

ATTACHMENT A

AMENDED AND RESTATED PROPERTY MAINTENANCE AGREEMENT

This Amended and Restated Property Maintenance Agreement ("First Amendment"), is entered into on November 4, 2025 ("Effective Date") between the City of Newport Beach ("City") and the Newport Coast Community Association ("NCCA" or "Association") (individually "Party" or collectively "Parties") and is made with reference to the following:

RECITALS

- A. City is a charter city with the powers and authority provided in the Newport Beach City Charter and the Constitution and laws of the State of California. For purposes of this First Amendment, the term City includes the employees, officers, representatives, agents or contractors of the City.
- B. Association is a Common Interest Development formed pursuant to California Civil Code section 1350 *et seq.*
- C. City, pursuant to a Pre-Annexation Agreement ("PAA") with the Newport Coast Committee of 2000, agreed to maintain the landscaping of certain areas/properties ("Eligible Property(ies)") in the areas commonly known as Newport Coast and/or Newport Ridge ("Annexed Area").
- D. On December 9, 2003, the Parties entered into the Property Maintenance Agreement ("Agreement" or "PMA"), attached hereto as Exhibit A, which set forth the terms and conditions of the City's maintenance obligations. Unless otherwise specifically amended herein, the Agreement remains in effect.
- E. On January 26, 2024, Association filed a lawsuit in Orange County Superior Court, Case No. 30-2024-01375558-CU-BC-CJC, alleging the City breached the Agreement, which the City denies ("Action"). The Parties have conditionally settled the action pursuant to a Settlement Agreement and Release.
- F. Notwithstanding the foregoing, as part of the resolution of the Action, the City and Association agreed to enter this First Amendment to further delineate the maintenance obligations of the City under the Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. TERM.

(a) **Effective Date.** The initial term of this First Amendment (Initial Term) shall be four (4) years commencing on the Effective Date unless this First Amendment is terminated as provided in Section 9 or Subsection (b) below.

(b) **Extension.** The Parties agree that the term of this First Amendment shall automatically extend for periods of four (4) years (Extended Term[s]) commencing on the expiration of the Initial Term or the expiration of any

Extended Term unless the Association serves the City with a notice of termination within thirty (30) days prior to expiration of the Initial Term or any Extended Term.

2. MAINTENANCE TO BE PERFORMED.

(a) **Scope.** City shall at its sole cost and expense, through either its own employees or a qualified third party contractor (unless the Parties agree to reimburse NCCA for the completion of certain work after review and approval of a proposal), perform maintenance services ("Maintenance") listed, and to the standard(s) described, in the Scope of Services attached hereto as Exhibit B (Scope of Services) with respect to the Eligible Property described/depicted in Exhibit C and more particularly described in Exhibit C-1, which sets forth the geospatial coordinates. The Parties agree to confirm the above geospatial coordinates in Exhibit C-1 following the execution of this First Amendment. To the extent the geospatial coordinates cannot be confirmed and agreed upon, the Parties agree to follow the dispute resolution procedures set forth in Sections 3.d. and 6.i. of the Settlement Agreement and Release in the Action. The City shall have no obligation to maintain or perform work on any property that is not specifically described/depicted as Eligible Property in Exhibits C and/or C-1. The City, in its sole and exclusive discretion, shall have control over the means, methods, equipment, techniques, sequences or procedures used to provide the Maintenance. City may remove or alter landscaping or other objects from the Eligible Property, following approval by the Association, and after a determination by the Public Works Director that the: (a) landscaping is suffering from incurable or infectious disease; (b) landscaping or object is damaged beyond recovery or repair; or (c) the landscaping or object is inconsistent with the safe movement of pedestrians or vehicles including, without limitation, obstructions to adequate site distance along or across any roadway or sidewalk. City shall use its best efforts to install replacement landscaping that is identical to the landscaping that was removed except if this is highly impracticable. Except as specifically provided herein or in Exhibit B, the City shall install landscaping that is: (a) most similar to, including size, the landscaping removed; and (b) on the then current and approved palette of plant materials for the Association. The plant palette remains the same, with the following changes/revisions: Trees can include the following species: Quercus Virginians 'Joan Lionetti,' Metrosideros Excelsa 'New Zealand Christmas Tree,' Arbutus Marina 'Marina Strawberry Tree,' California Sycamores (only grown in natural areas not on planed slopes), Olive Trees (36-inch box or smaller), and New Zealand Christmas Tree. Trees to be removed from the current plant palette include the following species: Cypress Trees, Aleppo Pine Trees, Eldarica Pine Trees, Eucalyptus Trees and Stone Pine Trees. Plants/Ground Cover can include the following species: Casuarina Glauca, Callistemon Red Rover, Coprosma Marble Queen, Coprosma Repens Taupata Gold, Agonis Flexuosa Nana, and Chrysanthemoides Incana. Plants/Ground Cover to be removed from the current plant palette include the following species: Acacia, 'Low Boy Prostrate,' and Myoporum. NCCA can provide updated plant palettes,

which can be modified by NCCA from time to time so long as it does not increase the costs to the City, or NCCA will have the option to pay the difference. Notwithstanding the foregoing, the City shall not be obligated to install replacement landscaping of the same species if it has been determined that the entire species is affected by the same disease, insect, or condition that caused the damage, destruction or removal of the landscaping and that the disease, insect, or condition cannot be prevented by industry standard maintenance. The intent of the Parties is that the City is obligated, to the maximum extent possible, to maintain the landscape density, design and appearance of the Eligible Property when all landscaping was in good condition. City shall consider, but not be bound by, comments submitted by the Association relative to the means, methods, or techniques used to provide Maintenance. This Section shall control the City's Maintenance obligations. Other than confirming the geospatial coordinates (to be agreed upon in Exhibit C-1) set forth above, any disputes or failures to agree between City and Association related to the Maintenance obligations set forth above shall be resolved in accordance with Section 8(b) herein.

- (b) **Landscape Changes**. The Parties understand that it may be necessary or advantageous for the Association to modify or change the landscape species (within the Eligible Property areas) for reasons related to aesthetics or for other reasons. Should the Association choose to voluntarily modify or change the landscape species and not because of being compelled to do so because of a governmental requirement, the Association shall be obligated to pay for the cost of such modifications or changes and be responsible for maintaining the particular area. If the modification or change is mandated by a government requirement, the cost of the modification or change shall be paid by the City.

3. **CONDITIONS OF DUTY TO MAINTAIN**

The City's duty to provide Maintenance is subject to Association's full compliance with this First Amendment and the following express conditions:

- (a) **Access**. Association shall grant City the rights necessary, to provide the Maintenance including surface and subsurface access, ingress and egress and the right, at the City's sole cost and expense, to modify, or replace any facility or equipment adjacent to, on, over or under the Eligible Property (Access). Except as provided in Subsection (b), the Association's grant of Access shall not be subject to any restriction including, without limitation, limits on the date or time of access, any obligation to provide insurance/indemnity or any limit on the size or nature of vehicles or equipment.
- (b) **Access Conditions**. The Association's grant of Access shall be subject to the conditions that: (i) the City repair or replace, to the condition prior to damage, any landscaping or facility that is damaged by City in the course of providing the Maintenance or otherwise; and (ii) except in the event of an emergency, the

City will comply with the Association's rules pertaining to the days and hours during which landscape maintenance may be performed.

- (c) **Payment for Utilities.** City, in its sole discretion, shall either (i) pay for and provide for the separation of any water or electrical meter or similar device if the meter or meters provide service to the Eligible Property and other properties adjacent to or nearby the Eligible Property that are controlled or maintained by the Association or its contractors; or (ii) City shall reimburse Association in an amount that is based on a formula, calculated by the City and the Association using their respective best efforts and acting in good faith that, represents the percentage of the overall cost of water and electrical service to all Association property that is attributable to the Eligible Property. Any dispute regarding the formula shall be submitted to the Neutral Arborist, as set forth in Section 8.
- (d) **Adjacent Property.** The Association shall use its best efforts to cooperate and comply with requests of the City relating to the maintenance, modification or condition of Association property or facility that is adjacent to the Eligible Property, and which is necessary for the City to fulfil its Maintenance obligations. Association agrees to indemnify and hold City harmless with respect to any damage or injury to the Eligible Property that is proximately caused by Association's failure to comply with its obligations pursuant to this Subsection. Association's duty to cooperate includes, without limitation, the obligation to maintain its property in good condition and in a manner that does not create or increase any risk of injury or damage to persons or real or personal property.
- (e) **Inspection of Eligible Property.** Association shall permit, and the City shall conduct, within thirty (30) days after the Effective Date, an inspection to document via photographs and/or video the condition of the Eligible Property. Both parties shall review the documentation and agree on the baseline condition of the Eligible Property. If the Parties cannot agree on the baseline condition, it shall be submitted to the Neutral Arborist as set forth in Section 8(b) below.

4. **ADDITIONAL PARTY OBLIGATIONS**

In addition to the duty to perform Maintenance:

- (a) **Irrigation System Management.** The City shall, repair, maintain, and/or replace any electrical, drainage, or irrigation equipment on the Eligible Property within the Maintenance Schedule timeframes set forth in Exhibit B that requires repair or replacement during the Term at its sole cost and expense.
- (b) **Damage to Association Property.** City shall as soon as reasonably practical repair or replace any Association property that is damaged or destroyed by City while providing the Maintenance.

5. WATER QUALITY & WATER CONSERVATION

- (a) **NPDES Obligations.** City shall reasonably comply with any and all obligations and requirements (including applying for and obtaining any required permits) pertaining to the Eligible Property that are imposed pursuant to the Municipal Separate Storm Sewer System ("MS4") Permit issued to the City and to the County of Orange by the California Regional Water Quality Control Board, Santa Ana Region ("Regional Board"), under the National Pollutant Discharge Elimination System ("NPDES") permit system.
- (b) **Water Quality-Limited Watersheds.** Association shall reasonably cooperate with the City with respect to compliance with any regulatory directive by the Regional Board or the State Water Resources Control Board ("State Board") pertaining to the Eligible Property. The City's obligation to perform Maintenance shall be deemed modified to the extent necessary to conform to any directive or order from the State Board, Regional Board, or other agency with jurisdiction over the Eligible Property.
- (c) **Water Conservation.** Association and its agents and contractors shall reasonably cooperate with the City with respect to any water conservation measure adopted by the City Council or other governmental agency with jurisdiction over the Eligible Property.

6. INDEMNIFICATION AND INSURANCE

- (a) **Indemnification.** City shall, assuming Association is not in default with respect to its obligations pursuant to this First Amendment, defend, indemnify and hold harmless the Association, its officers, employees, agents and members with respect to any damage, claim, liability, loss, injury, cost, attorney fees or expense that arises out of, or is in any way related to, any act or omission of the City in the performance or non-performance of Maintenance pursuant to this First Amendment. Association and its officers, employees, agents and members shall reasonably cooperate with City in the defense or any claim or lawsuit the City is obligated to defend pursuant to this First Amendment. City's obligations pursuant to this First Amendment shall not apply to damages, claims, injuries, liability, losses, costs, attorney fees or expenses that are proximately caused by the sole negligence or willful act of the Association or its officers, employees, agents, representatives, or members. City shall have full discretion to select counsel, experts or other professionals to represent or advise it and the Association as well as its officers, agents, employees and members with respect to any litigation or any action related to the litigation.
- (b) **Insurance.** In addition to its indemnification obligations in Subsection (a), the City shall maintain throughout the term of this First Amendment commercial general liability insurance coverage including owned, non-owned and hired vehicle insurance in an amount, and with the self-insurance retentions, as the City Council determines to be in the City's best interests given the current

market conditions. City shall provide Association with appropriate certificates evidencing compliance with this Section and shall use its best efforts to add the Association as an additional insured on any such policy provided the City would incur no additional cost to do so or Association reimburses the cost.

7. ADMINISTRATION

This First Amendment will be administered by the Director of the City's Public Works Department ("Director"). The Director shall be considered the Project Administrator and shall have the authority to act for City pursuant to this First Amendment. The Project Administrator or his/her authorized representative shall represent City in all matters pertaining to the Maintenance. The Project Administrator's address, phone number, facsimile number and e-mail address is set forth in Section 10 of this First Amendment. The City agrees that each time the Project Administrator changes, it will notify the Association of such change within thirty (30) days, and provide Association with the address, phone number, and e-mail address of the new Project Administrator at the time of notification of change.

8. MONTHLY WALKTHROUGHS AND DISPUTE RESOLUTION

- (a) **Monthly Walkthroughs.** The City and Association shall conduct monthly walkthroughs of the Eligible Property to inspect and assess the maintenance work performed. During each walk-through, both Parties shall document any items requiring repair, correction, or completion. Each Party shall complete the tasks identified in the monthly walk-through within one (1) month or, if the work cannot be reasonably completed within one month, a reasonable time. Notwithstanding the foregoing time frame, if any maintenance work requires urgent or immediate attention to prevent damage, preserve safety, or avoid material deterioration, the responsible Party shall take reasonable steps to address such maintenance promptly.
- (b) **Dispute Resolution.** The Parties recognize that disputes may arise as to compliance with the terms of this First Amendment. To minimize the need for further litigation over a dispute regarding the interpretation or compliance with this First Amendment, either Party may give written Notice to the other Party of a dispute in the manner set forth herein, fully describing the exact nature of the dispute ("Dispute Notice"). Within thirty (30) days after either Party sends a Dispute Notice, the Parties shall either mutually agree to a Neutral Arborist to decide/resolve the issues raised in the Dispute Notice, or if no such agreement can be reached, each Party shall designate their own arborist, and those two arborists shall select a third arborist within thirty (30) days after the initial designation, to decide/resolve the issues raised in the Dispute Notice. The Neutral Arborist shall be authorized to meet with the Parties and/or require written summaries relating to the issues raised in the Dispute Notice.

The decision(s) of the Neutral Arborist as to the work that needs to be completed to comply with this First Amendment shall be binding on the Parties

and shall be performed by the obligated Party in a timely manner. The Neutral Arborist shall only have jurisdiction to interpret this First Amendment as it applies to work to be completed and shall not have jurisdiction to change any terms in the same.

The Neutral Arborist shall serve as the Neutral Arborist for a four-year term, which may be renewed by agreement of the Parties. If the Parties cannot agree upon renewing the term of the Neutral Arborist, the Parties shall follow the procedure set forth in this paragraph to select a new Neutral Arborist. This provision is meant to be consistent with the Neutral Arborist Resolution Procedure set forth in Section 3d. of the Settlement Agreement and Release in the Action. To the extent there are any inconsistencies, the provision in the Settlement Agreement and Release shall control.

The Parties agree to execute a written agreement provided by the Neutral Arborist for the payment of his/her fees and costs. The fees and costs of the Neutral Arborist shall be shared by the Parties equally.

9. TERMINATION

(a) **Notice.** In the event either party fails or refuses to perform any of the provisions in this First Amendment, that party shall be deemed to be in default in the performance of this First Amendment. The party not in default may terminate this First Amendment if, within ten (10) days after notice of default, the party in default has not cured the default, or if more than ten (10) days are reasonably required to cure the default the party in default has failed to give adequate assurance of due performance within ten (10) days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default. To the extent the City terminates this First Amendment, the Association maintains (and does not waive) any rights it may have related to PAA and associated annexation of the Newport Coast community, including without limitation, all remedies.

(b) **Restoration Following Termination.** Upon termination of this First Amendment by either party, City agrees to restore the Eligible Property to the condition that existed upon the date of the City's inspection as described in Subsection 3(e) of this First Amendment. The restoration of the Eligible Property shall be completed as quickly as reasonably practicable, but in no event more than ninety (90) days following termination. Any damage or injury to Association property, facilities, landscaping or hardscape that is proximately caused by the City during the restoration process, or as a result of any delay in the restoration process (for example, plant material dying as a result of any irrigation, drainage, or electrical equipment being inoperative during the restoration) shall be repaired or replaced by City.

(c) **Survival of Obligations.** The commitments and obligations of the City that are specified in Sections 4(b), 6(a), 9(b), 9(c) and 16 shall survive the termination of this First Amendment.

10. NOTICES

All notices, demands, requests or approvals to be given under this First Amendment 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 set forth below or as changed by either Party with written notice to the other Party in the manner specified in this Section with additional noticing, if desired by either Party, by e-mail at the e-mail addresses set forth below.

All notices, demands, requests or approvals from Association to City shall be addressed to city at:

City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92625
Attn: City Manager
Phone: (949) 644-3311
E-Mail: gleung@newportbeachca.gov

City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92625
Attn: City Attorney
Phone: (949) 644-3311
E-Mail: aharp@newportbeachca.gov

City of Newport Beach
100 Civic Center Drive Newport Beach, CA 92625
Attn: Director of Public Works
Phone: (949) 644-3311
E-Mail: dawebb@newportbeachca.gov

All notices, demands, requests or approvals from City to Association shall be addressed to the Association, attention "Property Manager" and the following other individuals at:

Newport Coast Community Association
c/o First Service Residential
15241 Laguna Canyon Road
Irvine, CA 92618
Attn: Holly Maddalena
Phone: (949) 500-1163

E-Mail: Holly.Maddelena@fsresidential.com

Charles S. Krolikowski, Esq.
Newmeyer & Dillion, LLP
895 Dove St., 2nd Floor
Newport Beach, CA 92660
Phone: (949) 271-7233
E-Mail: Charles.Krolikowski@ndlf.com

Amber Y Snider
9 Veneto
Newport Coast, CA 92657
Phone: (949) 355-3862
E-Mail: essays1@cox.net

Gerald Klein
15 Castellina Drive
Newport Coast CA 92657 and
Phone: (949) 683-2009
E-Mail: gklein74@outlook.com

Jim McGee
McGee & Associates
24 Corporate Plaza Drive
2nd Floor
Newport Beach, CA 92660
E-Mail: jimmcgee@mcgee-law.com

Nothing herein shall require an amendment to this First Amendment to revise the names provided herein. The persons identified herein may be modified by either Party by providing prior written notification.

11. WAIVER

The waiver by City or Association of any breach of this First Amendment by the other shall not be deemed to be a waiver of any term, covenant, or condition or any subsequent breach.

12. PARTIAL INVALIDITY

If any term or provision of this First Amendment is declared invalid or unenforceable, the remainder of this First Amendment shall not be affected.

13. GOVERNING LAW

The laws of the State of California shall govern the enforcement and interpretation

of this First Amendment. Neither the City's execution of this First Amendment nor any consent or approval given by the City pursuant to this First Amendment shall affect the City's powers and duties as a governmental entity.

14. ENTIRE AGREEMENT; MODIFICATION

This First Amendment contains the entire understanding between the Parties relative to the subject matter. No verbal agreement or implied covenant shall be held to vary the provisions of this First Amendment. Each Party has relied on its own examination of this First Amendment, the counsel of its own advisors, and the warranties, representations, and covenants in this First Amendment. The failure or refusal of either Party to read this First Amendment or other documents or to obtain legal or other advice relevant to this First Amendment constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice. No provision of this First Amendment may be amended or varied except by an agreement in writing signed by the Parties or their respective successors and approved as to form by the City Attorney.

15. HEADINGS

The headings and captions of the various sections of this First Amendment are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of the same.

16. ATTORNEY'S FEES AND COSTS

Should litigation become necessary to enforce one or more of the terms, conditions and/or provisions of this First Amendment or with respect to any issue arising out of this First Amendment, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed on the day, and year first written above.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 10/29/25

By: Aaron C. Harp
Aaron C. Harp
City Attorney
10.29.25
AF

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Joe Stapleton
Mayor

ATTEST:

Date: _____

**NEWPORT COAST COMMUNITY
ASSOCIATION**, a California corporation

Date: _____

By: _____
Lena Shumway
City Clerk

By: _____

Date: _____

By: _____

[END OF SIGNATURES]

Attachments: Exhibit A - Agreement
Exhibit B - Scope of Services
Exhibit C - Eligible Property – Property Map
Exhibit C-1 Geospatial Coordinates of Eligible Property

EXHIBIT A
Agreement

PROPERTY MAINTENANCE AGREEMENT

This Agreement (Agreement), dated this 9th day of December, 2003 (Effective Date) between the City of Newport Beach ("City") and the Newport Coast Community Association ("Association") is made with reference to the following:

RECITALS

- A. City is a charter city with the powers and authority provided in the Newport Beach City Charter and the Constitution and laws of the State of California. For purposes of this Agreement, the term City includes the employees, officers, representatives, agents or contractors of the City.
- B. Association is a Common Interest Development formed pursuant to California Civil Code Section 1350, et seq.
- C. City has, pursuant to a Pre-Annexation Agreement (PAA) with the Newport Coast Committee of 2000, agreed to maintain certain properties (Eligible Properties) in the areas commonly known as Newport Coast and/or Newport Ridge (Annexed Area).
- D. The maintenance of parkways and medians provides a public benefit by minimizing the potential for pedestrian and/or traffic accidents, ensuring compliance with water quality laws, promoting an attractive environment and preserving public views.
- E. City's obligation to maintain the Eligible Properties is subject to certain conditions including a request from the Association (as the property owner) and execution of, and compliance with, this Property Maintenance Agreement.
- F. Association has submitted a request that City maintain Eligible Property owned by Association and, by execution of this Agreement, has committed to comply with all conditions specified in the PAA (relevant section included within **Exhibit C**).
- G. At its Regular Meeting on December 9, 2003, the Newport Beach City Council authorized the City Manager to execute this document on behalf the City of Newport Beach.

NOW, THEREFORE, the Parties agree as follows:

1. TERM

(a) **Effective Date.** The initial term of this Agreement (Initial Term) shall be four (4) years commencing on the Effective Date unless this Agreement is terminated as provided in Section 8 or extended pursuant to Subsection 1(b).

(b) **Extension.** The Parties agree that the term of this Agreement shall automatically extend for periods of four years (Extended Term[s]) commencing on the expiration of the Initial Term or the expiration of any Extended Term provided that Association has not served City with a notice of termination within thirty (30) days prior to the expiration of the Initial Term or any Extended Term.

2. MAINTENANCE TO BE PERFORMED

City shall, at its sole cost and expense, through either its own employees or a contractor, perform services listed, and to the standard(s) described, in **Exhibit A** (Maintenance) with respect to the Eligible Property described in **Exhibit B** (Property Map). Association warrants and represents, and City is reasonably relying on Association's representation, that the Maintenance is substantially similar to the services performed by Association or its contractors immediately prior to the Effective Date. City shall, in its sole and exclusive discretion, have control over the means, methods, equipment, techniques, sequences or procedures used to

provide the Maintenance. City may remove or alter landscaping or other objects from the Property following consultation with Association and after a determination by the General Services Director that the (a) the landscaping is suffering from incurable or infectious disease; (b) the landscaping or object is damaged beyond recovery or repair; or (c) that the landscaping or object is inconsistent with the safe movement of pedestrians or vehicles including, without limitation, obstructions to adequate sight distance along or across any roadway or sidewalk. City shall use its best efforts to install replacement landscaping that is identical to the landscaping that was removed, but if this is highly impracticable City shall install landscaping that is (a) most similar to the landscaping removed; and (b) on the then current and approved palette of plant materials for the Association. Notwithstanding the foregoing, City shall not be obligated to install replacement landscaping of the same species if it has been determined that the entire species is affected by the same disease or condition that caused the damage, destruction or removal of the landscaping. The intent of the Parties is that the City is obligated, to the maximum extent possible, to maintain the landscape density, design and appearance of the Property when all landscaping was in good condition. City shall consider, but not be bound by, comments submitted by the Association relative to the means, methods, or techniques used to provide the Maintenance.

3. CONDITIONS OF DUTY TO MAINTAIN

City's duty to provide Maintenance is subject to Association's full compliance with this Agreement and the following express conditions:

(a) Access. Association shall grant City the rights necessary to provide the Maintenance including surface and subsurface access, ingress and egress and the right, at the City's sole discretion and at the City's sole cost and expense, to modify, or replace any faculty or equipment adjacent to, on, over or under the Property (Access). Except as provided in Subsection (b), the Association's grant of Access shall not be subject to any restriction including, without limitation, limits on the date or time of access, any obligation to provide insurance/indemnity or any limit on the size or nature of vehicles or equipment.

(b) Access Conditions. The Association's grant of Access shall be subject to the conditions that: (i) the City repair or replace, to the condition prior to damage, any landscaping or facility that was damaged by City in the course of providing the Maintenance or otherwise; and (ii) except in the event of an emergency, the City will comply with the Association's rules pertaining to the days and hours during which landscape maintenance may be performed.

(c) Meter Separation/Payment for Utilities. City, in its sole discretion, shall either (i) pay for and provide for the separation of any water or electrical meter or similar device if the meter or meters provide service to the Property and other properties adjacent to or nearby the Property that are controlled and maintained by the Association or its contractors; OR (ii) City shall reimburse Association in an amount that is based on a formula, calculated by the City and the Association using their respective best efforts and acting in good faith, that represents the percentage of the overall cost of water and electrical service to all Association property that is attributable to the Property. The formula developed by the Parties shall be attached to this Agreement as an exhibit.

(d) Adjacent Property. Association shall use its best efforts to cooperate and comply with requests of the City relative to the maintenance, modification or condition of Association property or facility that is adjacent to the Property and which is necessary in order for the City to perform its Maintenance obligations. Association agrees to indemnify and hold City harmless with respect to any damage or injury to the Property that is proximately caused by Association's failure to comply with its obligations pursuant to this Subsection. Association's duty to cooperate includes, without limitation, the obligation to maintain its property in good condition and in a manner that does not create or increase any risk of injury or damage to persons or real or personal property.

(e) Inspection of Property. Association shall permit, and City shall conduct within 30 days after the Effective Date, an inspection of the Property and any adjacent property that contains facilities that serve the Property, to confirm that the Property contains live and viable landscaped material and that the Property and any relevant adjacent property contain a fully functioning irrigation system (fully functioning means all irrigation controllers, pipes, sprinkler heads or similar devices, water meters,

wiring, or any other aspect of the irrigation system are in good working condition and functioning as intended), and other facilities, such as electrical service, facilities necessary to perform the Services. The inspection shall be conducted to confirm that the Property meets the criteria for City Maintenance pursuant to the PAA and to establish a baseline with respect to the condition of the Property. The City may take videos or photographs of landscaping and irrigation equipment during this inspection and may retain these visual records.

4. **ADDITIONAL CITY OBLIGATIONS**

In addition to the duty to perform Maintenance:

(a) **Irrigation System Management.** City or its contractor shall promptly repair, maintain, and/or replace any electrical, drainage, or irrigation equipment and any tree, bush, shrub, ground cover or other plant material on the Property that requires repair or replacement during the Term at its sole cost and expense.

(b) **Damage to Association Property.** City its contractor shall as soon as reasonably practicable repair or replace any Association Property that is damaged or destroyed by City or its contractor while providing the Services.

(c) **Reimbursement.** City agrees to pay the Association funds addressing past maintenance to the Eligible Properties (maintenance that occurred between March 1, 2002 and the Effective Date) in a schedule that shall be added at a later date an incorporated herein within **Exhibit D** (Compensation Schedule).

5. **WATER QUALITY & WATER CONSERVATION**

(a) **NPDES Obligations.** City shall reasonably comply with any and all obligations and requirements pertaining to the Property that are imposed pursuant to the Municipal Separate Storm Sewer System (MS4) Permit issued to the City and to the County of Orange by the California Regional Water Quality Control Board, Santa Ana Region ("Regional Board"), under the National Pollutant Discharge Elimination System (NPDES) permit system.

(b) **Water Quality-Limited Watersheds.** Association shall reasonably cooperate with City with respect to compliance with any regulatory directive by the Regional Board or the State Water Resources Control Board ("State Board") pertaining to the Property. City's obligation to perform Maintenance shall be deemed modified to the extent necessary to conform to any directive or order from the State Board, Regional Board, or other agency with jurisdiction over the Property.

(c) **Water Conservation.** Association and its agents and contractors shall reasonably cooperate with City with respect to any water conservation measure adopted by the City Council or other governmental agency with jurisdiction over the Property.

6. **INDEMNIFICATION AND INSURANCE**

(a) **Indemnification.** City shall, assuming Association is not in default with respect to its obligations pursuant to this Agreement, defend, indemnify and hold harmless the Association, its officers, employees, agents and members with respect to any damage, claim, liability, loss, injury, cost, attorney fees or expense that arises out of, or is in any way related to, any act or omission of City in the performance or non-performance of Maintenance pursuant to this Agreement. Association and its officers, employees, agents and members shall reasonably cooperate with City in the defense or any claim or lawsuit the City is obligated to defend pursuant to this Agreement. City's obligations pursuant to this Agreement shall not apply to damages, claims, injuries, liability, losses, costs, attorney fees or expenses that are proximately caused by the sole negligence or willful act of the Association or its officers, employees, agents, representatives, or members. City shall have full discretion to select counsel, experts or other professionals to represent or advise it and the Association as well as its

officers, agents, employees and members with respect to any litigation or any action related to the litigation.

(b) **Insurance.** In addition to its indemnification obligations in Subsection (a), the City of Newport Beach shall maintain throughout the term of this Agreement commercial general liability insurance coverage including owned, non-owned and hired vehicle insurance in an amount, and with the self insurance retentions, as the City Council determines to be in the City's best interests given then current market conditions. City shall provide Association with appropriate Certificates evidencing compliance with this Section and shall use its best efforts to add the Association as an additional insured on any such policy provided the City would incur no additional cost to do so or Association reimburses the cost.

7. **ADMINISTRATION**

This Agreement will be administered by the Director of the City's General Services Department (Director). The Director shall be considered the Project Administrator and shall have the authority to act for City pursuant to this Agreement. The Project Administrator or his/her authorized representative shall represent City in all matters pertaining to the Maintenance. The Project Administrator's address, phone number, facsimile number and e-mail address are set forth in Section 9 of this Agreement. City agrees that each time the Project Administrator changes, it will promptly notify Association of such change, and provide Association with the address, phone number, facsimile number and e-mail address of the new Project Administrator at the time of notification of change.

8. **TERMINATION**

(a) **Notice.** In the event either party fails or refuses to perform any of the provisions in this Agreement, that party shall be deemed to be in default in the performance of this Agreement. The party not in default may terminate this Agreement if, within ten (10) days after notice of default, the party in default has not cured the default, or if more than ten (10) days are reasonably required to cure the default the party in default has failed to give adequate assurance of due performance within ten (10) days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default.

(b) **Restoration Following Termination.** Upon termination of this Agreement by either party, City agrees to restore the Property to the condition that existed upon the date of the City's inspection as described in Subsection 3(d) of this Agreement. The restoration of the Property shall be completed as quickly as reasonably practicable, but in no event more than ninety (90) days following termination. Any damage or injury to Association property, facilities, landscaping or hardscape that is proximately caused by the City during the restoration process, or as a result of any delay in the restoration process (for example, plant material dying as a result of any irrigation, drainage, or electrical equipment being inoperative during the restoration) shall be repaired or replaced by City.

(c) **Survival of Obligations.** The commitments and obligations of the City that are specified in Sections 4(b), 6(a), 8(c) and 15 shall survive the termination of this Agreement.

9. **NOTICES**

All notices, demands, requests or approvals to be given under 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 set forth below or as changed by either Party with written notice to the other Party in the manner specified in this Section.

All notices, demands, requests or approvals from Association to City shall be addressed to City, attention "General Services Director" at:

City of Newport Beach
3300 Newport Boulevard
P. O. Box 1768
Newport Beach, CA 92658-8915
Attn: Director of General Services
Phone: (949) 644-3055
Fax: (949) 650-0747
E-Mail: dneiderhaus@city.newport-beach.ca.us

All notices, demands, requests or approvals from City to Association shall be addressed to Association, attention "Property Manager" at:

Newport Coast Community Association
c/o Merit Property Management
25910 Acero Street, Second Floor
Mission Viejo, CA 92691
Attn: Melodie LaMont
Phone: (949) 465-5210
Fax: (949) 595-2304
E-Mail: mlamont@meritpm.com

10. WAIVER

The waiver by City or Association of any breach of this Agreement by the other shall not be deemed to be a waiver of any term, covenant, or condition or any subsequent breach.

11. PARTIAL INVALIDITY

If any term or provision of this Agreement is declared invalid or unenforceable, the remainder of this Agreement shall not be affected.

12. GOVERNING LAW

The laws of the State of California shall govern the enforcement and interpretation of this Agreement. Neither City's execution of this Agreement nor any consent or approval given by City pursuant to this Agreement shall affect City's powers and duties as a governmental entity.

13. ENTIRE AGREEMENT; MODIFICATION

This Agreement contains the entire understanding between the Parties relative to the subject matter. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. Each Party has relied on its own 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 read this Agreement or other documents or to obtain legal or other advice relevant to this Agreement constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice. No provision of this Agreement may be amended or varied except by an agreement in writing signed by the Parties or their respective Successors.

14. HEADINGS

The headings and 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.

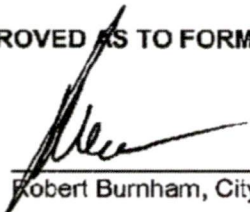
15. ATTORNEY'S FEES AND COSTS

Should litigation become necessary in order to enforce one or more of the terms, conditions and/or provisions of this Agreement or with respect to any issue arising out of this Agreement, the prevailing party shall be entitled to recovery reasonable attorney's fees and costs.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year first written above.

APPROVED AS TO FORM:

By:


Robert Burnham, City Attorney

CITY OF NEWPORT BEACH

A Municipal Corporation

By:


Homer Bludau, City Manager

NEWPORT COAST COMMUNITY ASSOCIATION

By:

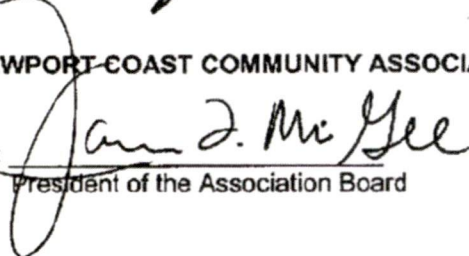

President of the Association Board

EXHIBIT A
Scope of Services

EVERGREEN SLOPES, PARKWAYS, AND MEDIANS

A. Ground cover

1. **Edging and Trimming:**
 - a. Edge as needed to maintain a neat, well-defined edge adjacent to walks, curbs, and paved areas.
 - b. A four (4) inch to six (6) inch bare dirt clearance shall be maintained around the circumference of all trees, signs, and adjacent buildings.
 - c. Trim ground cover over four (4) inches in height at 45° angle. Ground cover should be hand-pruned and should be soft in appearance as opposed to hedged.
2. **Fertilization:**

A minimum of four (4) times per year (or as needed) per recommendations of soils report, using a balanced fertilizer with Iron or an approved equal program to maintain an attractive, balanced appearance of continual growth.
3. **Aerification:**

Aerate ground cover areas as required to alleviate compaction and improve water penetration.
4. **Hard Pruning or Mowing:**

As directed by Owner's Representative, the contractor may be required to mow or hard prune down the height of the ground cover to approximately one third (1/3) its height in the early spring.
5. **Watering:**
 - a. All ground cover areas shall be uniformly irrigated to insure consistent growth and plant coverage.
 - b. Contractor shall schedule water application to produce a deep rooted ground cover using repeat cycles for deep watering and allowing soil to dry between waterings (depending on plant variety) without overwatering.
6. **Weed, Pest and Disease Control:**
 - a. Contractor shall maintain a weed, pest, and disease free ground cover and apply all necessary treatments as required.

B. Shrubs

1. **Pruning:**
 - a. Pruning of shrubs will fall into one of the following categories:

Natural Shape - The intent is to emphasize the natural form of the shrub. Initially "pinch prune" to develop structure, allowing the individual characteristics of the species to develop.

Natural Hedge - The intent is to develop a loose, informal appearing hedge which requires only minimal attention to keep in shape and size. Initially "pinch prune" to develop structure, allowing to fill solid horizontally.

Formal Hedge - It is the intent of these shrubs to have straight, crisp edges. Initial "pinch pruning" will encourage the shrubs to fill in.
 - b. All shrubs shall be pruned as required for safety, removal of broken or diseased branches, general containment or appearance.
 - c. Pruning at the correct time of the year is essential to maximize flowering potential. After flowering, remove any spent blossoms or flower stalks.
 - d. Change in pruning style within the contract shall be reviewed and agreed upon by Contractor, Owner and Owner's Representative prior to commencement of pruning.

2. Fertilization:
 - a. Fertilize all shrubs a minimum of four (4) times per year (or as needed) per recommendations of soils report using a balanced fertilizer with Iron or an approved equal program to maintain an attractive, balanced appearance of continual growth.
 - b. Contractor shall be responsible to apply all materials required to correct mineral deficiencies affecting plant growth. Due to area soil conditions, supplemental feeding of iron may be required to prevent chlorosis.
3. Weed, Pest, and Disease Control:
 - a. Contractor shall maintain a weed, pest, and disease free shrub-bed at all times and apply all necessary treatments as required.
 - b. All shrub areas not underplanted with ground cover will be raked clean a minimum of once per month or as required. Beds with mulch or bark shall be cleaned by using a blower or other means to remove debris.
4. Watering:
 - a. All shrub areas shall be uniformly irrigated to insure consistent growth and plant coverage.
 - b. Contractor shall schedule water application to produce a deep rooted ground cover using repeat cycles for deep watering and allowing soil to dry between waterings (depending on plant variety) without overwatering.

C. Vines

1. Pruning:
 - a. Vines and espalier plants shall be checked and re-tied as required.
 - b. Do not use nails to secure vines on masonry walls.
 - c. Prune all vines using accepted horticultural practices.
 - d. Vines shall be pruned and maintained so not to obstruct fixtures, signs, windows, etc.
 - e. Pruning at the correct time of year is essential to maximize flowering potential. After flowering, remove any spent blossoms or flower stalks.
2. Fertilization:

Fertilize all vines a minimum of four (4) times per year (or as needed) per recommendations of soils report using a balanced fertilizer with Iron or an approved equal program to maintain an attractive, balanced appearance of continual growth.
3. Watering:
 - a. All vines shall be uniformly irrigated to insure consistent growth and plant coverage.
 - b. Contractor shall schedule water application to produce a deep rooted ground cover using repeat cycles for deep watering and allowing soil to dry between waterings (depending on plant variety) without overwatering.
4. Weed, Pest, and Disease Control:
 - a. Contractor shall maintain a weed, pest, and disease free vine-bed at all times and apply all necessary treatments as required.
 - b. All vine planter areas not underplanted with ground cover will be raked clean a minimum of once per month or as required. Beds with mulch or bark shall be cleaned by using a blower or other means to remove debris.

D. Trees

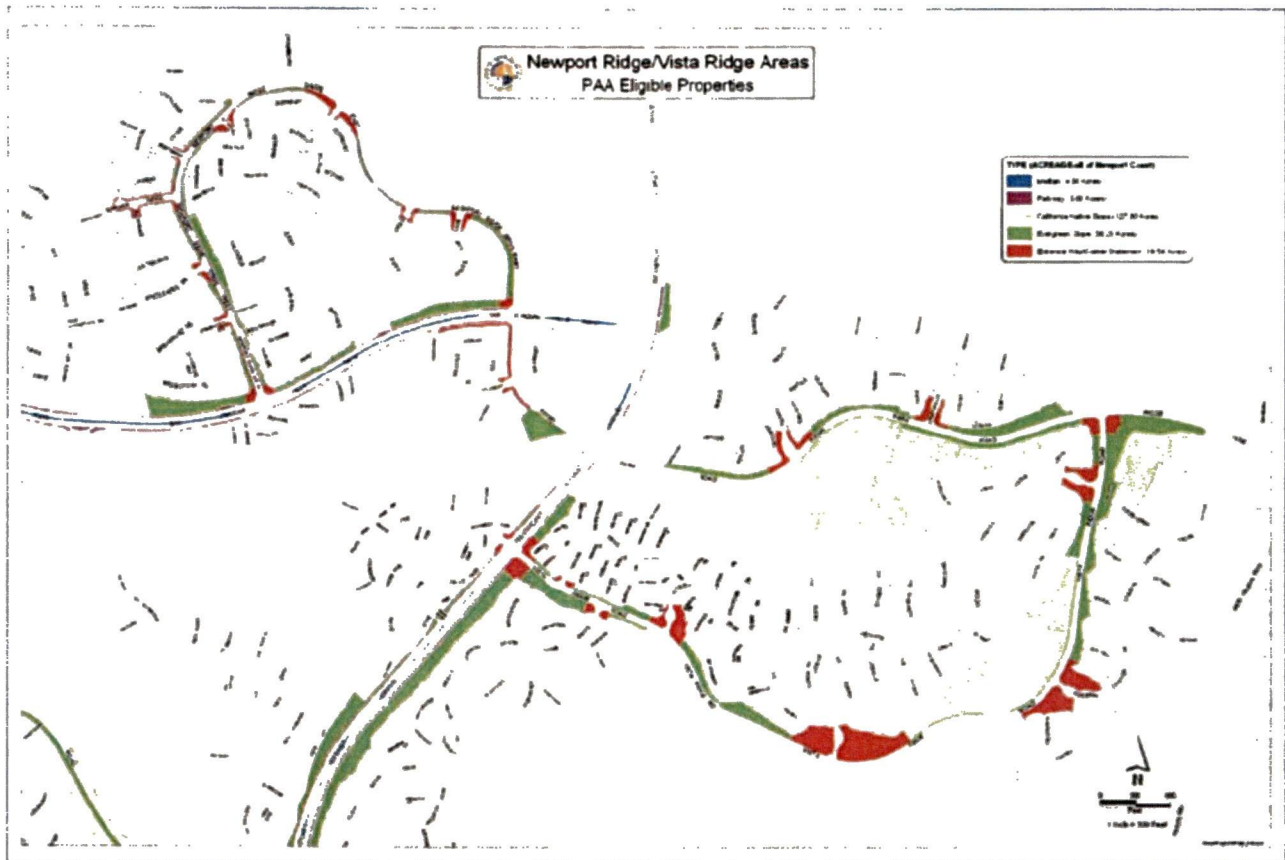
1. No tree work shall be done without prior written approval and direction from Owner's Representative. All tree work shall be undertaken under the direction and supervision of a certified arborist.
2. All trees shall be maintained in a healthy, vigorous growing condition at all times. All trees shall be allowed to grow in and to their natural genetic form and size.

3. Pruning: Under this specification pruning is limited to that which may be done from the ground or fifteen (15) foot within the tree, including removal of dead, diseased, crowded, weakly attached, low-vigor branches and water spots from a tree's crown or for safety. Trees should be pruned to allow for the necessary clearances for pedestrians and vehicle circulation. All branches overhanging the curb line on roadways shall have fourteen (14) foot clearance, and parking areas and walkways eight (8) foot clearance.
 - a. Under no circumstances shall stripping of lower branches ("raising up") of young trees be permitted. Lower branches can be cut off only after the tree is able to stand erect without staking or other support.
 - b. Pruning shall be done by those experienced and skilled in pruning techniques. All cuts shall be done using proper horticultural practices and in accordance with the I. S. A. Standards of Pruning.
 - c. All other tree pruning over fifteen (15) feet, such as annual thinning will be done under a separate contract. Such "Extra" tree work shall be done only by a professional I. S. A. Certified Arborist. A sample tree shall be pruned and approved before work is started.
 4. Tree stakes, ties, and guys shall be checked and corrected as needed. Ties will be adjusted to prevent girdling. Girdling is unacceptable and the Contractor may be held responsible for tree replacement at no additional cost to the Association. Remove stakes, ties and guys when no longer needed. Material for new tree stakes and guys will be considered extra work.
 5. All new trees shall be staked to allow movement (at least 6 inches) by wind. Stakes shall be removed as soon as trees are deemed sturdy enough. Any tree requiring staking for more than 12 months after installation shall be brought to the attention of the Owner's Representative for review and consideration.
 6. Apply all chemical controls, such as insecticides, as required to control or prevent pests and diseases.
 7. Fertilize all trees 3 times per year in spring, summer and fall, (or as needed) per recommendations of soils report, using a balanced fertilizer with Iron or an approved equal program to maintain an attractive, balanced appearance of continual growth. Deep root feeding or foliar application may be required. Palm trees shall be fertilized with "Palm Special" fertilizer, per manufacturers recommended rates, in spring, summer and fall.
 8. Surface roots in turf up to three (3) inches in diameter which become maintenance or appearance problems will be removed as required to prevent damage to adjacent paved areas. No more than 50% of the surface roots may be removed at one time to prevent instability of the tree. Such conditions that are inherited to the contract will be an exception.
- E. Fertilization of California native plants
1. California native plants, including trees, shrubs and ground cover, should be fertilized twice per year in early fall and early spring. Apply Osmocote 18-6-12 in early October at half the recommended label rate. Apply an alternate slow-release product with low phosphorus and less than 1% iron, in early March at half the recommended label rate. Turf Supreme 16-6-8 may be used at half rate for the spring feeding. Do not use Osmocote in the spring, as it releases too quickly.

CALIFORNIA NATIVE SLOPES

1. Visual review of need for trash removal weekly. Trash removal as needed and as directed by the General Services Director or his designee.
2. Pruning, plant replacement, and irrigation as needed and as directed by the General Services Director or his designee in order to retain the same aesthetics and level of vegetative cover as originally intended with the development approvals.
3. Remove non-native species and replant as necessary.

EXHIBIT B
Property Map *



* The Property Maps on these two pages are for illustrative purposes only. Only eligible properties (as defined) that are owned or controlled by the Newport Coast Community Association are subject to this Property Maintenance Agreement. Properties owned or controlled by other entities yet depicted on these Maps are not included within this Property Maintenance Agreement.

EXHIBIT B (cont'd)
Property Map *

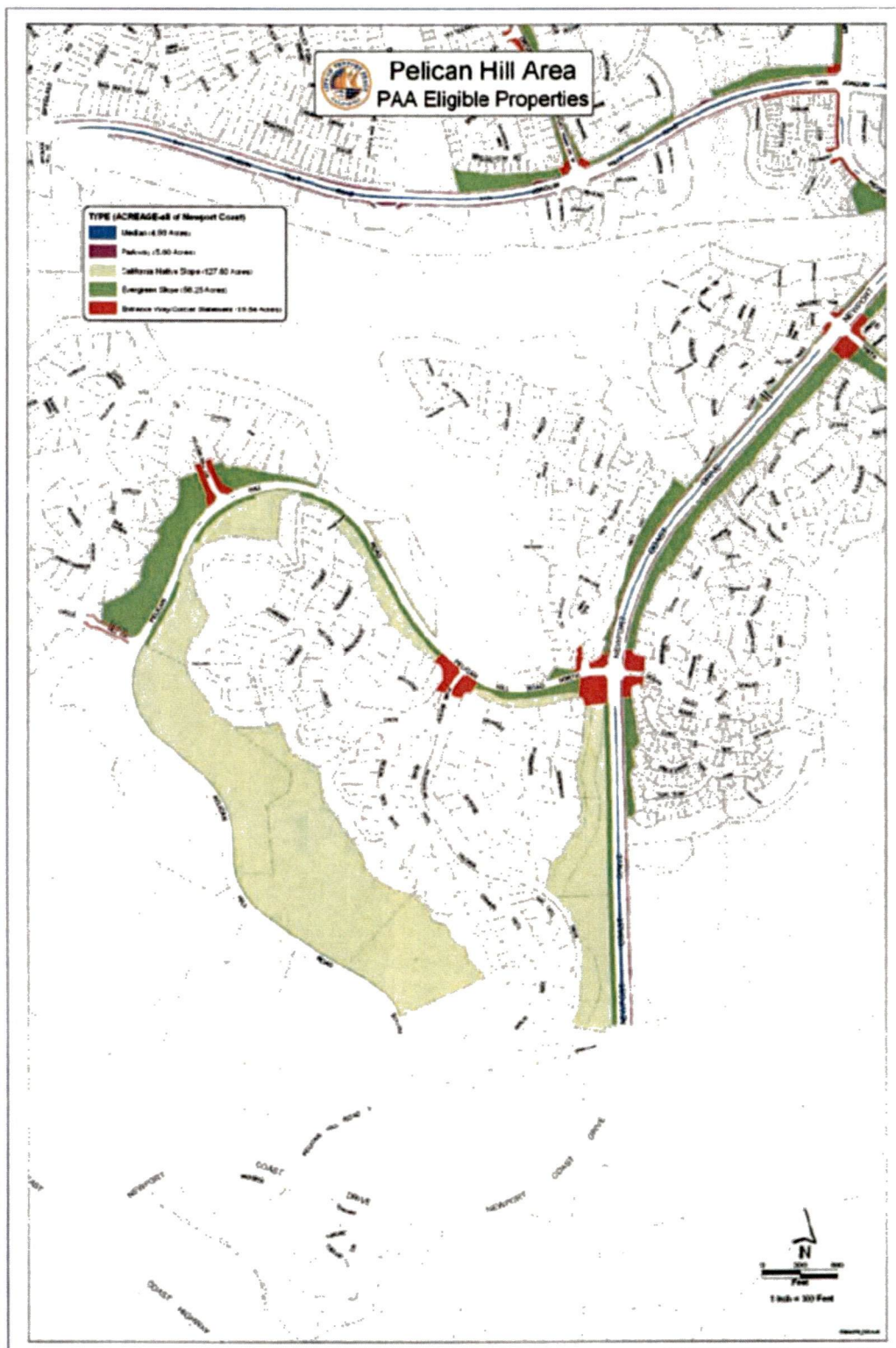


EXHIBIT C
Pre-Annexation Agreement (Section 14)

14. PROPERTY MAINTENANCE.

- (a) Intent/Public Purpose. The purpose and intent of this Section is to allow for City maintenance of certain parkways, medians, natural slopes, and fuel modification zones in the Newport Coast in accordance with quality standards in effect as of the Effective Date. The Parties agree that proper maintenance of parkways, medians, natural slopes, and fuel modification zones and the right to protect or enhance habitat serves a valuable public purpose. The Parties intend that the City's obligation to maintain parkways, medians, natural slopes and fuel modification zones is contingent upon a request by the property owner and execution of an agreement that, among other things, fully protects the City from any liability related to its maintenance unless the damage is proximately caused by the City's active negligence. The Parties acknowledge that City's maintenance obligations do not extend to any landscaping, irrigation, or lighting in or around the entrance pavilions or to any landscaped area within any community – such as private parks, private parkways, or private medians on streets behind gates.
- (b) Section Definitions. For purposes of this Section, the terms:
- (i) "Association" shall mean a residential homeowners' association or residential community association within the boundaries of the Property.
 - (ii) "Fuel modification zone" shall mean a slope owned by an Association that is adjacent to, and generally below, residential parcels and that has been planted with fire-resistant vegetation to prevent or inhibit fire damage to structures.
 - (iii) "Natural slope" shall mean a slope owned by an Association that has not been improved or contains primarily native vegetation, and is generally adjacent to and below a fuel modification zone.
 - (iv) "Maintain" or "Maintenance" shall mean, in the context of natural slopes, parkways, medians, and fuel modification zones, the irrigation, maintenance of irrigation equipment, fertilization, general care and replacement of plant material, and the maintenance of electrical and lighting equipment as applicable.
 - (v) "Median" shall mean the area in the center of a public street.
 - (vi) "Parkway" shall mean the area between a public sidewalk and the street curb.
 - (vii) "Property owner" shall mean an Association within the Property. It shall not mean a government, educational, or commercial venture such as a school, hotel, timeshare operator, golf course, land development company, or retail center.
- (c) General Obligations. City shall, during the term of this Agreement, have the obligation to maintain and pay for the costs of such maintenance:
- (i) Medians and parkways along public streets.
 - (ii) Natural slopes or fuel modification zones if and when the property owner fully satisfies the conditions specified in Subsection (d). City shall obtain any permit necessary to conduct any maintenance on any natural slope that is within the Natural Communities Conservation Plan. In no event shall the City be liable for any slope failure or slope subsidence in any fuel modification zone unless the failure or subsidence is proximately caused by the active negligence or willful conduct of the City.

City or its contractor shall maintain all medians and parkways, and to the extent the property owner satisfies the conditions specified in Subsection (d), the natural slopes, fuel modification zones, and open space dedications and facilities, in a manner that equals or exceeds the maintenance standards for each area or facility which is in place as of the Effective Date. City shall not be liable for any loss, claim or damage proximately caused by irrigation of a fuel modification zone that is consistent with the time and extent of irrigation

occurring as of the Effective Date.

- (d) Conditions to City Obligation Regarding Natural Slopes and Fuel Modification Zones. City's obligation to maintain any fuel modification zone or natural slope is contingent on satisfaction of all of the following conditions:
- (i) Written Request. An Association in existence as of the Effective Date has, within nine (9) months after the Effective Date, served City with a written request to maintain all or a portion of the fuel modification zone and/or natural slope; or, for those Associations not in existence as of the Effective Date, the Association shall, within nine (9) months of formation, have served the City with a written request to maintain all or a portion of the fuel modification zone and/or natural slope within that Association's boundaries.
 - (ii) Maintenance Agreement. The property owner has executed a written agreement ("Maintenance Agreement"), approved as to form and content by the City Attorney, that specifically authorizes City to enter the property to perform the maintenance defined in Subsection (b) of this Section, specifies the level of maintenance, and authorizes City use of any facilities necessary to provide maintenance. The Maintenance Agreement shall require the City to pay all costs incurred in maintenance of the natural slope, median, parkway, or fuel modification zone, including but not limited to water and other necessary utility services. The Maintenance Agreement shall confirm that the City is not liable for any loss, claim or damage, including slope subsidence or failure, unless proximately caused by the negligence or willful act of the City or its officers, employees, or agents. The Maintenance Agreement shall also require the property owner to fully cooperate with City and its officers, agents, members, employees and contractors with respect to maintenance of the property.
 - (iii) Material Default. The property owner is not in material default pursuant to the terms and conditions of the Maintenance Agreement described in Subdivision (ii).
- (e) Map. City and the Committee shall, within nine (9) months after the Effective Date prepare the maps of the fuel modification zones and natural slopes. The maps are for information and the failure of a map to depict property that otherwise qualifies as a fuel modification zone or natural slope shall not affect the City's maintenance obligations.

EXHIBIT D
Compensation Schedule
(Period of March 1, 2002 through Effective Date)

Schedule to be added.

EXHIBIT B

Scope of Services

EXHIBIT B

Scope of Services

I. MAINTENANCE SCHEDULE

With the exception of the work provided in Section II.A.1 below, which is completed on a weekly basis, the City and Contractor's performance obligations are based on regularly set intervals and schedules set forth in the attached map. The Association may request additional maintenance outside the regularly set intervals and schedules which shall be paid for by the Association and reimbursed to the City. In the event the schedule is adjusted, the City shall provide the Association with advanced written notice. In no event shall any adjustment in the schedule result in greater than three-month rotation of each area.

II. EVERGREEN SLOPES, PARKWAYS, AND MEDIANS

A. Ground cover

1. Mowing Edging and Trimming:

- a. All turf is mowed once per week.
- b. Maintain a neat, well-defined edge adjacent to walks, curbs, and paved areas.
- c. A four (4) inch to six (6) inch bare dirt clearance shall be maintained around the circumference of all trees, signs, and adjacent buildings.
- d. Trim ground cover over four (4) inches in height at 45° angle. Ground cover should be hand pruned and should be soft in appearance as opposed to hedged.

2. Fertilization:

Fertilization shall occur at least four (4) times per calendar year based on the Maintenance Schedule below or per recommendations of soils report, using a balanced fertilizer with Iron or an approved equal program to maintain an attractive, balanced appearance of continual growth.

3. Aerification:

At least once each calendar year, aerate ground cover areas to alleviate compaction and improve water penetration.

4. Hard Pruning:

Once each calendar year based on the Maintenance Schedule below, ground cover shall be hard pruned to approximately one

third (1/3) of its height in the early spring.

5. Watering:

- a. All ground cover areas shall be uniformly irrigated to ensure consistent growth and plant coverage.
 - b. Each calendar month, it shall be determined based on weather conditions, whether water application is necessary to produce a deep-rooted ground cover and, if so, repeat cycles for deep watering shall be implemented, allowing soil to dry between waterings (depending on plant variety) without overwatering.
6. Weed, Pest and Disease Control: Each month, City shall inspect the Eligible Property to ensure that weed, pest, and disease-free ground cover is being maintained and based on the Maintenance Schedule below shall take action as necessary to apply all necessary treatments as required.

B. Shrubs

1. Pruning: Pruning of shrubs will fall into one of the following categories:

- a. Natural Shape - The intent is to emphasize the natural form of the shrub. Initially "pinch prune" to develop structure, allowing the individual characteristics of the species to develop.
- b. Natural Hedge - The intent is to develop a loose, informal appearing hedge which requires only minimal attention to keep in shape and size. Initially "pinch prune" to develop structure, allowing to fill solid horizontally.

Formal Hedge - It is the intent of these shrubs to have straight, crisp edges. Initial "pinch pruning" will encourage the shrubs to fill in.

All shrubs shall be pruned in accordance with International Society of Arboriculture (ISA) standards.

2. Fertilization:

- a. Fertilize all shrubs a minimum of four (4) times per year at intervals determined by the Maintenance Schedule below or per recommendations of soils report using a balanced fertilizer with iron or an approved equal program to maintain an attractive, balanced appearance of continual growth.
- b. Contractor shall be responsible for applying all materials required to correct mineral deficiencies affecting plant growth. Due to area soil

conditions, supplemental feeding of iron may be required to prevent chlorosis.

3. Weed, Pest, and Disease Control:

- a. Contractor shall reasonably maintain a weed, pest, and disease-free shrub-bed and apply all necessary treatments as required during its regularly scheduled maintenance.
- b. All shrub areas not underplanted with ground cover will be raked clean a minimum of once per month or during its regularly scheduled maintenance. Beds with mulch or bark shall be cleaned by using a blower or other means to remove debris.

4. Watering:

- a. All shrub areas shall be uniformly irrigated to ensure consistent growth and plant coverage.
- b. Contractor shall schedule water application intended to produce a deep-rooted ground cover using repeat cycles for deep watering and allowing soil to dry between waterings (depending on plant variety) without overwatering.

C. Vines

1. Pruning:

- a. Vines and espalier plants shall be checked and re-tied during regularly scheduled maintenance intervals.
- b. Do not use nails to secure vines on masonry walls.
- c. Prune all vines using accepted horticultural practices.
- d. Vines shall be pruned and maintained so not to obstruct fixtures, signs, windows, etc.
- e. Pruning at the correct time of year is essential to maximize flowering potential. After flowering, remove any spent blossoms or flower stalks during regularly scheduled maintenance intervals.

- 2. Fertilization: Fertilize all vines a minimum of four (4) times per year based on the Maintenance Schedule below or per recommendations of soils report using a balanced fertilizer with iron or an approved equal program to maintain an attractive, balanced appearance of continual growth.

3. Watering:

- a. All vines shall be uniformly irrigated to ensure consistent growth and plant coverage.
- b. Contractor shall schedule water application to produce a deep-rooted ground cover using repeat cycles for deep watering and allowing soil to dry between waterings (depending on plant variety) without overwatering.

4. Weed, Pest, and Disease Control:

- a. Contractor shall maintain a weed, pest, and disease-free vine-bed based on the Maintenance Schedule and apply all necessary treatments as required.
- b. All vine planter areas not underplanted with ground cover will be raked clean a minimum of once per month or as required. Beds with mulch or bark shall be cleaned by using a blower or other means to remove debris.

D. Trees

1. Tree work, including but not limited to maintenance, removal and replacement, shall be agreed upon based upon the City and Association's monthly walkthroughs and written follow-up directive provided in Section 8(a) of the First Amendment. All tree work shall be undertaken under the direction and supervision of a certified arborist.
2. All trees shall be maintained in a healthy, vigorous growing condition. All trees shall be allowed to grow in and to their natural genetic form and size. Tree spacing shall comply with the International Society of Arboricultural standards.
3. Pruning: Under this specification pruning is limited to that which may be done from the ground or fifteen (15) foot within the tree, including removal of dead, diseased, crowded, weakly attached, low- vigor branches and water spots from a tree's crown or for safety. Trees should be pruned to allow for the necessary clearances for pedestrians and vehicle circulation. All branches overhanging the curb line on roadways shall have fourteen (14) foot clearance, and parking areas and walkways eight (8) foot clearance.
 - a. Lower branches can be cut off only after the tree is able to stand erect without staking or other support.

- b. Pruning shall be done by those experienced and skilled in pruning techniques. All cuts shall be done using proper horticultural practices and in accordance with the I. S. A. Standards of Pruning.
 - c. All other tree pruning over fifteen (15) feet, such as annual thinning will be done under a separate contract. Such "Extra" tree work shall be done only by a professional I. S. A. Certified Arborist. A sample tree shall be pruned and approved before work is started.
- 4. Tree stakes, ties, and guying shall be checked and corrected as needed. Ties will be adjusted to prevent girdling. Girdling is unacceptable and the Contractor may be held responsible for tree replacement at no additional cost to the Association. Remove stakes, ties and guys when no longer needed.
- 5. All new trees shall be staked to allow movement (at least 6 inches) by wind. Stakes shall be removed as soon as trees are deemed sturdy enough. Any tree requiring staking for more than twelve (12) months after installation shall be brought to the attention of the Parties representatives during monthly walkthroughs for review and consideration.
- 6. Apply all chemical controls, such as insecticides, as required to control or prevent pests and diseases.
- 7. Fertilize all trees three (3) times per year in spring, summer and fall, (or as needed) per recommendations of soils report, using a balanced fertilizer with iron or an approved equal program to maintain an attractive, balanced appearance of continual growth. Deep root feeding or foliar application may be required. Palm trees shall be fertilized with "Palm Special" fertilizer, per manufacturers recommended rates, in spring, summer and fall.
- 8. Surface roots in turf up to three (3) inches in diameter which become maintenance or appearance problems will be removed as required to prevent damage to adjacent paved areas. No more than 50% of the surface roots may be removed at one time to prevent instability of the tree.
- 9. Tree Replacement. For the corner locations at the intersections of Newport Coast Drive/Ocean Ridge Drive and Newport Coast Drive/Vista Ridge Road, the City's future obligation to replace any mature Phoenix Canariensis or Phoenix Dactylifera shall be like for like with respect to size, however, the cost cap per tree shall not exceed \$40,000. Notwithstanding the foregoing, the Phoenix Canariensis or Phoenix Dactylifera may be replaced with alternative species, mutually agreed to by the Parties, in the event the species are infected by incurable disease, or invasive insects. Additionally, the City's future obligation to replace any trees in all other locations shall be no larger than a 48-inch box.

- E. Fertilization of California Native Plants: California native plants, including trees, shrubs and ground cover, should be fertilized twice per year in early fall and early spring. Apply fertilizer in early October at half the recommended label rate. Apply an alternate slow-release product with low phosphorus and less than 1% iron, in early March at half the recommended label rate. Turf Supreme 16-6-8 may be used at half rate for the spring feeding. Do not use Osmocote in the spring, as it releases too quickly.

III. CALIFORNIA NATIVE SLOPES

1. Visual review of need for trash removal within the City's established Maintenance Schedule. Trash removal as needed based on the Contractor's regularly scheduled work on the Eligible Property and as directed by the Public Works Director or his/her designee.
2. Pruning, plant replacement, and irrigation as needed based on the Contractor's regularly scheduled work on the Property and as directed by the Public Works Director or his/her designee to retain the same aesthetics and level of vegetative cover as originally intended with the development approvals.
3. Remove non-native species and replant as necessary.
4. For purposes of this First Amendment, "native slope" is defined as an area of undeveloped terrain within a master planned community that maintains its original topography and vegetation, but is either: excluded from fuel modification requirements due to its distance from structures or lack of wildfire exposure, or Assessed by the Authority Having Jurisdiction (AHJ) and determined to pose minimal wildfire risk, based on factors such as slope gradient, aspect, vegetation type, and topographic isolation.

IV. V-DITCHES

The City shall maintain the V-Ditches within its maintenance obligation areas on not less than a quarterly basis and shall maintain records of completion of debris removal which may be requested at the monthly walkthroughs and provided within reasonable timeframes.

EXHIBIT C

Eligible Property – Property Map

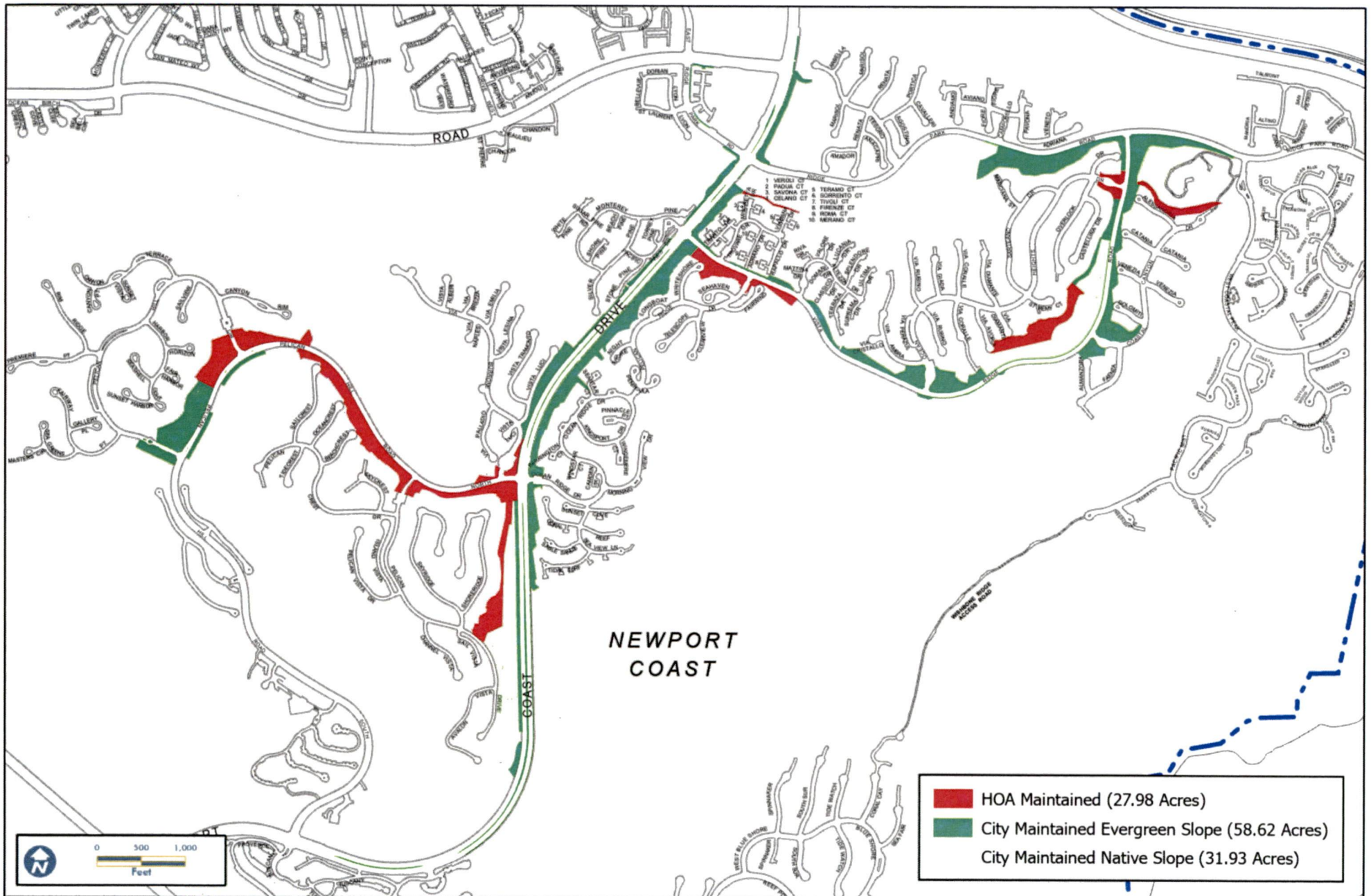


Exhibit C

Eligible Property – Property Map

EXHIBIT C-1

Geospatial Coordinates – of Eligible Property

[TO BE INSERTED]