

## April 15, 2025, City Council Agenda Comments

The following comments on items on the Newport Beach City Council [agenda](#) are submitted by:

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### ***Item 5. Corporation Yard, Utility Yard and Oilfield Gate Rehabilitation – Award of Contract No. 9749-1 (25F02)***

According to page 2 of the staff report, the low bid, from a firm that offered to perform the gate repair work at substantially lower cost than the recommended one, was rejected as “non-responsive” because the bidder provided only one reference.

The report does not indicate whether providing multiple references was a bid requirement.

If it was not, why was providing only one regarded as disqualifying?

And if it was not automatically disqualifying, shouldn't the reference have been contacted to learn if the firm's work was satisfactory and, if staff felt necessary, additional references requested?

### ***Item 6. Slurry Seal Program FY 2024-25 – Award of Contract No. 9717-1 (25R04)***

I do not claim to be an expert on pavement maintenance, but when the Council approved the notice of completion for the prior slurry seal contract as [Item 5](#) at the February 11 meeting, I noted orally that cracks in the pavement on the my own street had reappeared less than a year after their “sealing” on April 23, 2024, by Roy Allan Slurry Seal.

The photograph at right is the condition of some of those today.

From my limited observations of what Roy Allan did, the main slurry coating had been preceded a week or so earlier by some gentlemen walking by and rather casually spraying a bit of a tar-like substance on the cracks. That pre-coating appears to have done little other than bleed up through the slurry coating in the area around the cracks, which promptly reappeared.



Again, I do not know if this is normal, or not, but if the intent of the exercise is to remove the cracks (which I believe we have been told are bad because they allow water to penetrate), it did not seem particularly effective.



Additionally, in the follow-up a week or two later, that previous contractor seems to have misplaced either the striping or the reflectors, causing one to be painted over as shown at the arrow in the photo at left (and note more cracks to right of stripes).

Assuming this was less good work than we might expect, I am pleased to see a different contractor, American Asphalt South, beat out Roy Allan for the new contract (if only by a very tiny margin) and hope they will do better.

***Item 7. Approval of Amendment No. Three to On-Call Maintenance and Repair Services Agreement with Ray Brian Carmody dba Carmody Construction Company (C-8480-1A)***

See comment on Item 9, below. The transparency of how Council-approved on-call contracts are being used is not as good as it could be.

***Item 9. Approval of Professional Services Agreements with Anchor QEA, Inc., Dudek, and Moffatt & Nichol for On-Call Marine / Coastal Engineering and Harbor Related Services***

Section B of Council [Policy F-14](#) requires all contracts in excess of \$120,000 to be approved by the City Council.

In this case, staff is asking the Council to approve three 5-year \$500,000 “on-call” professional services contracts.

[Section G](#) of Policy F-14 addresses such contracts, but is ambiguous as to whether, once approved by the Council with a \$500,000 limit, staff can use the contracts to request services in any amount up to that limit, or has to return to the Council for approval of any individual request to use the contract that exceeds \$120,000. If the former is correct, the Council will, in effect, be authorizing staff to make potentially quite large expenditures on purposes that receive no further Council oversight.

However that may be, as Section 2 of each proposed contract indicates, no work can be performed without a request from City staff and a “letter proposal” from the contractor in response. Unfortunately, the public (and presumably the Council?) does not normally see these requests and proposals, so transparency as to how the approved contracts are actually being used is poor.

At various times there have been promises that all approved letter proposals would be provided to the City Clerk for posting as attachments to the on-call contracts in the City's Laserfiche [contracts database](#). That would have provided some public visibility regarding how broad Council approvals like these are being used, but there was no follow-through and, to the best of my knowledge, only a very few letter proposals have ever been archived.

As to the proposed contracts, there appears to be an error in Section 3.1, warning the "*Consultant to strictly adhere to the **schedule set forth in Exhibit A and the Letter Proposal.***"

Exhibit A, in each, consists of an identical two-page "Scope of Services" followed by what seems to be the proposal document the contractor submitted in response to the RFP.

While Subsection 2.1 requires the letter proposal to include "*The estimated number of hours*" and "*The time needed to finish the specific project,*" there is nothing I can find in Exhibit A that dictates any other schedule (or any schedule at all, other than vague promises to work quickly and efficiently). It would seem the words "*Exhibit A and*" should be deleted.

### ***Item 10. Professional Services Agreement with Carpi & Clay, Inc. for Federal Advocacy Services***

My only personal experience of what the City's "federal advocates" do is from Carpi & Clay's oral reports at some of the City's increasingly rare Aviation Committee meetings, most recently by Mr. Commins. At those, they appear competent, although the staff report is not clear on what, if any, alternative strengths the other bidder could provide at a substantially lower monthly fee.

As to the proposed contract with Carpi & Clay, I might suggest that on page A-2 the Scope of Services (agenda packet page 10-20) the following corrections might be considered in the upper half of the page:

*"g. Identify and advocate for mechanisms that accelerate airline fleet transition to **newer,** quieter and lower emissions aircraft."*

...

*"j. Advocate for the granting of waivers **for** to allow for the efficient use of drones by local public safety authorities."*

The first correction is suggested because while newer planes are often cleaner and quieter than older ones, the age of a plane does not necessarily correlate with the noise and pollution it produces. I believe we would be happy if a poorly-performing fleet were replaced with a better-performing one even if the replacement planes were older.

The second suggestion corrects what seems a typo.

### ***Item 11. Approval of Professional Service Agreement with Bloc Films, LLC for Junior Lifeguard Video Production Services***

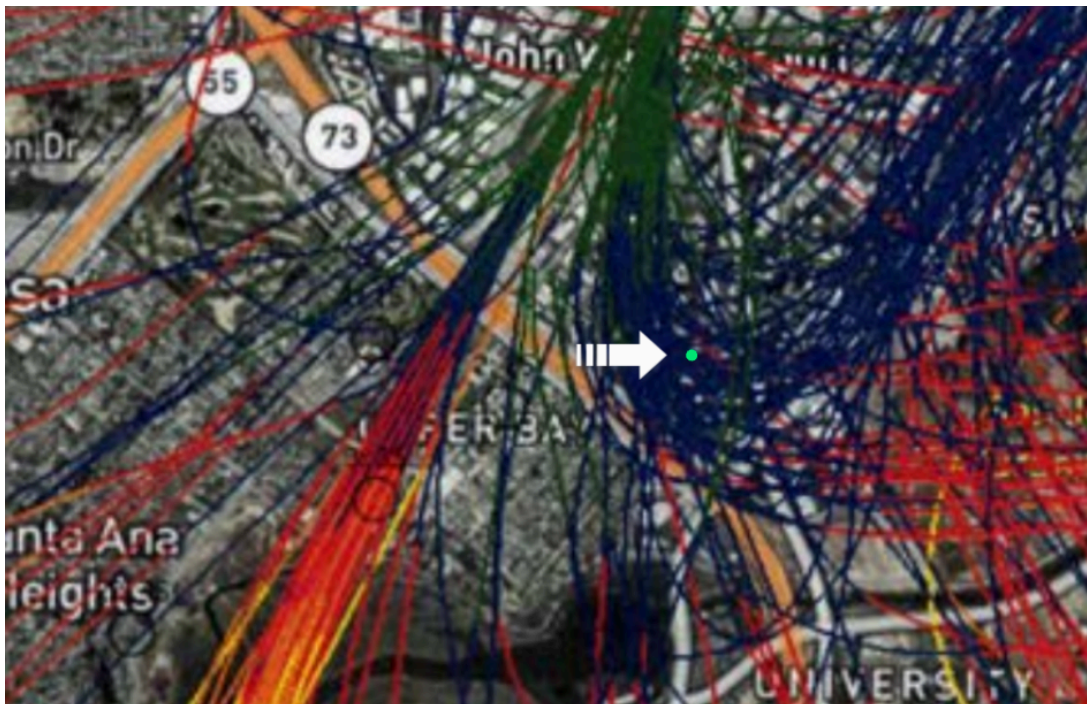
It might have been helpful for the staff report to identify the second-ranked proposer, Red 88 Media, as the incumbent, having been selected as [Item 11](#) at the May 14, 2019, Council meeting.

***Item 12. Resolution No. 2025-13: Notice of Intent to Override Orange County Airport Land Use Commission's Determination of Inconsistency for an Amendment to the Housing Opportunity (HO) Overlay Zoning and Coastal Zoning Districts (PA2024-0205)***

As the staff report indicates, this item is not about the merits of the "project," but simply an announcement that the Council might, at a future meeting, consider overriding the [ALUC's](#) determination of its inconsistency with the County's [JWA Airport Environs Land Use Plan](#).

As such, it seems curious it does not make clear the ALUC's sole concern was with the proposed addition of Footnote 1 to Table 2-16, reserving 179 of the Airport Area Housing Overlay units for the City-owned property at 1201 Dove Street, as shown on page 12-4.

County staff recommended a finding of consistency based on a belief that although the Commission had previously found adding a housing overlay to the Airport Area inconsistent with the AELUP, it would be better to confine the units to what it believed to be a lower noise area than allowing them to go anywhere. The Commission itself felt it needed to repeat its message that any additional housing in the Airport Area would be inconsistent. Additionally, the Commissioners felt 1201 Dove was a particularly bad place, both in terms of noise and safety, because the propeller-powered planes heading initially south from the airport would be passing over it while turning and climbing at relatively low altitude (between 500 and 1,000 feet). This seems to be supported by the flight tracks shown on page 12-132, in which 1201 Dove would seem to be at approximately the location of the added green dot:



Regarding the noise issue, I am not sure anyone has actually measured the impact of aircraft noise at this location, the only contours I am aware of being theoretical projections.

Contours produced in the 1980's (and still used in the [AELUP](#)) showed lobes of enhanced noise over this area at the 60 dB CNEL level, presumably caused by the propeller aircraft, but the more recent contours now used in the City's [General Plan](#) Noise Element (see Council [Item 22](#) from November 14, 2023), and the [Annual Contours](#) posted by the airport, do not. The Commissioners do not believe the noise from propeller planes has improved much. It is unclear who is right.

Regarding the safety issue, the staff report correctly notes that in the event of an override, California [Public Utilities Code Section 21678](#) immunizes the airport operator (in this case the County) from any liability for damage it might cause. Although it does not say, one would assume the City assumes that liability as a result of ignoring the ALUC's advice.

Setting aside these concerns, the staff report does not explain why the City is fighting to add a housing entitlement to this property. The public has been told it was purchased as the future site of our Police Headquarters. Yet in this "project," the City is seeking housing entitlements at both the old and presumed new locations. Has the plan changed, with the new headquarters to be built at some other location, so that neither of the previously-considered sites will be needed for that purpose? Or does it envision a combination of housing and a Police Headquarters at 1201 Dove?

Finally, it should be noted that the housing overlay that underlies the present dispute with the ALUC, including the units to be reserved for 1201 Dove, was added to the City's General Plan Land Use Element without a Greenlight vote and that act is the subject of litigation, the outcome of which could affect the validity of the entitlement.

### ***Item 13. Revocable License Agreement with Heritage Wellness Collective for Temporary Use of City Property for the Corona del Mar Farmers' Market***

Others may have asked (I have not read the many public comments), but do we know how much revenue the operator receives and what profit that generates ?

If it is at all substantial, shouldn't the City share in the revenue as it does for most other uses of public property?