA Division of Boating and Waterways and the CA Department of Fish and Wildlife. To date, the group has identified, recovered and returned one vessel reported as stolen and was able to more quickly respond to situations involving three other abandoned vessels • Code enforcement efforts continued to be a significant focus in the calendar year 2024 and specifically focused on noise and other nuisance conditions during night and early morning hours; navigation lighting enforcement; and dye-tabbing of visiting vessels, live-aboard permittees, mooring sub-permittees. • Continued monitoring, testing and repair of the vessel sanitation system pump-out equipment at the five City-owned pump-t facilities, when necessary. • Conducted safety and water quality training drills independently as well as in collaboration with the California National Guard Marine Command and the CA Department of Fish and Wildlife Office of Spill Response

Programs		Status
		B) *Regulation and transfer of mooring permit applications and titles* – Managed by the City's Harbormaster's Office on an ongoing basis. • The new Mooring License program was implemented. All 16 moorings in the program are licensed and there is a waiting list of more than 80 people. A 17th mooring was added to the program and has also been licensed. • The application for a pilot project to reorganize and optimize the utilization of the C-Mooring Field was submitted and deemed complete by the California Coastal Commission (CCC) on July 19, 2024. Staff worked extensively with CCC staff addressing concerns and ultimately received a positive staff recommendation in support of the project. Unfortunately, the CCC denied the project at the February 2025 hearing due to public comments raised regarding safety and liability. *C) Standards for the design and siting of bulkheads, pier, and similar structures to address their potential visual impacts – Current City Council approved Harbor Standards, state that the bulkhead height is required to be 10 feet Mean Lower Low Water (MLLW). On March 23, 2021, the City Council approved updated Waterfront Project Design Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities. The guidelines require that any structure permitted within the years 2021 through 2025 must have a minimum bulkhead elevation of 10.9 feet (NAVD 88) with a design for adaptability elevation of 14.4 feet (NAVD 88).* D) *Standards and policies specified by the Noise Element to protect sensitive noise receptors, residents and businesses from unwanted noise impacts from traffic, JWA operations, construction activities, truck deliveries, special events, charter and entertainment boats, and similar sources* – Reviewed and implemented on an ongoing basis through project review consistent with the Airport Land Use Environs Plan (AELUP), by Code Enforcement, Harbormaster's Office, and building inspectors. In 2023, the City adopted amendments to the Zoning Code and General Plan related to noise in the airport area, which were necessary to implement the 6th Cycle Housing Element. The amendments included adding regulations to Section 20.30.080 (Noise) of the NBMC that would serve to protect sensitive noise receptors from potential airport noise.
8.2	Prepare New Codes, Ordinances, and Guidelines	***Ongoing*** The comprehensive Zoning Code update was adopted in November 2010, by the City Council. The following are specifically recommended (sections from the Implementation Measure are italicized): A) *A "commercial-residential" interface ordinance that regulates use, activity, and design of commercial properties located on shallow parcels directly abutting residential neighborhoods* - The Zoning Code includes development standards that address the commercial and residential interface to minimize potential land conflicts.

Programs		Status
		B) *Design guidelines for the renovation or reconstruction of housing in existing neighborhoods to assure that they complement the character of existing development; these may be applied to specific neighborhoods or citywide* – The 2010 Zoning Code attempted to regulate third floor mass and bulk through the use of NBMC Section 20.48.180 (Residential Development Standards and Design Criteria), which includes third floor area limits, third floor step backs for enclosed floor area, and open space standards to increase building modulation. However, the third floor limits did not apply to unenclosed covered deck areas or unfinished attics, resulting in building designs with third levels (enclosed and unenclosed) that visually appear larger and bulkier than the code intended. Furthermore, these standards did not apply to Balboa Island (R-BI) and the Multiple Residential (RM) zoning districts. On November 24, 2020, the City Council adopted Ordinance No. 2020-28 amending the residential design standards to reduce the bulk and mass associated with future single-unit and two-unit developments by clarifying the definition of gross floor area, regulating covered third floor decks, and expanding the application of third floor area and open volume standards. C) *An ordinance or guidelines for the preservation of historic buildings and/or properties; this shall be developed in consideration of guidelines published by the State Historic Preservation Office* – Staff continues to review projects subject to the California Environmental Quality Act (CEQA) to address historic preservation. An ordinance has not been prepared at this time due to competing priorities and staff resources. D) *An ordinance managing parking in commercial and mixed-use corridors and districts characterized by deficient parking; this may provide for the establishment of parking districts in which new parking may be developed in public or private shared facilities or structures or other facilities, as well as procedures for the funding of these improvements* – The City has launched a comprehensive land use and mobility study (Study) to consider ways to enhance and improve the Corona del Mar (CdM) commercial corridor. When completed in Spring 2025, the Study will identify strategies and provide recommendations to help create a successful, vibrant, lively, walkable and connected “main street” destination. The objectives of the study include implementing parking solutions that balance all users. This includes identifying parking solutions that balance the needs of visitors, employees, business owners, and residents while reducing the burden on individual businesses. The Study will consider opportunities to enhance access to existing parking lots, identify potential sites for new parking facilities, and explore new technologies that can assist in parking management and help anticipate future trends in transportation and mobility. Also See Program 16.10 for an update on parking. On February 12, 2019, the City Council adopted amendments to Title 20 and Title 21 necessary to address changes in State law (Senate Bill 1069 and Assembly Bill 2299, Statutes of 2016, and Senate Bill 229 and Assembly Bill 494, Statutes of 2017) that require jurisdictions to amend their local ordinances to conform to California Government Code Section 65852.2. The ordinances expanded opportunities in the City for the conversion and construction of new Accessory Dwelling Units (ADUs) to any residential lot with existing or proposed single-unit development.

Programs		Status
		In 2019, the California Legislature adopted another group of housing bills aimed at addressing the housing crisis. The Legislature approved, and the Governor signed SB 13 (Chapter 653, Statutes of 2019), AB 68 (Chapter 655, Statutes of 2019), and AB 881 (Chapter 659, Statutes of 2019) into law that, among other things, amended Government Code sections 65852.2 and 65852.22 to further impose new limits on the City's ability to regulate ADUs and Junior Accessory Dwelling Units (JADUs). On March 10, 2020, the City adopted Ordinance No. 2020-9, amending Newport Beach Municipal Code (NBMC) Title 20 to conform with revisions to Government Code Sections 65852.2 and 65852.22. In addition, on April 10, 2020, staff submitted amendments to NBMC Title 21 (Implementation Plan of the Local Coastal Program) to the California Coastal Commission incorporating the revised ADU regulations. During this reporting period, the City continued to pursue amendments to Title 21 with the California Coastal Commission. Part A Amendment (update to the Accessory Dwelling Unit (ADU) provisions to further incentivize ADU construction and incorporate revisions necessary to comply with 2022 ADU legislation) of a three-part LCP Amendment (LCP-5-NPB-23-0019-1) was approved by the California Coastal Commission with suggested modifications on July 11, 2024, and approved by City Council on November 12, 2024. In 2024, the City pursued several efforts related to revising the City's regulations pertaining to accessory dwelling units and incentivizing their development: • *Code Amendment Related to State Law Updates and Additional Incentives:* In 2024, the City began to work on revising the ADU Ordinance to comply with SB1211 for multi-family properties, which outlines additional parking allowances, adds a definition of livable space, and additional units allowed. Amendments related to the SAFE ADU program and compliance with AB2533 are provided below. • *Website Enhancements:* In Spring of 2023, the Community Development Department launched a comprehensive update to the Newport Beach ADU webpage. The webpage is intended to supplement the City's outreach and foster interest in constructing ADUs. The website now includes a downloadable guidebook, interactive activities and exercises to help homeowners plan their ADU, an online calculator to estimate costs, and standard plans. The website also includes resources to help the homeowner understand the different types of ADUs by providing links to development standards and processes. External resources are available for potential finance and grant opportunities for homeowners. Users can look up their property attributes including zoning and approximate lot size. An interactive mapping application is also included for residents to see the ADUs that are being constructed in their neighborhoods. The website is updated on a regular basis, for example in 2024 updates regarding the SAFE ADU program were added. The Newport Beach ADU website can be reached at https://www.newportbeachca.gov/adu. • *ADU Standard Plans:* In late 2023 and early 2024, the City created its ADU Standard Plans program

Programs		Status
		designed to offer property owners permit ready ADU plans at no charge. Use of the standard plans provide a substantial cost savings ($15k to $30k) for property owners by eliminating the need to hire a design professional to prepare custom set of architectural and structural plans. They also reduce permit processing times since the architectural and structural component of the plans have been pre-reviewed and approved for building code compliance. The City currently offers two separate types of studio designs, one one-bedroom design, and one-and-two-car-garage conversion plans. In 2024, staff worked on enhancing the standard plans page on the City's website to include a process for architects to submit their own drawings to be reviewed as standard plans/preapproval. This effort is also being completed to comply with AB1332 (effective January 1, 2025). • *SAFE ADU Program*: Efforts began towards the end of 2023 to implement the State's amnesty program to permit informal (unpermitted) units. The program became official in 2024, allowing concessions for qualifying units that were existing but unpermitted. Three safe ADUs were permitted, and one was in applied status (i.e. plan check) in 2024. Additionally, the City prepared for implementation of changes to the SAFE ADU Ordinance pursuant to AB2533 (effective 2025) changing the year for qualified units from 2018 to 2020; and allowing JADUs for SAFE ADU. However, the City's Ordinance was a step ahead and already allowed JADUs to qualify for a SAFE ADU. • *ADU Permit and Plan Check Fee Waiver:* On November 29, 2022, the City Council extended a pilot program to temporarily waive City plan check review fees, building construction permit review fees, and other City permit fees directly related to a project creating an ADU or a JADU. The fee waiver extension ran through the end of 2024 and will complement other new City programs intended to promote and facilitate ADU development, including website enhancements and standard plans. The City continues to closely monitor changes in State legislation and strives to keep the NBMC up to date. Specifically, in 2024, the City continues to implement updates Title 20 to reflect changes in State law regarding accessory dwelling units.
9.1	Review City Council Policy Manual for Consistency with the General Plan	***Ongoing*** In 2024, the following City Council Policies were reviewed and amended: F-1 (2024-21); A-1, A-2, D-1, D-5 (2024-31); F-2 (2024-39); and F-1 (2024-78)

Programs		Status
10.1	Maintain Up-to-Date Comprehensive Database (*Data such as built land use and traffic should be updated on a continuing basis, while data that is stable, such as seismic hazard zones, can be updated on a less frequent basis*)	***Ongoing*** The City's Geographical Information System (GIS) data is updated regularly to provide up-to-date parcel-specific information including specific lot information (agreements), planning (zoning, land entitlements, building, code enforcement, environmental layers, general information [contours, assessor, easement, etc.]), general services, harbor, hazards including flood and seismic, fire, police, public works, parking, street and utilities. New layers are added whenever necessary and appropriate.
10.2	Maintain Development Tracking and Monitoring Program	***Ongoing*** The City continues to fine-tune a parcel-specific database that accounts for all existing development. The database includes statistics for commercial floor area and residential dwelling units. The database is used for site-specific information or compiled to provide information by any geography needed, from a single lot to a neighborhood to statistical area and citywide. The land use data is available by Statistical Area as directed by the General Plan. The data is currently being used to update the land use portion of the Newport Beach Traffic Model (NBTAM). As required by Section 423 of the City Charter, the Planning Division tracks increases in development limits approved by General Plan amendments (GPA) for a period of 10 years. If a proposed amendment exceeds the established thresholds of 40,000 square feet of non-residential development, 100 dwelling units, 100 AM peak hour traffic trips, or 100 PM peak hour traffic trips on its own or, when combined with 80% of previously approved General Plan amendment(s) located in the same Statistical Area, the amendment is considered a "major amendment." Approval or denial of a "major amendment" is determined by a vote of the electorate. The GPA/Charter Section 423 tracking tables are available for public review at the General Plan information page on Newport Beach's Community Development Department's Planning Division website at - https://www.newportbeachca.gov/chartersection423 Land Use Element policies LU4.3 (Transfer of Development Rights) and LU6.14.3 (Transfers of Development Rights – Newport Center) allow development rights (e.g. square footage) to be transferred in certain circumstances without an amendment to the General Plan. The policies are implemented by Chapter 20.46 (Transfer of Development Rights) of the Newport Beach Municipal Code and the North Newport Center Planned Community Development

Programs		Status
		Plan. The transfer of development tables is located at the following webpage: https://www.newportbeachca.gov/developmenttransfertables
11.1	CEQA Review Development and Entitlement Applications	***Ongoing*** All private and public development projects and programs defined as a "project" pursuant to the California Environmental Quality Act (CEQA) are reviewed in compliance with the Act.
12.1	Evaluate Fiscal Benefits of Large Development Proposals and Annexations	***Ongoing*** The City continues to examine the fiscal benefits of large development proposals consistent with Implementation Policy 12.1. No annexations were considered during the reporting period.
12.2	Maintain and Update Fiscal Impact Model	***Ongoing*** The fiscal impact model is maintained by Applied Development Economics, Inc. on behalf of the City. The model calculates public service impacts for specific land uses that support the residential population, the employment base and the visitor population in the City. It also calculates the public revenues that each type of land use typically generates for the City, including property taxes, sales taxes, and other taxes, as well as a variety of user charges and fees. The output from the fiscal impact model can be modified to address these circumstances for each individual project and the fiscal year the project is proposed. In 2025, maintenance of the fiscal impact model will be transferred to a new consultant, Keyser Martson Associates, Inc.
13.1	Process Development Agreements	***Ongoing*** The City requires Development Agreements for projects in accordance with Chapter 15.45 of the Municipal Code and where required by the General Plan. In 2024, the City completed negotiations on several development agreements including 1600 Dove Street, 1400 Bristol Street, and 20 Corporate Plaza. Additionally, the City initiated negotiations on two other projects including the North Newport Center Planned Community Amendment and the Saunders Self Storage Project.

Programs		Status
14.1	Adjoining Cities (*"Borders Committees" to collaborate with the cities of Irvine, Huntington Beach, and Costa Mesa*)	***Ongoing*** The City continues to provide robust assistance to those who are unhoused in the community. For this reporting period, the following was accomplished: • In 2024, the Be Well OC Mobile Crisis Team (Be Well) operated seven days a week for 12 hours per shift, from January to the end of August. Be Well responded to mental, behavioral, and substance use crises throughout the City. The team proactively engaged the unhoused population to provide resources, shelter placements, and program referrals. Be Well had 2,825 contacts with residents, visitors, and unhoused people. Be Well transported individuals 302 times to social service, medical, and other essential appointments, or intakes. Of the 302 transports, 56 were for shelter intake appointments, 34 to crisis stabilization units for treatment, and 45 to the Be Well campus sobering station for treatment. Be Well also reunified four people with their families. • The City's homeless outreach and engagement team permanently housed one person from the streets to housing. One person was housed in assisted living and four were reunified with family from the street. • The Costa Mesa Bridge Shelter services permanently housed eleven people and reunified one person with their family. In July 2023, the City Council approved an additional five beds in the Costa Mesa Bridge Shelter, with the option to use up to six more beds if the City of Costa Mesa has open beds. The daily cost for the additional six beds is $155 per bed per day including full wrap-around services. In 2024, the per six (per-diem) beds were used several times. There were 28 Newport Beach shelter guests for two weeks in October 2024. • In February 2024, PATH (People Assisting the Homeless) became the City's social service contractor. PATH placed 34 people into shelters and provided 520 contacts with the unhoused population in Newport Beach. • In December 2024, the City Police Department reorganized to assign three officers dedicated as Homeless Liaison Officers (HLO). • Trellis International is a Costa Mesa-based non-profit organization which provides volunteer opportunities for individuals experiencing homelessness or housing insecurity to learn and/or rebuild job skills and a path forward to stable employment and housing. The Public Works department manages projects with Trellis' Community Impact Team (CIT). CIT participants develop and refine job skills needed to renter the job market and remain employed. The projects may include beach cleanup, trash and graffiti removal, vegetation

Programs		Status
		trimming and removal, and more. The CIT completed 114 projects in 2024. • The outreach and engagement team had three notable permanent housing placements in 2024. A man was unhoused for 34 years in Newport Beach. PATH and the City's homeless liaison police officer built a rapport with him within weeks of contacting him. The man had a housing voucher and was afraid to look for apartments on his own. PATH and the officer started showing him apartments online and their proximity to public libraries. He located an apartment he liked and moved into independent living in June 2024. PATH continues to check in with him to ensure stability and success. A man who experienced homelessness, living in his vehicle for several months, stayed at the Costa Mesa Bridge Shelter after working with the Be Well team. He moved into permanent supportive housing in September 2024 and is now addressing his medical needs. A woman was reunified with her family in another state in October 2024 after staying at the Costa Mesa Bridge Shelter. She volunteered in the Newport Beach community for 10 years and did not want to end her service. She now lives with her daughter and is building a new community for herself.
14.2	Coordinate with School Districts	***Ongoing*** Staff works with Newport Mesa Unified School District, Santa Ana Unified School District, and Coast Community College District ("School Districts") on the identification and acquisition of potential school sites and expansion of existing facilities on an as-needed basis. Should the need arise, Public Works staff monitors traffic conditions at school locations. The City works with the School Districts on joint-use agreements for public recreational uses of school properties on an as-needed basis. School fees are assessed during the issuance of building permits when applicable.
14.3	Coordinate with Orange County	***Ongoing*** The City of Newport Beach continues to work with Orange County on various programs affecting land use and development, affordable housing, transportation, infrastructure, resource conservation, environmental quality, management of Newport Harbor and Upper Newport Bay; and John Wayne Airport operations and improvement plans on an as-needed basis.
14.4	Coordinate with Orange County Transportation Authority (OCTA)	***Ongoing*** The Deputy Public Works Director/City Engineer is on the Technical Advisory Committee (TAC), which meets monthly and consists of most of the Public Works Directors in Orange County, to discuss and make recommendations to the OCTA and its board on the allocation of funding. Additionally, Staff attends OCTA Traffic

Programs		Status
		Forums along with other Orange County agencies on a biannual basis to discuss regional traffic items and traffic signal synchronization.
14.5	State of California Department of Housing and Community Development (HCD)	***Ongoing*** The 2024 General Plan Annual Progress Report, including the Housing Element Report, will be sent to HCD in April 2025.
14.6	Coordinate with California Coastal Commission	***Ongoing*** • Big Canyon Restoration - Phase 3 (formerly 2B/C). This proposed project at the mouth of Big Canyon Nature Park contains jurisdictional wetlands and requires permits from the California Coastal Commission, Army Corps of Engineers with concurrence from U.S. Fish and Wildlife Service, Regional Water Quality Control Board and California Department of Fish and Wildlife. Project is scheduled to be advertised for bid in April 2025 with construction start in September 2025. Project is expected to be substantially complete by May 2026. CEQA has been completed, and all permits have been obtained. Under an agreement currently in preparation with the California Department of Fish and Wildlife, City will manage the construction and pay the contractor. City will be reimbursed from grants funds awarded the project. The project is estimated to cost seven million dollars. • Planning and Public Works staff routinely communicate directly with Coastal Commission staff on an as-needed basis regarding implementation of the Local Coastal Program. The following are Coastal Commission Actions related to LCP Amendments in 2024: ○ On December 9, 2022, the City submitted a three-part LCP Amendment (LCP-5-NPB-22-0056-1) to the Coastal Commission for their review and approval. The three parts include: Part A) Request to amend the Implementation Plan (IP) of the City's certified Local Coastal Program to incorporate standards and establish an approval process for considering density bonuses with housing development projects. These amendments are required to ensure the City's regulations are in compliance with State law; Part B) Amend development limit to increase the maximum gross floor area allowed on the Lido House Hotel site from 103,470 square feet to 118,573 square feet and delete references to fire station; and Part C) Clarifying development allowances for residential uses that are nonconforming due to density and reinstating a side setback allowance for properties in the R-1-6,000, R-1-7,200, R-1-10,000, R-2-6,000, and the RM-6,000 zoning and coastal zoning districts. Part A Amendment - approved with suggested modifications on April 12, 2024. Approved by City

Programs		Status
		Council on September 24, 2024. Part B Amendment - approved by the California Coastal Commission on February 8, 2024. The next step is to schedule the City Council meeting to adopt the Ordinance after lease agreement is finalized. Part C Amendment - approved by the California Coastal Commission on May 8, 2024. The City Council approved on October 8, 2024. ○ On April 11, 2023, the City received a letter from the California Coastal Commission requiring the installation of protection fencing and monthly bird monitoring. The fence was installed mid November 2023 along with informative signs on the fence. Since then, the City has complied with the cease and desist order. The City consults with Glenn Lukos Associates to conduct bi-monthly monitoring of the plovers during the monitoring season (July through March). The City reports back to the Coastal Commission on a monthly basis with a report of the two separate visits during the month. The info includes the total number of plovers and where they were observed. It also includes weather conditions. The City is on the second year of monitoring and continuing to comply with the cease and desist order. ○ On April 13, 2023, the City submitted a three-part LCP Amendment (LCP-5-NPB-23-0019-1) to the Coastal Commission for their review and approval. The three parts include: Part A) Update the Accessory Dwelling Unit (ADU) provisions to further incentivize ADU construction and incorporate revisions necessary to comply with 2022 ADU legislation; Part B) Increasing the development limit specified for Bay Island from 23 dwelling units maximum to 25 dwelling units maximum; and Part C) Change land use designation of site from Neighborhood Commercial (CN) to Two-Unit Residential (R-2). Part A Amendment - approved by the California Coastal Commission with suggested modifications on July 11, 2024. Approved by City Council on November 12, 2024. Part B Amendment - approved by California Coastal Commission on July 11, 2024, and approved by the City Council on November 12, 2024. Part C Amendment - approved by the California Coastal Commission on August 8, 2024, and by City Council on November 12, 2024. ○ On September 11, 2023, the City submitted a two-part LCP Amendment (LCP-5-NPB-23-0039-3) to the Coastal Commission for their review and approval. The three parts include: Part A) Request to amend the Implementation Plan (IP) of the City's certified Local Coastal Program (LCP) to establish the Special Flood Hazard (VE) Overlay District; and, Part B) Request to amend the certified Implementation Plan (IP) of the City's Local Coastal Program (LCP) revising regulations pertaining to commercial parking. The amendment was deemed incomplete by the California Coastal Commission on January 5, 2024, deemed complete on April 14, 2024, and a one-year extension granted on June 14, 2024. Hearings are anticipated in Spring of 2025.

Programs		Status
		○ On, February 28, 2023, the City submitted request to the Coastal Commission for Coastal Development permit (CDP) jurisdiction for lands meeting the criteria of Coastal Act Section 30613. This would provide the City with increased and consolidated CDP issuing authority for properties that are currently bisected with Coastal Commission jurisdiction, eliminating lengthy and costly reviews by both agencies. Throughout 2024, City and Coastal Commission staff have conducted regular working sessions to refine the jurisdiction boundaries and finalize the request. Completion of this project is anticipated in Summer of 2025. ○ On October 4, 2023, the City submitted a coastal development permit request to reconfigure the 5.5-acre Mooring Field C from single-row to double-row moorings. Mooring Field C currently has 55 moorings and may have up to 62 moorings upon completion of the proposed Project. The application was deemed complete by the California Coastal Commission (CCC) on July 19, 2024.. Staff worked extensively with CCC staff addressing concerns and ultimately received a positive staff recommendation in support of the project. When deemed complete, the application was more than 3,500 pages. Unfortunately, the CCC denied the project at the February 2025 hearing due to public comments raised regarding safety and liability. The Coastal Commission has expressed concern over the process related to transferability of mooring permits and may address it as part of their consideration of this application. ○ On February 8, 2024, the City submitted a three-part LCP Amendment (LCP-5-NPB-24-0004-1) to the Coastal Commission for their review and approval. Part A Amendment - Establishing regulations permitting short term lodging within the MU-W2 (Mixed-Use Water) and MU-CV/15th Street (Mixed-Use Cannery Village and 15th Street) coastal zoning districts; changing the maximum cap of short term lodging permits from 1,550 permits Citywide to: 1) 1,475 permits in residential districts; and 2) 75 permits within the MU-W2 and MU-CV/15th Street zoning districts; and correcting an inconsistency in the definition and use of short term lodging and bed and breakfast inn to mean a rental of 30 days or less. Part B Amendment - Allow land use changes to a previously approved mixed-use project which consists of a tennis club, hotel, and residential components. The amendment includes: 1) modifying the density and intensity limit for the number of tennis courts from 7 to 4 courts and adds 14 pickleball courts; 2) converting 3 of the 5 allowed single-family residences to attached residential condominium units; 3) establishing new development standards for attached residential condominiums; and 4) revising the density and intensity limits for the hotel from 27 to 41 short-term guest rental rooms. Additionally, the maximum allowable gross floor area increases from 28,300 to 47,484 square feet, and square footage for ancillary hotel uses are included. Part C Amendment - 1) Deletion of Chapter 21.34 (Conversion or Demolition of Affordable Housing); 2) Creating a coastal development permit (CDP) exemption for tentative parcel maps involving the subdivision of airspace within multi-unit

Programs		Status
		dwellings for condominium purposes; 3) Correcting, updating and/or clarifying the references to State law throughout; 4) Changing references from "Building Director" or "Planning Director" to "Community Development Director"; and, 5) Clarifying the definition of "Code" to mean the Newport Beach Municipal Code. The amendment was deemed complete on February 23, 2024, and an extension granted on May 8, 2024. Hearings are anticipated in Spring of 2025. ○ On August 8, 2024, the City submitted an LCP Amendment (LCP-5-NPB-24-0004-2) to the Coastal Commission for their review and approval for a request to amend the Implementation Plan (IP) and the Coastal Land Use Plan (CLUP) of the City's certified Local Coastal Program (LCP) to establish the Housing Opportunity (HO) Coastal Zoning Districts in the Coastal Zone. The project was deemed incomplete and resubmitted in December 2024, then deemed complete January 2025. Hearings are anticipated in Summer of 2025.
14.7	Coordinate with the California Resources Agency, Department of Fish and Game (*now known as California Department of Fish and Wildlife*)	***Ongoing*** 1. Planning and Public Works staff routinely communicates with California Department of Fish and Wildlife with regards to the management of Upper Buck Gully and the upper Newport Bay. 2. Recreation and Senior Services staff continues to work as a partner with the University of California, Irvine; Orange County Public Health; OC Parks; California Department of Fish and Wildlife; and the Back Bay Science Center.
14.8	Coordinate with the California Department of Parks and Recreation	***Ongoing*** The City, through its Natural Resource Division of the Recreation and Senior Services Department, coordinates with the California Department of Fish and Wildlife, California State Parks, the County, education, and non-governmental organizations (NGOs) to protect natural resources through implementation of state and local legislation, enforcement, monitoring, and to provide education programming at Big Corona del Mar and Little Corona del Mar State Beach, Crystal Cove, and Upper Newport Bay. Coordination highlights from 2024 include the following: 1. Natural Resource Division continued to work with various City departments on issues concerning natural resources and strategies to inform and educate the public. 2. Natural Resource Division continued to work with the MPA Watch (Marine Protected Area Watch Program - Human Use), along with serving as an active member of the Orange County Marine Protected Area Council (OCMPAC).

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		3. The Natural Resource Division staff engaged with the public at our tidepool areas within the Marine Protected Area, in order to discourage illegal collecting and educate visitors about the rules of the protected area. 4. The Natural Resource Division partnered with other City departments, Newport Bay Conservancy, Newport Dunes Resort and Marina, California Department of Fish and Wildlife and California Coastal Commission to run the Fostering interest in Nature (FiiN) program. The program is a three-day, two-night science camp program located within the Upper Newport Bay MPA for Title I fifth grade students. In the Fall of 2024, 525 students attended during the 8-week program.
14.9	Coordinate with the California Department of Transportation ("Caltrans")	***Ongoing*** The City's Public Works Department coordinates with Caltrans on an as-needed basis for the review of improvements to the State Highway System or impacts on the system by development, construction and/or special events: • The City continues to coordinate with Caltrans in review of upcoming projects and as a project team member for current construction projects including the ongoing SR-55 (Newport Blvd/Hospital Rd) traffic signal upgrade (completed - 2024), and SR-1 (Coast Hwy) pavement and traffic signal rehabilitation projects. West Coast Highway Coordination with Caltrans Paving Project: • Caltrans is paving Coast Highway from the Santa Ana River to Jamboree (anticipated completion - February 2025). • Caltrans new policy is not to lower manholes before they pave the road. This leads to a less smooth ride. • The City has contracted separately to hire a contractor to lower all utility manholes/ valve covers before Caltrans paves. • Caltrans will then be able to pave the road more accurately and smoothly. • Once paving is complete, the City's contractor will raise all the manholes/ valve covers to the new pavement surface. The result will be a much smoother, long lasting pavement surface. • The City also coordinated with Orange County Sanitation District (OCSD) to have their facilities lowered and raised to grade along with the City's facilities.
14.10	Transportation Corridor Agencies (TCA)	***Ongoing*** City staff continually works with the Transportation Corridor Agencies (TCA) regarding the San Joaquin Hills (SR-73) Toll Road and continuously implements TCA's Major Thoroughfare and Bridge Fee Program through the Municipal

Programs		Status
		Code. Impact fees are collected by the City when a building permit is issued. Councilmember Grant is the city representative on the TCA board.
14.11	California Public Utilities Commission (CPUC)	***Ongoing*** The City works with the California Public Utilities Commission (CPUC) to explore funding for the undergrounding of utilities. To date, the City has adopted several underground utility districts, including property owner funded assessment districts, to provide funding for undergrounding projects. Most of the funding for undergrounding in the City has come from these assessment districts using CPUC Rule 20B. In years past, the City received funding allocation from Southern California Edison (SCE) for Rule 20A undergrounding projects. In 2013, the City Council adopted a Utility Undergrounding District on Balboa Boulevard from Coast Highway to 23rd Street and directed staff to proceed with a Rule 20A, an undergrounding project along Balboa Boulevard. However, the 20A program was suspended by the CPUC at their June 8, 2021, commission meeting. SCE will only complete "Active" 20A underground projects; Balboa Boulevard being the last City project, which was completed in 2024. The City Council approved four Rule 20B Utility Underground Assessment Districts in the past several years, upon a positive resident vote: one adjacent to the Balboa Boulevard Rule 20A project (AD-111), and a 2018 approved district for the west side of Balboa Island (AD-113), and two districts approved in 2021 for the remaining portions of Balboa Island (AD-124) and a small area on Santa Ana Avenue near Cliff Drive (AD-120-2). All these assessment districts are in various stages of completion. AD-111 on the Balboa Peninsula and AD-113 in west Balboa Island was completed in 2024. The remaining two will be completed in future years. Staff also continues to work with other resident groups in Harbor Highlands, Balboa Peninsula and Corona del Mar for possible other Rule 20B projects, though activity has somewhat slowed.
14.12	Coordinate with United States Army Corps of Engineers ("Corps")	***Ongoing*** 1. Public Works staff continues to strategize and coordinate with the Corps on the next phase of dredging the Lower Bay to the federally authorized and approved depths. The City completed all of the pre-project planning including sediment testing/approval, design, engineering, environmental review and permitting (with Corps input). Funding is secured and construction is scheduled to begin in the Summer 2025. 2. Big Canyon Restoration - Phase 2A. Complete. 3. Big Canyon Restoration – Phase 3 (formerly called Phase 2B/C). This proposed project is at the mouth of Big Canyon Nature Park and contains a wetlands Design and permits are complete. Project scheduled to be advertised for bid in April 2025 with construction start in September 2025. Project is expected to be substantially complete by May 2025. CEQA has been completed, and all permits have been obtained. Under

Programs		Status
		an agreement currently in preparation with the California Department of Fish and Wildlife, City will manage the construction and pay the contractor. City will be reimbursed from grants funds awarded the project. The project is estimated to cost seven million dollars. 4. San Diego Creek Interceptor (formerly called the Newport Bay Water Wheel) – The Trash Interceptor is currently under construction in San Diego Creek just upstream of the Jamboree Road Bridge. The project is nearing completion with construction expected to be substantially complete by March 2025. Project commissioning will continue until June 2025. At that time, the facility will be managed by staff from Public Work's Municipal Operation Division.
14.13	Coordinate with United States Fish and Wildlife Service	***Ongoing*** **Big Canyon Habitat Restoration and Water Quality Improvement Project** – Phase 2A and Phase 3 contains jurisdictional wetlands and requires permits from the California Coastal Commission, Army Corps of Engineers with concurrence from U.S. Fish and Wildlife Service, Regional Water Quality Control Board and California Department of Fish and Wildlife. Phase 2A was completed in early 2022. For Phase 3 - Project is scheduled to be advertised for bid in April 2025 with construction start in September 2025. Project is expected to be substantially complete by May 2026. CEQA has been completed, and all permits have been obtained. Under an agreement currently in preparation with the California Department of Fish and Wildlife, City will manage the construction and pay the contractor. City will be reimbursed from grants funds awarded the project. The project is estimated to cost seven million dollars. **Western Snowy Plover (WSP) Habitat Management Plan** – Planning Division staff is in the process of creating a management plan for the portions of ocean-facing beach designated as critical habitat. Coordination with U.S. Fish and Wildlife Service and the California Coastal Commission has occurred and will continue to occur for the preparation of a revised draft plan. In the interim, the City has installed protective fencing and is conducting monthly monitoring and reporting the California Coastal Commission.
14.14	Coordinate with Environmental Protection Agency (EPA)	***Ongoing*** The City coordinates with the U.S. EPA in collaboration with other resource agencies in the protection of terrestrial and marine resources and sediment disposal sites for future dredging projects on an as-needed basis when projects are within the U.S. EPA jurisdiction.
14.15	Coordinate with USPS (*for relocation of the Mariners' Mile*	***Complete*** The USPS distribution facility was relocated to Santa Ana and Anaheim. The USPS maintains a location in the

Programs		Status
	distribution facility)	Mariners' Mile area offering typical retail mail services.
14.16	Other Agencies	***Ongoing*** The City continuously works with the following agencies that are involved in the development of capital improvement and conservation programs: • Energy providers, such as Southern California Edison and Southern California Gas Company • Telecommunications service providers on a case-by-case basis • Santa Ana Regional Water Quality Control Board • Metropolitan Water District • South Coast Air Quality Management District • Southern California Association of Governments (SCAG) • California State Parks • National Marine Fisheries Service
15.1	Encourage Annexation of Banning Ranch Prior to Development	***Ongoing*** The City's goals and policies encourage the annexation of the entire Banning Ranch property prior to any development. However, it is notable that in 2023, most of Banning Ranch was acquired by a private party for use and conservation as permanent open space.
16.1	Improve Arterial Streets and Highways According to Classification	***Ongoing*** West Coast Highway (SR-1) and Old Newport Boulevard Intersection Improvements – The project will improve West Coast Highway at Old Newport Boulevard to provide for a third westbound through lane, a right turn lane, and a bike lane. The project's environmental document (IS/ND) was adopted in 2018. The City is currently applying for OCTA Measure M2 grant funding for right-of-way acquisition and construction. West Coast Highway (SR-1)/Superior Avenue Bridge project was completed in September 2024. This project involved constructing a new pedestrian and bicycle bridge over the north leg of the intersection (Superior Avenue) and a new larger parking lot to improve access to Sunset Ridge Park. The project has been awarded grant funding through the OCTA Bicycle Corridor Improvement Program.

Programs		Status
16.2	Monitor Traffic Conditions and Plan for and Fund Improvements	***Ongoing*** 1. Traffic Engineering Staff continues to operate the Traffic Management Center to monitor and respond to traffic issues during and after normal work hours, Holidays, peak summer season, special events and construction projects. 2. Traffic Signal Rehabilitation Programs (see Program 16.4) 3. Installation of additional CCTV Cameras includes field surveillance cameras for integration into the City Traffic Management Center to monitor and change the traffic signal system depending on traffic conditions. 4. The Traffic Management Center underwent a display wall upgrade; it includes a 3x2 – 50-inch monitors with a small bezel to stretch imagines across multiple displays (anticipated completion was December 2024).
16.3	Construct Street and Highway Improvements	***Ongoing*** Refer to Program 16.1 for discussion regarding the West Coast Highway (SR-1) and Old Newport Boulevard Intersection Improvements. The City maintains a Pavement Management Plan and performs roadway pavement resurfacing projects to maintain roadways at a high level. Roadways are improved through replacement of deteriorated roadway surfaces with new concrete or asphalt pavement, including new traffic striping and traffic sign cleanup. Local and neighborhood streets are maintained through the annual roadway slurry seal program.
16.4	Monitor Roadway Conditions and Operational Systems	***Ongoing*** The City continues to monitor and improve traffic flow through proactive maintenance and updates to the City's modern traffic signal system. The City has teamed up with the Orange County Transportation Authority (OCTA) and the City of Irvine to update traffic signal communication, control equipment and coordination along MacArthur Boulevard, Bonita Canyon Drive and Ford Road through the Measure M2 grant-funded projects. These projects are being led by the City of Irvine and are in the Operation and Maintenance phase.
16.5	Maintain Consistency with Regional Jurisdictions	***Ongoing*** The City monitors the regional Arterial Program, OCTA's Master Plan of Arterial Highways, and the Countywide traffic model to ensure consistency. Public Works staff coordinates with regional jurisdictions on an as-needed basis.

Programs		Status
	(*Caltrans and Orange County to provide adequate roadway infrastructure plans and design standards such as the Orange County Master Plan of Arterial Highways*)	
16.6	Local/Neighborhood Access Roads	***Ongoing*** Public Works staff works with local neighborhood groups on an as-needed basis when traffic issues arise. The City maintains standards that ensure safe and efficient access for emergency vehicles. The City maintains the Pavement Management Plan and performs roadway pavement resurfacing projects to maintain roadways at a high level. Roadways are improved through replacement of deteriorated roadways surfaces with new concrete or asphalt pavement, including new traffic striping and traffic sign cleanup. Local and neighborhood streets are maintained through the annual roadway slurry seal program.
16.7	Traffic Control	***Ongoing*** The following projects were implemented to improve traffic congestion through conventional and innovative methods of traffic control: 1. The Annual Traffic Signal Rehabilitation Program will rehabilitate traffic signals within Newport Coast (completed April 2024) and along the Balboa Peninsula (anticipated completion - February 2025). 2. The Public Works Department maintains the traffic signal system through an ongoing Traffic Signal Maintenance agreement with a contractor that specializes in traffic signal maintenance. 3. Roadway signage and striping is maintained on as needed by the City's Municipal Operations Division of the Public Works Department. Large-scale signage and striping maintenance/replacement is accomplished through the Capital Improvement Program.

Programs		Status
16.8	Provide Public Transportation	***Ongoing*** The City continuously looks for opportunities to support the upgrade and enhancement of existing facilities, as well as encourage the development of additional public transportation services and facilities. The City provides shuttle bus services for the Oasis Senior Center clients on an as-needed basis. The City also continuously works with the Orange County Transportation Authority (OCTA) for countywide bus services. The City operates the Balboa Peninsula Trolley (Trolley), a local transit service, on the Balboa Peninsula during the summer. The free service generally runs from 10:00 a.m. to 9:30 p.m. on Saturdays and Sundays from Memorial Day weekend through Labor Day, as well as on July 4, making 22 stops along the peninsula. The program is partially funded by the OCTA Measure M2 (Project V) program. The program finished it's seventh and final year of the current grant in 2024. Over the life of the program, the Trolley served approximately 140,000 riders at an average of approximately 590 per day. The City applied for and was awarded additional Project V grant funds to facilitate procurement of five new trolley vehicles and continue operating the Trolley program for another seven years (2025-2031).
16.9	Manage Truck Operations	***Ongoing*** Trucks are required to obtain a Haul Route Permit through the Public Works Department and are required to use designated haul routes.
16.10	Improve Parking Supply and Management	***Ongoing*** Parking availability can be challenging especially during the summer when many thousands of people visit coastal areas. West Newport, Balboa Peninsula, Mariners Mile, and Corona del Mar experience high parking demand. Parking conflicts can hold back commercial and economic activities. Creating new parking is often expensive. The City requires new development to provide off-street parking in accordance with the Zoning Code and Local Coastal Program thereby increasing parking supply. On April 17, 2019, the City submitted a Local Coastal Program Amendment (LC2017-001) to the California Coastal Commission to add the Balboa Village Parking Management Overlay District to the certified Local Coastal Program Implementation Plan. On February 23, 2021, the City Council approved modifications to the Balboa Village overlay provided by the California Coastal Commission. Near the end of 2021, the City prepared a parking management

Programs		Status
		plan for the Balboa Village overly (PM-1) and it was approved by Coastal Commission in 2022. Building off the Balboa Village effort, the City Council directed staff in 2021 to study the development of Parking Management Overlay Districts in other activity nodes within the City. The City retained a parking consulting firm to assist with this effort and is actively studying other parking management tools such as curbside management and code updates to address parking requirements in light of the increase in rideshare and other alternative forms of transportation. In 2023, the City Council adopted an ordinance to adjust commercial parking requirements, which are now effective in City areas outside of the Coastal Zone. The City submitted the accompanying Local Coastal Program Amendment in the fourth quarter of 2023. The following is a list of recent updates related to this effort: • Deemed Incomplete by the CCC on January 5, 2024; • Efforts dovetailed with Corona del Mar Area Study at Council Study Session; • Contract with consultant was modified to pivot study to support the Corona del Mar Planning effort; • LCPA Application deemed complete by CCC on April 15, 2024, and extension granted on July 14, 2024 (new deadline is now July 10, 2025); • Staff is currently working with the California Coastal Commission to prepare the amendment for a hearing. As previously discussed under Program 8.2, the City launched a comprehensive land use and mobility study (Study) to consider ways to enhance and improve the Corona del Mar (CdM) commercial corridor including parking solutions.
16.11	Maintain Trails	***Ongoing*** The City continues to maintain existing bike paths and trails that are within the City's jurisdiction. The City continues to review and expand bicycle facilities during roadway reconstruction projects. The City continues on-street bike lane maintenance and improvements via roadway reconstruction projects.
16.12	Marine Transportation	***Complete*** The City's Harbor Commission studied the feasibility of a water taxi in the harbor. A fixed route and an on-demand system were examined. Constraints include providing appropriate accessible locations to pick-up and drop-off passengers in a safe manner. Due to the size of the harbor, number of vessels, and cost, the fixed route model was deemed infeasible. The on-demand system was deemed infeasible due to low demand for the service. Either way, a significant public subsidy was identified and there was no funding source. As a result, further study of a water

Programs		Status
		transportation service was abandoned.
17.1	Maintain and Implement Urban Water Management Plans and Encourage Conservation	***Ongoing*** The U.S. Drought Monitor shows a shift from no drought to “abnormally dry”. Therefore, drought could be edging closer to a reality again for the state. A new Water Use Objective was signed into law late 2024 requiring water use reporting for the previous fiscal year for all water suppliers beginning January 2025. This report defines a water use objective. This calculation is based upon the water need in its service area for efficient indoor residential water use, outdoor residential water use, commercial, industrial and institutional (CII) irrigation with dedicated meters. The calculation will include reasonable amounts of system water loss, along with consideration of other unique local uses (i.e., variances) and “bonus incentive,” or credit, for potable water reuse, using the standards adopted by the Board. Efficient water use is the most cost-effective way to achieve long-term conservation goals, as well provide the water supply reliability needed to adapt to the longer and more intense droughts climate change is causing in California. Although it does not impose individual mandates for homeowners or businesses, the mandates will focus on urban water suppliers – not customers. Specifically, the bills call for creation of new urban efficiency standards for indoor use, outdoor use, and water lost to leaks, as well as any appropriate variances for unique local conditions. For more information, visit: https://www.waterboards.ca.gov/publications_forms/publications/factsheets/docs/water_efficiency_bill_factsheet.pdf One component to achieving water use standards and minimizing water loss, is the large investment the City made in installing automated metering Infrastructure [AMI metering]. Along with deploying AMI, the City and its customers are able to track their respective water usage in hourly increments. Armed with this information, leaks are detected quickly, and customers are informed of how much water they use. As a complement to the AMI installations, the City has partnered with Aquatrax, a web and mobile application portal allowing each customer to visualize their respective water consumption and historical trends.
18.1	Maintain and Implement Sewer Master Plan	***Ongoing*** The Public Works Department continues to implement the adopted Sewer Master Plan with projects throughout the City.

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		A vigorous sanitary system overflow (SSO) prevention plan, which includes good investments in our Wastewater Master Plan, use of closed-circuit television (CCTV) program to monitor the system, and an aggressive lift-station cleaning program continues.
19.1	Maintain Storm Drainage Facilities	***Ongoing*** The City provides an annual budget allocation for ongoing maintenance of the City's storm drain system. Additionally, the City identifies additional system enhancements in the City's Capital Improvement program. Storm drain facility improvements are estimated at $18M. Projects include: 1. Newport Bay Trash Interceptor – estimated Completion March 2025. 2. Big Canyon Project Phase 3A– construction will begin Fall 2025. 3. Balboa Island Storm Drain Improvements – In September 2024, the City Council adopted the Mitigated Negative Declaration and the design and permitting is underway. 4. Street sweeping program consisted of 37,452 curb miles swept, removing 5,799 tons (dry) of debris. 5. The City's 86 tidal valves are operated/maintained on a regular basis. 6. Six miles of channel and 3,268 catch basins were cleaned, yielding 432 tons of debris. A total of 435 Inlet Guards were re-installed after the winter season to assist in keeping trash/debris from entering the storm drain system/bay/ocean.
20.1	Design, Fund, and Construct Streetscape Improvements	***Ongoing*** This is an ongoing effort that is budgeted through the City's Capital Improvement program. Newport Blvd., Industrial Way to West Coast Highway median landscaping and slope landscaping parkway right-of-way along Newport Blvd. from Industrial Way to Coast Highway. Newport Boulevard Median Landscape and West Coast Highway landscape improvements completed in October 2024. • City is updating the median landscaping on Newport Boulevard from Industrial Way to Pacific Coast

Programs		Status
		Highway, to improve the appearance of the median as it serves as a main entrance to the City. • The median enhancements will include grubbing and clearing of all understory shrub plantings, while retaining the existing Mediterranean Fan and Windmill Palms. The new understory plants will consist of California friendly drought tolerant plants such as: aloes, natal plum, colorful red yucca accents and blue-gray chalk finger ground covers. • The hillside slopes will be relandscaped with colorful Bougainvillea and African Tulip accent trees. • These efforts will freshen up these areas and create an inviting corridor to visitors entering the City. West Coast Highway northside adjacent to the Santa Ana River landscape improvements completed in October 2024: • This project will add landscape to this barren stretch of Coast Highway and adding color and greenery. • The landscaping here will include accent red yucca, aloes, bougainvillea, natal plum and coral trees. Newport Blvd., 16th street, and Coast Highway median landscaping and slope landscaping parkway right-of-way along Newport Blvd. from Industrial to Coast Highway. In addition, a small slope on West Coast Highway near the Santa Ana River is also included for improvement. Completed in October 2024. MacArthur Boulevard Pavement Rehabilitation and Median Improvements on MacArthur Boulevard from Jamboree Road to Campus Drive. Design began in 2024, and construction scheduled to start in January 2026 with anticipated completion in August 2026: • City is designing the new medians with landscaping on MacArthur Boulevard from Jamboree Road to Campus Drive, to improve the appearance of the street as it serves as an entrance to the City. • The median construction will include planting trees and shrubs. The new trees will consist of Forest Pansy, African Tulip, and Date Palms. The new understory plants will consist of California-friendly drought-tolerant plants such as Natal Plum, colorful Red Yucca accents, Blue Glow agave, Coast Rosemary, and Vitex Purpurea. • These efforts will create an inviting corridor for visitors entering the City.
20.2	Design, Fund, and Construct Waterfront Promenade	***On Hold*** A plan was created in 2005 for a walkway from Mariners' Mile to Lido Village along Newport Harbor; however, the plan is on hold due to lack of funding.

Programs		Status
20.3	Fund and Construct Public View Sites	***Ongoing*** West Coast Highway (SR-1)/Superior Avenue Bridge project was completed in September 2024. This project involved constructing a new pedestrian and bicycle bridge over the north leg of the intersection (Superior Avenue) and a new larger parking lot to improve access to Sunset Ridge Park. The project has been awarded grant funding through the OCTA Bicycle Corridor Improvement Program.
21.1	Review and Update Harbor and Tidelands Improvement Plans	***Ongoing*** The Tidelands Capital Plan (TCP) was originally implemented in 2012. The TCP is now called the Harbor Capital Project Planning Tool and is a living document that is updated and refined by staff throughout each year, including 2024.
21.2	Develop Harbor Area Management Plan (HAMP)	***Complete*** In November 2010, the City Council approved the HAMP.
21.3	Events Management and Programs	***Ongoing*** Chamber of Commerce, Harbor Resources, and Orange County Harbor Patrol continuously work together to plan and implement special events that take place in the Harbor such as the annual Christmas Boat Parade. City staff usually teams up with the Orange County Water District to provide education on how to protect our coast and waterways from trash at the Children's Water Education Festival which was held March 27 and28, 2024.
21.4	Harbor Operations and Management	***Ongoing*** A joint City/County study that evaluates the costs and efficiency of current services provided by the City and County in Newport Harbor and opportunities to realign these to reduce costs was considered in 2021 and had support from the LAFCO organization. The study did not move forward based on guidance from County leadership who felt the study was not needed at this time. A new study may be prioritized in the future based on needs and funding.
22.1	Maintain and Enhance Police and Fire Facilities	***Ongoing*** Newport Beach Police and Fire Departments annually maintain and periodically update facilities and personnel to provide a high-level of service. This process is implemented through the City's budget process. Additionally, response times are monitored, and changes are proposed through the budget process.

Programs		Status
		In September of 2024, the City Council approved a Coastal Development Permit for the demolition of an existing City fire station and library at 100 East Balboa Boulevard, and construction of a new 5,400 two-story City fire station (Fire Station No.1) and an attached 3,700 one story library (Balboa Branch Library). However, the project was appealed to the California Coastal Commission in October of 2024. As of February 2025, the project is still under review with the California Coastal Commission.
23.1	Maintain and Update Parks and Recreation Facility Plans	***Ongoing*** The Recreation and Senior Services Department reviews the status of the park system on an ongoing basis and improvements are recommended in the City's annual Capital Improvement Plan. Capital improvement plans approved include: 1. Replace synthetic turf and upgrade athletic field lights to LEDs at Bonita Creek Park; 2. Plan and design an aquatic facility at Lower Castaways with a 50-meter pool, therapy pool, splash pad and community room; 3. Renovate and add shade element at Spyglass Hill Park playground; and 4. Replace Park assets identified in the Parks Maintenance Master Plan including fencing and shade elements.
23.2	Maintain and Improve Parks and Recreation Facilities	***Ongoing*** In 2024, the following accomplishments were achieved: • Ongoing maintenance of existing facilities; • Playground renovation at Peninsula Park: construction complete; • Newport Beach Junior Guard building and community center: construction complete; • Arroyo Park synthetic turf conversion and LED upgrade: construction complete; • Newport Ridge Park Pickleball courts: construction complete; • Bonita Creek Community Center renovation: construction complete; • Sunset Ridge Park Pedestrian Bridge and parking lot expansion: construction complete; • OASIS Community Center LED Phase 1: retrofit complete; • Construction of Witte Lecture Hall: scheduled to be completed in 2026; • Design for Playground renovations at San Miguel Park and Newport Elementary School (city property): Construction scheduled to start and be completed in 2025; • Replaced Fitness station and installed ADA pad at Irvine Terrace Park; • Resurfaced pickleball courts at Bonita Canyon Sports Park and basketball courts at 38th Street, West Newport Park, Marina Park; and • Installed youth sports AEDs at two athletic fields to comply with AB1467 by Jan 1, 2027

Programs		Status
23.3	Assess Recreation Needs	***Ongoing*** The Recreation and Senior Services Department continuously analyzes enrollment numbers in existing recreation programs and periodically initiates community surveys to assess the current needs of the community.
23.4	Maintain Recreation Programs for Newport Beach's Residents	***Ongoing*** The Recreation and Senior Services Department provides recreation programs citywide. The Newport Navigator is a recreation guide for all recreation programs and services provided by the City. The Newport Navigator is produced quarterly in addition to a digital summer issue. Additionally, OASIS Newsletter is published monthly to promote Senior programs and services. The Parks, Beaches, and Recreation Commission (PB&R) acts in an advisory capacity to City Council for all matters pertaining to parks, beaches, recreation, parkways, and street trees. The following are Commission highlights from 2024: • Presentation: Update Regarding the Special City Blue Gum Eucalyptus Tree Removal at the Balboa Library; • Balboa Branch Library/Fire Station 1 Replacement Concepts and Special Tree Removal; • Two Tree Donations– Castaways Park; • Drinking Fountain Donation– Back Bay Drive; • Four Tree Reforestations Requested; • Light request for Newport Mesa Soccer Club (Bonita Canyon Sports Park 5), Pateadores (Bonita Creek and Arroyo Park), Slammers Futbol Club (Arroyo Park); • City Park Signage Discussion; • Presentations– Special City Tress in Westcliff Neighborhood Affected by Curb, Gutter and Sidewalk Repairs; • Presentation to outgoing Commissioner David Granoff; • Community Service Awards: Jerry Nininger; and • Elections– Kiera Kirby, Chair & Vice Chair, Anne Yelsey Ad Hoc Committee Appointments: Municipal Code and Council Policy Manual Review: Sunset; Community Service Award: Reappoint Diane Daruty, Kate Malouf and Anne Yelsey; Youth Sports Commission Member Organization: Reappoint Kate Malouf, Amy Waunch; Ocean Blvd: Reappoint Hassan Archer, Keira Kirby and Anne Yelsey, City Park Signage: Appoint Kate Malouf, Amy Waunch, Anne Yesley; Lower Castaways Aquatics Complex: Appoint TBD
23.5	Requirements for Residential Developers	***Ongoing*** Park fees are assessed for all new residential subdivisions pursuant to the Subdivision Map Act and the City's

Programs		Status
		Subdivision Code. Last adjusted in 2007, Resolution No. 2020-95 approved by City Council on November 10, 2020, adjusts the park fees pursuant to an appraisal. The adjusted rate went into effect January 9, 2021, and will be phased-in over two years. In October of 2024, the City Council adopted Resolution 2024-75 which adjusted the park fees pursuant to an updated appraisal. The adjusted rate will be phased in over one year. In November 2024 the City Council approved a Nexus Study, Fee Schedule, and established a Development Impact Fee (DIF) Program (see Imp. Program 30.2) that will be applied to new development projects meeting certain criteria. The DIF program includes fees for Police, Fire, Recreation, Water, and Sewer facilities. The fees became effective in January 2025.
24.1	Adopt and Implement Strategic Plan for Fiscal and Economic Sustainability	***Ongoing*** In June 2009, the City Council updated its Strategic Plan for Fiscal and Economic Stability through the Economic Development Committee (EDC). The Strategic Plan is designed to serve as a work program for the City Council, City staff, and the EDC to promote and sustain fiscal and economic vitality in Newport Beach. It is intended, in part, as a companion document for the General Plan (adopted in 2006), to assist the City in implementing portions of the General Plan that affect economic development in the City. The Strategic Plan includes goals and objectives to enhance the business climate in the community and focuses on a shorter time frame (three to five years) than does the General Plan, since economic conditions and priorities can change more rapidly than do planning goals related to community character and land use patterns. The Strategic Plan calls for regular reviews of progress and re-assessments of priorities. The Strategic Plan continues to be reviewed and implemented each year.
25.1	Implement Housing Element Programs	***Ongoing*** The City implements Housing Element Programs through review of proposed residential projects. Programs are reviewed in the Housing Element Progress Report, provided as a part of the Annual General Plan Progress Report.
26.1	Enforce Codes and Ordinances	***Ongoing*** The City enforces all Municipal Code Sections including but not limited to health and safety and zoning to implement the General Plan primarily on a complaint-driven basis.
27.1	Seismic Compliance	***Ongoing*** The City continuously implements the Municipal Code and the California Building Code through the Building Division, which requires seismic retrofitting and strengthening to minimize damage in the event of a seismic geologic hazard.

Programs		Status
28.1	Maintain Hazards Data Base	***Ongoing*** The Police Department maintains a crime statistics database to keep track of the type and occurrence of criminal activities. The Fire Department relies on the Disaster Preparedness Division under the City's Emergency Management Program (see Program 28.2 and 29.1) for the planning of facilities, personnel assignments, and emergency response programs as related to natural hazards. Additionally, the City maintains hazard information in its Geographic Information System (GIS).
28.2	Maintain Emergency Preparedness, Response, and Recovery Programs	***Ongoing*** On March 27, 2024, the City participated in the Statewide Tsunami Communications Drill. Representatives from Fire, Police, Lifeguards and the Harbor Department gathered at the City Emergency Operations Center (EOC) and discussed protocols and communication resources to be utilized during a tsunami event. On July 4, 2024, the Police Department Operations Center (DOC) was activated to support the field operations and interdepartmental coordination. Several briefings were held to ensure all departments were sharing intelligence and coordinating. On October 10, 2024, Orange County's Regional Emergency Notification System, AlertOC, was tested with the help of 25 jurisdictions (24 cities and the County unincorporated areas) including Newport Beach, in conjunction with National Preparedness Month. The primary objective of the regional exercise was to test Alert OC's capability, capacity and effectiveness to deliver emergency notifications to the public during a major disaster, and to encourage residents to register their cell phone numbers. Approximately 33,000 (mostly landline) phone numbers were called during the test. The City's public hotline received over 400 calls from residents. The hotline was staffed with representatives from the Police Department. The City's Emergency Preparedness Committee (EPC) is comprised of representatives from each department and meets quarterly. The EPC works collaboratively to plan, train, and address all city emergency management threats.

Programs		Status
29.1	Educate the Community	***Ongoing*** February 12, 2024, the Police Department launched the Newport Notified alert system for disseminating general and emergency information directly to the community. It is used to notify residents and subscribers about issues impacting safety, such as traffic advisories, crime alerts, and community updates. It is also used for emergency notifications related to power outages, evacuations, tsunamis, and other hazards where public safety is at risk. The City continuously educates the community through its various City Departments on services, programs, and key issues including land use zoning and development processes; development fees; code compliance; property and building maintenance and improvement techniques; financial assistance and affordable housing programs, public transportation; ride-sharing, energy conservation methods, waste reduction and recycling programs; hazards and emergency/disaster preparedness, evacuation, and response protocols and procedures; natural resources and their value; educational and cultural events and venues; parks and recreation, health and safety, and seniors and youth programs; and access to government services and elected officials. Significant events include: • Emergency Siren System Test (1/5/24) • Emergency Siren System Test (2/2/24) • Emergency Siren System Test (3/1/24) • Emergency Siren System Test (4/5/24) • Emergency Siren System Test (5/3/24) • Emergency Siren System Test (6/7/24) • Emergency Siren System Test (7/5/24) • Emergency Siren System Test (8/2/24) • Emergency Siren System Test (9/6/24) • Emergency Siren System Test (10/4/24) • Emergency Siren System Test (11/1/24) • Emergency Siren System Test (12/6/24) The Disaster Preparedness Division implemented several community outreach programs as they relate to emergency and disaster preparedness including AlertOC, which is a mass notification calling system for staff, residents, and businesses, The Community Emergency Response Team (CERT) program to certify residents as Disaster Service Workers, School Emergency Response Team (SERT) training sessions in public schools and private schools, and Business Emergency Response Team training sessions.

Programs		Status
29.2	Support of the Arts, Culture, and Historic Resources Melissa Harston	***Ongoing*** **2024 Arts and Culture Update:** *Concerts on the Green* Three concerts were held Summer 2024 with hundreds of residents and guests in attendance at each performance. Featured bands were Radio Rebels, Wilbury Super Group, and AbSOULute. Concerts took place in Civic Center Park. *Cultural Arts Grants* In 2024, arts organizations were awarded a total of $25,000 of grant funding to provide arts programs to the local community. *Exhibits in the Central Library* The City Arts Commission maintains exhibit space at the Central Library. The Commission's Art in Public Places Ad Hoc Subcommittee meets periodically to review artist's submissions for the exhibition in the Central Library Lobby Gallery. Six artists' works of art were displayed in the gallery space during 2024. *Marina Park Concert* In October, residents and guests attended the annual Concert at Marina Park featuring jazz and swing tribute band Gotham City Swingers. *Newport Beach Art Exhibition* The 57th Annual Newport Beach Art Exhibition took place in June 2024. The event featured 233 pieces of artwork by 138 artists. Attendees of the one-day art show enjoyed visiting with local artists and hearing live music with refreshments available in the Pavilion on the Civic Center Green. Children's art activities were also offered to allow young artists an opportunity to express their own artistic creativity. *Newport Beach Arts Foundation* The Newport Beach Arts Foundation, a private non-profit 501 (c) (3) organization, is dedicated to supporting the purposes and objectives of the arts programs of the City of Newport Beach. Their annual Art in the Park fine arts and artisans fair took place in September 2024. *Sculpture Exhibition in Civic Center Park* In June 2024, the City Arts Commission presented Phase IX of the Sculpture Exhibition in Civic Center Park with the grand opening ceremony held the same day as the Newport Beach Art Exhibition.

Programs		Status
		In November 2024, the City Council approved changing the exhibition period from two years to three years for currently installed Phases VIII and IX and future phase installations. *Student Art Exhibition* The Newport Beach Student Art Exhibition opened to pre-K through 12th grade students at the beginning of 2024. Accepted artwork was displayed at the Central Library in April and May and an awards ceremony recognizing exhibition winners was held during the City Arts Commission's June 2024 regular meeting.
29.3	Support Community Environmental and Recreation Initiatives	***Ongoing*** The City supports any private groups' efforts to acquire property to improve access to the anticipated development of the Orange Coast River Park. The City has also supported the Banning Ranch Conservancy's efforts to acquire the Banning Ranch property to preserve it as open space while advocating for development of approximately 10% of the site for housing including affordable housing to assist the City's efforts to meet the 6th Cycle Regional Housing Needs Assessment (RHNA) allocation. The Peter & Mary Muth Interpretive Center ran by the Newport Bay Conservancy and Orange County Parks is a 10,000 square foot educational facility built into the side of one of the bluffs on the north side of the Bay. The center is open daily with fee admission, provides exhibits and interactive displays on the nature and history of the Bay. Visitors learn about life in and around an estuary and why Upper Newport Bay is such an important estuary. The knowledge and understanding gained here will give people an even greater appreciation of the Bay when they take guided walking and water tours or explore the Bay on their own. The Interpretive Center provides community events throughout the year such tours and education events, and environmental clean-up events (The Peter & Mary Muth Interpretive Center).
30.1	Maintain Annual Budgets for City Services and Improvements	***Ongoing*** Annual budgets are maintained and reviewed by the City Council annually. A Capital Improvement Plan (CIP) is included in the annual budget approved by City Council each year. In June 2022, the City Council approved the budget and CIP for the Fiscal Year 2022-23. In June 2023, the City Council approved the budget for the Fiscal Year 2023-24.

Programs		Status
30.2	Administer Impact and User Fees (*Development Impact Fees, Park Dedication and In-Lieu Fees, and Tideland Revenue Fees*)	***Ongoing*** 1. Development impact fees including fair share traffic fees are assessed for each development project. The completion of updating the Fair Share Traffic Fee has been put on hold (see Program 7.2). 2. In November 2024 and effective 2025, the City Council approved a Nexus Study, Fee Schedule, and established a Development Impact Fee (DIF) Program. The fee schedule and DIF program was approved with no opposition from the development community. More information on this program and fees can be found in the Staff Report. The program will apply to new residential development planned in the 6th Cycle Housing Element and new nonresidential development. For nonresidential, language is included that incentivizes neighborhood serving uses and tax generating uses. 3. Park fees are assessed for all new residential subdivisions pursuant to the Subdivision Map Act and the City's Subdivision Code. Last adjusted in 2007, Resolution No. 2020-95 approved by City Council on November 10, 2020, adjusts the park fees pursuant to an appraisal. The adjusted rate went into effect January 9, 2021, and will be phased-in over two years. In October of 2024, the City Council adopted Resolution 2024-75 which adjusted the park fees pursuant to an updated appraisal. The adjusted rate will be phased in over one year. 4. Annually, in January the fees for onshore and offshore moorings escalate based on the Consumer Price Index. The new fees were implemented with the billing cycle beginning January 1, 2025. 5. Annually in Q2 the services of the Harbor Department and associated fees are evaluated. Additionally, the Harbor Department was selected to participate in the 2023 Fee Study. In 2024, six of the fees for Harbor Department services were reduced based on improved processes and use of technology. Eleven new fees were added for services the Harbor Department is now able to provide: a. Rhine Wharf permit b. Variance applications c. Use of electrical cord and/or adapter while at Marina Park d. Purchase (non-return) of electrical cord or adapter e. Mooring size exchange f. Mooring license application fee g. Mooring license waitlist fee (one-time or annual) h. Group/exclusive use fee for Marina Park i. Deposit/late cancellation fee for use of Human Lift - Marina Park j. Mooring assists- after hours k. Deposit/late cancellation fee for use of Human Lift - Balboa Marina PD 6. In 2024, new rate structure for mooring permits was proposed by the City Council and is now under review by the State Lands Commission.

Programs		Status
31.1	Consider the Establishment of Community Facilities and Special Assessment Districts	***Ongoing*** City staff has been evaluating the potential need to establish a Community Facilities District for the Airport Area to potentially support additional public safety equipment and personnel. As an alternative to establishing financing districts, the City Council initiated a study of Development Impact fees as a way to fund future facility needs. The study was started in 2021 and completed in November 2024. In 2024, the City began the process to establish a community pool facility, the Lower Castaways Aquatics Facility, at 100 Dover Drive: • An Ad Hoc Committee met several times between March and September 2024. • City Council study session held on October 8, 2024, supported the Ad Hoc Committees recommendation for development as a community pool facility. • On November 12, 2024, the City Council initiated amendments to Anomaly 54 in Table LU2 of the General Plan Land Use Element and to the Castaways Marina Planned Community (PC-37) Development Plan. Both amendments are necessary for the City to consider development of the Lower Castaways Aquatics Facility.

APPENDIX B.

Government Code Section 65400 requires that each city, including charter cities, prepare an annual progress report (APR) on the status of the Housing Element of its General Plan. The State Department of Housing and Community Development provides mandatory forms (Excel spreadsheets) and definitions to meet State law reporting requirements. The forms include six large tables (Tables A through F). The complete Table D is provided below but the forms are too large to copy for this report and are available online at the following link: www.newportbeachca.gov/APR.

Table D - 2022 Housing Element Implementation Status Pursuant to Government Code Section 65583

Policy Action	Policy	Status
1A: Airport Environs Sub Area	The City will establish a housing opportunity overlay district, or similar rezoning strategy, in the Airport Environs area for 172 acres of land to provide for the accommodation of at least 2,577 housing units in the Very Low, Low, Moderate and Above Moderate-income categories.	***Complete*** Immediately after the Housing Element's adoption in September 2022, the City began efforts to implement the housing strategy. This predominantly included analyzing the General Plan Land Use Element for necessary amendments needed for consistency, drafting an overlay zoning text for the various focus areas, and creating objective design standards. The goal was to rezone the housing opportunity sites appropriately for housing development. The City worked with the General Plan Update Steering Committee and the General Plan Advisory Committee on this effort, held study sessions with the Planning Commission and City Council, and made draft documents available for public review and input to ensure a transparent process that is representative of the community's values. In July 2024, the City Council adopted an amendment to the Land Use Element to revise the necessary goals and policies to support housing production in the focus areas identified by the Housing

Policy Action	Policy	Status
		Element. The Land Use Element's revised policies and goals can be found in Exhibit A of Resolution 2024-51. On September 24, 2024, the City Council adopted Zoning Code Amendments to implement the Housing Element by providing the necessary zoning. These amendments included adding a Housing Opportunity (HO) Overlay Zoning District (Overlay) to the NBMC , Section 20.28.050, which provides procedures and development standards for future housing projects. The Overlay provides allowed uses, maximum dwelling unit limits for each subarea, and appropriate development standards such as height, parking, setbacks, and open space requirements. The Overlay also provides a streamlined review process for projects that include a minimum of 20 percent of units reserved for very-low- and low-income residents, which serves to incentive the provision of affordable housing. The Zoning Code Amendment also added Section 20.48.185 (Multi-Unit Objective Design Standards to provide a baseline standard for all new multi-unit development (See the Status listed for Policy Action 3A). These amendments included adding Housing Overlays into the Zoning Code (Section 20.28.050) The following map is of the Airport Environs Area of the Overlay Areas: HO-1 Airport Area Environs Area
1B: West Newport Mesa	The City will establish a housing opportunity overlay, or similar rezoning strategy, in the West Newport Mesa area for 47 acres of land to provide for the accommodation of at least 1,107 housing units in the Very Low, Low, Moderate and Above Moderate-income categories.	***Complete*** Please refer to the Status listed for Policy Action 1A. These amendments included adding Housing Overlays into the Zoning Code (Section 20.28.050) The following map is of the West Newport Mesa of the Overlay Areas: HO-2 West Newport Mesa Area

Policy Action	Policy	Status
		The City Council authorized the submittal of a Local Coastal Program Amendment to the California Coastal Commission (CCC) to amend the City's Coastal Land Use Plan and Title 21 (Local Coast Program Implementation Plan) to apply the new Overlay to applicable properties in the coastal zone. The amendment is currently under review by the CCC.
1C: Newport Center	The City will establish a housing opportunity overlay, or similar rezoning strategy, in the Newport Center area for 163 acres of land to provide for the accommodation of at least 2,439 housing units in the Very Low, Low, Moderate and Above Moderate-income categories.	***Complete*** Please refer to the Status listed for Policy Action 1A. These amendments included adding Housing Overlays into the Zoning Code (Section 20.28.050) The following map is of the Newport Center of the Overlay Areas: HO-4 Newport Center Area
1D: Dover/Westcliff	The City will establish an overlay, or similar rezoning strategy, in the Dover / Westcliff area for 20 acres of land to provide for the accommodation of at least 521 housing units in the Very Low, Low, Moderate and Above Moderate-income categories.	***Complete*** Please refer to the Status listed for Policy Action 1A. These amendments included adding Housing Overlays into the Zoning Code (Section 20.28.050) The following map is of the Dover-Westcliff area of the Overlay Areas: HO-3 Dover-Westcliff Area The City Council authorized the submittal of a Local Coastal Program Amendment to the California Coastal Commission (CCC) to amend the City's Coastal Land Use Plan and Title 21 (Local Coast Program Implementation Plan) to apply the new Overlay to applicable properties in the coastal zone. The amendment is currently under review by the CCC.
1E: Banning Ranch	The City will continue to pursue residential opportunities on a portion of the Banning Ranch site, consistent with existing General Plan policies to provide opportunities for up to 1,475	***On Hold*** In late 2022, the City began working with a consultant and the community to update the Land Use Element to support the adoption of an overlay zoning with objective design standards for the housing opportunity sites in accordance with the Implementation Actions of

Policy Action	Policy	Status
	residential units at an average density of 50 dwelling units per acre.	Subsection B in Section 4 (Housing Plan) of the Housing Element. In 2023, the majority of Banning Ranch was acquired by a private party for conservation purposes. While it remains a housing opportunity site due to pre-existing development intensity authorized by the current General Plan, it is not considered a site for the purpose of satisfying the City's RHNA allocation.
1F: Coyote Canyon	The City will rezone at least 34 acres of land on the Coyote Canyon site, as shown in Appendix B, to accommodate up to 1,530 housing units at an average density of 60 dwelling units per acre.	***Complete*** Please refer to the Status listed for Policy Action 1A. These amendments included adding Housing Overlays into the Zoning Code (Section 20.28.050) The following map is of the Coyote Canyon area of the Overlay Areas: HO-5 Coyote Canyon Area
1G: 5th Cycle Housing Element Sites	To comply with State law, the City will amend Title 20 of the Newport Beach Municipal Code (NBMC) to permit residential uses by-right for housing development projects in which at least 20% of the units are affordable to lower-income households.	***Complete*** Please refer to the Status listed for Policy Action 1A. These amendments included adding Housing Overlays into the Zoning Code (Section 20.28.050) The following map is of the Existing 5th Cycle Sites of the Overlay Areas: HO-6 Existing 5th Cycle Sites
1H: Accessory Dwelling Unit Construction	The City will aggressively support and accommodate the construction of at least 240 ADUs by a variety of methods.	***Ongoing*** In 2024, the City pursued several efforts related to revising the City's regulations pertaining to accessory dwelling units and incentivizing their development: • *Code Amendment Related to State Law Updates and Additional Incentives:* In 2024, the City began to work on revising the ADU Ordinance to comply with SB1211 for multi-family properties, which outlines additional parking allowances, adds a definition of livable space, and additional units allowed. Amendments related to the SAFE ADU program and compliance with AB2533 are provided below.

Policy Action	Policy	Status
		• *Website Enhancements:* In Spring of 2023, the Community Development Department launched a comprehensive update to the Newport Beach ADU webpage. The webpage is intended to supplement the City's outreach and foster interest in constructing ADUs. The website now includes a downloadable guidebook, interactive activities and exercises to help homeowners plan their ADU, an online calculator to estimate costs, and standard plans. The website also includes resources to help the homeowner understand the different types of ADUs by providing links to development standards and processes. External resources are available for potential finance and grant opportunities for homeowners. Users can look up their property attributes including zoning and approximate lot size. An interactive mapping application is also included for residents to see the ADUs that are being constructed in their neighborhoods. The website is updated on a regular basis, for example in 2024, updates regarding the SAFE ADU program were added. The Newport Beach ADU website is accessible at https://www.newportbeachca.gov/adu. • *ADU Standard Plans:* In late 2023 and early 2024, the City created its ADU Standard Plans program designed to offer property owners permit ready ADU plans at no charge. Use of the standard plans provide a substantial cost savings ($15k to $30k) for property owners by eliminating the need to hire a design professional to prepare custom set of architectural and structural plans. They also reduce permit processing times since the architectural and structural component of the plans have been pre-reviewed and approved for building code compliance. The City currently offers two separate types of studio designs, one one-bedroom design, and one-and-two-car-garage conversion plans. In 2024, staff worked on enhancing the standard

Policy Action	Policy	Status
		plans page on the City's website to include a process for architects to submit their own drawings to be reviewed as standard plans/preapproval. This effort is also being completed to comply with AB1332 (effective January 1, 2025). • *SAFE ADU Program*: Efforts began towards the end of 2023 to implement the State's amnesty program to permit informal (unpermitted) units. The program became official in 2024, allowing concessions for qualifying units that were existing but unpermitted. Three safe ADUs were permitted, and one was in applied status (i.e. plan check) in 2024. Additionally, the City prepared for implementation of changes to the SAFE ADU Ordinance pursuant to AB2533 (effective 2025) changing the year for qualified units from 2018 to 2020; and allowing JADUs for SAFE ADU. However, the City's Ordinance was a step ahead and already allowed JADUs to qualify for a SAFE ADU. • *ADU Permit and Plan Check Fee Waiver:* On November 29, 2022, the City Council extended a pilot program to temporarily waive City plan check review fees, building construction permit review fees, and other City permit fees directly related to a project creating an ADU or a JADU. The fee waiver extension ran through the end of 2024 and complemented other new City programs intended to promote and facilitate ADU development, including website enhancements and standard plans. Since the start of the program, the City waived a total of $273,425 in permit and plan check fees associated with ADU construction.

Policy Action	Policy	Status
1I: Accessory Dwelling Units Monitoring Program	The City will annually monitor its progress in permitting an average of 30 ADUs annually, for a total of 240 ADUs during the planning period, in conjunction with Annual Housing Element Progress Report.	***Ongoing*** In 2024, 62 ADUs were submitted for review. There were 46 ADUs that received building permits for an increase of existing units, and 28 received final inspections. The ADUs that received permits for an increase of existing units (net increase) in 2024 will be counted towards the new 6th Cycle RHNA.
1J: Accessory Dwelling Units Amnesty Program	The City will establish a program to allow owners with existing unpermitted ADUs to obtain permits to legalize the ADUs during the 2021-2029 planning period.	***Complete*** In 2024, the City rolled out its Safe ADU program. The program consists of informational materials (i.e. webpage and public handout) advising property owners of the benefits of legalizing unpermitted units and the new opportunities (i.e., SB 897) and incentives (i.e., current fee waiver) available to them. The City's ADU webpage now includes a dedicated page to this effort where the attached flyer can also be obtained: https://www.newportbeachadu.org/safeadu. The flyer was also distributed in City water bills to notify property owners of the program. Three safe ADUs were permitted, and one was in applied status in 2024. Additionally, the City prepared for implementation of changes to the SAFE ADU Ordinance pursuant to AB2533 (effective 2025) changing the year for qualified units from 2018 to 2020.

Policy Action	Policy	Status
1K: Inclusionary Housing Policy	The City will investigate inclusionary housing policy options as an additional means to provide a variety of housing types and opportunities for very low, low- and moderate-income households in Newport Beach.	***In Progress*** In 2022, the City retained Keyser Marston Associates, Inc. (KMA) to prepare a financial evaluation for prospective inclusionary housing program options in the City. The City Council has held study sessions and continues to explore the appropriate policy choice that will encourage and not hinder affordable housing development. As a related action in 2023, the City Council revised the inclusionary requirement for the Residential Overlay in the Airport Area, reducing it from 30% to 15%. KMA's report showed that the 30% requirement could serve to hinder housing production altogether. The City will continue to study inclusionary housing in 2025 with technical support from KMA.
2A: Neighborhood Preservation	The City will continue to improve housing quality and prevent deterioration of existing neighborhoods by strictly enforcing applicable Building Code, Fire Code, and Zoning Code regulations and abating Code violations and nuisances.	***Ongoing*** The building inspectors and code enforcement officers continually enforce code regulations, abatement violations, and nuisances. A quarterly report on code enforcement activities is available and kept on file at the City. The City Council awarded funding for the Senior Home Assistance Repair Program. (See Program 1.1.2 for details.)
2B: Residential Building Record Program	The City will maintain and continue to implement the Residential Building Records (RBR) program to reduce and prevent violations of building and zoning ordinances	***Ongoing*** During the fourth quarter of 2023, the City Council opted to streamline real estate transactions through removal of the Residential Building Record Program requirement. However, the Program remains available on a voluntary basis. This City report allows the City to verify that its residential buildings meet zoning, building code, and life safety requirements as set forth by the City's Municipal Code and fulfill the State's requirement that all homes have both smoke detectors and seismic strapping of water heaters (California Health and Safety Code, Section 19211). In 2024, there were 248 RBRs processed.

Policy Action	Policy	Status
2C: Preservation of At-Risk Units	The city will proactively seek to preserve as many affordable units as possible by reaching out to owners that want to opt out of Section 8 contracts and work with them to incentivize keeping the units as affordable.	***Ongoing*** The City of Newport Beach is registered as a Qualified Preservation Entity with HCD as of 2012. When notification is received, City staff will evaluate the potential use of monies to preserve the affordable units. Staff maintains an updated contact list for affordable units. Priscila Davila and Associates (consultant) included this information that was sent to the owners as a part of the annual monitoring. During the RFP process for the expenditure of the affordable housing funds, the City and Priscila Davila and Associates reached out to the owners of the existing affordable housing units within the City and there was no interest to extend the existing affordable housing covenants. Pamphlets informing prospective tenants and landlords about the Orange County Housing Authority (OCHA) Section 8 program have been made available in the public lobby and information is posted on the City website.
3A: Objective Design Standards	The City of Newport Beach will review existing entitlement processes for housing development and will eliminate discretionary review for all housing development proposals that include a minimum affordable housing component.	***Complete*** The Zoning Code Amendment that approved the Housing Overlays also added Section 20.48.185 (Multi-Unit Objective Design Standards to provide a minimum baseline design standard for all new multi-unit development. The objective design standards are intended to result in quality design of multi-unit residential and mixed-use development. Review under the standards supports development that builds on context, contributes to the public realm, and provides high quality and resilient buildings and public spaces. These standards shall be applied uniformly and without discretion to enhance the built environment for both affordable and market-rate multi-unit residential development. The standards would apply to housing throughout the City that consists of a density of 30 dwelling units per acre or greater.

Policy Action	Policy	Status
3B: SB 35 Streamlining	The City will establish written procedures to comply with California Government Code Section 65913.4 and publish those procedures for the public, as appropriate, to comply with the requirements of SB 35, Chapter 366 Statues 2017.	***In Progress*** The City has not yet created written procedures; however, inquiries related to SB 35 are promptly and consistently responded to.
3C: Preservation of Rental Opportunities	The City will continue to maintain rental housing opportunities by restricting conversions of rental units to condominiums in a development containing 15 or more units unless the rental housing vacancy rate in Newport Beach is 5% or higher, and unless the property owner complies with condominium conversion regulations contained in Newport Beach Municipal Code Chapter 19.64.	***Ongoing*** A vacancy rate survey is completed upon receiving an application for the conversion of 15 or more rental units to condominiums. No such projects of 15 or more units were submitted in 2024.
3D: Priority of Affordable Housing	The City will continue to take all feasible actions to ensure expedient construction and occupancy for projects approved with lower- and moderate-income housing requirements.	***Ongoing*** In 2024, the City received and expeditiously processed five different preliminary applications for residential development. The City also continues to offer multi-departmental preliminary application meetings (Development Review Committee-DRC) to assist in streamlining entitlement processes. DRC is a service that is offered free of charge to the development community.
3E: Mortgage Revenue Bonds	The City will continue to participate with the County of Orange in the issuance of tax-exempt mortgage revenue bonds to facilitate and assist in financing, development, and construction of housing affordable to low and moderate-income households.	***Ongoing*** The City has continued its coordination with the County of Orange.

Policy Action	Policy	Status
3F: Annual Reporting Program	The City will conduct an annual compliance-monitoring program for units required to be occupied by very low-, low-, and moderate-income households.	***Ongoing*** Annual compliance monitoring has been conducted for 2024 and the report for the City's income- and rent-restricted units by Priscila Davila and Associates (consultant) found all units in compliance.
3G: Entitlement Assistance	The City will provide entitlement assistance, expedited entitlement processing, and waive application processing fees for developments in which 5% of units are affordable to extremely low-income households.	***Ongoing*** The City provides strong staffing presence at the public counter to expeditiously field any development inquiries. The City also continues to offer multi-departmental preliminary application meetings (Development Review Committee) to assist in streamlining entitlement processes and to facilitate an easier entitlement review. Development Review Committee is a service that is offered free of charge to the development community.
3H: Prioritization of Affordable Housing Funds	The City will give highest priority for use of Affordable Housing Fund monies to affordable housing developments providing units affordable to extremely-low-income households and senior households.	***Ongoing***
3I: Public Information About Affordable Housing	The City will continue to maintain a brochure of incentives offered by the City for the development of affordable housing including fee waivers, expedited processing, density bonuses, and other incentives.	***Ongoing*** A brochure is maintained and provided on the City website and in the public lobby. Additionally, during 2024, several developers took advantage of the City's various incentives for affordable housing including through the granting of density bonus, development standard waivers, and fee waivers.
3J: Priority in Kind Assistance for Affordability	The City shall provide more assistance for projects that provide a higher	***Ongoing***

Policy Action	Policy	Status
	number of affordable units or a greater level of affordability.	No projects proposed a larger number of affordable units than the minimum nor at greater affordability levels during the 2024 reporting period. However, in late 2024, the City adopted the Housing Opportunity (HO) Overlay Zoning District (Section 10.28.060 of the NBMC), which includes a provision to allow significant streamlining opportunities for housing development applications that include a higher proportion of affordable housing.
3K: Coastal Zone Development Affordability	The City shall follow Government Code Section 65590 and implement Municipal Code Titles 20.34 and 21.34 "Conversion or Demolition of Affordable Housing" for new developments proposed in the Coastal Zone areas of the City.	***Complete*** On October 29, 2019, the Community Development Director determined that Newport Beach Municipal Code (NBMC) Chapters 20.34 and 21.34 (Conversion of Demolition of Affordable Housing) are no longer required. These chapters of the NBMC implement the Mello Act (Government Code Sections 65590 - 65590.1 Low- and Moderate-Income Housing Within the Coastal Zone). The regulations require the replacement of housing units lost within the coastal zone that are occupied by low- and moderate-income households under certain circumstances when feasible. Both the NBMC and the Mello Act provide when there is less than 50 acres in aggregate, of privately owned, vacant land available for residential use within the City's coastal zone, and three miles therefrom, the replacement requirement is not required. The Planning Division completed a land use inventory to determine if 50 aggregate acres of privately owned, vacant land is available for residential use within the City's coastal zone and within three miles inland of the coastal zone. The inventory conducted in October 2022, found less than 50 qualifying acres.
3L: Proactive Education and Outreach to Prospective Developers	The City will continue to advise and educate existing landowners and prospective developers of affordable housing development opportunities available within Banning Ranch, the Airport Area, West Newport Mesa,	***Ongoing*** City Community Development staff provides information to landowners and developers about affordable housing opportunities and staff encourage the inclusion of affordable housing units in new projects. There has been significant interest from landowners and

Policy Action	Policy	Status
	Dover-Westcliff, Newport Center, Mariners' Mile, and Balboa Peninsula areas.	developers within the various focus areas, including the submittal of development applications and preliminary applications, demonstrating that the City has provided effective outreach.
3M: Regional Coordination of Housing Issues	The City will continue to participate in other programs that assist production of housing.	***Ongoing*** The City of Newport Beach is a participating member of the Orange County Housing Authority (OCHA). OCHA receives, distributes and monitors the Section 8 Vouchers for the City. OCHA has many housing programs that are offered and available to City residents and promote housing production. City Planning staff participate in quarterly meetings at the OCHA to stay up to date on all the programs, projects, and vouchers. City staff also actively participates on the Orange County Council of Governments (OCCOG) Technical Advisory Committee (TAC), which undertakes issue of regional importance, including housing production and affordability.
3N: Housing Impact Studies	The City will continue to study housing impacts of proposed larger-scale, significant commercial/industrial projects during the development review process.	***Ongoing*** The City rarely sees large commercial or industrial development that could significantly affect housing. The City will conduct a housing impact analysis when preparing an environmental impact report for a significant large-scale commercial or industrial project that includes a significant number of employees.
3O: Single Resident Occupancies (SROs)	Use State and federal funding to continue to provide assistance and make provisions for development of single-room occupancy (SRO) housing and other forms of housing for people experiencing homelessness in the City.	***Ongoing*** In December 2024, the City Council authorized the City Manager and City Clerk to execute the Affordable Housing Loan Agreement between the City of Newport Beach and American Family Housing, LLC, (AFH) to loan $3,000,000 to convert an existing Travelodge North Motel property at 1400 Bristol Street, Costa Mesa s permanent supportive housing for those experiencing or at risk of homelessness. AFH's proposed project would convert the existing

Policy Action	Policy	Status
		120-unit motel property into 78 total units of housing - 76 units of permanent supportive housing and two manager's units (Project). There would be a "local preference" for 12 studio units at the Project based on the eligible tenants connection to Newport Beach.
3P: Residential Care Facilities	The City will review and amend the permitting procedures, application requirements, and development standards applicable to residential care facilities for persons of seven or more to ensure consistency with state and federal laws to promote objectivity and greater approval certainty.	***In Progress*** City staff met with HCD to discuss next steps in furtherance of this Policy Action and anticipates substantial progress by the middle of 2025.
4A: Affirmatively Furthering Fair Housing	The City will affirmatively further fair housing by taking meaningful actions in addition to resisting discrimination, that overcomes patterns of segregation and fosters inclusive communities free from barriers that restrict access to opportunity based on protected classes, as defined by State law.	***In Progress*** The City intends to emphasize meaningful actions to overcome patterns of segregation and to foster inclusive communities free from barriers that restrict access to opportunity based on protective classes, as defined by State law. The City continues to maintain a contract for fair housing services with the Fair Housing Foundation and will participate in an update to the Orange County Regional Analysis of Impediments to Fair Housing when the next update occurs. The City is also collaborating with neighboring jurisdictions through the Orange County Council of Government (OCCOG) and its Regional Early Action Planning (REAP) on-call services bench, as there is an effort to streamline various housing element implementation program actions, including AFFH efforts, regionally.
4B: Streamlined Project Review	The City will provide a streamlined "fast-track" development review process for proposed affordable housing developments.	***Ongoing*** The City provides a prioritized and expedited development review process for all affordable housing projects. In 2024, this included entitlement approval of the following projects:

Policy Action	Policy	Status
		• Residences at Newport Airport Village - 37 very low units • Residences at 1401 Quail Street - 6 very low affordable units and 2 low affordable units • Residences at 1400 Bristol Street – 233 very low affordable units Additionally, in late 2024, the City adopted the Housing Opportunity (HO) Overlay Zoning District (Section 10.28.060 of the NBMC), which includes a provision to allow significant streamlining opportunities for housing development applications that include a higher proportion of affordable housing (i.e. 20%).
4C: Density Bonus and Incentives for Affordable Housing	The City will update its Density Bonus Ordinance (Newport Beach Municipal Code Chapter 20.32) to be consistent with State Law, as amended.	***Ongoing*** The City continuously monitors changes to state density bonus law. The most recent amendment was to the Implementation Plan (IP) of the City's certified Local Coastal Program to incorporate standards and establish an approval process for considering density bonuses with housing development projects. These amendments are required to ensure the City's regulations are in compliance with State law. The California Coastal Commission approved the amendment with suggested modifications on April 12, 2024. The City Council adopted the amendment on September 25, 2024 and the Environmental Determination was approved on November 15, 2024. Additionally, monitoring efforts for compliance and consistency will continue.
4D: List of Pre-Approved Development Incentives	The City will develop a pre-approved list of incentives and qualifications for such incentives to promote the development of affordable housing.	***In Progress*** The City established apermit and plan check fee waiver program to incentivize the development of accessory dwelling units that

Policy Action	Policy	Status
		continued through the end of 2024. Other potential incentives for affordable housing development, including ADUs, is in progress.
4E: Airport Area Policy Exceptions for Affordable Housing	The City shall maintain an exception to the minimum 10-acre village requirement for projects that include a minimum of 30% of the units affordable to lower-income households in the Airport Area.	***Ongoing*** In 2023, the Newport Place Planned Community (PC-11) Development Plan was amended to modify the inclusionary requirement from 30% to 15% for residential projects. A report from KMA demonstrated that a 30% inclusionary requirement may hinder housing development.
4F: Encourage Development of Opportunity Sites	The City will continue to encourage and facilitate residential and/or mixed-use development on sites listed in Appendix B by providing technical assistance to interested developers with site identification and entitlement processing.	***Ongoing*** Since adoption of the Housing Opportunity (HO) Overlay Zoning District (Overlay), City staff has met with several prospective developers and real estate brokers to provide assistance and explanation of the overlay, including the development review process.
4G: Annual RHNA Sites Inventory Monitoring	The City will monitor and evaluate the development of vacant and underdeveloped parcels on an annual basis and report the success of strategies to encourage residential development in its Annual Progress Reports required pursuant to Government Code 65400.	***Ongoing***
4H: Review Mixed-Use Zones	The City will review established mixed-use land use categories and corresponding zoning regulations in the City and recommend policy or code changes to the City Council that reduce regulatory barriers and incentivize mixed-use residential development.	***In Progress*** The City will begin work on this Policy Action in 2025 with the assistance of a consultant.

Policy Action	Policy	Status
4I: Establish Mixed-Use Resort Opportunities	The City will consider policies, regulations and/or interpretations to establish mixed-use resort opportunities.	***Complete*** In 2021, the Community Development Director issued Director's Determination No. DD2021-001 Interpreting Accessory Residential as an Allowed Use within Resort Hotels (PA2021-096). DD2021-001 determined that residential uses are permitted as an accessory use to hotels subject to certain conditions.
4J: Airport Environs Sub Area Environmental Constraints	The City will take actions to address potential environmental constraints in the Airport Environs Sub Area and ensure continued feasibility of sites, particularly for lower-income RHNA.	***In Progress*** In 2023, the City adopted amendments to the Zoning Code and General Plan related to noise in the airport area, which were necessary to implement the 6th Cycle Housing Element. The amendments included adding regulations to Section 20.30.080 (Noise) of the NBMC that would serve to protect sensitive noise receptors from potential airport noise.
4K: West Newport Mesa Environmental Constraints	The City will take actions to address environmental constraints and ensure feasibility of sites, particularly for lower-income RHNA, in the West Newport Mesa Area with regards to noise and pollutants.	***In Progress***
4L: Coyote Canyon Environmental Constraints	The City will take actions to address environmental constraints on the Coyote Canyon landfill site.	***In Progress***
5A: Preservation of Affordability Covenants	The City will contact owners of 19 affordable units approaching the expiration of affordability covenants to obtain information regarding their plans for continuing affordability on their properties, inform them of	***Ongoing*** Refer to the discussion under 2c above. The City will continue outreach efforts in 2025 to preserve affordability covenants.

Policy Action	Policy	Status
	financial resources available, and to encourage the extension of the affordability agreements for the developments listed beyond the years noted.	
5B: Section 8 Participation	The City shall maintain information on the City's website and prepare written communication for tenants and other interested parties about Orange County Housing Authority Section 8 opportunities and to assist tenants and prospective tenants acquire additional understanding of housing law and related policy issues	***Ongoing*** The City continues to maintain a contract for fair housing services with the Fair Housing Foundation. The City maintains a robust housing webpage with information regarding housing opportunities and contact information for affordable housing providers and the Fair Housing Foundation.
5C: Incentivize for Preserving of Affordability Covenants	The City will investigate the potential for providing additional incentives or modify its current policy to incentivize property owners to maintain the affordability of units on their property during the 6th Cycle.	***Ongoing***
5D: Mobile Home Park Conversions	The City will continue to employ the provisions of NBMC Title 20 provision of the Mobile Home Park Overlay to maintain and protect mobile home parks in a stable environment with a desirable residential character.	***Ongoing*** City Community Development staff continues to inform property owners and developers of the provisions of the City's MHP overlay. The City has used and will continue to make available the Senior Housing Assistance Repair Program (SHARP) funds to help senior residents repair their mobile homes if it is necessary to abate substandard living conditions.
5E: Orange County Housing Authority Advisory Committee	The City of Newport Beach will continue to participate as a member of the Orange County Housing Authority (OCHA) Advisory Committee and work in cooperation with the OCHA to provide Section 8 Rental Housing	***Ongoing*** Staff attends the quarterly meetings of the OCHA Cities Advisory Committee. Staff continually works in cooperation with the County to provide Section 8 rental housing assistance to residents.

Policy Action	Policy	Status
	Assistance to residents of the community.	A link to the Orange County Housing Authority website has been placed on the City website to provide information on the Section 8 program. City staff worked closely with OCHA staff to facilitate the award of the Veterans Affairs Supportive Housing (VASH) Vouchers to the Newport Shores project (see Program 4.1.4).
5F: Water Efficiency for Residential Projects	The City will continue to implement and enforce the Water Efficient Landscape Ordinance and Landscape and Irrigation Design Standards in compliance with AB 1881 (Chapter 559 Statutes 2006).	***Ongoing*** All new development projects are reviewed for compliance with the City's Water Efficient Landscape Ordinance. The annual report on the City's Water Efficient Landscape Ordinance for 2024 was submitted to California Department of Water Resources on January 30, 2025.
5G: Energy Efficiency in Residential Projects	The City of Newport Beach will continue to require that any affordable housing developments that receive City assistance from Community Development Block Grant (CDBG) funds or from the City's Affordable Housing Fund shall be required, to the extent feasible, to include installation of energy efficient appliances and devices that will contribute to reduced housing costs for future occupants of the units.	***Ongoing*** No affordable housing projects received funding via CDBG or the City's Affordable Housing Fund during the 2024 reporting period.
6A: Homeless Program Assistance	The City will continue to apply annually for United States Department of Urban Development Community Development Block Grant (CDBG) funds and allocate a portion of such funds to sub-recipients who provide shelter and other services for the homeless as well as submit Annual Action Plan to HUD in May of each year.	***Ongoing*** The City applied for a grant allocation for the 2024 reporting period. The City submitted its Action Plan in May of 2024 and allocated a portion of the grant for the provision of homeless services.

Policy Action	Policy	Status
6B: Repair Loans and Grant Programs for Seniors, Persons with Physical and Developmental Disabilities and Lower-Income Households	The City, in partnership with OASIS Senior Center and Habitat for Humanity Orange County, has developed a Senior Home Repair Assistance Program (SHARP). Additionally, the City will continue to cooperate with the Orange County Housing Authority to pursue establishment of a Senior/Disabled or Limited Income Repair Loan and Grant Program to underwrite all or part of the cost of necessary housing modifications and repairs. Cooperation with the Orange County Housing Authority will include continuing City of Newport Beach participation in the Orange County Continuum of Care and continuing to provide CDBG funding.	***Ongoing*** The City's Senior Housing Assistance Repair Program (SHARP) continues to successfully assist low-income seniors. In 2024, Habitat for Humanity and OASIS staff worked on four new projects and expended a total of $95,545.59. The project included accessibility modifications as well as mold abatement, wall and cabinet replacement and roof repairs. To date, the program has used $ 476,222.96 for a total of 20 projects.
6C: Leverage CDGB and other Federal Formula Grant Funding	The City shall make every effort to leverage CDBG and Federal formula grant annual funds from various agencies to further the City's housing goals; these include, but are not limited to, State, Regional and private resources. The City of Newport Beach will continue to maintain a list of "Public and Private Resources Available for Housing and Community Development Activities" and maintain a list of resources on City website and update as necessary in the 6th Cycle.	***Ongoing***

Policy Action	Policy	Status
6D: Child Daycare Facilities	The City will continue to encourage the development of daycare centers as a component of new affordable housing developments and grant additional incentives in conjunction with the review and approval of density bonus projects pursuant to NBMC Chapter 20.32 (Density Bonus).	***Ongoing*** City Community Development Department staff requests developers include child daycare facilities in developments that include affordable housing.
6E: Housing Assistance for Seniors	The City shall continue to encourage senior citizen independence through the promotion of housing and services related to in-home care, meal programs, and counseling, and maintain a senior center that affords seniors opportunities to live healthy, active, and productive lives in the City	***Ongoing*** The City supports a Meals on Wheels program that provides home-delivered meals to individuals who are homebound due to age, illness, or disability. Funding is provided through the CDBG program on a yearly basis. The Meals on Wheels program provides home-delivered meals to individuals who are homebound due to age, illness, or disability. The City also operates the OASIS Senior Center. Services include: • A multi-purpose center owned and operated by the City of Newport Beach in partnership with the Friends of OASIS nonprofit dedicated to meeting needs of senior citizens and their families. • Classes in art, health & fitness, music & dance, foreign languages, technology, enrichment, and much more. • A state-of-the-art fitness center for those age 50 and older which provides a safe, comfortable, senior-friendly exercise environment for the active older adult including access to hire a personal trainer for individualized programs. Separate membership required to join.

Policy Action	Policy	Status
		• Regularly scheduled low-cost special events and socials such as luncheons, concerts, barbecues, a Paint & Wine night and holiday parties. • Travel department coordination of day and overnight trips. • Curb-to-curb transportation program for residents of Newport Beach age 60 and older who are no longer driving to use for medical appointments, grocery shopping, banking, and to attend OASIS classes (fee required). • Social services information and referral for seniors and their families dealing with a need for caregiver services, housing, transportation, legal matters, and more. Informational and supportive counseling is available to seniors and their family members on an individual basis. • Various health resources and screenings for seniors, including flu shots, blood pressure, memory screenings, medication review, and health insurance counseling services. • Regularly scheduled support group meetings at the Center to help senior citizens and their families cope with stress, illness, life transitions, and crises. • Congregate lunch program for seniors age 60 and older that is funded by the federal government through the *Older Americans Act*. A donation is requested for meals, which are provided by Meals on Wheels OC.
6F: Emergency Shelters, Transitional and Supportive Housing	The City of Newport Beach will amend certain sections of its Municipal Code in order to comply with State law to address: 'Supportive Housing Streamlined Approvals', 'Emergency and Transitional Housing Act of 2019', amending NBMC definitions to comply with California Government Code, and	***In Progress*** City staff met with HCD to discuss next steps in furtherance of this Policy Action and anticipates substantial progress by the middle of 2025.

Policy Action	Policy	Status
	amending NBMC to ensure proper zoning of emergency, transitional, and supportive housing according to State law.	
6G: Senior Housing Priority Program	The City seeks to develop explore the feasibility and appropriateness of proactive policies and programs to address and prioritize the needs of its senior population.	***Ongoing***
7A: Supportive Housing/ Low Barrier Navigation Centers	To comply with State law, the City of Newport Beach will adopt policies, procedures, and regulations for processing this type of use to establish a non-discretionary local permit approval process that must be provided to accommodate supportive housing and lower barrier navigation centers per State law.	***Pending***
7B: Transitional and Supportive Housing	In compliance with Senate Bill 2 (Chapter 364, Statutes 2017) and SB 745 Chapter 185, Statutes 2013) the City will ensure the Zoning Code is amended to encourage and facilitates emergency shelters and limits the denial of emergency shelters and transitional and supportive housing under the Housing Accountability Act.	***Ongoing*** Staff intends to implement this Policy Action in conjunction with the amendments necessary to implement Policy Action 3P: Residential Care Facilities in 2025.
7C: Housing for Persons with Developmental Disabilities	To accommodate residents with developmental disabilities, the City will review and prioritize housing construction and rehabilitation including supportive services targeted for persons with developmental disabilities.	***Ongoing*** During the 2024 reporting period, no projects were proposed that targeted the provision of housing or services for persons with developmental disabilities.

Policy Action	Policy	Status
7D: Fair Housing Services	The City of Newport Beach will continue to contract with an appropriate fair housing service agency for the provision of fair housing services for Newport Beach residents.	***Ongoing*** The City contracted with the Fair Housing Foundation to provide these services. The Fair Housing Foundation provided the following trainings, seminars, and outreach activities for the City in 2024: • Fair Housing Workshops – 2/14/24, 9/26/24 and 11/5/24 • Contacts Services – 2/14/24 Newport Mesa Family Resource Center, 8/3/24 Newport Mesa Unified School District, • Public service announcement, City of Newport Beach TV – 5/22/24 • Literature Distribution – 3,832 documents
8A: Annual Reporting Program	The City of Newport Beach shall report on the status of all housing programs as part of its annual General Plan Review and Annual Progress Report (APR).	***Ongoing*** This report is intended to satisfy this Policy Action for the 2024 reporting period.
8B: Water and Sewer Service Providers	Pursuant to SB 1087, Chapter 727, Statues of 2005, the City of Newport Beach is required to deliver its adopted housing element and any amendments thereto to local water and sewer service providers.	***Pending*** The City received notice from HCD of the certification of the City's 6th Cycle Housing Element in October of 2022. Copies of the certified Housing Element were sent to all local water and sewer utility providers that supply the City.



On the Agenda: March 25 City Council Meeting

The next meeting of the Newport Beach City Council will be on Tuesday, March 25 at 4 p.m. The full agenda is available here.

Agenda items include:

- A 5-year agreement with Kit Coffee (operating under Kit at the Library, Inc.), to operate the retail concession facility at the Central Library, 1000 Avocado Ave. City staff is recommending Kit Coffee, a locally owned coffee shop with facilities in Newport Beach and Irvine, after evaluating proposals from interested food-service operators. Kit Coffee proposes to offer coffee and tea-based drinks and a limited food menu with items such as toasts, sandwiches and salads at the library location.
- 2024 General Plan annual progress report, including a Housing Element report. Under State law the City must prepare and submit an annual report on the status of the City's General Plan and implementation progress. The Council action would approve the report and authorize staff to submit the report to the California Department of Housing and Community Development.
- Amendment of a municipal ordinance related to the completion of residential home construction. In 2019, the City Council adopted a three-year time limit to complete construction of one-unit and two-unit family dwellings. In 2022, as the COVID-19 pandemic disrupted supply chains and delayed construction, the Council temporarily granted the City's building official authority to extend the time limit for up to one additional year. The Council will consider an amendment to remove a sunset provision from the ordinance and grant the building official authority to approve up to two, 180-day extensions for projects entering their fourth year. This amendment eliminates the public hearing requirement for these specific extensions, streamlining the process and reducing costs for permit holders. Requests for a third or fourth extension would require a public hearing with an administrative hearing officer. Additionally, the proposed ordinance introduces new requirements for applicants seeking extensions.

VIEW THE FULL AGENDA >>

CITY OF

NEWPORT BEACH

City Council Staff Report

March 25, 2025
Agenda Item No. 12

TO:	HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM:	Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov
PREPARED BY:	Tonee Thai, Deputy Community Development Director/Chief Building Official - 949-718-1867, tthai@newportbeachca.gov
TITLE:	Ordinance No. 2025-5: An Amendment to Section 15.02.095 of the Newport Beach Municipal Code Related to Timeframes for Completion of Construction

ABSTRACT:

On April 23, 2019, the City Council adopted Ordinance No. 2019-8, setting a three-year time limit to complete construction of one-unit and two-unit family dwellings. The COVID-19 pandemic disrupted supply chains for certain building materials and fixtures causing delays in completing construction. As a temporary solution to supply chain delays, the City Council adopted Ordinance No. 2022-8 on March 22, 2022, authorizing the building official to grant an extension of the time limit to complete construction for up to one additional year. The temporary solution would sunset on April 21, 2025.

For the City Council's consideration is an amendment to Ordinance No. 2019-8 to remove the sunset provision and amend Section 15.02.095 of the Newport Beach Municipal Code (NBMC). The amendment would also introduce additional criteria for applicants seeking further time extensions.

RECOMMENDATIONS:

a) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and

b) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2025-5, *An Ordinance of the City of Council of the City of Newport Beach, California, Amending Section 15.02.095 (Section 105.3.4) of the Newport Beach Municipal Code Related to Timeframes for Completion of Construction*, and pass to second reading on April 15, 2025.

DISCUSSION:

Ordinance No. 2019-8, adopted on April 23, 2019, established a three-year construction time limit for one- and two-family dwellings.

Under this ordinance, extensions require an administrative hearing officer's approval following a public hearing, with a maximum extension of one year. Further extensions beyond the fourth year necessitate City Council approval.

The COVID-19 pandemic caused significant disruptions to the construction industry, including supply chain delays, material shortages, and labor constraints. As a result, many projects that would have been completed within the original three-year timeframe faced unavoidable delays.

To address these challenges, the City Council adopted Ordinance No. 2022-8 on March 22, 2022, granting the building official temporary authority to extend construction time limits by one additional year beyond the three initial years. This ordinance is set to expire on April 21, 2025. Extensions under this ordinance are granted based on adequate project progress and necessity for completion. Any additional extensions beyond the one-year granted by the building official require a public hearing before an administrative hearing officer. The administrative hearing officer may grant up to two, 180-day extensions.

Applicants seeking further extensions must submit a request through the City Clerk to the City Council for consideration through a public hearing. This request must be filed at least 45 days before the expiration of the last granted extension. To date, no applicants have requested extensions from the City Council.

Projects that have exhausted all administrative remedies are referred to the City Attorney’s Office (CAO). The CAO may either prosecute the applicant for violating the City’s ordinance or work with the property owner to establish a completion schedule through a settlement agreement.

The ordinance provides a consistent framework for granting extensions, ensuring they are approved only when circumstances warrant additional time or when delays are beyond the control of the property owner, applicant or contractor.

Since the adoption of Ordinance No. 2022-8, the building official has granted extensions for 150 projects, with 106 successfully completed. During the same period, 24 projects required public hearings for extensions, resulting in 12 completed projects and 12 still under construction. Additionally, five settlement agreements have been reached, and four projects are currently under review by CAO.

The high completion rate (71%) for projects granted extensions by the building official demonstrates the effectiveness of this streamlined approach. It reduces administrative burdens, minimizes delays, and supports project completion.

Impacts if Ordinance No. 2022-8 Sunsets

If Ordinance No. 2022-8 expires, the building official will lose the authority to extend construction permits, and the authority will revert to a public hearing process overseen by an administrative hearing officer.

Property owners seeking extensions beyond the third year must submit applications to the City Clerk, subject to a maximum extension of 180 days per request. The property owner may request up to two extensions.

Additionally, the cost of obtaining an extension will increase. The current fee for an extension granted by the building official is $221. If the ordinance sunsets, extensions requiring a public hearing will cost $1,496 due to administrative expenses, including hearing officer fees and public notice requirements.

Transitioning to a public hearing process may also cause delays. If a hearing cannot be scheduled before a permit expires, construction must be suspended until a decision is issued. This could result in project downtime and increased costs for property owners.

Draft Ordinance

The proposed ordinance removes the sunset provision from Ordinance No. 2022-8, granting the building official authority to approve up to two 180-day extensions for projects entering their fourth year. This amendment eliminates the public hearing requirement for these specific extensions, streamlining the process and reducing costs for permit holders. However, any request for a third or fourth extension will still require a public hearing with an administrative hearing officer.

Additionally, the proposed ordinance introduces new requirements for applicants seeking extensions. Requests must include:

1. A detailed explanation of the reasons for the delay and supporting justification.
2. A comprehensive completion schedule.
3. A record of any past complaints or enforcement actions, which will be considered in evaluating the extension request.

FISCAL IMPACT:

There is no fiscal impact related to this item.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will notresult in a direct or reasonably foreseeable indirect physical change in the environment)and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. The adoption of the amendment does not authorize new development or change the densityor intensity of any potential future development.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Ordinance No. 2025-5
Attachment B – Redlined Ordinance

Attachment A

Ordinance No. 2025-5

ORDINANCE NO. 2025-5

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING SECTION 15.02.095 (SECTION 105.3.4) OF THE NEWPORT BEACH MUNICIPAL CODE RELATED TO TIMEFRAMES FOR COMPLETION OF CONSTRUCTION

WHEREAS, Section 200 of the City Newport Beach's ("City") Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, the number of construction projects on private property in the City has increased substantially over the past eleven years, which has resulted in increased impacts to residents from construction related noise, loss of on-street parking, and traffic;

WHEREAS, Chapter 15.02 (Administrative Code) of the Newport Beach Municipal Code ("NBMC"), adopts and incorporates by reference Chapter 1, Division II of the California Building Code;

WHEREAS, the City Council adopted Ordinance No. 2019-8 on April 23, 2019, adding Section 15.02.095 (Addition of Sections 105.3.3, 105.3.4, and 105.3.5), which sets a three-year time limit from the issuance of the first or original building permit for one-unit or two-unit dwellings to be completely constructed, unless the time is extended as provided in subsection 1.05.3.4;

WHEREAS, the City Council adopted Ordinance No. 2022-8 on March 22, 2022, amending Section 15.02.095 (Section 105.3.4) of the NBMC to allow for the extension of the timeframe to complete construction due to the impacts of COVID-19;

WHEREAS, it is in the interest of the residents of the City to place a reasonable time limit on the duration of construction projects and to streamline the extension request process, to balance the needs of the owner of the project with the health, safety and welfare of the neighbors; and

WHEREAS, the City Council desires to modify Section 15.02.095 (Section 105.3.4) of the NBMC to ensure that reasonable time extensions are granted, when necessary, with the primary objective of ensuring construction projects are completed promptly.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: Subsection 105.3.4 of Section 15.02.095 of the Newport Beach Municipal Code is hereby amended to read as follows:

Section 105.3.4 Extension of time limit to complete construction.

The maximum allowable time to complete construction, as set forth in Section 105.3.3, may be extended as follows:

1. Application for Extension to Building Official.

a) A property owner, or authorized agent of the property owner, may request an extension by filing with the Building Official, in writing and on a form provided by the Building Official, an application for extension which sets forth: (i) the address of the project site; (ii) the name of the applicant and property owner; (iii) when the first or original building permit was issued; (iv) the length of time extension requested, which shall not be greater than one hundred and eighty (180) calendar days; (v) how many previous extensions have been granted; (vi) criteria that establish the cause(s) of delay and the reason for the extension request; (vii) a comprehensive completion schedule; (viii) a brief description of the improvements that are the subject of the application; (ix) past complaints and enforcement history; and (x) any other information requested by the City.

b) Unless authorized by the Building Official in writing, an application for extension shall be submitted no later than forty-five (45) calendar days prior to the expiration of the building permit. The application for extension to the Building Official shall be accompanied by a fee adopted by resolution of the City Council.

c) Within forty-five (45) days of a request for extension, the Building Official may ministerially grant, conditionally grant or deny a request for extension for a period not to exceed one hundred and eighty (180) calendar days with a maximum of two extensions being granted by the Building Official under this subsection. The Building Official shall only grant an extension if he/she determines adequate progress has been made towards completion of construction and the request for extension is necessary for its completion. The decision of the Building Official shall be final and non-appealable.

2. Application for Additional Extension(s).

a) If construction of the project has not been completed within the timeframe authorized by the Building Official, a property owner, or authorized agent of the property owner, may request an additional extension by filing with the City Clerk, in writing and on a form provided by the City Clerk, an application for extension which sets forth: (i) the address of the project site; (ii) the name of the applicant and property owner; (iii) when the first or original building permit was issued; (iv) the length of time extension requested, which shall not be greater than one hundred and eighty (180) calendar days; (v) how many previous extensions have been granted; (vi) criteria that establishes the cause(s) of delay and the reason for the extension request; (vii) a comprehensive completion schedule; (viii) a brief description of the improvements that are the subject of the application; (ix) past complaints and enforcement history; and (x) any other information requested by the City.

b) Unless authorized by the Building Official in writing, an application for extension shall be submitted no later than forty-five (45) calendar days prior to the expiration of the building permit.

c) An application for extension filed with the City Clerk shall be accompanied by a hearing and noticing fee adopted by resolution of the City Council.

3. Scheduling and Noticing.

a) For an application for an additional extension set forth in subsection 2, a Hearing Officer, designated by the City Manager, shall hear and decide whether a third application for extension, or fourth application for extension, shall be granted, conditionally granted, or denied. The City Council shall hear and decide whether any additional application for extension, beyond four total extensions, shall be granted, conditionally granted or denied. The applicable hearing body shall be referred to herein as the "review authority."

b) For any application for extension to be heard by a Hearing Officer, the City Manager shall appoint a Hearing Officer with the requisite qualifications and experience to consider the application for extension. The Hearing Officer shall not be a City employee and the employment, performance evaluation, compensation and benefits of the Hearing Officer, if any, shall not be conditioned, either directly or indirectly, upon the outcome of any decision by the Hearing Officer.

Within seven (7) calendar days of the City Clerk's receipt of an application for extension, the City Manager or his/her designee shall notify the applicant of the name of the Hearing Officer in accordance with Section 1.08.080. If the applicant wishes to challenge the designated Hearing Officer, the applicant shall have seven (7) calendar days from the date of service of the notice to submit to the City Manager a request, in writing, to disqualify the Hearing Officer, which sets forth the basis for disqualification. A Hearing

Officer may only be disqualified for: (i) bias; (ii) prejudice; (iii) a conflict of interest; or (iv) a reason for which a judge may be disqualified after a showing of good cause under the laws of the State of California.

The City Manager will review any request for disqualification and decide as to whether a Hearing Officer shall be disqualified. The City Manager's decision shall be final. If the City Manager disqualifies a Hearing Officer, the City Manager shall designate a new Hearing Officer in accordance with the procedures in this subsection.

c) The applicant shall be notified of the time and place set for the hearing of the application, in accordance with Section 1.08.080, at least ten (10) calendar days prior to the date of the hearing. All hearings on an application to be heard by the review authority shall be noticed in the following manner:

(i) Mailed to property owners within three hundred (300) feet of the project site that is the subject of the application, at least ten (10) calendar days in advance of the hearing. The notice shall contain: the address of the project site; the length of time extension requested; the new end project date if the application is approved; the name of the applicant and property owner; a brief description of the improvements; the date, time, and place of the hearing; and a statement informing the person they have the ability to attend the hearing and provide comments; and

(ii) Posted by the applicant at the project site, that is the subject of the application, at least ten (10) calendar days before the scheduled hearing. The size, location and number of sign(s) shall be posted as determined by the City Manager or his/her designee. The applicant shall be responsible for maintaining the sign(s) in a satisfactory condition and shall remove all sign(s) within twenty-four (24) hours following the conclusion of the hearing.

The failure of any person or entity to receive notice given in compliance with this subsection shall not invalidate the actions of the applicable review authority.

4. Conduct of Hearing.

a) A hearing shall be held at the date, time, and place for which notice was given.

b) The review authority shall only consider evidence and testimony, presented by the applicant or any other interested person, relevant to whether: (i) special circumstances warrant an extension of time; (ii) the failure to meet the time limit was caused by circumstances beyond the property owner's, applicant's or their contractor's control; and (iii) any approval should contain conditions to ensure timely completion of the project in a manner that limits impacts on surrounding property owners. Any documents submitted by City staff shall constitute prima facie evidence of the respective facts contained in those documents.

c) The review authority may grant, or conditionally grant, up to a one hundred and eighty (180) calendar day extension, per application for extension, if it finds special circumstances warrant an extension of time or the failure to meet the time limit was caused by circumstances beyond the property owner's, applicant's or their contractor's control. If the review authority makes the findings to grant an extension, the review authority shall consider whether conditions are necessary to ensure timely completion of the project in a manner that limits impacts on surrounding property owners. The review authority shall deny the application if it cannot make the findings set forth in this subsection.

d) A hearing may be continued without further notice, provided the Hearing Officer or chair of the review authority announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.

e) The review authority may announce a tentative decision and defer its action on a final decision until appropriate findings and/or conditions of approval have been prepared.

f) The review authority shall issue a written decision, setting forth its findings, and the decision shall be final and effective on the date the decision is made, unless otherwise specified by the review authority. The review authority shall provide the City Clerk with its final decision within three (3) calendar days of the date of decision and the City Clerk shall mail a copy of the final decision to the applicant within ten (10) calendar days of receipt of the final decision.

5. Judicial Proceeding.

Nothing herein shall prohibit the Building Official from issuing a building permit or extending a building permit if the extension is a term of an enforceable settlement agreement between the City and the property owner or a term of a court order/judgment.

6. Judicial Review.

The decision of the review authority shall not be appealable to any City body. A person shall not seek judicial review related to any application for extension until the person has first exhausted all administrative procedures set forth in Section 15.02.095.

Section 2: Any ordinance or portion thereof that conflicts with Ordinance No. 2025-5 including, but not limited to, the applicability of the sunset provision set forth in Section 5 of Ordinance No. 2022-8 is hereby repealed.

Section 3: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 4: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 5: The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 6: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the NBMC shall remain unchanged and shall be in full force and effect.

Section 7: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 25th day of March, 2025, and adopted on the 15th day of April, 2025, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

_____
Joe Stapleton, Mayor

ATTEST:

_____
Leilani I. Brown, City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

_____
Aaron C. Harp, City Attorney

Attachment B

Redlined Ordinance No. 2022-8

ORDINANCE NO. ~~2022-8~~2025-5

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY NEWPORT BEACH, CALIFORNIA, AMENDING SECTION 15.02.095 (SECTION 105.3.4) OF THE NEWPORT BEACH MUNICIPAL CODE RELATED TO TIMEFRAMES FOR COMPLETION OF CONSTRUCTION~~OF THE NEWPORT BEACH MUNICIPAL CODE AUTHORIZING AN EXTENSION OF THE TIME LIMIT TO COMPLETE CONSTRUCTION FOR AN ADDITIONAL YEAR~~

WHEREAS, Section 200 of the City of Newport Beach's ("City") Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, the number of construction projects on private property in the City has increased substantially over the past ~~eight~~ eleven years, which has resulted in increased impacts to residents from construction related noise, loss of on-street parking, and traffic;

WHEREAS, Chapter 15.02 (Administrative Code) of the Newport Beach Municipal Code ("NBMC"), adopts and incorporates by reference Chapter 1, Division II of the California Building Code;

WHEREAS, the City Council adopted Ordinance No. 2019-8 on April 23, 2019, adding Section 15.02.095 (Addition of Section 105.3.3, 105.3.4, and 105.3.5), which sets a three-year time limit from the issuance of the first or original building permit for one-unit or two-unit dwellings to complete construction;~~WHEREAS, on April 23, 2019, the City Council adopted Ordinance No. 2019-8 setting a three-year time limit from the issuance of the first or original building permit for one-unit or two-unit dwellings to complete construction;~~

WHEREAS, the City Council adopted Ordinance No. 2022-8 on March 22, 2022, amending Section 15.02.095 (Section 105.3.4) of the NBMC to allow for the extension of the timeframe to complete construction due to the impacts of COVID-19;~~WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services announced a nationwide public health emergency, in response to the COVID-19 outbreak;~~

~~WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19;~~

WHEREAS, it is in the interest of the residents of the City to place a reasonable time limit on the duration of construction projects and to streamline the extension request process, to balance the needs of the owner of the project with the health, safety and welfare of the neighbors; and~~WHEREAS, due to the impacts caused by COVID-19 disrupting the supply lines for products and materials, and the health impacts to skilled workforce, some construction projects may take longer than three years to complete; and~~

WHEREAS, the City Council desires to modify Section 15.02.095 (Section 105.3.4) of the NBMC to ensure that reasonable time extensions are granted, when necessary, with the primary objective of ensuring construction projects are completed promptly.~~WHEREAS, it is in the interest of the residents of the City to place a reasonable time limit on the duration of construction projects, so as to balance the needs of the owner of the project with the health, safety and welfare of the neighbors.~~

NOW, THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: ~~Section~~ Subsection 105.3.4 of Section 15.02.095 of the Newport Beach Municipal Code is hereby amended to read as follows:

Section 105.3.4 Extension of time limit to complete construction.

The maximum allowable time to complete construction, as set forth in Section 105.3.3, may be extended as follows:

1. Application for Extension to Building Official.

a) A property. owner, or authorized agent of the property owner, may request an extension by filing with the Building Official, in writing and on a form provided by the Building Official, an application for extension which sets forth: (i) the address of the project site; (ii) the name of the applicant and property owner; (iii) when the first or original building permit was issued; (iv) the length of time extension requested, which shall not be greater than one hundred and eighty (180) calendar days~~three hundred and sixty-five (365) calendar days~~; (v) how many previous extensions have been granted; (vi) criteria that establish the cause(s) of delay and the reason for the extension request; (vii) a comprehensive completion schedule ~~the basis for the requested extension; (vii) the new end project date if the application is approved;~~; (viii) a brief description of the improvements that are the subject of the application; and (ix) past complaints and enforcement history; and (x) any other information requested by the City~~(ix) any other information requested by the City~~.

b) Unless authorized by the Building Official in writing, an application for extension shall be submitted no later than forty-five (45) calendar days prior to the expiration of the building permit. The application for extension to the Building Official shall be accompanied by a fee adopted by resolution of the City Council~~the fee set forth in the City's master fee schedule~~.

c) Within forty-five (45) days of a request for extension, the Building Official may ministerially grant, conditionally grant or deny a request for extension for a period not to exceed one hundred and eighty (180~~three hundred sixty-five (365~~) calendar days with a maximum of two extensions being granted by the Building Official under this subsection. The Building Official shall only grant an extension if he/she determines adequate progress has been made towards completion of construction and the request for extension is necessary for its completion. The decision of the Building Official shall be final and non-appealable.

2. Application for Additional Extension(s).

a) If construction of the project has not been completed within the timeframe authorized by the Building Official, a property owner, or authorized agent of the property owner, may request an additional extension by filing with the City Clerk, in writing and on a form provided by the City Clerk, an application for extension which sets forth: (i) the address of the project site; (ii) the name of the applicant and property owner; (iii) when the first or original building permit was issued; (iv) the length of time extension requested, which shall not be greater than one hundred and eighty (180) calendar days; (v) how many previous extensions have been granted; (vi) criteria that establishes the cause(s) of delay and the reason for the extension request; (vii) a comprehensive completion schedule~~the basis for the requested extension; (vii) the new end project date if the application is approved~~; (viii) a brief description of the improvements that are the subject of the application; (ix) past complaints and enforcement history; and (~~i~~x) any other information requested by the City.

b) Unless authorized by the Building Official in writing, an application for extension shall be submitted no later than forty-five (45) calendar days prior to the expiration of the building permit.

c) An application for extension filed with the City Clerk shall be accompanied by a hearing and noticing fee adopted by resolution of the City Council~~identified in the City's master fee schedule~~.

3. Scheduling and Noticing.

a) For an application for an additional extension set forth in subsection 2), a Hearing Officer, designated by the City Manager, shall hear and decide whether a third ~~second~~ application for extension, or fourth ~~third~~ application for extension, shall be granted, conditionally granted, or denied. The City Council shall hear and decide whether any additional application for extension beyond four total extensions, shall be granted, conditionally granted or denied. The applicable hearing body shall be referred to herein as the "review authority."

b) For any application for extension to be heard by a Hearing Officer, the City Manager shall appoint a Hearing Officer with the requisite qualifications and experience to consider the application for extension. The Hearing Officer shall not be a City employee and the employment, performance evaluation, compensation and benefits of the Hearing Officer, if any, shall not be conditioned, either directly or indirectly, upon the outcome of any decision by the Hearing Officer.

Within seven (7) calendar days of the City Clerk's receipt of an application for extension, the City Manager or his/her designee shall notify the applicant of the name of the Hearing Officer in accordance with Section 1.08.080. If the applicant wishes to challenge the designated Hearing Officer, the applicant shall have seven (7) calendar days from the date of service of the notice to submit to the City Manager a request, in writing, to disqualify the Hearing Officer, which sets forth the basis for disqualification. A Hearing Officer may only be disqualified for:
(i) bias; (ii) prejudice; (iii) a conflict of interest; or (iv) a reason for which a judge may be disqualified after a showing of good cause under the laws of the State of California.

The City Manager will review any request for disqualification and decide ~~make a decision~~ as to whether a Hearing Officer shall be disqualified. The City Manager's decision shall be final. If the City Manager disqualifies a Hearing Officer, the City Manager shall designate a new Hearing Officer in accordance with the procedures in this subsection.

c) The applicant shall be notified of the time and place set for the hearing of the application, in accordance with Section 1.08.080, at least ten (10) calendar days prior to the date of the hearing. All hearings on an application to be heard by the review authority shall be noticed in the following manner:

(i) Mailed to property owners within three hundred (300) feet of the project site that is the subject of the application, at least ten (10) calendar days in advance of the hearing. The notice shall contain: the address of the project site; the length of time extension requested; the new end project date if the application is approved; the name of the applicant and property owner; a brief description of the improvements; the date, time, and place of the hearing; and a statement informing the person they have the ability to attend the hearing and provide comments; and

(ii) Posted by the applicant at the project site, that is the subject of the application, at least ten (10) calendar days before the scheduled hearing. The size, location and number of sign(s) shall be posted as determined by the City Manager or his/her designee. The applicant shall be responsible for maintaining the sign(s) in a satisfactory condition and shall remove all sign(s) within twenty-four (24) hours following the conclusion of the hearing.

The failure of any person or entity to receive notice given in compliance with this subsection shall not invalidate the actions of the applicable review authority.

4. Conduct of Hearing.

a) A hearing shall be held at the date, time, and place for which notice was

given.

b) The review authority shall only consider evidence and testimony, presented by the applicant or any other interested person, relevant to whether: (i) special circumstances warrant an extension of time; (ii) the failure to meet the time limit was caused by circumstances beyond the property owner's, applicant's or their contractor's control; and (iii) any approval should contain conditions to ensure timely completion of the project in a manner that limits impacts on surrounding property owners. Any documents submitted by City staff shall constitute prima facie evidence of the respective facts contained in those documents.

c) The review authority may grant, or conditionally grant, up to a one hundred and eighty (180) calendar day extension, per application for extension, if it finds special circumstances warrant an extension of time or the failure to meet the time limit was caused by circumstances beyond the property owner's, applicant's or their contractor's control. If the review authority makes the findings to grant an extension, the review authority shall consider whether conditions are necessary to ensure timely completion of the project in a manner that limits impacts on surrounding property owners. The review authority shall deny the application if it cannot make the findings set forth in this subsection.

d) A hearing may be continued without further notice, provided the Hearing Officer or chair of the review authority announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.

e) The review authority may announce a tentative decision and defer its action on a final decision until appropriate findings and/or conditions of approval have been prepared.

f) The review authority shall issue a written decision, setting forth its findings, and the decision shall be final and effective on the date the decision is made, unless otherwise specified by the review authority. The review authority shall provide the City Clerk with its final decision within three (3) calendar days of the date of decision and the City Clerk shall mail a copy of the final decision to the applicant within ten (10) calendar days of receipt of the final decision.

5. Judicial Proceeding.

Nothing herein shall prohibit the Building Official from issuing a building permit or extending a building permit if the extension is a term of an enforceable settlement agreement between the City and the property owner or a term of a court order/judgment.

6. Judicial Review.

The decision of the review authority shall not be appealable to any City body. A person shall not seek judicial review related to any application for extension until the person has first exhausted all administrative procedures set forth in Section 15.02.095.

Section 2: Any ordinance or portion thereof that conflicts with Ordinance No. 2025-5 including, but not limited to, the applicability of the sunset provision set forth in Section 5 of Ordinance No. 2022-8 is hereby repealed.

Section ~~2~~3: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section ~~3~~4: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall notaffect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section ~~4~~5: The City Council finds and determines that the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

~~Section 5: Ordinance 2022-008, which amends Section 105.3.4 of Section 15.02.095 of the Newport Beach Municipal Code, shall remain in in effect through the end of business on April 21, 2025, and as of that date/time is repealed. After April 21, 2025, the unamended version of Section 105.3.4 of Section 15.02.095 of the Newport Beach Municipal Code shall be in full force and effect. Except as expressly modified in this ordinance, all other titles, chapters, sections, subsections, terms, sentences, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.~~

Section 6: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the NBMC shall remain unchanged and shall be in full force and effect.

Section ~~6~~7: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the ~~8th~~ 25th day of March, ~~2022~~2025, and adopted on the ~~22nd~~ 15th day of ~~March~~April, ~~2022~~2025, by the following vote, to-wit:

AYES:_____

NAYS:_____

ABSENT: _____



On the Agenda: March 25 City Council Meeting

The next meeting of the Newport Beach City Council will be on Tuesday, March 25 at 4 p.m. The full agenda is available here.

Agenda items include:

- A 5-year agreement with Kit Coffee (operating under Kit at the Library, Inc.), to operate the retail concession facility at the Central Library, 1000 Avocado Ave. City staff is recommending Kit Coffee, a locally owned coffee shop with facilities in Newport Beach and Irvine, after evaluating proposals from interested food-service operators. Kit Coffee proposes to offer coffee and tea-based drinks and a limited food menu with items such as toasts, sandwiches and salads at the library location.
- 2024 General Plan annual progress report, including a Housing Element report. Under State law the City must prepare and submit an annual report on the status of the City's General Plan and implementation progress. The Council action would approve the report and authorize staff to submit the report to the California Department of Housing and Community Development.
- Amendment of a municipal ordinance related to the completion of residential home construction. In 2019, the City Council adopted a three-year time limit to complete construction of one-unit and two-unit family dwellings. In 2022, as the COVID-19 pandemic disrupted supply chains and delayed construction, the Council temporarily granted the City's building official authority to extend the time limit for up to one additional year. The Council will consider an amendment to remove a sunset provision from the ordinance and grant the building official authority to approve up to two, 180-day extensions for projects entering their fourth year. This amendment eliminates the public hearing requirement for these specific extensions, streamlining the process and reducing costs for permit holders. Requests for a third or fourth extension would require a public hearing with an administrative hearing officer. Additionally, the proposed ordinance introduces new requirements for applicants seeking extensions.

VIEW THE FULL AGENDA >>

March 25, 2025, City Council Agenda Comments

The following comments on items on the Newport Beach City Council agenda are submitted by:
Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item 1. Minutes for the March 11, 2025 City Council Meeting

The passage shown in *italics* below is from the draft minutes with a suggested correction shown in ***~~strikeout~~*** ***underline*** format. The page number refers to Volume 66.

> **Page 279**, Item X, Mayor Stapleton, end of last bullet: "*Attended the Newport Shores annual HOA meeting, the trash interceptor ribbon cutting, the OCIACC Nowruz Spring Festival, and the Fire Station 2 demolition party and extended congratulations to Bob* ***~~Olsen~~*** ***Olson***."

Item 3. Ordinance No. 2025-4: Amending the Newport Beach Municipal Code to Update Administrative Procedures Related to Good Cause Determinations and the Extension of Deadlines for Short-Term Lodging Permits

This matter involving who should be authorized to grant exceptions to STL permit deadlines, and for what reasons, is unusual in that parts of it have had fairly extensive Council discussion even though it has never been publicly announced on any agenda, including this one, as a matter for such discussion.

The proposal started as part of Item 3 on the October 8, 2024, consent calendar (along with an unrelated Finance Department matter about demolition debris hauling), from which it was pulled for a discussion that was continued to a future planning session.

That discussion was indeed continued (see video) at the Council's February 1, 2025, planning session, and a person hoping for relief from the STL deadlines was apparently even expected to plead their case to the Council. However, nothing on the agenda reminded the public that such a discussion by the Council was planned for that day.

In the February 1 discussion, Council members seemed to agree that what qualified as "good cause" needed to be defined (which it had not been in the October 8 offering). But curiously, the example of an aggrieved person, who turned out to be a professional asset manager who had apparently failed to properly manage his client's asset rather than a property owner who had innocently missed a deadline due to some special hardship, never explained the unusual circumstances that had caused him to miss a deadline (see video), nor did the Council discuss whether they would agree his circumstances constituted "good cause" for relief or, more generally, how they thought "good cause" should be defined.

The matter returned as Item 5 on the March 11 consent calendar, where a definition of "good cause" was proposed, but not discussed, although I provided extensive written comments.

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I concluded from this that no action was needed since neither of those ordinances makes any mention of the provisions they added being subject to sunsetting. But perhaps action is needed, since neither seems to have explicitly repealed the uncodified parts Ordinance No. 2022-8.

Assuming the April 21, 2025, sunsetting provision in Ordinance No. 2022-8 *is* still operative, it would appear the present ordinance repealing it will not be adopted until a second reading on April 15, and will not become effective until 30 days later, on May 15.

What will happen to projects that, under the prior code that staff believes will be restored for the 24 days from April 21 to May 15, would need to file for an extension during that time?

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March 25, 2025, City Council Agenda Comments

The following comments on items on the Newport Beach City Council agenda are submitted by:
Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item 1. Minutes for the March 11, 2025 City Council Meeting

The passage shown in *italics* below is from the draft minutes with a suggested correction shown in ***~~strikeout~~*** ***underline*** format. The page number refers to Volume 66.

> **Page 279**, Item X, Mayor Stapleton, end of last bullet: "*Attended the Newport Shores annual HOA meeting, the trash interceptor ribbon cutting, the OCIACC Nowruz Spring Festival, and the Fire Station 2 demolition party and extended congratulations to Bob* ***~~Olsen~~*** ***Olson***."

Item 3. Ordinance No. 2025-4: Amending the Newport Beach Municipal Code to Update Administrative Procedures Related to Good Cause Determinations and the Extension of Deadlines for Short-Term Lodging Permits

This matter involving who should be authorized to grant exceptions to STL permit deadlines, and for what reasons, is unusual in that parts of it have had fairly extensive Council discussion even though it has never been publicly announced on any agenda, including this one, as a matter for such discussion.

The proposal started as part of Item 3 on the October 8, 2024, consent calendar (along with an unrelated Finance Department matter about demolition debris hauling), from which it was pulled for a discussion that was continued to a future planning session.

That discussion was indeed continued (see video) at the Council's February 1, 2025, planning session, and a person hoping for relief from the STL deadlines was apparently even expected to plead their case to the Council. However, nothing on the agenda reminded the public that such a discussion by the Council was planned for that day.

In the February 1 discussion, Council members seemed to agree that what qualified as "good cause" needed to be defined (which it had not been in the October 8 offering). But curiously, the example of an aggrieved person, who turned out to be a professional asset manager who had apparently failed to properly manage his client's asset rather than a property owner who had innocently missed a deadline due to some special hardship, never explained the unusual circumstances that had caused him to miss a deadline (see video), nor did the Council discuss whether they would agree his circumstances constituted "good cause" for relief or, more generally, how they thought "good cause" should be defined.

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