



**CITY OF NEWPORT BEACH
CITY COUNCIL AGENDA**

**JANUARY 14, 2025
COUNCIL CHAMBERS - 100 CIVIC CENTER DRIVE, NEWPORT BEACH, CA 92660**

**CLOSED SESSION - 4:00 P.M.
REGULAR MEETING - 5:30 P.M.**

**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
LEILANI I. BROWN, 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. **PUBLIC COMMENTS**

The City Council of Newport Beach welcomes and encourages community participation. Public comments are invited on items listed on the agenda and non-agenda items. Speakers must limit comments 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.

III. **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).

B. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

(Government Code § 54956.8): 1 matter

Property: A portion of the public right-of-way adjacent to 929 Zurich Circle (423-282-04) and 944 Via Lido Nord (423-281-10) (approximately 1,105 square feet).

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

Negotiating Parties: Palmer Luckey on behalf of the 929 Zurich Circle Trust and the 944 Via Lido Nord Trust.

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

**C. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Government Code § 54956.9(d)(1)): 2 matters**

John Doe S.C. v. City of Newport Beach et al.

Orange County Superior Court Case No. 30-2022-01299631-CU-PP-CJC

Barbara Salvini v. City of Newport Beach

Orange County Superior Court Case No. 30-2024-01442980-CU-OE-CJC

IV. RECESS

V. RECONVENE AT 5:30 P.M. FOR REGULAR MEETING

VI. ROLL CALL

VII. CLOSED SESSION REPORT

VIII. INVOCATION - Pastor Phil Eyskens, Lighthouse of Costa Mesa Church of the Nazarene

IX. PLEDGE OF ALLEGIANCE - Webelos Pack 108

X. PRESENTATION

- **History of Lower Castaways by Bill Lobdell**

Correspondence

XI. 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.

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

XIII. PUBLIC COMMENTS ON CONSENT CALENDAR

This is the time in which Councilmembers may pull items from the CONSENT CALENDAR for discussion (ITEMS 1 - 18). 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.

XIV. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. Minutes for the December 10, 2024 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.

RESOLUTIONS FOR ADOPTION

3. Resolution No. 2025-1: Updating the List of Designated Employees for 2024 Under the City's Conflict of Interest Code

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) Adopt Resolution No. 2025-1, *A Resolution of the City Council of the City of Newport Beach, California, Updating the Appendix of Designated Employees and Appendix of Disclosure Categories of the City of Newport Beach Conflict of Interest Code.*

[Staff Report](#)

[Attachment A - Resolution No. 2025-1](#)

[Attachment B - Exhibit 1 \(redline\)](#)

4. Resolution Nos. 2025-2 and 2025-3: Amending the General Plan Advisory Committee and the General Plan Update Steering 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. 2025-2, *A Resolution of the City Council of the City of Newport Beach, California, Amending the General Plan Advisory Committee to Update the Membership and Provide for Annual Appointment of Members at the First City Council Meeting Held in February*; and

c) Adopt Resolution No. 2025-3, *A Resolution of the City Council of the City of Newport Beach, California, Amending the General Plan Update Steering Committee's Term of Membership, Responsibilities and Provide for the Annual Appointment of Members at the First City Council Meeting Held in February*.

[Staff Report](#)

[Attachment A - Resolution No. 2025-2](#)

[Attachment B - Resolution No. 2025-3](#)

[Written Comments](#)

5. Resolution No. 2025-4: Approving an Amendment to the Key and Management Compensation Plan

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) Adopt Resolution No. 2025-4; *A Resolution of the City of Newport Beach, California, Approving an Amendment to the Key and Management Compensation Plan*.

[Staff Report](#)

[Attachment A - Resolution No. 2025-4](#)

[Written Comments](#)

6. Resolution No. 2025-5: Creating the Ad Hoc Council Policy Review 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. 2025-5; *A Resolution of the City Council of the City of Newport Beach, California, Creating an Ad Hoc Committee to Review the City Council Policies and Make Recommendations to the City Council Regarding Revisions Thereto*; and

c) Appoint Mayor Joe Stapleton, Mayor Pro Tem Lauren Kleiman and Councilmember Sara J. Weber to serve on the Ad Hoc Council Policy Review Committee.

[Staff Report](#)

[Attachment A - Resolution No. 2025-5](#)

[Written Comments](#)

CONTRACTS AND AGREEMENTS

7. Hillsborough Pump Station Rehabilitation - Notice of Completion for Contract No. 8758-2 (23W12)

a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project.

[Staff Report](#)

[Attachment A - Location Map](#)

8. Storm Drain System Upgrades - Notice of Completion for Contract No. 9148-1 (23D02)

a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project.

[Staff Report](#)

[Attachment A - Location Map](#)

9. 2023-2024 Facilities Painting Project - Notice of Completion for Contract No. 9393-1 (24F02)

a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project.

[Staff Report](#)

[Attachment A - Location Map](#)

10. 38th Street and Lake Avenue Landscape Improvement Project - Notice of Completion for Contract No. 9008-1 (24L01)

a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project.

[Staff Report](#)

[Attachment A - Location Map](#)

11. Police Department Parking Lot Maintenance - Award of Contract No. 7901-1 (25F02)

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) Approve the project plans and specifications;

c) Award Contract No. 7901-1 to Elegant Construction Inc., for the total bid price of \$585,000 for the Police Department Parking Lot Maintenance, and authorize the Mayor and City Clerk to execute the contract; and

d) Establish a contingency of \$88,000 (approximately 15% of total bid) to cover the cost of unforeseen work not included in the original contract.

[Staff Report](#)

[Attachment A - Location Map](#)

12. Approval of Maintenance and Repair Services Agreements with EverFence Corporation and Red Hawk Services, Inc. for On-Call Fencing

- 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 EverFence Corporation for a five-year term and total not-to-exceed amount of \$300,000, and authorize the Mayor and City Clerk to execute the agreement; and
- c) Approve a Maintenance and Repair Services Agreement with Red Hawk Services, Inc. for a five-year term and total not-to-exceed amount of \$300,000, and authorize the Mayor and City Clerk to execute the agreement.

[Staff Report](#)

[Attachment A - Everfence Corporation Agreement](#)

[Attachment B - Red Hawk Services, Inc. Agreement](#)

13. Amendment No. Two to Professional Services Agreements for The Code Group dba VCA Code for Building Safety Related 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 and authorize the Mayor and City Clerk to execute Amendment No. Two to Professional Services Agreement with The Code Group, for Staff Augmentation and Plan Review Services to increase the contract amount by \$250,000, not-to-exceed an amount of \$1,270,000.

[Staff Report](#)

[Attachment A – Amendment No. Two to Professional Services Agreement](#)

[Attachment B – Amendment No. One to Professional Services Agreement](#)

[Attachment C - The Code Group dba VCA Code Agreement](#)

14. Memorandum of Agreement with the City of Long Beach Acting By and Through the Port of Long Beach Board of Harbor Commissioners Authorizing Disposal of Lower Bay Dredged Material Into the Port's Pier G Slip Fill Project

- a) Find that, pursuant to Section 21166 of the California Public Resources Code and Section 15162 of the CEQA Guidelines, the certified Environmental Impact Report for the Piers G and J Terminal Redevelopment (SCH No. 2000-021021) addressed all environmental impacts associated with the City of Newport Beach entering into this Memorandum of Agreement, that there are no new or more severe impacts beyond those analyzed in that document, and, as a result, no further environmental review is required by CEQA;
- b) Approve and execute the Memorandum of Agreement with the City of Long Beach acting by and through the Port of Long Beach Board of Harbor Commissioners authorizing disposal of Lower Bay dredged material into the Port's Pier G Slip Fill Project; and
- c) Authorize the City Manager or her designee to execute any future amendments or agreements with the City of Long Beach acting by and through the Port of Long Beach Board of Harbor Commissioners as related to the disposal of Lower Bay dredged material to ensure the City of Newport Beach meets the strict delivery schedule imposed by the Port.

[Staff Report](#)

[Attachment A - Memorandum of Agreement](#)

[Attachment B - Environmental Impact Report](#)

[On the Agenda](#)

[Correspondence](#)

[Written Comments](#)

MISCELLANEOUS

15. Planning Commission Agenda for the January 9, 2025 Meeting

Receive and file.

[Planning Commission Action Report](#)

[Planning Commission Agenda](#)

[Written Comments](#)

16. Confirmation of Nominations to Fill an Unscheduled Vacancy on the Parks, Beaches & Recreation Commission

- a) Determine that the 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 it will not result in a physical change to the environment, directly or indirectly; and
- b) Confirm the nominations of Kelly Denner and Travis Piridy to fill the vacancy on the Parks, Beaches and Recreation Commission.

[Staff Report](#)

[Attachment A - Applications](#)

[Written Comments](#)

17. Confirmation of Mayor Joe Stapleton's Appointments

- 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) Confirm Mayor Joe Stapleton's appointments under City Council Policy A-2, as provided in the staff report.

[Staff Report](#)

[On the Agenda](#)

[Written Comments](#)

18. Ground Emergency Medical Transport Intergovernmental Transfer Voluntary Participation for Calendar Year 2025

- 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 the City of Newport Beach's voluntary participation in the Public Provider GEMT Intergovernmental Transfer program per AB 1705 for Calendar Year 2025, and authorize the City Manager to execute the Public Provider Intergovernmental Transfer Program for Ground Emergency Medical Transportation Services Certification Forms and pay all necessary invoices.

[Staff Report](#)

[Attachment A - Certification for CY 2025 Program](#)

[Attachment B - Public Notice](#)

[On the Agenda](#)

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

XV. ITEMS REMOVED FROM THE CONSENT CALENDAR

XVI. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Public comments are invited on 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.

XVII. 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.

XVIII. ADJOURNMENT

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.

From: [Garrett, Errica](#)
To: [City Clerk's Office](#)
Subject: FW: Swimming pool Dover/PCH
Date: January 10, 2025 4:25:40 PM

Errica Garrett
Administrative Assistant to the Mayor and City Council
City Manager's Office
Office: 949-644-3004

100 Civic Center Drive
Newport Beach, CA 92660

-----Original Message-----

From: Diane Saunders <dianen.saunders@icloud.com>
Sent: January 10, 2025 4:24 PM
To: Dept - City Council <CityCouncil@newportbeachca.gov>
Subject: Swimming pool Dover/PCH

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe. Report phish using the Phish Alert Button above.

Please be advised that I, as a resident of Newport Beach, vehemently oppose the addition of a swimming pool at that very busy intersection. We already have traffic gridlock often, why would we want to add more congestion? If you feel compelled to add a swimming pool, look to the area near Bristol and the golf course ; not to the beach areas. This is a stupid idea that should be tabled.
Thank you for your consideration.
Diane Saunders
818 6406433

From: [Garrett, Errica](#)
To: [City Clerk's Office](#)
Subject: FW: Opposition of proposed Public Pool on Dover/PCH, Newport Beach
Date: January 13, 2025 7:49:26 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)



Errica Garrett
Administrative Assistant to
the Mayor and City Council
City Manager's Office
Office: 949-644-3004

100 Civic Center Drive
Newport Beach, CA 92660



From: Linda Laurance <linda_laurance@yahoo.com>
Sent: January 11, 2025 9:55 AM
To: Dept - City Council <CityCouncil@newportbeachca.gov>
Subject: Opposition of proposed Public Pool on Dover/PCH, Newport Beach

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe. Report phish using the Phish Alert Button above.

Dear Members of the City Council,

I am writing on behalf of myself and many concerned residents to express strong opposition to the proposed public pool in [specific area]. While the intention to enhance community amenities is appreciated, this project would significantly disrupt our neighborhood and create

several problems that far outweigh any potential benefits.

The area being considered for this project is already heavily trafficked, with congested streets and limited parking. Adding a public pool would exacerbate these issues, leading to increased traffic congestion, noise, and safety concerns for pedestrians and residents. The chaos that would result from an influx of visitors to the area, particularly during peak seasons, would greatly diminish the quality of life for those who live here.

Additionally, the neighborhood lacks the infrastructure to support such a facility. Increased traffic and parking demands would likely spill over into residential areas, creating frustration and conflicts. This is particularly concerning given the presence of families with young children and elderly residents, whose safety and well-being must be prioritized.

It is clear that the majority of residents in this area are strongly against this proposal. Instead of pursuing this ill-advised plan, we urge the council

to consider alternative locations that are better suited to handle the increased activity a public pool would bring. A more appropriate site with adequate infrastructure would allow the community to enjoy the benefits of such a facility without imposing undue burdens on any one neighborhood.

We respectfully request that the council reconsider this proposal and take into account the voices of the residents who will be most directly affected. A decision to proceed with this project in its current location would be a serious mistake, with lasting negative impacts on our community.

Thank you for considering our concerns. We look forward to your thoughtful response

Linda Laurance
3004 Cliff Dr
Newport Beach 92663

**City Council Minutes
Regular Meeting
December 10, 2024**

I. ROLL CALL – 5:30 p.m.

Present: Mayor Will O’Neill, Mayor Pro Tem Joe Stapleton, Councilmember Brad Avery, Councilmember Noah Blom, Councilmember Robyn Grant, Councilmember Lauren Kleiman, Councilmember Erik Weigand

II. INVOCATION – Mayor O’Neill

III. PLEDGE OF ALLEGIANCE – Councilmember Avery

IV. PUBLIC COMMENTS

Miles Patricola voiced frustration with posts about him on social media during the election and asked for political rhetoric to be toned down.

Adam Leverenz suggested that the Council consider greater flexibility regarding occupancy limits in relation to Item 10 (Affordable Housing Loan Agreement to American Family Housing for the Travelodge North Homekey Project at 1400 Bristol Street, Costa Mesa).

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

Councilmember Grant:

- Recognized the Newport Beach Police Department (NBPD) for solving both a long-standing cold case and a more recent significant crime
- Thanked the community, local Chambers of Commerce, and local businesses for their participation in upcoming holiday events

Mayor Pro Tem Stapleton:

- Wished Fire Chief Boyles a happy birthday
- Attended the Restoration Hardware Grand Opening Party, Corona del Mar (CdM) Christmas Walk, and Boat Parade

VI. PUBLIC COMMENTS ON CONSENT CALENDAR

Jim Mosher recommended not changing the term of Finance Committee members in Item 5 (Amending the Term for Finance Committee Members) and suggested establishing a written commitment for landscaping upkeep on the private property noted in Items 7 (Approval of Reimbursement Agreement with Cameo Community Association for East Coast Highway Beautification) and 8 (East Coast Highway Beautification – Shore Cliffs Landscaping).

VII. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. Minutes for the November 12, 2024 and November 19, 2024 City Council Meetings

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

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. 2024-29: Amending Title 21 (Local Coastal Implementation Plan) of the Newport Beach Municipal Code Related to the Lido House Hotel Site (PA2020-068)**
- a) Find this action is consistent with the California Environmental Quality Act (CEQA). Pursuant to Section 15062 of the CEQA Guidelines, the changes authorized under the project are not substantial, as they do not involve new significant effects or a substantial increase in the severity of previously identified significant effects, and therefore, a subsequent Environmental Impact Report (EIR) does not need to be prepared; and
 - b) Conduct second reading and adopt Ordinance No. 2024-29, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting a Local Coastal Program Amendment to Change the Development Limit Specified for the Lido House Hotel Located at 3300 Newport Boulevard and 475 32nd Street (PA2020-068).*

Councilmember Blom recused himself from Item 3 due to real property interest conflicts.

4. **Ordinance Nos. 2024-30 to 2024-32: Establishing a Development Impact Fee Program (PA2021-127)**
- a) Determine the adoption of these ordinances is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2), 15060(c)(3), 15273, and 15378(b)(4) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
 - b) Conduct second reading and adopt Ordinance No. 2024-30, *An Ordinance of the City Council of the City of Newport Beach, California, Repealing and Replacing Chapter 14.33 (Water and Sewer Capital Improvement Fee) to the Newport Beach Municipal Code Authorizing Collection of Development Impact Fees for Water and Sewer Service Facilities*, including the amended exhibit;
 - c) Conduct second reading and adopt Ordinance No. 2024-31, *An Ordinance of the City Council of the City of Newport Beach, California, Adding Chapter 15.43 (Recreation Facilities Improvement Fee) to the Newport Beach Municipal Code Authorizing Collection of Development Impact Fees for Recreation Facilities*; and
 - d) Conduct second reading and adopt Ordinance No. 2024-32, *An Ordinance of the City Council of the City of Newport Beach, California, Adding Chapter 15.44 (Public Safety Development Impact Fee) to the Newport Beach Municipal Code Authorizing Collection of Development Impact Fees for Police and Fire Service Facilities.*

RESOLUTION FOR ADOPTION

5. **Resolution No. 2024-91: Amending the Term for Finance Committee Members to Provide that any Seat on the Finance Committee Held by a Councilmember or the Councilmember's Citizen Appointee is Automatically Vacated Once the Councilmember is No Longer a Member of the City Council**
- 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) Adopt Resolution No. 2024-91, *A Resolution of the City Council of the City of Newport Beach, California, Amending the Term for Finance Committee Members to Provide that any Seat on the Finance Committee Held by a Councilmember or the Councilmember's Citizen Appointee is Automatically Vacated Once the Councilmember is No Longer a Member of the City Council.*

CONTRACTS AND AGREEMENTS

6. **Newport Coast Pickleball Courts (Project No. 22P13) – Notice of Completion for Contract No. 9018-2**
- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project.

- 7. Approval of Reimbursement Agreement with Cameo Community Association for East Coast Highway Beautification (C-9804-1)**
- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (h) (rehabilitation of existing landscape) 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; and
 - b) Approve a Reimbursement Agreement with the Cameo Community Association for Irrigation and Landscape Improvements in the City of Newport Beach and authorize the Mayor and City Clerk to execute the agreement.

Councilmember Kleiman recused herself from Item 7 due to potential financial benefit conflicts.

- 8. East Coast Highway Beautification – Shore Cliffs Landscaping (C-9805-1)**
- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (h) (rehabilitation of existing landscape) 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; and
 - b) Authorize the expense for landscape and irrigation improvements of up to \$125,000 within the public right-of-way and on the private properties located at 301, 321, 341 and 345 Evening Canyon Road.

Councilmember Kleiman recused herself from Item 8 due to potential financial benefit conflicts.

- 9. Purchase of 2025 North Star 234-5 Command Vehicle**
- 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 the selection and purchase of a 2025 North Star 234-5 Command Vehicle, from Braun Northwest Inc., using cooperative selection and pricing under H-GAC agreement #AM10-23, and authorize the City Manager to execute a purchase order in the amount of \$382,625.42.

10. Pulled from the Consent Calendar

- 11. Amendment No. Four to the Professional Services Agreement with Psomas for Environmental Services Related to the Newport Village Mixed-Use Project (PA2022-0166) (C-8605-1A)**
- 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. Four to the Professional Services Agreement with Psomas for Environmental Impact Report for Newport Village Mixed-Use Development to extend the termination date to December 31, 2025, and authorize the Mayor and City Clerk to execute the Amendment.

MISCELLANEOUS

- 12. Planning Commission Action Report for the November 21, 2024 Meeting and Agenda for the December 5, 2024 Meeting**
Receive and file.

- 13. First Quarter Budget Update**
- 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 Budget Amendment No. 25-024, adjusting revenue estimates and expenditure appropriations as outlined in the report; and
- c) Receive and file the report of budget amendments for the first quarter.

Motion by Mayor Pro Tem Stapleton, seconded by Councilmember Avery, to approve the Consent Calendar, except for Item 10; and noting the recusal by Councilmember Kleiman to Items 7 and 8 and Councilmember Blom to Item 3, the amendments to Item 1, and the amended exhibit to Ordinance No. 2024-30 (Item 4).

The motion carried unanimously.

VIII. ITEM REMOVED FROM THE CONSENT CALENDAR

10. Affordable Housing Loan Agreement to American Family Housing for the Travelodge North Homekey Project at 1400 Bristol Street, Costa Mesa (C- 9806-1)

Councilmember Kleiman relayed that she has questions and concerns about the agreement terms, especially the practical application of local priorities relative to homelessness and affordable housing, and asked that she and Councilmember Grant work with staff on the tenant plan and final agreement terms.

Noa Tuliau, Policy Fellow at County Supervisor Katrina Foley's office, discussed the Homekey in a Box Program and expressed Supervisor Foley's commitment to working with the City to solve the homelessness crisis.

Motion by Councilmember Kleiman, seconded by Councilmember Grant, to 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) approve Budget Amendment No. 25-047, appropriating \$3,000,000 for increased expenditures in the Permanent Supportive Housing Account No. 01201925-980000-22M15; c) authorize the City Manager to finalize negotiations and authorize the City Manager and City Clerk to execute the Affordable Housing Loan Agreement between the City of Newport Beach and American Family Housing, LLC, to loan \$3,000,000 to convert the property at 1400 Bristol Street, Costa Mesa, into permanent supportive housing, provided the terms of the Agreement are substantially similar with the Agreement attached to the staff report, which terms shall be reviewed and approved by the City Attorney's Office, and to take any other action necessary to implement the Agreement, including, but not limited to, approving and executing additional documents related thereto; and d) allow Councilmember Kleiman and Councilmember Grant to work with staff on finalizing the terms of the agreement.

The motion carried unanimously.

IX. PUBLIC COMMENTS REGARDING CITY COUNCIL REORGANIZATION

Dennis Bress thanked the outgoing members of Council for their service and noted continued efforts to work with the Aviation Committee to have aircrafts flyer high, slower, and quieter.

Noa Tuliau congratulated the newly elected and reelected members of the City Council on behalf of County Supervisor Katrina Foley, expressed gratitude to the outgoing Councilmembers, noted Supervisor Foley's intent to work collaboratively with the City, and provided her contact information. He provided Certificates of Recognition for distribution to the outgoing, newly elected, and reelected Councilmembers.

X. CITY COUNCIL REORGANIZATION

PRESENTATIONS

- **Presentation of Gavel Plaque to Mayor Will O'Neill**

Mayor Pro Tem Stapleton recognized Mayor O'Neill's accomplishments and contributions to the City during his time on Council, displayed photos, and thanked Mayor O'Neill and his family for his service.

Mayor Pro Tem Stapleton presented Mayor O'Neill with a gavel plaque and custom challenge coin holder in recognition of his service as Mayor during 2024.

- **Presentations to Outgoing Councilmembers**

Costa Mesa Mayor John Stephens read and presented a commendation to Mayor O'Neill.

Former Senator Janet Nguyen, 34th District, presented Senate Resolutions to Mayor O'Neill and Councilmember Avery.

Cooper Strull from Assembly Member Diane Dixon's office, 72nd District, presented Certificates of Recognition to Mayor O'Neill and Councilmember Avery.

Councilmember Weigand presented gifts to Mayor O'Neill and Councilmember Avery, and thanked them for their service.

Mayor Pro Tem Stapleton presented commemorative clocks to Mayor O'Neill and Councilmember Avery on behalf of the City.

- **Remarks by Outgoing Councilmembers**

Councilmember Avery noted his eight years of service on Council, stated that it was an honor to serve the citizens of a thriving City, noted collaborative efforts with fellow members of Council, and expressed his gratitude to City Manager Leung and her team, the police and fire departments, and City staff. He stated that he plans to follow the work of the City Council due to his continued interest in the City affairs, and expressed interest in exploring other opportunities to serve. He relayed his gratitude for his wife's emotional support, thanked Will O'Neill for his leadership, and congratulated the new Councilmembers.

Mayor O'Neill thanked his wife Jenny, his children, the voters, Council colleagues, Councilmember Avery, and City staff. He shared the story of Alexis Portillo's request for ADA "wrap around" swings and thanked her for being an example. He stated that the City benefits when citizens help solve problems, noted the honor it has been to recognize the helpers in the community, gifted each Councilmember with custom artwork from M Street Artwork, and extended a blessing to the new Council and the City.

CERTIFICATION OF GENERAL MUNICIPAL ELECTION RESULTS

14. Resolution No. 2024-92: Certification of General Municipal Election Results

City Clerk Brown provided a report and announced that the City's voter turnout was over 82%.

Motion by Councilmember Weigand, seconded by Councilmember Grant, to 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) adopt Resolution No. 2024-92, *A Resolution*

of the City Council of the City of Newport Beach, California, Reciting the Facts of the General Municipal Election held on Tuesday, November 5, 2024, and Declaring the Result and Such Other Matters as Provided by Law.

The motion carried unanimously.

Mayor O'Neill and Councilmember Avery stepped down from the dais.

REORGANIZATION

15. Administration of Oath of Office

City Clerk Brown called reelected Councilmember Noah Blom forward. His wife, Marin, administered the Oath of Office prescribed in the State Constitution, and City Clerk Brown presented a Certificate of Election to Councilmember Blom.

City Clerk Brown called newly elected Councilmember Michelle Barto forward. Former Mayor Will O'Neill administered the Oath of Office prescribed in the State Constitution, and City Clerk Brown presented a Certificate of Election to Councilmember Barto.

City Clerk Brown called the newly elected Councilmember Sara J. Weber forward. Former Mayor Will O'Neill administered the Oath of Office prescribed in the State Constitution, and City Clerk Brown presented a Certificate of Election to Councilmember Weber.

16. Election of Mayor

City Clerk Brown, in presiding, placed all members of the City Council on an equal basis to nominate and elect.

Councilmember Kleiman nominated Councilmember Stapleton for the position of Mayor.

Motion by Councilmember Grant, seconded by Councilmember Barto, to close nominations.

The motion carried unanimously.

Councilmember Stapleton was selected unanimously as the Mayor of the City of Newport Beach for 2024-2025 and took his place at the Council dais.

17. Election of Mayor Pro Tem

Mayor Stapleton, in presiding, placed all members of the City Council on an equal basis to nominate and elect.

Councilmember Blom nominated Councilmember Kleiman for the position of Mayor Pro Tem.

Motion by Councilmember Blom, seconded by Mayor Stapleton, to close nominations.

The motion carried unanimously.

Councilmember Kleiman was selected unanimously as the Mayor Pro Tem of the City of Newport Beach for 2024-2025 and took her place at the Council dais.

18. Seating Arrangements for City Council

Councilmembers decided on the seating arrangement for the Council dais pursuant to City Council Policy A-1. The following seating order was determined (left to right):

Noah Blom - Sara J. Weber - Lauren Kleiman - Joe Stapleton - Robyn Grant - Michelle Barto - Erik Weigand

19. Remarks

Elected Councilmember Remarks:

Councilmember Blom thanked his wife and shared that he got involved in the City to make a difference, expressed gratitude for his colleagues, thought that Newport Beach had the greatest Council, and looked forward to taking care of City staff, especially the firefighters, police officers, and lifeguards.

Councilmember Barto expressed her gratitude for being part of the City, the public support she received, and her family, and looked forward to serving on Council.

Councilmember Weber thanked Will O'Neill and Brad Avery for their service and keeping Newport Beach the best City in the world. She also thanked her friends, the voters, her husband, her parents, and her daughters, and extended congratulations to Mayor Stapleton and Mayor Pro Tem Kleiman.

New Mayor Remarks:

Mayor Stapleton thanked former Mayors O'Neill and Avery for their service to the community, relayed Newport Beach's uniqueness, acknowledged his mentors, expressed his sincere gratitude, thanked the voters and his colleagues for their trust in him, and noted that he appreciated working with a group of leaders working towards a common goal. He recognized that this was the first female majority City Council in the history of Newport Beach and thanked his friends, family, and his wife, Julie. He announced his 2025 theme as Mayor to be "Celebrate Newport." He relayed a plan to recognize the past, present, and future contributors to the City and spoke on initiatives that support public safety, technology, community infrastructure, transportation, trash collection, future leadership development, collaboration, celebration, growth, and community.

XI. PUBLIC COMMENTS

Jim Mosher suggested that new members of the City Council read through the Consent Calendar and suggested adding the City Council meeting location to the resolution for Item 20 (Resolution No. 2024-93: Setting City Council Regular Meeting Dates for Calendar Year 2025). He also asked Council to consider a City Council meeting start time that is convenient for more members of the public to attend.

Craig Sheets utilized a presentation to discuss offshore oil wells, weapon storage, stack freight containers, oil tankers, children from other countries learning to use weapons, and the sun.

Supervisor Don Wagner, 3rd District, extended his support to the City and congratulated Council.

Huntington Beach Councilmember Tony Strickland congratulated Mayor Stapleton, Mayor Pro Tem Kleiman, Councilmember Weber, Councilmember Barto, and former Mayor O'Neill, and expressed his excitement to work with the City.

XII. MATTERS WHICH COUNCIL MEMBERS HAVE ASKED TO BE PLACED ON A FUTURE AGENDA

- **Consider directing City staff to make a recommendation to the City Council regarding a new ordinance designating portions of Corona del Mar, including, but not limited to, Pirate's Cove, Corona del Mar State Beach, Little Corona del Mar Beach, Ocean Boulevard, and the surrounding neighborhoods, as a Safety Enhancement Zone for the 4th of July holiday weekend, and at other times deemed appropriate [Kleiman]**

Council unanimously concurred to bring the matter back at a future meeting.

- **Consider creating an ad hoc committee to review and make recommendations for revisions to the City Council Policy Manual [Kleiman]**

Mayor Stapleton, Mayor Pro Tem Kleiman, and Councilmembers Barto, Blom, Grant, and Weber concurred to bring the matter back at a future meeting.

XIII. CONSENT CALENDAR

RESOLUTION FOR ADOPTION

20. Resolution No. 2024-93: Setting City Council Regular Meeting Dates for Calendar Year 2025

Councilmember Weigand requested a change to the April 2025 dates to April 15 and April 29, 2025.

Motion by Councilmember Weigand, seconded by Councilmember Grant, to 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) adopt amended Resolution No. 2024-93, *A Resolution of the City Council of the City of Newport Beach, California, Setting the Time and Dates of City Council Regular Meetings for Calendar Year 2025.*

The motion carried unanimously.

XIV. MOTION FOR RECONSIDERATION – None

XV. ADJOURNMENT – 6:57 p.m.

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 on December 5, 2024, at 4:00 p.m.

**Joe Stapleton
Mayor**

**Leilani I. Brown
City Clerk**

January 14, 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 III.B CONFERENCE WITH REAL PROPERTY NEGOTIATORS

This appears to be at least the tenth time a closed session has been announced for the Council to privately discuss “price and terms of payment” regarding public right-of-way adjacent to the identical properties, the first announcement having been as [Item IV.A](#) on February 23, 2021. And the only change has been the initial “*approximately 845 square feet*” increasing to the “*approximately 1,105 square feet*” when it came back as [Item IV.A](#) on November 12, 2024.

And while the purpose of the announcement is, in theory, to invite public comment to guide the Council in its decision, at no time has there been any public disclosure of why a sale or lease is being considered. This may be contrasted with earlier, more transparent announcements, for example [Item IV.C](#) from July 26, 2011, where it was at least disclosed that “price and terms of payment” needed to be discussed “*with respect to resolution of boundary dispute between Tidelands and Uplands.*”

Why is public property in play adjacent to 929 Zurich Circle and 944 Via Lido Nord?

Item 1. Minutes for the December 10, 2024 City Council Meeting

The passages shown in *italics* below are from the [draft minutes](#) with suggested corrections shown in ***strikeout underline*** format. The page numbers refer to Volume 66.

Page 220, Item IX, paragraph 1: “*Dennis Bress thanked the outgoing members of Council for ~~their~~ service and noted continued efforts to work with the Aviation Committee to have ~~aircrafts flyer high aircraft fly higher~~, slower, and quieter.*”

[See [video](#). “[Aircraft](#)” is recognized as a noun that does not require an “s” to make it plural, and Mr Bress did not add one. Similarly, he add “er” to “high” not “fly.”]

Page 222, Item 15 (Administration of Oath of Office):

“His wife, Marin, administered the Oath of Office ...”

“Former Mayor Will O’Neill administered the Oath of Office ...”

[**Comment:** I am not much of a believer in loyalty oaths, but it does seem reasonable for citizens to have some assurance those elected to office are committed to upholding the rules under which governments are expected to operate. Indeed, the [first page](#) of the official minutes of our City Council begins with Notary Public Clyde Bishop administering the Oath of Office¹ to the five newly-elected trustees at their first meeting on September 3, 1906.

¹ The oath, in Article XX, Section 3 of the [California Constitution at that time](#) consisted solely of: “*I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of _____, according to the best of my ability.*”

Since then, through [2012](#), it seems to have been the invariable practice for the City Clerk to administer the oaths. However, in [2014](#), with the election of “Team Newport,” Orange County Superior Court Judge [James E. Rogan](#) administered the oaths. And after that, a variety of judges continued to perform this role with the exception of [2020](#), when former Mayor Evelyn Hart administered the oath to re-elected Council Member Brad Avery, and [2022](#), when former Mayor Steve Rosansky administered the oath to newly-elected Council Member Robyn Grant.

This new practice of having the oath of office administered by private citizens who, whether former elected officials or not, do not seem authorized by law to do so,² seems a bit like attending a wedding at which a private party administers the vows while the minister, judge or government clerk sits to the side as an observer rather than a participant.

It seems strange to me. Is it a new trend?³]

Item XIII. PUBLIC COMMENTS ON CONSENT CALENDAR

Since I believe this may be a first in the City’s history, it seems noteworthy that the public portion of the current agenda contains no items requiring a Council decision other than those on the Consent Calendar.⁴

As a result those watching the meeting without access to the agenda will be at loss to know what, if any, City business was conducted.

It might be noted that Newport Beach didn’t always have a Consent Calendar.

And, as I have noted before, there is at least one other California city, [Benecia](#), where the Mayor reads the titles of the items on the Consent Calendar so that the public at least knows what their Council is consenting to. There are likely others with similar practices. For example, in [Del Mar](#), the City Clerk reads the consent calendar item titles. In both cases, not only the council members, but members of the public are invited to pull items for discussion by their elected representatives. It also appears other cities may be more judicious in what items they place on their consent calendar for approval without discussion.

It seems to me the consent calendar may be overused in Newport Beach, for it seems unlikely none of the seven Council members would have any questions about any of the items on the Consent Calendar, or that all would agree each of those items should be approved exactly as presented. As a result, the public is left with the impression that information is being exchanged,

² In 2022, Krista Weigand administered the oath to newly-elected Council Member Erik Weigand, but she did so as a Trustee of the Newport-Unified School District. The law, [Government Code Sections 1360 - 1369](#), is ambiguous, saying only the oath must be taken “before” a person authorized to administer oaths.

³ For a fee of \$125, the [Santa Cruz County](#) Clerk offers to appoint private citizens 18 or older as “Deputy Commissioner of Marriage for a Day,” authorized to officiate at a specified wedding anywhere in California (as do [Los Angeles County](#), [Nevada County](#), [San Diego County](#) and likely more). [At one time](#), the Orange County Clerk-Recorder offered this service, as well. It is unclear if he still does.

⁴ I recall one or two previous agendas where all the business items were on the consent calendar, but I believe the agenda included either a study session or suggestions for future agenda items, where Council input was solicited.

and decisions made, outside public view. In other words, that the public's business is not being done in public.

Item 4. Resolution Nos. 2025-2 and 2025-3: Amending the General Plan Advisory Committee and the General Plan Update Steering Committee

This seems to me to be an example of the overuse of the consent calendar. As the staff report explains, this is on the agenda because, pursuant to City Council [Policy A-1](#), at the November 19, 2024, meeting, the previous Council voted, without discussion, to bring the subject back at a future meeting “*for discussion and/or action.*” Yet, staff has placed it on the consent calendar, where a specific proposal that has never been publicly discussed is expected to be approved, again without any discussion.

One might think that, at a minimum, before voting the Council members would want to ask about the status of the General Plan Update and its expected timeline. If they did so, they might learn that the entire process is expected to be completed, and the advisory committees dissolved, before the end of the current year.

Given that context, establishing a procedure by which the advisory committees' membership will be reassessed each February seems strange – because there will be no future Februaries other than the coming one.

As to changing the composition *this* February, as a current GPAC member, but commenting as a private citizen, I have seen no reason offered for what seems both unnecessary and disruptive. While the process to date has been a very imperfect one, and could have been better, changing the participants, but not the structure, in the final months hardly seems likely to produce a better result.

On a more technical note, the Council may wish to know how the City Clerk plans to advertise the unscheduled vacancies and how long the application period will be left open. Finding 20 to 30 new members will be difficult, and [Government Code Section 54974](#) requires only that at least 10 working days elapse between the posting and the appointment, but does not seem to say how long the invitation to apply needs to be “open.”

As to the existing members, there seems to be a discrepancy between the proposed resolutions, whose Attachment A's say “*Members who are in good standing at the time their term has expired are eligible for reappointment and **need not reapply***” and the staff report, which says “*As drafted, if a current GPAC or GPUSC member is in good standing **with an application on file that is no more than two years old** at the time of City Council's appointments, there would be no need to submit a new application.*” The City's [GPAC page](#) indicates most of the current members were appointed on November 15, 2022, and its [GPUSC page](#) indicates all three members were appointed on April 12, 2022. All of these people's applications would now be more than two years old, and they would need to reapply according to the staff report, but not according to what would seem to be the plain language of the resolutions. Which is correct?

Additionally, the Council members may wish to discuss whether the rules for achieving geographic and institutional diversity in appointments to the GPAC detailed in the table on page 4-6 of the staff report is still appropriate, and how the table should be used. In particular, many applicants will have multiple affiliations and it is not clear how the limitations to “not more than one” from each “sample” is intended to apply to them.

As to the substance of what the committees do, there is an existing uncertainty in that the GPAC is instructed to make recommendations to the GPUSC, but there is no provision as what the GPUSC is supposed to do with them. Are they obligated to pass them on to the City Council? Or does the GPUSC have veto power over the GPUSC recommendations?

Item 5. Resolution No. 2025-4: Approving an Amendment to the Key and Management Compensation Plan

The staff report (page 5-1) implies the maximum bonus available for scholastic achievement is 8.5%, however the actual proposed language on page 5-6 shows a 7% bonus for achieving the BA/BS level, and a separate 8.5% bonus for the MA/MS/JD level without making it clear if members can qualify for only one or for both. Will that be a problem?

Also shouldn't there be a requirement that the achievement is in a field related to the employee's work?

More generally, the amendment is offered to the Council for approval as a snippet without being able to see the context in which it will occur or the prior language it replaces. Compounding that problem, the public does not seem to be able to easily see or review the current Key & Management Compensation Plan. Instead, on the HR Department's [MOUs & Benefit Summaries](#) page one finds a 2022 version and what seem to be 12 adjustments to it, some of which are not machine searchable, making it particularly challenging to piece together what the current plan is. However, as best I can tell, the (non-machine-readable) [Sixth Amendment](#) made Policy Safety Key & Management employees eligible for the same scholastic achievement benefits as members of the Police Management Association, with language essentially identical to that for Fire Safety Key & Management employees. What was wrong with that? Is Fire Safety Management eligible for a larger benefit than Police Safety Management? If so, how large is the change? And why wouldn't Police Management want the same benefit?

The report does not seem very transparent.

Item 6. Resolution No. 2025-5: Creating the Ad Hoc Council Policy Review Committee

This is another case where, rather than being on the consent calendar, one might think the Council members would want to discuss the matter to give direction to the committee as to the scope of their assignment, and possibly as to who should be on it.

Although I cannot find it mentioned in either the staff report or the proposed resolution, the last comprehensive review of the [Council Policy Manual](#) took place in 2018, and culminated in the massive 338-page [Item 18](#) on the August 8, 2017, agenda, making changes that neither the

public nor the Council members not on the committee had time to thoughtfully consider or review.

I would strongly recommend the present committee be asked to review the policies in more digestible pieces, and through a more public process – including, for example, presentation at a study session at a meeting prior to the meeting at which adoption is proposed.

Item 14. Memorandum of Agreement with the City of Long Beach Acting By and Through the Port of Long Beach Board of Harbor Commissioners Authorizing Disposal of Lower Bay Dredged Material Into the Port's Pier G Slip Fill Project

Part (2) of Condition 8 on page 14-8, causing the Agreement to terminate on “*the commencement of the placement of the Newport Bay Material at a site other than the Project*” seems slightly strange. Does this mean that if any of the “*approximately 225,000 cubic yards of material from the Lower Newport Bay channels*” identified as “*Newport Bay Material*” is found to be suitable for disposal outside the Port of Long Beach, and disposed of at some alternate location, the Port will refuse to accept any more?

Also, if the Port of Long Beach location becomes unavailable before all the unsuitable material has been disposed of, does the City have a plan to construct a smaller CAD than was originally planned? And, finally, how does this Agreement affect the private homeowners who were promised use of the CAD?

Item 15. Planning Commission Agenda for the January 9, 2025 Meeting

Those new to the Council may be wondering why they are receiving a report on the actions of the Planning Commission and not of any of the City's other boards or commissions. Originally, this was not on the consent calendar, but scheduled as a full discussion item. And its purpose, then as now, was to apprise Council members of the Planning Commission's decisions, so they would have a chance to call for review, as allowed, currently, by Municipal Code [Chapter 20.64](#).⁵

In the present case, the Council is receiving reports of two Planning Commission decisions, both of which seem problematic to me.

In the first, the PC approved remodeling of a warehouse as a fitness training facility for exclusive use by students of a neighboring high school, even though the property is designated for industrial uses and other uses “ancillary” or “accessory” to the primary industrial uses. While, as staff indicated, fitness facilities are allowed “by right” in this area, the assumption is they will be serving the needs of the primary industrial users. A facility serving exclusively students from a neighboring district is clearly not supporting the industrial uses. Staff seems to be reading “ancillary” or “accessory” not as “supporting,” but rather as anything that occupies

⁵ One might still wonder why the Council does not receive similar reports regarding decisions by the Harbor Commission, since there is a parallel call for review provision in NBMC [Chapter 17.65](#). Or for decisions of the Parks, Beaches and Recreation Commission, even though the opportunity to review is found only in Council Policies.

less than a majority of the district. To me, that seems clearly not to have been the intent of the code.

In the second hearing, the PC had to deal with a tennis club consisting of two separately-owned parcels, but originally approved and allowed to be subdivided only under the assumption they would be operated together. Without making any changes to that existing permit for the two parcels to operate together, and without seeing any evidence of consent by the owner of one of the parcels, the PC approved a staff-proposed, new, separate permit for the second parcel, allowing it to be used as a separate pickleball facility. The result seems to be both to have caused the other parcel to become landlocked, and to have transferred to it all the entitlements of the original permit. Additionally, it seems quite possible the approval will create land use incompatibilities, with noise from the pickleball activity disturbing future guests at the neighboring hotel and, possibly, residents across Jamboree Road at Sea Island. I took some grief from the Commissioners for suggesting City staff did not have the expertise to independently verify the conclusions of the applicant noise analysis (which nowhere addressed the highly impulsive nature of pickleball noise), but I do believe that to be the case.

Council members may wish to consider calling one of both of these decisions up for review.

Item 16. Confirmation of Nominations to Fill an Unscheduled Vacancy on the Parks, Beaches & Recreation Commission

Since the Council is being asked to “confirm” just two nominations, it would have been helpful to at least list the names of any other citizens who might have applied. It would seem they deserve at least that minimal recognition,⁶ and other Council members may wish to propose adding some of the names from that list.

Item 17. Confirmation of Mayor Joe Stapleton's Appointments

Since this item is scheduled to be adopted without discussion, it presumably involved some non-public discussion of who wanted to serve on what committees. While that is not necessarily illegal, it would seem like a discussion that could better have taken place at the public meeting.

That said, I have, for a number of years, been puzzled by the continuing appointment of a Council member as chair of the [Environmental Quality Affairs Committee](#), especially considering that committee has not met since [August 16, 2016](#) (and before that, on [November 20, 2014](#)) and currently has no members other than the Council appointee (of which there are actually supposed to be two).

I see from the [minutes](#) of the similar [Item 12](#) from January 10, 2023, that I raised the same puzzlement, and that year’s appointee, Mayor Blom, volunteered that “*as Chair of EQAC, he will assess the future of EQAC.*” But as [Item 11](#) on January 9, 2024, he was reappointed as Chair, and, as I [noted](#) then, one might wonder how long the assessment will take? One continues to wonder.

⁶ In other cities, such as Costa Mesa and Laguna Beach, I believe the full council publicly interviews all the applicants before making appointments.



NEWPORT BEACH

City Council Staff Report

January 14, 2025
Agenda Item No. 3

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Leilani I. Brown, City Clerk - 949-644-3005,
lbrown@newportbeachca.gov

PREPARED BY: Leilani I. Brown, City Clerk

TITLE: Resolution No. 2025-1: Updating the List of Designated Employees for 2025 Under the City's Conflict of Interest Code

ABSTRACT:

The City of Newport Beach updates its Conflict of Interest Code annually.

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) Adopt Resolution No. 2025-1, *A Resolution of the City Council of the City of Newport Beach, California, Updating the Appendix of Designated Employees and Appendix of Disclosure Categories of the City of Newport Beach Conflict of Interest Code.*

DISCUSSION:

The City's Conflict of Interest Code was first adopted in 1977 in response to the enactment of the 1974 Political Reform Act (Act). In February 1990, the City updated its Conflict of Interest Code pursuant to Section 18730 of the regulations adopted by the Fair Political Practices Commission. The City's Conflict of Interest Code consists of two basic parts:

1. The body of the code contains the provisions required by Section 87302 of the Act, such as the manner of reporting financial interests and the method to be used by designated positions when they are required to disqualify themselves from making or participating in the making of decisions; and
2. The Appendix to the code lists the positions of those designated employees within the agency who make or participate in the making of decisions which may foreseeably have a material effect on economic interests. It includes the corresponding disclosure categories for each position, specifying which kinds of economic interests are reportable by designated employees in their Statement of Economic Interests.

Prior to the time the Statement of Economic Interests are submitted to the City Clerk on an annual basis, the list of "Designated Employees" is reviewed with the City's department directors to determine if there are additions or deletions that need to be made. The positions on the Designated Employees List (included as Exhibit 1 to Attachment A) were determined in cooperation with the department directors by evaluating each position to determine their job duties and corresponding disclosure categories.

The disclosure categories are listed beside each position and indicate the different financial interests within the City which must be disclosed and reported on each Designated Employee's Statement of Economic Interests depending upon whether the duties involve a broad range of duties or involve specific duties, such as contracting or decisions which might affect real property interests.

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).

ATTACHMENTS:

Attachment A – Resolution No. 2025-1 with Exhibits
Attachment B – Exhibit 1 (redline)

ATTACHMENT A

RESOLUTION NO. 2025-1

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, UPDATING THE APPENDIX OF DESIGNATED EMPLOYEES AND APPENDIX OF DISCLOSURE CATEGORIES OF THE CITY OF NEWPORT BEACH CONFLICT OF INTEREST CODE

WHEREAS, the California Political Reform Act, Government Code Sections 81000 *et seq.* ("Act"), requires every local governmental agency to adopt and promulgate a Conflict of Interest Code;

WHEREAS, the Fair Political Practices Commission ("FPPC") adopted regulations for compliance with the Act under Division 6 of Title 2 of the California Code of Regulations ("Regulations");

WHEREAS, Section 18730 of the Regulations ("Section 18730") provides that incorporation by reference of the terms of Section 18730, along with the designation of employees by position ("Designated Employees") who make or participate in the making of decisions which may foreseeably have a material effect on economic interests, and the formulation of disclosure categories specifying which kinds of economic interests are reportable by Designated Employees in their Statement of Economic Interests, constitute the adoption and promulgation of a Conflict of Interest Code as required by Government Code Section 87300 or the amendment of a Conflict of Interest Code within the meaning of Government Code Section 87306;

WHEREAS, on February 26, 1990, the City Council adopted Resolution No. 90-21, which adopted Section 18730 as provided under the Regulations, along with an appendix of Designated Employees ("Appendix of Designated Employees") and an appendix of Disclosure Categories ("Appendix of Disclosure Categories");

WHEREAS, subsequent to February 26, 1990, the City Council periodically adopted resolutions updating the Appendix of Designated Employees and the Appendix of Disclosure Categories to reflect personnel and staffing position changes;

WHEREAS, California Assembly Bill No. 1170, effective January 1, 2025, amended Government Code Section 87500 to require that all positions designated in Government Code Section 87200 file their Statement of Economic Interests directly with the FPPC using the FPPC's electronic filing system but did not change the existing requirement that the City's Designated Employees and other designated positions file their Statement of Economic Interests directly with the City Clerk; and

WHEREAS, the City Council desires to adopt an updated Appendix of Designated Employees and Appendix of Disclosure Categories to reflect continuing personnel and staffing position changes in effect as of the date of this resolution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newport Beach, California, as follows:

Section 1: The Regulations, as required by Section 18730, are incorporated herein by this reference.

Section 2: The Appendix of Designated Employees, which is attached hereto as Exhibit 1 and incorporated herein by this reference, is hereby adopted and incorporated as part of the City of Newport Beach Conflict of Interest Code.

Section 3: The Appendix of Disclosure Categories, which is attached hereto as Exhibit 2 and incorporated herein by this reference, is hereby adopted and incorporated into the City of Newport Beach Conflict of Interest Code.

Section 4: All previously adopted Appendix of Designated Employees and Appendix of Disclosure Categories are hereby superseded.

Section 5: All positions designated in Government Code Section 87200 shall file their Statement of Economic Interests directly with the FPPC using the FPPC's electronic filing system.

Section 6: With the exception of those positions designated in Government Code Section 87200, all Designated Employees and other positions listed in the Appendix of Designated Employees shall file their Statement of Economic Interests with the City Clerk electronically.

Section 7: The City Clerk is hereby instructed to take all necessary actions to implement compliance with the Regulations, including preparation and distribution of necessary reporting forms and the subsequent filing and recording of all required reports.

Section 8: The recitals provided above are true and correct and are incorporated into the substantive portion of this resolution.

Section 9: 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 10: The City Council finds 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, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 11: This resolution shall take effect immediately upon its adoption by the City Council and the City Clerk shall certify the vote adopting the resolution.

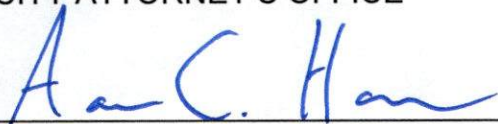
ADOPTED this 14th day of January, 2025.

Joe Stapleton
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachments: Exhibit 1 – 2025 Designated Employees List
Exhibit 2 – Appendix of Disclosure Categories

EXHIBIT 1

EXHIBIT 1

**APPENDIX OF DESIGNATED POSITIONS
(including elected officials and consultants)**

Departments/Positions	Disclosure Categories
City Council	GC §87200
Office of the City Attorney	
City Attorney	GC §87200
Assistant City Attorney	1
Deputy City Attorney	1
Paralegal	2, 3
Office of the City Clerk	
City Clerk	1
Assistant City Clerk	1
Office of the City Manager	
City Manager	GC §87200
Assistant City Manager	1
Deputy City Manager	1
Public Information Manager	1
Management Analyst	2
IT Manager	2
IT Supervisor	2
Community Development Department	
Community Development Director	1
Deputy Community Development Director	1
Systems & Administrator Manager	2
Administrative Analyst	2, 3, 4
Building Division:	
Real Property Administrator	3, 4
Senior Plan Check Engineer	3, 4
Principal Building Inspector	3, 4
Senior Building Inspector	3, 4
Building Inspector II	3, 4
Permit Specialist II	3, 4
Permit Specialist	3, 4
Principal Civil Engineer	3, 4
Senior Civil Engineer	3, 4
Civil Engineer	3, 4
EMS Plans Examiner	3, 4
Principal Engineer	3, 4
Senior Plan Check Engineer	3, 4
Planning Technician	3, 4
Permit Technician II	3, 4
Permit Technician Supervisor	3, 4
Permit Specialist II	3, 4

Department/Positions	Disclosure Categories
Planning Division:	
Planning Manager	1
Principal Planner	1
Senior Planner	2, 3, 4
Associate Planner	2, 3, 4
Assistant Planner	3, 4
Code Enforcement Supervisor	3, 4
Code Enforcement Officer, Senior	3, 4
Code Enforcement Officer I	3, 4
Code Enforcement Officer Trainee	3, 4
Finance Department	
Finance Director/City Treasurer	GC §87200
Deputy Finance Director	1
Revenue Manager	2, 3
Finance Manager	2, 3
Purchasing and Contracts Administrator	2
Senior Accountant	2
Senior Buyer	2
Buyer	2
Fire Department	
Fire Chief	1
Assistant Fire Chief	1
Assistant Fire Chief of Lifeguard Operations	1
EMS Division Chief	1
Fire Marshal	1
EMS Captain	2
Administrative Manager	2
Assistant Management Analyst	2
Deputy Fire Marshal	3, 4
Senior Fire Inspector	3, 4
Senior Fire Inspector	3, 4
Fire Services Coordinator	2
Recreation Coordinator	2
Harbor Department	
Harbormaster/Director	1
Deputy Harbormaster	1
Human Resources Department	
Human Resources Director	1
Human Resources Manager	2
Library Services Department	
Library Services Director	1
Library Services Manager	2
Adult Services Coordinator (Librarian III)	2
Branch and Youth Services Coordinator (Librarian III)	2
Circulation and Technical Processing Coordinator (Librarian III)	2

Department/Positions	Disclosure Categories
Police Department	
Chief of Police	1
Deputy Chief of Police	1
Support Services Administrator	1
Executive Officer to the Chief of Police	2
Support Services Lieutenant	2
Police Fiscal Service/Facility Manager	2
Public Works Department	
Administration and Finance Division:	
Public Works Director	1
Public Works Finance/Administrative Manager	1
Administrative Analyst	2
Analyst	2
Management Specialist	2
Engineering and Transportation Division:	
Deputy Public Works Director/City Engineer – Public Works	1
Administrative Manager	2, 3, 4
Assistant City Engineer	2, 3, 4
City Traffic Engineer	1
Principal Civil Engineer	2, 3, 4
Senior Civil Engineer	2, 3
Senior Civil Engineer-Plan Check	3, 4
Associate Civil Engineer	2
Associate Civil Engineer	3, 4
Associate Civil Engineer-5%	2
Associate Civil Engineer-Plan Check	2, 3, 4
Senior Public Works Inspector	2, 3, 4
Public Works Inspector	2, 3, 4
Public Works Inspector II	2, 3, 4
Senior Engineer	2, 3, 4
Construction Manager	2, 3, 4
Water Conservation Coordinator	3, 4
Municipal Operations Division:	
Deputy Public Works Director – Municipal Operations	1
Assets Maintenance Manager	2, 4
City Arborist	2, 3, 4
Refuse Manager	2, 3, 4
Field Maintenance Manager	2, 3
Parks and Trees Manager	2, 3, 4
Equipment Maintenance Supervisor	2
Facilities Maintenance Supervisor	2, 4
Landscape Maintenance Supervisor	2
Recreation and Senior Services Department	
Recreation and Senior Services Director	1
Deputy Recreation and Senior Services Director	2
Recreation and Senior Services Manager	2

Department/Positions	Disclosure Categories
Utilities Department	
Utilities Director	1
Field Superintendent II	2
Operations Support Superintendent	2
Senior Management Analyst	2

Boards, Commissions and Committees	Disclosure Categories
Boards, Commissions and Committees	
Board of Library Trustees	2
Building and Fire Board of Appeals	3, 4
City Arts Commission	2
Civil Service Board	3
Finance Committee	1
Harbor Commission	3, 4
Parks, Beaches and Recreation Commission	4
Planning Commission	GC §87200
Consultants	1
<p>Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:</p> <p>The Department Director may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Department Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.</p>	

EXHIBIT 2

EXHIBIT 2

APPENDIX OF DISCLOSURE CATEGORIES

CATEGORY	DESCRIPTION OF CATEGORY
GC 87200	Must disclose all personal investments and business positions in business entities, sources of income and interests in real property within Newport Beach.
1	<p>DESIGNATED EMPLOYEES WHOSE DUTIES ARE BROAD AND INDEFINABLE.</p> <p>Must disclose all personal investments and business positions in business entities, sources of income and interests in real property within Newport Beach.</p> <p>CONSULTANTS shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:</p> <p>The Department Director may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Department Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.</p>
2	<p>DESIGNATED EMPLOYEES WHOSE DUTIES INVOLVE CONTRACTING OR PURCHASING.</p> <p>Must disclose investments and business positions in business entities within Newport Beach and income from sources within Newport Beach which manufacture, sell or provide supplies, materials, books, machinery, services, equipment or computer equipment of the type utilized by the City, or utilized by the employee's department.</p>
3	<p>DESIGNATED EMPLOYEES WHOSE DUTIES INVOLVE REGULATORY POWERS.</p> <p>Must disclose all investments and business positions in business entities within Newport Beach, and income from sources within Newport Beach which are subject to the regulatory, permit or licensing authority of the City of Newport Beach.</p>
4	<p>DESIGNATED EMPLOYEES WHOSE DECISIONS MAY AFFECT REAL PROPERTY INTERESTS.</p> <p>Must disclose investments and business positions in business entities within Newport Beach, and income from sources within Newport Beach which engage in land development, construction or the acquisition or sale of real property, and all interests in real property.</p>
5	<p>POSITIONS WHICH INVOLVE CITY SELF-INSURANCE BENEFITS.</p> <p>Must disclose all interests in real property, investments and business positions in business entities within Newport Beach and sources of income within Newport Beach from:</p> <ol style="list-style-type: none"> a) Persons or entities which provide services, supplies, materials, machinery or equipment of the type utilized by the agency. b) Entities which are engaged in the business of insurance including, but not limited to, insurance companies, carriers, holding companies, underwriters, brokers, solicitors, agents, adjusters, claims managers and actuaries. c) Financial institutions including, but not limited to, banks, savings and loan associations and credit unions. d) Entities or persons who have filed a claim, or have a claim pending, against the agency.

**ATTACHMENT B
EXHIBIT 1**

**APPENDIX OF DESIGNATED POSITIONS
(including elected officials and consultants)**

Departments/Positions	Disclosure Categories
<u>City Council</u>	GC §87200
<u>Office of the City Attorney</u>	
City Attorney	GC §87200
Assistant City Attorney	1
Deputy City Attorney	1
Paralegal	2, 3
<u>Office of the City Clerk</u>	
City Clerk	1
Deputy Assistant City Clerk	1
<u>Office of the City Manager</u>	
City Manager	GC §87200
Assistant City Manager	1
Deputy City Manager	1
Public Information Manager	1
Management Analyst	2
IT Manager	2
IT Supervisor	2
<u>Community Development Department</u>	
Community Development Director	1
Deputy Community Development Director	1
Systems & Administrator Manager	2
Administrative Analyst	2, 3, 4
<u>Building Division:</u>	
Real Property Administrator	3, 4
Senior Plan Check Engineer	3, 4
Principal Building Inspector	3, 4
Senior Building Inspector	3, 4
Building Inspector II	3, 4
Permit Specialist II	3, 4
Permit Specialist	3, 4
Principal Civil Engineer	3, 4
Senior Civil Engineer	3, 4
Civil Engineer	3, 4
EMS Plans Examiner	3, 4
Principal Engineer	3, 4
Senior Plan Check Engineer	3, 4
Planning Technician	3, 4
Permit Technician II	3, 4
Permit Technician Supervisor	3, 4
Permit Specialist II	3, 4

Department/Positions	Disclosure Categories
Planning Division:	
Planning Manager	1
Principal Planner	1
Senior Planner	2, 3, 4
Associate Planner	2, 3, 4
Assistant Planner	3, 4
Code Enforcement Supervisor	3, 4
Code Enforcement Officer, Senior	3, 4
Code Enforcement Officer I	3, 4
Code Enforcement Officer Trainee	3, 4
Finance Department	
Finance Director/City Treasurer	GC §87200
Deputy Finance Director	1
Revenue Manager	2, 3
Finance Manager	2, 3
Purchasing and Contracts Administrator	2
Senior Accountant	2
Senior Buyer	2
Buyer	2
Fire Department	
Fire Chief	1
Assistant Fire Chief	1
Assistant Fire Chief of Lifeguard Operations	1
EMS Division Chief	1
Fire Marshal	1
EMS Captain	2
Administrative Manager	2
Assistant Management Analyst	2
Life Safety Specialist III Deputy Fire Marshal	3, 4
Life Safety Specialist II Senior Fire Inspector	3, 4
Life Safety Specialist I Fire Inspector	3, 4
Fire Services Coordinator	2
Recreation Coordinator	2
Harbor Department	
Harbormaster/Director	1
Deputy Harbormaster	1
Human Resources Department	
Human Resources Director	1
Human Resources Manager	2
Library Services Department	
Library Services Director	1
Library Services Manager	2
Adult Services Coordinator (Librarian III)	2
Branch and Youth Services Coordinator (Librarian III)	2
Circulation and Technical Processing Coordinator (Librarian III)	2

Department/Positions	Disclosure Categories
Police Department	
Chief of Police	1
Deputy Chief of Police	1
Support Services Administrator	1
Executive Officer to the Chief of Police	2
Support Services Lieutenant	2
Police Fiscal Service/Facility Manager	2
Public Works Department	
<i>Administration and Finance Division:</i>	
Public Works Director	1
Public Works Finance/Administrative Manager	1
Administrative Analyst	2
Analyst	2
Management Specialist	2
<i>Engineering and Transportation Division:</i>	
Deputy Public Works Director/City Engineer – Public Works	1
Administrative Manager	2 , 3 , 4
Assistant City Engineer	2 , 3 , 4
City Traffic Engineer	1
Principal Civil Engineer	2 , 3 , 4
Senior Civil Engineer	2 , 3
Senior Civil Engineer-Plan Check	3 , 4
Associate Civil Engineer	2 , 3 , 4
Associate Civil Engineer-5%	2
Associate Civil Engineer-Plan Check	2 , 3 , 4
Senior Public Works Inspector	2 , 3 , 4
Public Works Inspector	2 , 3 , 4
Public Works Inspector II	2 , 3 , 4
Senior Engineer	2 , 3 , 4
Construction Manager	2 , 3 , 4
Water Conservation Coordinator	3 , 4
<i>Municipal Operations Division:</i>	
Deputy Public Works Director – Municipal Operations	1
Assets Maintenance Manager	2 , 4
City Arborist	2 , 3 , 4
Refuse Manager	2 , 3 , 4
Field Maintenance Manager	2 , 3
Parks and Trees Manager	2 , 3 , 4
Equipment Maintenance Supervisor	2
Facilities Maintenance Supervisor	2 , 4
Landscape Maintenance Supervisor	2
Recreation and Senior Services Department	
Recreation and Senior Services Director	1
Deputy Recreation and Senior Services Director	2
Recreation and Senior Services Manager	2

Department/Positions	Disclosure Categories
Utilities Department	
Utilities Director	1
Field Superintendent II	2
Operations Support Superintendent	2
Senior Management Analyst	2

Boards, Commissions and Committees	Disclosure Categories
Boards, Commissions and Committees	
Board of Library Trustees	2
Building and Fire Board of Appeals	3, 4
City Arts Commission	2
Civil Service Board	3
Finance Committee	1
Harbor Commission	3, 4
Parks, Beaches and Recreation Commission	4
Planning Commission	GC §87200
Consultants	1
<p>Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:</p> <p>The Department Director may determine in writing that a particular consultant, although a “designated position,” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. The Department Director’s determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.</p>	



NEWPORT BEACH

City Council Staff Report

January 14, 2025
Agenda Item No. 4

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: Resolution Nos. 2025-2 and 2025-3: Amending the General Plan Advisory Committee and the General Plan Update Steering Committee

ABSTRACT:

For the City Council's consideration is the adoption of resolutions to amend the Rules of Procedures for the General Plan Advisory Committee (GPAC) and the General Plan Update Steering Committee (GPUSC) to include a requirement for members to be appointed and/or reappointed annually. The number of GPAC members would also be revised to include a range from no less than 20 to a maximum of 30.

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. 2025-2, *A Resolution of the City Council of the City of Newport Beach, California, Amending the General Plan Advisory Committee to Update the Membership and Provide for Annual Appointment of Members at the First City Council Meeting Held in February*; and
- c) Adopt Resolution No. 2025-3, *A Resolution of the City Council of the City of Newport Beach, California, Amending the General Plan Update Steering Committee's Term of Membership, Responsibilities and Provide for the Annual Appointment of Members at the First City Council Meeting Held in February*.

DISCUSSION:

On November 19, 2024, former Mayor Will O'Neill requested to amend the resolutions governing the General Plan Advisory Committee (GPAC) and the General Plan Update Steering Committee (GPUSC) to provide for the annual appointment of members at the first meeting in February of each year, pursuant to City Council Policy A-1. The City Council voted unanimously, via a straw poll, in favor of staff returning with an item. At the suggestion of then Mayor Pro Tem Joe Stapleton, it was determined that the item should come back for the City Council's consideration at the first meeting of 2025.

For the City Council's discussion and consideration are resolutions to revise the Rules of Procedures for the GPAC and the GPUSC, requiring annual reappointment of members for those committees. If the City Council adopts the resolutions, the City Clerk would publish the *Notice of Vacancies* for the GPAC and GPUSC to allow for new applications to be filed. As drafted, if a current GPAC or GPUSC member is in good standing with an application on file that is no more than two years old at the time of City Council's appointments, there would be no need to submit a new application.

To further streamline the appointment process and to ensure GPAC membership is confirmed at the first City Council meeting held in February, the resolutions also remove the GPUSC's recommendation of members from the selection process. The mayor or mayor's designee will have discretion to determine the process for selecting GPAC members for the City Council's confirmation.

Since the GPAC is a large group consisting of up to 30 members, it has had a challenge in keeping all members engaged and in good standing. In addition to the annual reappointment, staff is recommending that the GPAC's membership be revised to include a range of between 20 and 30 members. This will serve to clarify that the GPAC can operate with a lesser number of members and will remove the need to constantly fill vacant seats.

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).

ATTACHMENTS:

Attachment A – Resolution No. 2025-2

Attachment B – Resolution No. 2025-3

ATTACHMENT A

RESOLUTION NO. 2025-2

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING THE GENERAL PLAN ADVISORY COMMITTEE TO UPDATE THE MEMBERSHIP AND PROVIDE FOR ANNUAL APPOINTMENT OF MEMBERS AT THE FIRST CITY COUNCIL MEETING HELD IN FEBRUARY

WHEREAS, based on the recommendations of the General Plan Update Steering Committee ("Steering Committee"), on September 13, 2022, the City Council adopted Resolution No. 2022-59, establishing the General Plan Advisory Committee ("GPAC"), to review and help guide the comprehensive Newport Beach General Plan Update;

WHEREAS, GPAC is a relatively large group consisting of up to thirty members who were previously recommended for membership by the Steering Committee and confirmed by the City Council;

WHEREAS, on August 22, 2023, the City Council adopted Resolution No. 2023-51, amending the GPAC by establishing an attendance policy for members; and

WHEREAS, the City Council now desires to amend the GPAC to update the number of members, provide for the annual appointment of members, who will be appointed by the Mayor and confirmed by the City Council, at the first City Council meeting held in February of each year, and revise the term of membership to expire upon the date of the first City Council meeting held in February each year unless reappointed by the City Council.

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

Section 1: The City Council hereby amends the GPAC as set forth in Attachment "A," attached hereto and incorporated herein by this reference.

Section 2: The City Council hereby repeals all previous resolutions related to the GPAC that conflict with this resolution.

Section 3: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 4: 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 5: 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 6: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.


ADOPTED this 14th day of January, 2025.

Joe Stapleton
Mayor

ATTEST:

Leilani I. Brown
City Clerk

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



Aaron C. Harp
City Attorney

Attachment "A" - General Plan Advisory Committee (GPAC)

Attachment "A"

General Plan Advisory Committee (GPAC)

- AUTHORIZATION:** Established by Resolution No. 2022-59 adopted on September 13, 2022; amended by Resolution No. 2023-51 adopted on August 22, 2023; amended by Resolution No. 2025-__ adopted on January 14, 2025.
- MEMBERSHIP:** No less than twenty (20) and up to thirty (30) members consistent with the composition set forth below. Members will be annually appointed by the Mayor and confirmed by the City Council at the first City Council meeting held in February of each year.
- TERM:** GPAC membership shall expire upon the date of the first City Council meeting held in February each year unless reappointed by the City Council. Members who are in good standing at the time their term has expired are eligible for reappointment and need not reapply.
- MEETINGS:** GPAC meetings will be held as necessary. All meetings shall be held in such locations and at such dates and times consistent with the Ralph M. Brown Act.
- COMPOSITION OF APPOINTED MEMBERS:** All members shall be Newport Beach residents and shall not be members of the City Council. The City Council seeks membership representing a diversity of geographic areas, age groups, business interests, or other interests. The appointments shall follow the guidelines below:

Category	Number	Sample Organizations / Interests
City Boards, Commissions, or Committees	Not more than one (1) member from each sample for a maximum of six (6) members	Including, but not limited to, City Arts Commission, Board of Library Trustees, Harbor Commission, Parks, Beaches & Recreation Commission, Planning Commission, Water Quality/Coastal Tidelands Committee, Aviation Committee, etc.
Non-City Boards, Commissions, or Committees	Not more than one (1) member from each sample for a maximum of four (4) members	Including, but not limited to Friends of OASIS, Newport Mesa Unified School District, Newport Beach historical society, Newport Beach Fire Safe Council, etc.
Environmental interest groups	Not more than one (1) member from each sample for a maximum of three (3) members	Including, but not limited to Still Protecting Our Newport (SPON), Surfrider, Newport Banning Ranch Conservancy, Sierra Club, Coastkeeper, etc.
Business interest groups	Not more than one (1) member from each sample for maximum of three (3) members	Including, but not limited to Newport Beach Chamber of Commerce, CDM Chamber of Commerce, the Balboa Chamber, Visit Newport Beach, Building Industry Association of Southern California (BIA), merchants associations, etc.
At-large members with a diversity of representation	Up to fourteen (14) members	Including, but not limited to interested residents or property owners (at least one from each Council District), community association representatives, private school operators, faith-based organizations, community service providers, major employers, large landowners, etc.
	Maximum of thirty (30) members	

SELECTION OF APPOINTED MEMBERS:

Except as otherwise required by state law, the Mayor (or his/her designee) shall have the discretion to determine the process for selecting GPAC members and shall not be required to form an "ad-hoc appointments committee" or comply with the procedural or timing requirements set forth in Council Policy A-2. GPAC members serve at the pleasure of the City Council.

MEMBER ATTENDANCE:

Any one member who has three (3) consecutive unexcused absences from a regular GPAC meeting shall be deemed automatically removed from the GPAC.

PURPOSE & RESPONSIBILITIES:

- A. Ensure there is sufficient stakeholder input regarding the update to the City of Newport Beach General Plan ("General Plan Update");
- B. Review and provide guidance to City staff and its consultant(s) on changes to General Plan goals and/or policies as part of the update process that are deemed necessary or advisable to reflect the community's vision for the City; and
- C. Make recommendations to the General Plan Update Steering Committee regarding changes to General Plan goals and/or policies.

EXPIRATION:

The GPAC shall expire and sunset without further action by the City Council upon adoption of the General Plan Update or sooner if dissolved by the City Council.

Attachment "A"

General Plan Advisory Committee (GPAC)

- AUTHORIZATION:** Established by Resolution No. 2022-59 adopted on September 13, 2022; amended by Resolution No. 2023-51 adopted on August 22, 2023; amended by Resolution No. 2025- adopted on January 14, 2025.
- MEMBERSHIP:** No less than twenty (20) and Up to thirty (30) members consistent with the composition set forth below. Members will be annually recommended by the General Plan Update Steering Committee ("Steering Committee") appointed by the Mayor and confirmed by the City Council at the first City Council meeting held in February of each year.
- TERM:** GPAC membership shall be for_ expire upon the date of the first City Council meeting held in February each year unless reappointed by the City Councilthe duration of the General Plan Update process concluding with the City Council adoption of the comprehensive update of the General Plan or dissolution of the GPAC by City Council action. Members who are in good standing at the time their term has expired are eligible for reappointment and need not reapply.
- MEETINGS:** GPAC meetings will be held as necessary. All meetings shall be held in such locations and at such dates and times consistent with the Ralph M. Brown Act.
- COMPOSITION OF APPOINTED MEMBERS:** All members shall be Newport Beach residents and shall not be members of the City Council. The Steering Committee and City Council seeks membership representing a diversity of geographic areas, age groups, business interests, or other interests. The appointments shall follow the guidelines below:

Category	Number	Sample Organizations / Interests
City Boards, Commissions, or Committees	Not more than one (1) member from each sample for a maximum of six (6) members	Including, but not limited to, City Arts Commission, Board of Library Trustees, Harbor Commission, Parks, Beaches & Recreation Commission, Planning Commission, Water Quality/Coastal Tidelands Committee, Aviation Committee, etc.
Non-City Boards, Commissions, or Committees	Not more than one (1) member from each sample for a maximum of four (4) members	Including, but not limited to Friends of OASIS, Newport Mesa Unified School District, Newport Beach historical society, Newport Beach Fire Safe Council, etc.
Environmental interest groups	Not more than one (1) member from each sample for a maximum of three (3) members	Including, but not limited to Still Protecting Our Newport (SPON), Surfrider, Newport Banning Ranch Conservancy, Sierra Club, Coastkeeper, etc.
Business interest groups	Not more than one (1) member from each sample for maximum of three (3) members	Including, but not limited to Newport Beach Chamber of Commerce, CDM Chamber of Commerce, the Balboa Chamber, Visit Newport Beach, Building Industry Association of Southern California (BIA), merchants associations, etc.
At-large members with a diversity of representation	Up to fourteen (14) members	Including, but not limited to interested residents or property owners (at least one from each Council District), community association representatives, private school operators, faith-based organizations, community service providers, major employers, large landowners, etc.
	Maximum of thirty (30) members	

SELECTION OF APPOINTED MEMBERS:

~~The Steering Committee will review all applications to serve on the GPAC and will finalize~~

~~appointment recommendations at a duly noticed public meeting. The Steering Committee Except as otherwise required by state law, the Mayor (or his/her designee) shall have the discretion to determine the process for selecting GPAC members and shall not be required to form an "ad-hoc appointments committee" or~~ comply with the procedural or timing requirements set forth in Council Policy A-2. ~~The Steering Committee membership recommendations will include a separate recommendation for Chair and Vice Chair and will be provided to the City Council for consideration and confirmation.~~ GPAC ~~M~~m members serve at the pleasure of the City Council.

MEMBER ATTENDANCE:

Any one member who has three (3) consecutive unexcused absences from a regular GPAC meeting shall be deemed automatically removed from the GPAC.

PURPOSE & RESPONSIBILITIES:

- A. Ensure there is sufficient stakeholder input regarding the update to the City of Newport Beach General Plan ("General Plan Update");
- B. Review and provide guidance to City staff and its consultant(s) on changes to General Plan goals and/or policies as part of the update process that are deemed necessary or advisable to reflect the community's vision for the City; and
- C. Make recommendations to the General Plan Update Steering Committee regarding changes to General Plan goals and/or policies.

EXPIRATION:

The GPAC shall expire and sunset without further action by the City Council upon adoption of the General Plan Update or sooner if dissolved by the City Council.

Attachment B

Resolution Amending the GPUSC

RESOLUTION NO. 2025- 3

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING THE GENERAL PLAN UPDATE STEERING COMMITTEE'S TERM OF MEMBERSHIP, RESPONSIBILITIES AND PROVIDE FOR THE ANNUAL APPOINTMENT OF MEMBERS AT THE FIRST CITY COUNCIL MEETING HELD IN FEBRUARY

WHEREAS, on January 25, 2022, the City Council adopted Resolution No. 2022-2, establishing a General Plan Update Steering Committee ("GPUSC") to ensure sufficient public outreach and stakeholder input on the development and implementation of the City's General Plan, provide guidance with respect to selection of a General Plan update consultant, and make recommendations for the formation of, and provide oversight to, a General Plan Advisory Committee;

WHEREAS, based on the recommendation of the GPUSC, on September 13, 2022, the City Council adopted Resolution No. 2022-59, establishing the General Plan Advisory Committee; and

WHEREAS, the City Council now desires to amend the GPUSC to modify the GPUSC's responsibilities, provide for the annual appointment of members at the first City Council meeting held in February of each year, and revise the term of membership to expire upon the date of the first City Council meeting held in February each year unless reappointed by the City Council.

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

Section 1: The City Council hereby amends the GPUSC as set forth in Attachment "A," attached hereto and incorporated herein by this reference.

Section 2: The City Council hereby repeals all previous resolutions related to the GPUSC that conflict with this resolution.

Section 3: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 4: 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 5: 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 6: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

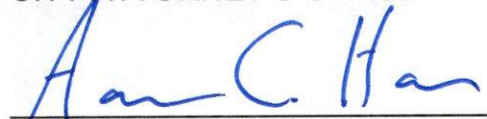
ADOPTED this 14th day of January, 2025.

Joe Stapleton
Mayor

ATTEST:

Leilani I. Brown
City Clerk

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



Aaron C. Harp
City Attorney

Attachment "A" - General Plan Update Steering Committee (GPUSC)

Attachment "A"

General Plan Update Steering Committee (GPUSC)

AUTHORIZATION: Established by Resolution No. 2022-2 adopted on January 25, 2022; amended by Resolution No. 2025-__ adopted on January 14, 2025.

MEMBERSHIP: Three (3) members that meet the qualifications set forth below. Appointed annually by the Mayor and confirmed by the City Council at the first City Council meeting held in February of each year.

TERM: GPUSC membership shall expire upon the date of the first City Council meeting held in February each year unless reappointed by the City Council. Members who are in good standing at the time their term has expired are eligible for reappointment and need not reapply.

MEETINGS: GPUSC meetings shall be held as required by the business needs of the GPUSC in such locations, dates and times as allowed by the Ralph M. Brown Act.

QUALIFICATIONS OF APPOINTED MEMBERS: Appointed GPUSC members shall be:

- A. A resident of the City of Newport Beach;
- B. A registered voter of the City of Newport Beach; and
- C. Not be a member of the Newport Beach City Council.

SELECTION OF APPOINTED MEMBERS: Except as otherwise required by state law, the Mayor (or his/her designee) shall have the discretion to determine the process for selecting GPUSC members and shall not be required to form an "ad-hoc appointments committee" or comply with any other procedural or timing requirements set forth in Council Policy A-2. GPUSC members serve at the pleasure of the City Council

**PURPOSE &
RESPONSIBILITIES:**

- A. Ensure there is sufficient public outreach and stakeholder input regarding the update to the City of Newport Beach General Plan (“General Plan Update”);
- B. Provide guidance to City staff regarding the scope of work and preparation of a Request for Proposal for a General Plan Update consultant;
- C. Review responses to the Request for Proposal;
- D. Make a recommendation to the City Council regarding the selection of a consultant to assist with the General Plan Update;
- E. Provide oversight and direction to the General Plan Advisory Committee to ensure the overall General Plan Update process stays on task; and
- F. Make reports to the City Council, at least bi-monthly, regarding the progress of the General Plan Update.

EXPIRATION:

The GPUSC shall expire and sunset without further action by the City Council upon adoption of the General Plan Update or sooner if acted upon by the City Council.

Attachment "A"

General Plan Update Steering Committee (GPUSC)

AUTHORIZATION: Established by Resolution No. 2022-2 adopted on January 25, 2022; amended by Resolution No. 2025-adopted on January 14, 2025.

MEMBERSHIP: Three (3) members that meet the qualifications set forth below. Appointed annually by the Mayor and confirmed by the City Council at the first City Council meeting held in February of each year.

TERM: ~~The term of the Committee Members~~GPUSC membership shall ~~be~~ expire upon the date of the first City Council meeting held in February each year unless reappointed by the City Council indefinite pending City Council adoption of the General Plan Update. Members who are in good standing at the time their term has expired are eligible for reappointment and need not reapply.

MEETINGS: GPUSC Mmeetings shall be held as required by the business needs of the GPUSCCommittee in such locations, dates and times as allowed by the Ralph M. Brown Act.

QUALIFICATIONS OF APPOINTED MEMBERS:

~~_____~~Appointed ~~Committee~~ GPUSC ~~M~~members shall be:

- A. A resident of the City of Newport Beach;
- B. A registered voter of the City of Newport Beach; and
- C. Not be a member of the Newport Beach City Council.

SELECTION OF APPOINTED

MEMBERS:

Except as otherwise required by state law, the Mayor (or his/her designee) shall have the discretion to determine the process for selecting GPUSC Committee Members and shall not be required to form an “ad-hoc appointments committee” or comply with any other procedural or timing requirements set forth in Council Policy A-2. GPUSC members serve at the pleasure of the City Council

PURPOSE & RESPONSIBILITIES:

- _____ A. Ensure there is sufficient public outreach and
-stakeholder input regarding the update to the City of Newport Beach General Plan (“General Plan Update”);
- _____ B. Provide guidance to City staff regarding the scope of work and preparation of a Request for Proposal for a General Plan Update consultant;
- _____ C. Review responses to the Request for Proposal;
- _____ D. Make a recommendation to the City Council regarding the selection of a consultant to assist with the General Plan Update;
- ~~_____ E. Provide a recommendation to the City Council on the formation and membership of a subsequent General Plan Update Advisory Committee (“Advisory Committee”) that will help guide policy changes with the General Plan Update;~~
- _____ FE. Provide oversight and direction to the General Plan Advisory Committee to ensure the

overall General Plan Update process stays on task; and

~~GF.~~ Make reports to the City Council, at least bi-monthly, regarding the progress of the General Plan Update.

EXPIRATION:

The ~~Committee~~ GPUSC shall expire and sunset without further action by the City Council upon adoption of the General Plan Update or sooner if acted upon by the City Council.

January 14, 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 III.B CONFERENCE WITH REAL PROPERTY NEGOTIATORS

This appears to be at least the tenth time a closed session has been announced for the Council to privately discuss “price and terms of payment” regarding public right-of-way adjacent to the identical properties, the first announcement having been as [Item IV.A](#) on February 23, 2021. And the only change has been the initial “*approximately 845 square feet*” increasing to the “*approximately 1,105 square feet*” when it came back as [Item IV.A](#) on November 12, 2024.

And while the purpose of the announcement is, in theory, to invite public comment to guide the Council in its decision, at no time has there been any public disclosure of why a sale or lease is being considered. This may be contrasted with earlier, more transparent announcements, for example [Item IV.C](#) from July 26, 2011, where it was at least disclosed that “price and terms of payment” needed to be discussed “*with respect to resolution of boundary dispute between Tidelands and Uplands.*”

Why is public property in play adjacent to 929 Zurich Circle and 944 Via Lido Nord?

Item 1. Minutes for the December 10, 2024 City Council Meeting

The passages shown in *italics* below are from the [draft minutes](#) with suggested corrections shown in ***strikeout underline*** format. The page numbers refer to Volume 66.

Page 220, Item IX, paragraph 1: “*Dennis Bress thanked the outgoing members of Council for ~~their~~ service and noted continued efforts to work with the Aviation Committee to have ~~aircrafts flyer high aircraft fly higher~~, slower, and quieter.*”

[See [video](#). “[Aircraft](#)” is recognized as a noun that does not require an “s” to make it plural, and Mr Bress did not add one. Similarly, he add “er” to “high” not “fly.”]

Page 222, Item 15 (Administration of Oath of Office):

“His wife, Marin, administered the Oath of Office ...”

“Former Mayor Will O’Neill administered the Oath of Office ...”

[**Comment:** I am not much of a believer in loyalty oaths, but it does seem reasonable for citizens to have some assurance those elected to office are committed to upholding the rules under which governments are expected to operate. Indeed, the [first page](#) of the official minutes of our City Council begins with Notary Public Clyde Bishop administering the Oath of Office¹ to the five newly-elected trustees at their first meeting on September 3, 1906.

¹ The oath, in Article XX, Section 3 of the [California Constitution at that time](#) consisted solely of: “*I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of _____, according to the best of my ability.*”

Since then, through [2012](#), it seems to have been the invariable practice for the City Clerk to administer the oaths. However, in [2014](#), with the election of “Team Newport,” Orange County Superior Court Judge [James E. Rogan](#) administered the oaths. And after that, a variety of judges continued to perform this role with the exception of [2020](#), when former Mayor Evelyn Hart administered the oath to re-elected Council Member Brad Avery, and [2022](#), when former Mayor Steve Rosansky administered the oath to newly-elected Council Member Robyn Grant.

This new practice of having the oath of office administered by private citizens who, whether former elected officials or not, do not seem authorized by law to do so,² seems a bit like attending a wedding at which a private party administers the vows while the minister, judge or government clerk sits to the side as an observer rather than a participant.

It seems strange to me. Is it a new trend?³]

Item XIII. PUBLIC COMMENTS ON CONSENT CALENDAR

Since I believe this may be a first in the City’s history, it seems noteworthy that the public portion of the current agenda contains no items requiring a Council decision other than those on the Consent Calendar.⁴

As a result those watching the meeting without access to the agenda will be at loss to know what, if any, City business was conducted.

It might be noted that Newport Beach didn’t always have a Consent Calendar.

And, as I have noted before, there is at least one other California city, [Benecia](#), where the Mayor reads the titles of the items on the Consent Calendar so that the public at least knows what their Council is consenting to. There are likely others with similar practices. For example, in [Del Mar](#), the City Clerk reads the consent calendar item titles. In both cases, not only the council members, but members of the public are invited to pull items for discussion by their elected representatives. It also appears other cities may be more judicious in what items they place on their consent calendar for approval without discussion.

It seems to me the consent calendar may be overused in Newport Beach, for it seems unlikely none of the seven Council members would have any questions about any of the items on the Consent Calendar, or that all would agree each of those items should be approved exactly as presented. As a result, the public is left with the impression that information is being exchanged,

² In 2022, Krista Weigand administered the oath to newly-elected Council Member Erik Weigand, but she did so as a Trustee of the Newport-Unified School District. The law, [Government Code Sections 1360 - 1369](#), is ambiguous, saying only the oath must be taken “before” a person authorized to administer oaths.

³ For a fee of \$125, the [Santa Cruz County](#) Clerk offers to appoint private citizens 18 or older as “Deputy Commissioner of Marriage for a Day,” authorized to officiate at a specified wedding anywhere in California (as do [Los Angeles County](#), [Nevada County](#), [San Diego County](#) and likely more). [At one time](#), the Orange County Clerk-Recorder offered this service, as well. It is unclear if he still does.

⁴ I recall one or two previous agendas where all the business items were on the consent calendar, but I believe the agenda included either a study session or suggestions for future agenda items, where Council input was solicited.

and decisions made, outside public view. In other words, that the public's business is not being done in public.

Item 4. Resolution Nos. 2025-2 and 2025-3: Amending the General Plan Advisory Committee and the General Plan Update Steering Committee

This seems to me to be an example of the overuse of the consent calendar. As the staff report explains, this is on the agenda because, pursuant to City Council [Policy A-1](#), at the November 19, 2024, meeting, the previous Council voted, without discussion, to bring the subject back at a future meeting “*for discussion and/or action.*” Yet, staff has placed it on the consent calendar, where a specific proposal that has never been publicly discussed is expected to be approved, again without any discussion.

One might think that, at a minimum, before voting the Council members would want to ask about the status of the General Plan Update and its expected timeline. If they did so, they might learn that the entire process is expected to be completed, and the advisory committees dissolved, before the end of the current year.

Given that context, establishing a procedure by which the advisory committees' membership will be reassessed each February seems strange – because there will be no future Februaries other than the coming one.

As to changing the composition *this* February, as a current GPAC member, but commenting as a private citizen, I have seen no reason offered for what seems both unnecessary and disruptive. While the process to date has been a very imperfect one, and could have been better, changing the participants, but not the structure, in the final months hardly seems likely to produce a better result.

On a more technical note, the Council may wish to know how the City Clerk plans to advertise the unscheduled vacancies and how long the application period will be left open. Finding 20 to 30 new members will be difficult, and [Government Code Section 54974](#) requires only that at least 10 working days elapse between the posting and the appointment, but does not seem to say how long the invitation to apply needs to be “open.”

As to the existing members, there seems to be a discrepancy between the proposed resolutions, whose Attachment A's say “*Members who are in good standing at the time their term has expired are eligible for reappointment and **need not reapply***” and the staff report, which says “*As drafted, if a current GPAC or GPUSC member is in good standing **with an application on file that is no more than two years old** at the time of City Council's appointments, there would be no need to submit a new application.*” The City's [GPAC page](#) indicates most of the current members were appointed on November 15, 2022, and its [GPUSC page](#) indicates all three members were appointed on April 12, 2022. All of these people's applications would now be more than two years old, and they would need to reapply according to the staff report, but not according to what would seem to be the plain language of the resolutions. Which is correct?

Additionally, the Council members may wish to discuss whether the rules for achieving geographic and institutional diversity in appointments to the GPAC detailed in the table on page 4-6 of the staff report is still appropriate, and how the table should be used. In particular, many applicants will have multiple affiliations and it is not clear how the limitations to “not more than one” from each “sample” is intended to apply to them.

As to the substance of what the committees do, there is an existing uncertainty in that the GPAC is instructed to make recommendations to the GPUSC, but there is no provision as what the GPUSC is supposed to do with them. Are they obligated to pass them on to the City Council? Or does the GPUSC have veto power over the GPUSC recommendations?

Item 5. Resolution No. 2025-4: Approving an Amendment to the Key and Management Compensation Plan

The staff report (page 5-1) implies the maximum bonus available for scholastic achievement is 8.5%, however the actual proposed language on page 5-6 shows a 7% bonus for achieving the BA/BS level, and a separate 8.5% bonus for the MA/MS/JD level without making it clear if members can qualify for only one or for both. Will that be a problem?

Also shouldn't there be a requirement that the achievement is in a field related to the employee's work?

More generally, the amendment is offered to the Council for approval as a snippet without being able to see the context in which it will occur or the prior language it replaces. Compounding that problem, the public does not seem to be able to easily see or review the current Key & Management Compensation Plan. Instead, on the HR Department's [MOUs & Benefit Summaries](#) page one finds a 2022 version and what seem to be 12 adjustments to it, some of which are not machine searchable, making it particularly challenging to piece together what the current plan is. However, as best I can tell, the (non-machine-readable) [Sixth Amendment](#) made Policy Safety Key & Management employees eligible for the same scholastic achievement benefits as members of the Police Management Association, with language essentially identical to that for Fire Safety Key & Management employees. What was wrong with that? Is Fire Safety Management eligible for a larger benefit than Police Safety Management? If so, how large is the change? And why wouldn't Police Management want the same benefit?

The report does not seem very transparent.

Item 6. Resolution No. 2025-5: Creating the Ad Hoc Council Policy Review Committee

This is another case where, rather than being on the consent calendar, one might think the Council members would want to discuss the matter to give direction to the committee as to the scope of their assignment, and possibly as to who should be on it.

Although I cannot find it mentioned in either the staff report or the proposed resolution, the last comprehensive review of the [Council Policy Manual](#) took place in 2018, and culminated in the massive 338-page [Item 18](#) on the August 8, 2017, agenda, making changes that neither the

public nor the Council members not on the committee had time to thoughtfully consider or review.

I would strongly recommend the present committee be asked to review the policies in more digestible pieces, and through a more public process – including, for example, presentation at a study session at a meeting prior to the meeting at which adoption is proposed.

Item 14. Memorandum of Agreement with the City of Long Beach Acting By and Through the Port of Long Beach Board of Harbor Commissioners Authorizing Disposal of Lower Bay Dredged Material Into the Port’s Pier G Slip Fill Project

Part (2) of Condition 8 on page 14-8, causing the Agreement to terminate on “*the commencement of the placement of the Newport Bay Material at a site other than the Project*” seems slightly strange. Does this mean that if any of the “*approximately 225,000 cubic yards of material from the Lower Newport Bay channels*” identified as “*Newport Bay Material*” is found to be suitable for disposal outside the Port of Long Beach, and disposed of at some alternate location, the Port will refuse to accept any more?

Also, if the Port of Long Beach location becomes unavailable before all the unsuitable material has been disposed of, does the City have a plan to construct a smaller CAD than was originally planned? And, finally, how does this Agreement affect the private homeowners who were promised use of the CAD?

Item 15. Planning Commission Agenda for the January 9, 2025 Meeting

Those new to the Council may be wondering why they are receiving a report on the actions of the Planning Commission and not of any of the City’s other boards or commissions. Originally, this was not on the consent calendar, but scheduled as a full discussion item. And its purpose, then as now, was to apprise Council members of the Planning Commission’s decisions, so they would have a chance to call for review, as allowed, currently, by Municipal Code [Chapter 20.64](#).⁵

In the present case, the Council is receiving reports of two Planning Commission decisions, both of which seem problematic to me.

In the first, the PC approved remodeling of a warehouse as a fitness training facility for exclusive use by students of a neighboring high school, even though the property is designated for industrial uses and other uses “ancillary” or “accessory” to the primary industrial uses. While, as staff indicated, fitness facilities are allowed “by right” in this area, the assumption is they will be serving the needs of the primary industrial users. A facility serving exclusively students from a neighboring district is clearly not supporting the industrial uses. Staff seems to be reading “ancillary” or “accessory” not as “supporting,” but rather as anything that occupies

⁵ One might still wonder why the Council does not receive similar reports regarding decisions by the Harbor Commission, since there is a parallel call for review provision in NBMC [Chapter 17.65](#). Or for decisions of the Parks, Beaches and Recreation Commission, even though the opportunity to review is found only in Council Policies.

less than a majority of the district. To me, that seems clearly not to have been the intent of the code.

In the second hearing, the PC had to deal with a tennis club consisting of two separately-owned parcels, but originally approved and allowed to be subdivided only under the assumption they would be operated together. Without making any changes to that existing permit for the two parcels to operate together, and without seeing any evidence of consent by the owner of one of the parcels, the PC approved a staff-proposed, new, separate permit for the second parcel, allowing it to be used as a separate pickleball facility. The result seems to be both to have caused the other parcel to become landlocked, and to have transferred to it all the entitlements of the original permit. Additionally, it seems quite possible the approval will create land use incompatibilities, with noise from the pickleball activity disturbing future guests at the neighboring hotel and, possibly, residents across Jamboree Road at Sea Island. I took some grief from the Commissioners for suggesting City staff did not have the expertise to independently verify the conclusions of the applicant noise analysis (which nowhere addressed the highly impulsive nature of pickleball noise), but I do believe that to be the case.

Council members may wish to consider calling one of both of these decisions up for review.

Item 16. Confirmation of Nominations to Fill an Unscheduled Vacancy on the Parks, Beaches & Recreation Commission

Since the Council is being asked to “confirm” just two nominations, it would have been helpful to at least list the names of any other citizens who might have applied. It would seem they deserve at least that minimal recognition,⁶ and other Council members may wish to propose adding some of the names from that list.

Item 17. Confirmation of Mayor Joe Stapleton's Appointments

Since this item is scheduled to be adopted without discussion, it presumably involved some non-public discussion of who wanted to serve on what committees. While that is not necessarily illegal, it would seem like a discussion that could better have taken place at the public meeting.

That said, I have, for a number of years, been puzzled by the continuing appointment of a Council member as chair of the [Environmental Quality Affairs Committee](#), especially considering that committee has not met since [August 16, 2016](#) (and before that, on [November 20, 2014](#)) and currently has no members other than the Council appointee (of which there are actually supposed to be two).

I see from the [minutes](#) of the similar [Item 12](#) from January 10, 2023, that I raised the same puzzlement, and that year’s appointee, Mayor Blom, volunteered that “*as Chair of EQAC, he will assess the future of EQAC.*” But as [Item 11](#) on January 9, 2024, he was reappointed as Chair, and, as I [noted](#) then, one might wonder how long the assessment will take? One continues to wonder.

⁶ In other cities, such as Costa Mesa and Laguna Beach, I believe the full council publicly interviews all the applicants before making appointments.



NEWPORT BEACH

City Council Staff Report

January 14, 2025
Agenda Item No. 5

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Barbara J. Salvini, Human Resources Director - 949-644-3300, bsalvini@newportbeachca.gov

PREPARED BY: Barbara J. Salvini, Human Resources Director

TITLE: Resolution No. 2025-4: Approving an Amendment to the Key and Management Compensation Plan

ABSTRACT:

To address recruitment and retention challenges associated with the City of Newport Beach’s sworn executive management personnel, the City Council wishes to amend the Key and Management Compensation Plan by amending the existing eligibility criteria for Scholastic Achievement Pay for Key and Management sworn police employees.

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) Adopt Resolution No. 2025-4, *A Resolution of the City of Newport Beach, California, Approving an Amendment to the Key and Management Compensation Plan.*

DISCUSSION:

On November 12, 2024, the City Council approved offering Scholastic Achievement Pay to sworn Key and Management police, fire and lifeguard safety employees. The City Council wishes to clarify the eligibility criteria for sworn police Key and Management employees. If approved, Key and Management police safety employees are eligible to receive an additional 7%-8.5% of pay, depending on the degree obtained.

The Plan adjustments are intended to clarify the eligibility criteria for Key and Management sworn police employees and to provide parity with the eligibility criteria for Key and Management sworn fire employees. It is anticipated the adjustments will incentivize existing employees to stay and encourage and attract safety management candidates from outside agencies to apply when vacancies occur.

FISCAL IMPACT:

The estimated maximum cost to provide scholastic pay for eligible Key and Management sworn police employees is \$39,400 for the remainder of Fiscal Year 2024-25.

The Fiscal Year 2024-25 budget includes sufficient savings to fund the cost of the proposed amendment to the Key and Management Compensation Plan.

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. 2025-4

ATTACHMENT A

RESOLUTION NO. 2025-4

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING THE SEVENTH AMENDMENT TO THE KEY AND MANAGEMENT COMPENSATION PLAN

WHEREAS, the City Council of the City of Newport Beach ("City Council") previously adopted Resolution No. 2001-50, the "Employer-Employee Relations Resolution," pursuant to authority contained in the Meyers-Milias-Brown Act, Government Code 3500, *et seq.*;

WHEREAS, the City of Newport Beach ("City") promotes effective communication and collaborative working relationships with its employees to foster improved relations while balancing good management practices;

WHEREAS, the City Council previously adopted Resolution No. 2022-10 approving a Key and Management Compensation Plan ("Plan"), which established compensation and benefit terms for unrepresented employees, including Executive Management, Administrative Management, Division Management and Confidential employees for the period January 1, 2022, through December 31, 2025; and

WHEREAS, the City Council desires to amend the Plan to clarify the eligibility of Scholastic Achievement Pay for eligible Key and Management police public safety employees, as set forth in Exhibit A.

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

Section 1: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 2: The City Council hereby approves the Seventh Amendment to the Plan attached hereto as set forth in Exhibit A, which is incorporated herein by reference and clarifies the eligibility for Scholastic Achievement Pay for Key and Management police public safety employees as set forth therein.

Section 3: 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 4: 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 5: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

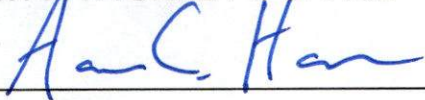
ADOPTED this 14th day of January, 2025.

Joe Stapleton
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachments: Exhibit A: Seventh Amendment to the City Key and Management
Compensation Plan

EXHIBIT A

**SEVENTH AMENDMENT TO
CITY OF NEWPORT BEACH
KEY AND MANAGEMENT COMPENSATION PLAN**

WHEREAS, on January 25, 2022, the City Council adopted Resolution No. 2022-10 adopting a Key and Management Compensation Plan ("Plan") for the period of January 1, 2022, through December 31, 2025;

WHEREAS, on August 23, 2022, the City Council adopted Resolution No. 2022-52 amending the Plan and modifying the cost-of-living adjustments for Key and Management Employees ("First Amendment to the Plan");

WHEREAS, on November 29, 2022, the City Council adopted Resolution No. 2022-92 amending the Plan and modifying employee retirement contributions to CalPERS for Key and Management Employees ("Second Amendment to the Plan");

WHEREAS, on April 11, 2023, the City Council adopted Resolution No. 2023-19 amending the Plan and adjusting the salary schedules and modifying the language related to employee retirement contributions to CalPERS for Key and Management Safety Employees ("Third Amendment to the Plan");

WHEREAS, on November 28, 2023, the City Council adopted Resolution No. 2023-82 amending the Plan and modifying certain positions and titles for Key and Management Employees ("Fourth Amendment to the Plan");

WHEREAS, on December 12, 2023, the City Council adopted Resolution No. 2023-85 approving revised salary schedules for Key and Management Employees;

WHEREAS, on August 27, 2024, the City Council adopted Resolution No. 2024-60 amending the Plan and extending previously modified language related to employee retirement contributions to CalPERS for Key and Management Employees and providing lump sum bonuses to eligible Key and Management Employees ("Fifth Amendment to the Plan");

WHEREAS, on November 12, 2024, the City Council adopted Resolution No. 2024-82 amending the Plan and extending eligibility for Scholastic Achievement Pay to sworn employees covered by the Key and Management Plan ("Sixth Amendment to the Plan");

WHEREAS, the City Council wishes to further amend the Plan to clarify the eligibility of Scholastic Achievement Pay for sworn police Key and Management Employees; and

WHEREAS, this amendment will not be binding until it is approved by the City Council.

NOW, THEREFORE, the City Council of the City of Newport Beach wishes to amend the Plan as follows:

Section 1. The Compensation section of the Plan is amended to include the following language to Section J. Scholastic Achievement Pay – Public Safety:

“J. SCHOLASTIC ACHIEVEMENT PAY – PUBLIC SAFETY

1. Police Safety

Absent an Employment Agreement or Resolution to the contrary, Key and Management police safety employees are entitled to additional compensation in the form of Scholastic Achievement Pay as follows:

BA/BS – 7% MA/MS/JD – 8.5%

The parties agree that to the extent permitted by law, the Scholastic Achievement Pay in this section is special compensation and shall be reported to CalPERS as such.”

Section 2. Except as expressly modified herein, all other terms and provisions set forth in the Plan shall remain unchanged and shall be in full force and effect.

January 14, 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 III.B CONFERENCE WITH REAL PROPERTY NEGOTIATORS

This appears to be at least the tenth time a closed session has been announced for the Council to privately discuss “price and terms of payment” regarding public right-of-way adjacent to the identical properties, the first announcement having been as [Item IV.A](#) on February 23, 2021. And the only change has been the initial “*approximately 845 square feet*” increasing to the “*approximately 1,105 square feet*” when it came back as [Item IV.A](#) on November 12, 2024.

And while the purpose of the announcement is, in theory, to invite public comment to guide the Council in its decision, at no time has there been any public disclosure of why a sale or lease is being considered. This may be contrasted with earlier, more transparent announcements, for example [Item IV.C](#) from July 26, 2011, where it was at least disclosed that “price and terms of payment” needed to be discussed “*with respect to resolution of boundary dispute between Tidelands and Uplands.*”

Why is public property in play adjacent to 929 Zurich Circle and 944 Via Lido Nord?

Item 1. Minutes for the December 10, 2024 City Council Meeting

The passages shown in *italics* below are from the [draft minutes](#) with suggested corrections shown in **strikeout underline** format. The page numbers refer to Volume 66.

Page 220, Item IX, paragraph 1: “*Dennis Bress thanked the outgoing members of Council for ~~their~~ service and noted continued efforts to work with the Aviation Committee to have ~~aircrafts flyer high aircraft fly higher~~, slower, and quieter.*”

[See [video](#). “[Aircraft](#)” is recognized as a noun that does not require an “s” to make it plural, and Mr Bress did not add one. Similarly, he add “er” to “high” not “fly.”]

Page 222, Item 15 (Administration of Oath of Office):

“His wife, Marin, administered the Oath of Office ...”

“Former Mayor Will O’Neill administered the Oath of Office ...”

[**Comment:** I am not much of a believer in loyalty oaths, but it does seem reasonable for citizens to have some assurance those elected to office are committed to upholding the rules under which governments are expected to operate. Indeed, the [first page](#) of the official minutes of our City Council begins with Notary Public Clyde Bishop administering the Oath of Office¹ to the five newly-elected trustees at their first meeting on September 3, 1906.

¹ The oath, in Article XX, Section 3 of the [California Constitution at that time](#) consisted solely of: “*I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of _____, according to the best of my ability.*”

Since then, through [2012](#), it seems to have been the invariable practice for the City Clerk to administer the oaths. However, in [2014](#), with the election of “Team Newport,” Orange County Superior Court Judge [James E. Rogan](#) administered the oaths. And after that, a variety of judges continued to perform this role with the exception of [2020](#), when former Mayor Evelyn Hart administered the oath to re-elected Council Member Brad Avery, and [2022](#), when former Mayor Steve Rosansky administered the oath to newly-elected Council Member Robyn Grant.

This new practice of having the oath of office administered by private citizens who, whether former elected officials or not, do not seem authorized by law to do so,² seems a bit like attending a wedding at which a private party administers the vows while the minister, judge or government clerk sits to the side as an observer rather than a participant.

It seems strange to me. Is it a new trend?³]

Item XIII. PUBLIC COMMENTS ON CONSENT CALENDAR

Since I believe this may be a first in the City’s history, it seems noteworthy that the public portion of the current agenda contains no items requiring a Council decision other than those on the Consent Calendar.⁴

As a result those watching the meeting without access to the agenda will be at loss to know what, if any, City business was conducted.

It might be noted that Newport Beach didn’t always have a Consent Calendar.

And, as I have noted before, there is at least one other California city, [Benecia](#), where the Mayor reads the titles of the items on the Consent Calendar so that the public at least knows what their Council is consenting to. There are likely others with similar practices. For example, in [Del Mar](#), the City Clerk reads the consent calendar item titles. In both cases, not only the council members, but members of the public are invited to pull items for discussion by their elected representatives. It also appears other cities may be more judicious in what items they place on their consent calendar for approval without discussion.

It seems to me the consent calendar may be overused in Newport Beach, for it seems unlikely none of the seven Council members would have any questions about any of the items on the Consent Calendar, or that all would agree each of those items should be approved exactly as presented. As a result, the public is left with the impression that information is being exchanged,

² In 2022, Krista Weigand administered the oath to newly-elected Council Member Erik Weigand, but she did so as a Trustee of the Newport-Unified School District. The law, [Government Code Sections 1360 - 1369](#), is ambiguous, saying only the oath must be taken “before” a person authorized to administer oaths.

³ For a fee of \$125, the [Santa Cruz County](#) Clerk offers to appoint private citizens 18 or older as “Deputy Commissioner of Marriage for a Day,” authorized to officiate at a specified wedding anywhere in California (as do [Los Angeles County](#), [Nevada County](#), [San Diego County](#) and likely more). [At one time](#), the Orange County Clerk-Recorder offered this service, as well. It is unclear if he still does.

⁴ I recall one or two previous agendas where all the business items were on the consent calendar, but I believe the agenda included either a study session or suggestions for future agenda items, where Council input was solicited.

and decisions made, outside public view. In other words, that the public's business is not being done in public.

Item 4. Resolution Nos. 2025-2 and 2025-3: Amending the General Plan Advisory Committee and the General Plan Update Steering Committee

This seems to me to be an example of the overuse of the consent calendar. As the staff report explains, this is on the agenda because, pursuant to City Council [Policy A-1](#), at the November 19, 2024, meeting, the previous Council voted, without discussion, to bring the subject back at a future meeting “*for discussion and/or action.*” Yet, staff has placed it on the consent calendar, where a specific proposal that has never been publicly discussed is expected to be approved, again without any discussion.

One might think that, at a minimum, before voting the Council members would want to ask about the status of the General Plan Update and its expected timeline. If they did so, they might learn that the entire process is expected to be completed, and the advisory committees dissolved, before the end of the current year.

Given that context, establishing a procedure by which the advisory committees' membership will be reassessed each February seems strange – because there will be no future Februaries other than the coming one.

As to changing the composition *this* February, as a current GPAC member, but commenting as a private citizen, I have seen no reason offered for what seems both unnecessary and disruptive. While the process to date has been a very imperfect one, and could have been better, changing the participants, but not the structure, in the final months hardly seems likely to produce a better result.

On a more technical note, the Council may wish to know how the City Clerk plans to advertise the unscheduled vacancies and how long the application period will be left open. Finding 20 to 30 new members will be difficult, and [Government Code Section 54974](#) requires only that at least 10 working days elapse between the posting and the appointment, but does not seem to say how long the invitation to apply needs to be “open.”

As to the existing members, there seems to be a discrepancy between the proposed resolutions, whose Attachment A's say “*Members who are in good standing at the time their term has expired are eligible for reappointment and **need not reapply***” and the staff report, which says “*As drafted, if a current GPAC or GPUSC member is in good standing **with an application on file that is no more than two years old** at the time of City Council's appointments, there would be no need to submit a new application.*” The City's [GPAC page](#) indicates most of the current members were appointed on November 15, 2022, and its [GPUSC page](#) indicates all three members were appointed on April 12, 2022. All of these people's applications would now be more than two years old, and they would need to reapply according to the staff report, but not according to what would seem to be the plain language of the resolutions. Which is correct?

Additionally, the Council members may wish to discuss whether the rules for achieving geographic and institutional diversity in appointments to the GPAC detailed in the table on page 4-6 of the staff report is still appropriate, and how the table should be used. In particular, many applicants will have multiple affiliations and it is not clear how the limitations to “not more than one” from each “sample” is intended to apply to them.

As to the substance of what the committees do, there is an existing uncertainty in that the GPAC is instructed to make recommendations to the GPUSC, but there is no provision as what the GPUSC is supposed to do with them. Are they obligated to pass them on to the City Council? Or does the GPUSC have veto power over the GPUSC recommendations?

Item 5. Resolution No. 2025-4: Approving an Amendment to the Key and Management Compensation Plan

The staff report (page 5-1) implies the maximum bonus available for scholastic achievement is 8.5%, however the actual proposed language on page 5-6 shows a 7% bonus for achieving the BA/BS level, and a separate 8.5% bonus for the MA/MS/JD level without making it clear if members can qualify for only one or for both. Will that be a problem?

Also shouldn't there be a requirement that the achievement is in a field related to the employee's work?

More generally, the amendment is offered to the Council for approval as a snippet without being able to see the context in which it will occur or the prior language it replaces. Compounding that problem, the public does not seem to be able to easily see or review the current Key & Management Compensation Plan. Instead, on the HR Department's [MOUs & Benefit Summaries](#) page one finds a 2022 version and what seem to be 12 adjustments to it, some of which are not machine searchable, making it particularly challenging to piece together what the current plan is. However, as best I can tell, the (non-machine-readable) [Sixth Amendment](#) made Policy Safety Key & Management employees eligible for the same scholastic achievement benefits as members of the Police Management Association, with language essentially identical to that for Fire Safety Key & Management employees. What was wrong with that? Is Fire Safety Management eligible for a larger benefit than Police Safety Management? If so, how large is the change? And why wouldn't Police Management want the same benefit?

The report does not seem very transparent.

Item 6. Resolution No. 2025-5: Creating the Ad Hoc Council Policy Review Committee

This is another case where, rather than being on the consent calendar, one might think the Council members would want to discuss the matter to give direction to the committee as to the scope of their assignment, and possibly as to who should be on it.

Although I cannot find it mentioned in either the staff report or the proposed resolution, the last comprehensive review of the [Council Policy Manual](#) took place in 2018, and culminated in the massive 338-page [Item 18](#) on the August 8, 2017, agenda, making changes that neither the

public nor the Council members not on the committee had time to thoughtfully consider or review.

I would strongly recommend the present committee be asked to review the policies in more digestible pieces, and through a more public process – including, for example, presentation at a study session at a meeting prior to the meeting at which adoption is proposed.

Item 14. Memorandum of Agreement with the City of Long Beach Acting By and Through the Port of Long Beach Board of Harbor Commissioners Authorizing Disposal of Lower Bay Dredged Material Into the Port's Pier G Slip Fill Project

Part (2) of Condition 8 on page 14-8, causing the Agreement to terminate on “*the commencement of the placement of the Newport Bay Material at a site other than the Project*” seems slightly strange. Does this mean that if any of the “*approximately 225,000 cubic yards of material from the Lower Newport Bay channels*” identified as “*Newport Bay Material*” is found to be suitable for disposal outside the Port of Long Beach, and disposed of at some alternate location, the Port will refuse to accept any more?

Also, if the Port of Long Beach location becomes unavailable before all the unsuitable material has been disposed of, does the City have a plan to construct a smaller CAD than was originally planned? And, finally, how does this Agreement affect the private homeowners who were promised use of the CAD?

Item 15. Planning Commission Agenda for the January 9, 2025 Meeting

Those new to the Council may be wondering why they are receiving a report on the actions of the Planning Commission and not of any of the City's other boards or commissions. Originally, this was not on the consent calendar, but scheduled as a full discussion item. And its purpose, then as now, was to apprise Council members of the Planning Commission's decisions, so they would have a chance to call for review, as allowed, currently, by Municipal Code [Chapter 20.64](#).⁵

In the present case, the Council is receiving reports of two Planning Commission decisions, both of which seem problematic to me.

In the first, the PC approved remodeling of a warehouse as a fitness training facility for exclusive use by students of a neighboring high school, even though the property is designated for industrial uses and other uses “ancillary” or “accessory” to the primary industrial uses. While, as staff indicated, fitness facilities are allowed “by right” in this area, the assumption is they will be serving the needs of the primary industrial users. A facility serving exclusively students from a neighboring district is clearly not supporting the industrial uses. Staff seems to be reading “ancillary” or “accessory” not as “supporting,” but rather as anything that occupies

⁵ One might still wonder why the Council does not receive similar reports regarding decisions by the Harbor Commission, since there is a parallel call for review provision in NBMC [Chapter 17.65](#). Or for decisions of the Parks, Beaches and Recreation Commission, even though the opportunity to review is found only in Council Policies.

less than a majority of the district. To me, that seems clearly not to have been the intent of the code.

In the second hearing, the PC had to deal with a tennis club consisting of two separately-owned parcels, but originally approved and allowed to be subdivided only under the assumption they would be operated together. Without making any changes to that existing permit for the two parcels to operate together, and without seeing any evidence of consent by the owner of one of the parcels, the PC approved a staff-proposed, new, separate permit for the second parcel, allowing it to be used as a separate pickleball facility. The result seems to be both to have caused the other parcel to become landlocked, and to have transferred to it all the entitlements of the original permit. Additionally, it seems quite possible the approval will create land use incompatibilities, with noise from the pickleball activity disturbing future guests at the neighboring hotel and, possibly, residents across Jamboree Road at Sea Island. I took some grief from the Commissioners for suggesting City staff did not have the expertise to independently verify the conclusions of the applicant noise analysis (which nowhere addressed the highly impulsive nature of pickleball noise), but I do believe that to be the case.

Council members may wish to consider calling one of both of these decisions up for review.

Item 16. Confirmation of Nominations to Fill an Unscheduled Vacancy on the Parks, Beaches & Recreation Commission

Since the Council is being asked to “confirm” just two nominations, it would have been helpful to at least list the names of any other citizens who might have applied. It would seem they deserve at least that minimal recognition,⁶ and other Council members may wish to propose adding some of the names from that list.

Item 17. Confirmation of Mayor Joe Stapleton's Appointments

Since this item is scheduled to be adopted without discussion, it presumably involved some non-public discussion of who wanted to serve on what committees. While that is not necessarily illegal, it would seem like a discussion that could better have taken place at the public meeting.

That said, I have, for a number of years, been puzzled by the continuing appointment of a Council member as chair of the [Environmental Quality Affairs Committee](#), especially considering that committee has not met since [August 16, 2016](#) (and before that, on [November 20, 2014](#)) and currently has no members other than the Council appointee (of which there are actually supposed to be two).

I see from the [minutes](#) of the similar [Item 12](#) from January 10, 2023, that I raised the same puzzlement, and that year’s appointee, Mayor Blom, volunteered that “*as Chair of EQAC, he will assess the future of EQAC.*” But as [Item 11](#) on January 9, 2024, he was reappointed as Chair, and, as I [noted](#) then, one might wonder how long the assessment will take? One continues to wonder.

⁶ In other cities, such as Costa Mesa and Laguna Beach, I believe the full council publicly interviews all the applicants before making appointments.



NEWPORT BEACH

City Council Staff Report

January 14, 2025
Agenda Item No. 6

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Grace K. Leung, City Manager - 949-644-3001,
gleung@newportbeachca.gov

PREPARED BY: Tara Finnigan, Assistant City Manager - 949-644-3035,
tfinnigan@newportbeachca.gov

TITLE: Resolution No. 2025-5: Creating the Ad Hoc Council Policy Review Committee

ABSTRACT:

If adopted, Resolution No, 2025-5, would establish the Ad Hoc Council Policy Review Committee comprised of three City Council members to review and make recommendations regarding revisions to the Council Policy Manual.

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. 2025-5, *A Resolution of the City Council of the City of Newport Beach, California, Creating an Ad Hoc Committee to Review the City Council Policies and Make Recommendations to the City Council Regarding Revisions Thereto*; and
- c) Appoint Mayor Joe Stapleton, Mayor Pro Tem Lauren Kleiman and Councilmember Sara J. Weber to serve on the Ad Hoc Council Policy Review Committee.

DISCUSSION:

At the request of Mayor Pro Tem Lauren Kleiman pursuant to Council Policy A-1, at its December 10, 2024 meeting, the City Council considered forming an ad hoc committee to review and make recommendations for revisions to the City Council Policy Manual. The City Council voted 6-1, via a straw poll, in favor of staff returning with an item.

If adopted, Resolution No. 2025-5 would create the Ad Hoc Council Policy Review Committee (Committee) consisting of three Council members appointed by the Mayor and confirmed by the entire City Council. The Committee will be responsible for reviewing the City Council's policies and submitting recommendations for potential revisions to the full Council for consideration. The Committee would be advisory and expire upon making a final recommendation to the City Council or December 31, 2025, whichever is earlier.

Additionally, for the Council's consideration, are the appointments of Mayor Joe Stapleton, Mayor Pro Tem Lauren Kleiman and Councilmember Sara J. Weber to serve on the Committee.

FISCAL IMPACT:

There is no fiscal impact related to the adoption of Resolution No. 2025-5.

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. 2025-5

ATTACHMENT A

RESOLUTION NO. 2025-5

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, CREATING AN AD HOC COMMITTEE TO REVIEW THE CITY COUNCIL POLICIES AND MAKE RECOMMENDATIONS TO THE CITY COUNCIL REGARDING REVISIONS THERETO

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, pursuant to the authority vested in the City Council by the Charter, the City Council has adopted official polices to provide guidelines and procedures governing the conduct of City business in conformity with the Charter (“Council Policies”);

WHEREAS, the City Council recognizes the importance of periodically reviewing and updating Council Policies to maintain relevancy, brevity, and coherency for the benefit of the people of Newport Beach; and

WHEREAS, the City Council desires to create an Ad Hoc Committee for the purpose of reviewing the Council Policies and submitting recommendations regarding potential revisions to the Council Policies to the entire City Council by December 31, 2025.

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

Section 1: The City Council hereby creates the Ad Hoc Council Policy Review Committee (“Committee”) consisting of three (3) Council members appointed by the Mayor and confirmed by the entire City Council. The sole purpose and responsibility of the Committee shall be to review the City Council Policies and submit recommendations regarding potential revisions thereto to the entire City Council by December 31, 2025.

Section 2: Unless terminated sooner by action of the City Council, the Committee shall be advisory and shall expire upon making a final recommendation to the City Council or December 31, 2025, whichever is earlier.

Section 3: The Committee shall not be subject to the Brown Act; however, the recommendation of the Committee to the City Council shall be considered at a meeting of the entire City Council noticed in accordance with California Government Code Section 54950 *et seq.*

Section 4: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

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.

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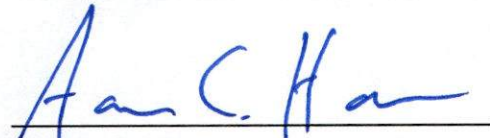
ADOPTED this 14th day of January, 2025.

Joe Stapleton
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

January 14, 2025, City Council Agenda Comments

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Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

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Since then, through [2012](#), it seems to have been the invariable practice for the City Clerk to administer the oaths. However, in [2014](#), with the election of “Team Newport,” Orange County Superior Court Judge [James E. Rogan](#) administered the oaths. And after that, a variety of judges continued to perform this role with the exception of [2020](#), when former Mayor Evelyn Hart administered the oath to re-elected Council Member Brad Avery, and [2022](#), when former Mayor Steve Rosansky administered the oath to newly-elected Council Member Robyn Grant.

This new practice of having the oath of office administered by private citizens who, whether former elected officials or not, do not seem authorized by law to do so,² seems a bit like attending a wedding at which a private party administers the vows while the minister, judge or government clerk sits to the side as an observer rather than a participant.

It seems strange to me. Is it a new trend?³]

Item XIII. PUBLIC COMMENTS ON CONSENT CALENDAR

Since I believe this may be a first in the City’s history, it seems noteworthy that the public portion of the current agenda contains no items requiring a Council decision other than those on the Consent Calendar.⁴

As a result those watching the meeting without access to the agenda will be at loss to know what, if any, City business was conducted.

It might be noted that Newport Beach didn’t always have a Consent Calendar.

And, as I have noted before, there is at least one other California city, [Benecia](#), where the Mayor reads the titles of the items on the Consent Calendar so that the public at least knows what their Council is consenting to. There are likely others with similar practices. For example, in [Del Mar](#), the City Clerk reads the consent calendar item titles. In both cases, not only the council members, but members of the public are invited to pull items for discussion by their elected representatives. It also appears other cities may be more judicious in what items they place on their consent calendar for approval without discussion.

It seems to me the consent calendar may be overused in Newport Beach, for it seems unlikely none of the seven Council members would have any questions about any of the items on the Consent Calendar, or that all would agree each of those items should be approved exactly as presented. As a result, the public is left with the impression that information is being exchanged,

² In 2022, Krista Weigand administered the oath to newly-elected Council Member Erik Weigand, but she did so as a Trustee of the Newport-Unified School District. The law, [Government Code Sections 1360 - 1369](#), is ambiguous, saying only the oath must be taken “before” a person authorized to administer oaths.

³ For a fee of \$125, the [Santa Cruz County](#) Clerk offers to appoint private citizens 18 or older as “Deputy Commissioner of Marriage for a Day,” authorized to officiate at a specified wedding anywhere in California (as do [Los Angeles County](#), [Nevada County](#), [San Diego County](#) and likely more). [At one time](#), the Orange County Clerk-Recorder offered this service, as well. It is unclear if he still does.

⁴ I recall one or two previous agendas where all the business items were on the consent calendar, but I believe the agenda included either a study session or suggestions for future agenda items, where Council input was solicited.

and decisions made, outside public view. In other words, that the public's business is not being done in public.

Item 4. Resolution Nos. 2025-2 and 2025-3: Amending the General Plan Advisory Committee and the General Plan Update Steering Committee

This seems to me to be an example of the overuse of the consent calendar. As the staff report explains, this is on the agenda because, pursuant to City Council [Policy A-1](#), at the November 19, 2024, meeting, the previous Council voted, without discussion, to bring the subject back at a future meeting “*for discussion and/or action.*” Yet, staff has placed it on the consent calendar, where a specific proposal that has never been publicly discussed is expected to be approved, again without any discussion.

One might think that, at a minimum, before voting the Council members would want to ask about the status of the General Plan Update and its expected timeline. If they did so, they might learn that the entire process is expected to be completed, and the advisory committees dissolved, before the end of the current year.

Given that context, establishing a procedure by which the advisory committees' membership will be reassessed each February seems strange – because there will be no future Februaries other than the coming one.

As to changing the composition *this* February, as a current GPAC member, but commenting as a private citizen, I have seen no reason offered for what seems both unnecessary and disruptive. While the process to date has been a very imperfect one, and could have been better, changing the participants, but not the structure, in the final months hardly seems likely to produce a better result.

On a more technical note, the Council may wish to know how the City Clerk plans to advertise the unscheduled vacancies and how long the application period will be left open. Finding 20 to 30 new members will be difficult, and [Government Code Section 54974](#) requires only that at least 10 working days elapse between the posting and the appointment, but does not seem to say how long the invitation to apply needs to be “open.”

As to the existing members, there seems to be a discrepancy between the proposed resolutions, whose Attachment A's say “*Members who are in good standing at the time their term has expired are eligible for reappointment and **need not reapply***” and the staff report, which says “*As drafted, if a current GPAC or GPUSC member is in good standing **with an application on file that is no more than two years old** at the time of City Council's appointments, there would be no need to submit a new application.*” The City's [GPAC page](#) indicates most of the current members were appointed on November 15, 2022, and its [GPUSC page](#) indicates all three members were appointed on April 12, 2022. All of these people's applications would now be more than two years old, and they would need to reapply according to the staff report, but not according to what would seem to be the plain language of the resolutions. Which is correct?

Additionally, the Council members may wish to discuss whether the rules for achieving geographic and institutional diversity in appointments to the GPAC detailed in the table on page 4-6 of the staff report is still appropriate, and how the table should be used. In particular, many applicants will have multiple affiliations and it is not clear how the limitations to “not more than one” from each “sample” is intended to apply to them.

As to the substance of what the committees do, there is an existing uncertainty in that the GPAC is instructed to make recommendations to the GPUSC, but there is no provision as what the GPUSC is supposed to do with them. Are they obligated to pass them on to the City Council? Or does the GPUSC have veto power over the GPUSC recommendations?

Item 5. Resolution No. 2025-4: Approving an Amendment to the Key and Management Compensation Plan

The staff report (page 5-1) implies the maximum bonus available for scholastic achievement is 8.5%, however the actual proposed language on page 5-6 shows a 7% bonus for achieving the BA/BS level, and a separate 8.5% bonus for the MA/MS/JD level without making it clear if members can qualify for only one or for both. Will that be a problem?

Also shouldn't there be a requirement that the achievement is in a field related to the employee's work?

More generally, the amendment is offered to the Council for approval as a snippet without being able to see the context in which it will occur or the prior language it replaces. Compounding that problem, the public does not seem to be able to easily see or review the current Key & Management Compensation Plan. Instead, on the HR Department's [MOUs & Benefit Summaries](#) page one finds a 2022 version and what seem to be 12 adjustments to it, some of which are not machine searchable, making it particularly challenging to piece together what the current plan is. However, as best I can tell, the (non-machine-readable) [Sixth Amendment](#) made Policy Safety Key & Management employees eligible for the same scholastic achievement benefits as members of the Police Management Association, with language essentially identical to that for Fire Safety Key & Management employees. What was wrong with that? Is Fire Safety Management eligible for a larger benefit than Police Safety Management? If so, how large is the change? And why wouldn't Police Management want the same benefit?

The report does not seem very transparent.

Item 6. Resolution No. 2025-5: Creating the Ad Hoc Council Policy Review Committee

This is another case where, rather than being on the consent calendar, one might think the Council members would want to discuss the matter to give direction to the committee as to the scope of their assignment, and possibly as to who should be on it.

Although I cannot find it mentioned in either the staff report or the proposed resolution, the last comprehensive review of the [Council Policy Manual](#) took place in 2018, and culminated in the massive 338-page [Item 18](#) on the August 8, 2017, agenda, making changes that neither the

public nor the Council members not on the committee had time to thoughtfully consider or review.

I would strongly recommend the present committee be asked to review the policies in more digestible pieces, and through a more public process – including, for example, presentation at a study session at a meeting prior to the meeting at which adoption is proposed.

Item 14. Memorandum of Agreement with the City of Long Beach Acting By and Through the Port of Long Beach Board of Harbor Commissioners Authorizing Disposal of Lower Bay Dredged Material Into the Port’s Pier G Slip Fill Project

Part (2) of Condition 8 on page 14-8, causing the Agreement to terminate on “*the commencement of the placement of the Newport Bay Material at a site other than the Project*” seems slightly strange. Does this mean that if any of the “*approximately 225,000 cubic yards of material from the Lower Newport Bay channels*” identified as “*Newport Bay Material*” is found to be suitable for disposal outside the Port of Long Beach, and disposed of at some alternate location, the Port will refuse to accept any more?

Also, if the Port of Long Beach location becomes unavailable before all the unsuitable material has been disposed of, does the City have a plan to construct a smaller CAD than was originally planned? And, finally, how does this Agreement affect the private homeowners who were promised use of the CAD?

Item 15. Planning Commission Agenda for the January 9, 2025 Meeting

Those new to the Council may be wondering why they are receiving a report on the actions of the Planning Commission and not of any of the City’s other boards or commissions. Originally, this was not on the consent calendar, but scheduled as a full discussion item. And its purpose, then as now, was to apprise Council members of the Planning Commission’s decisions, so they would have a chance to call for review, as allowed, currently, by Municipal Code [Chapter 20.64](#).⁵

In the present case, the Council is receiving reports of two Planning Commission decisions, both of which seem problematic to me.

In the first, the PC approved remodeling of a warehouse as a fitness training facility for exclusive use by students of a neighboring high school, even though the property is designated for industrial uses and other uses “ancillary” or “accessory” to the primary industrial uses. While, as staff indicated, fitness facilities are allowed “by right” in this area, the assumption is they will be serving the needs of the primary industrial users. A facility serving exclusively students from a neighboring district is clearly not supporting the industrial uses. Staff seems to be reading “ancillary” or “accessory” not as “supporting,” but rather as anything that occupies

⁵ One might still wonder why the Council does not receive similar reports regarding decisions by the Harbor Commission, since there is a parallel call for review provision in NBMC [Chapter 17.65](#). Or for decisions of the Parks, Beaches and Recreation Commission, even though the opportunity to review is found only in Council Policies.

less than a majority of the district. To me, that seems clearly not to have been the intent of the code.

In the second hearing, the PC had to deal with a tennis club consisting of two separately-owned parcels, but originally approved and allowed to be subdivided only under the assumption they would be operated together. Without making any changes to that existing permit for the two parcels to operate together, and without seeing any evidence of consent by the owner of one of the parcels, the PC approved a staff-proposed, new, separate permit for the second parcel, allowing it to be used as a separate pickleball facility. The result seems to be both to have caused the other parcel to become landlocked, and to have transferred to it all the entitlements of the original permit. Additionally, it seems quite possible the approval will create land use incompatibilities, with noise from the pickleball activity disturbing future guests at the neighboring hotel and, possibly, residents across Jamboree Road at Sea Island. I took some grief from the Commissioners for suggesting City staff did not have the expertise to independently verify the conclusions of the applicant noise analysis (which nowhere addressed the highly impulsive nature of pickleball noise), but I do believe that to be the case.

Council members may wish to consider calling one of both of these decisions up for review.

Item 16. Confirmation of Nominations to Fill an Unscheduled Vacancy on the Parks, Beaches & Recreation Commission

Since the Council is being asked to “confirm” just two nominations, it would have been helpful to at least list the names of any other citizens who might have applied. It would seem they deserve at least that minimal recognition,⁶ and other Council members may wish to propose adding some of the names from that list.

Item 17. Confirmation of Mayor Joe Stapleton's Appointments

Since this item is scheduled to be adopted without discussion, it presumably involved some non-public discussion of who wanted to serve on what committees. While that is not necessarily illegal, it would seem like a discussion that could better have taken place at the public meeting.

That said, I have, for a number of years, been puzzled by the continuing appointment of a Council member as chair of the [Environmental Quality Affairs Committee](#), especially considering that committee has not met since [August 16, 2016](#) (and before that, on [November 20, 2014](#)) and currently has no members other than the Council appointee (of which there are actually supposed to be two).

I see from the [minutes](#) of the similar [Item 12](#) from January 10, 2023, that I raised the same puzzlement, and that year’s appointee, Mayor Blom, volunteered that “*as Chair of EQAC, he will assess the future of EQAC.*” But as [Item 11](#) on January 9, 2024, he was reappointed as Chair, and, as I [noted](#) then, one might wonder how long the assessment will take? One continues to wonder.

⁶ In other cities, such as Costa Mesa and Laguna Beach, I believe the full council publicly interviews all the applicants before making appointments.



NEWPORT BEACH

City Council Staff Report

January 14, 2025
Agenda Item No. 7

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: David A. Webb, Public Works Director - 949-644-3311,
dawebb@newportbeachca.gov

PREPARED BY: Michael J. Sinacori, Assistant City Engineer - 949-644-3342,
msinacori@newportbeachca.gov

TITLE: Hillsborough Pump Station Rehabilitation – Notice of Completion for
Contract No. 8758-2 (23W12)

ABSTRACT:

On March 28, 2023, the City Council awarded Contract No. 8758-2 for the Hillsborough Pump Station Rehabilitation project to Vicon Enterprise, Inc. of Anaheim. The project replaced the existing pump and motor, added a new standalone motor starter, replaced valves and lighting, and added new electrical power, controls and panels at the water pump station adjacent to Hillsborough in the Spyglass Hill area. The work is now complete and staff requests City Council acceptance and close out of the contract.

RECOMMENDATION:

- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project.

DISCUSSION:

Overall Contract Cost/Time Summary

Awarded Contract Amount	Final Total Contract Amount	Total Contract Change Amount	Percent Contract Cost Change
\$354,000	\$391,550.19	\$37,550.19	10.6%
Allowed Contract Time + Approved Extensions (Days) =		432	Actual Time Used (Days) 374

This project included pump, motor, valves, lighting, fan and pipe support installation at the Hillsborough water pump station. The contracted work has been completed to the satisfaction of the Public Works Department. A summary of the construction cost is as follows:

Original Bid Amount:	\$ 354,000.00
Actual Cost of Bid Items Constructed:	\$ 354,000.00
Total Change Orders:	\$ 37,550.19
Final Contract Cost:	\$391,550.19

The final total contract amount was \$391,550.19, which was approximately 10.6% higher than the original bid amount (City Council approved a 15% contingency allowance). This cost increase was primarily due to City-requested change orders, such as using a particular brand of valve and replacement of other pipeline determined necessary by the Utilities Department.

A summary of the project schedule milestones is as follows:

Estimated Start of Construction per Annual Baseline Schedule	July 2, 2023
Actual Start of Construction Per Notice to Proceed	May 1, 2023
Estimated Contract Completion Date with Approved Extensions	January 31, 2025
Actual Substantial Construction Completion Date	October 31, 2024

Although the Award of Contract staff report indicated that the contractor would have 250 consecutive working days, the contractor was given 400 consecutive working days per Addendum No. 1 issued on February 8, 2023, prior to bid opening. Change orders provided an additional 32 working days. The contractor needed time to procure materials and equipment as supply chain issues were still impacting water system materials. The project was completed ahead of the extended schedule.

FISCAL IMPACT:

The Hillsborough Pump Station Rehabilitation project was included within the FY 2022-23 Capital Improvement Program Budget. Funds for the construction contract were expended from the following account:

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
Water Capital Distribution/Piping	70201931-980000-23W12	\$ 391,550.19
	Total:	\$ 391,550.19

ENVIRONMENTAL REVIEW:

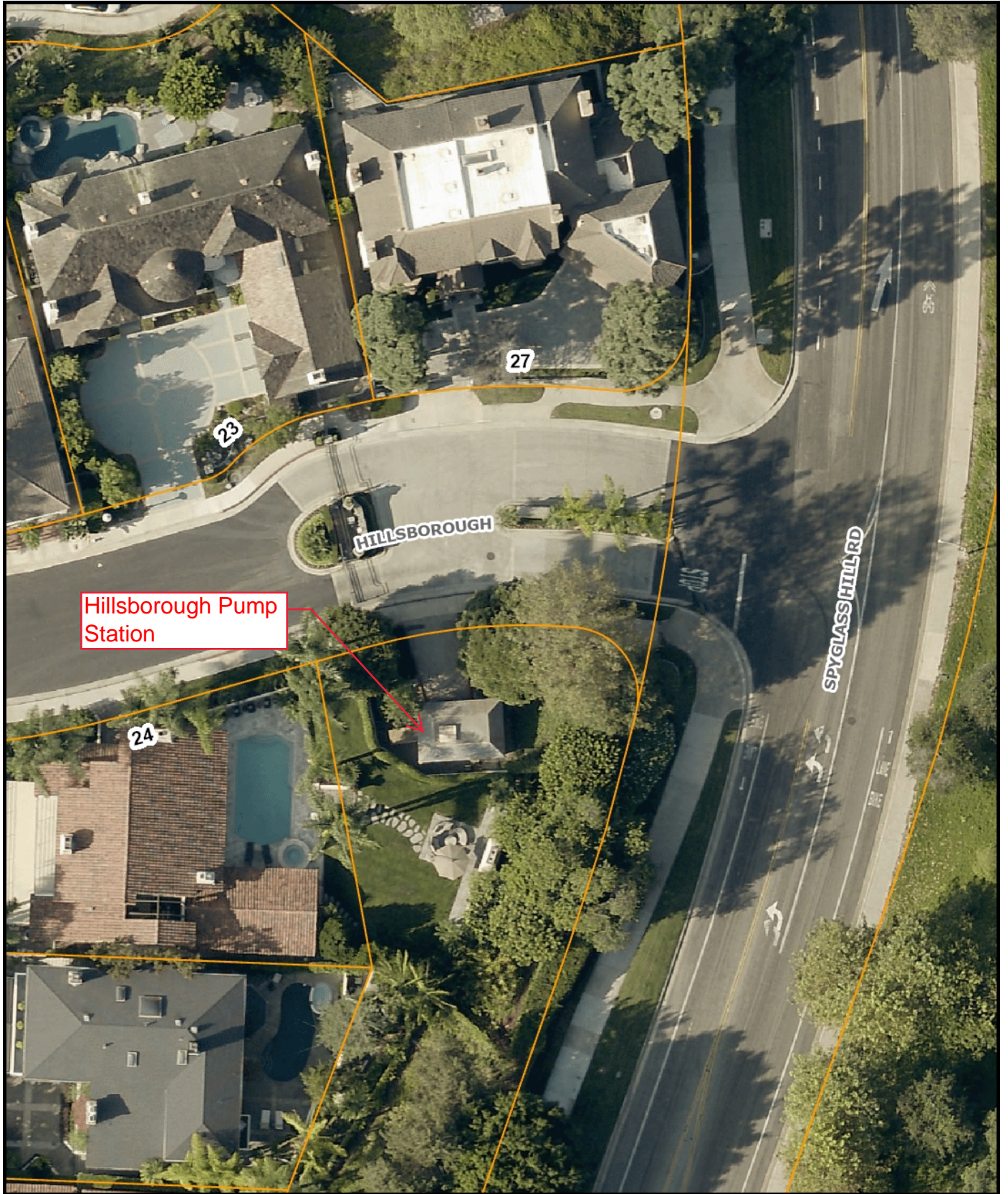
On March 28, 2023, the City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301(c), Class 1 (maintenance of existing public facilities involving negligible or no expansion of use) of the CEQA Guidelines, California Code of Regulations, Title 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).

ATTACHMENT:

Attachment A – Location Map



HILLSBOROUGH PUMP STATION
REHABILITATION
LOCATION MAP

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

C-8758-2

1/14/2025



NEWPORT BEACH

City Council Staff Report

January 14, 2025
Agenda Item No. 8

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: David A. Webb, Public Works Director - 949-644-3311,
dawebb@newportbeachca.gov

PREPARED BY: Michael J. Sinacori, Assistant City Engineer - 949-644-3342,
msinacori@newportbeachca.gov

TITLE: Storm Drain System Upgrades – Notice of Completion for Contract
No. 9148-1 (23D02)

ABSTRACT:

On July 23, 2024, the City Council awarded Contract No. 9148-1 for the Storm Drain System Upgrades project to PALP, Inc. DBA Excel Paving Company. The project installed drainage improvements at two areas within the City of Newport Beach, at Iris and Jasmine Avenues and at Port Edward Circle. Storm drainpipes were installed at both areas to alleviate drainage concerns for nearby residents. The work is now complete and staff requests the City Council’s acceptance and close out of the contract.

RECOMMENDATION:

- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project.

DISCUSSION:

Overall Contract Cost/Time Summary

Awarded Contract Amount	Final Total Contract Amount	Total Contract Change Amount	Percent Contract Cost Change
\$463,828.00	\$502,989.80	\$39,161.80	8.4%
Allowed Contract Time + Approved Extensions (Days) =		70	Actual Time Used (Days) 60

This project included the installation of storm drain piping, catch basins, and concrete pavement at the end of Iris and Jasmine Avenues, and installing a sub-drain system in Port Edward Circle that connected to an existing sub-drain line in Newport Hills Drive East.

The contracted work has been completed to the satisfaction of the Public Works Department. A summary of the construction cost is as follows:

Original Bid Amount:	\$ 463,828.00
Actual Cost of Bid Items Constructed:	\$ 463,828.00
Total Change Orders:	\$ 39,161.80
Final Contract Cost:	\$ 502,989.80

The final total contract amount was \$502,989.80, which was approximately 8.4% higher than the original bid amount. This cost increase was primarily due to upgrading the drainage system to use HDPE piping and adding another sub-drainage lateral to the system that was found during construction to be contributing to the excess water in the area.

A summary of the project schedule milestones is as follows:

Estimated Start of Construction per Annual Baseline Schedule	August 12, 2024
Actual Start of Construction Per Notice to Proceed	August 19, 2024
Estimated Contract Completion Date with Approved Extensions	November 1, 2024
Actual Substantial Construction Completion Date	November 8, 2024

The contractor stayed on schedule throughout the project and completed all work in excellent condition.

FISCAL IMPACT:

The Storm Drain System Upgrades project was included within the Fiscal Year 2024-25 Capital Improvement Program Budget. Funds for the construction contract were expended from the following account(s):

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
Neighborhood Enhancement	53601-980000-23D02	\$ 347,209.97
General Fund	01201926-980000-25D02	\$ 155,779.83
	Total:	\$ 502,989.80

The Neighborhood Enhancement Fund is used for projects that enhance neighborhood aesthetics and functionality and is funded via surplus general funds.

ENVIRONMENTAL REVIEW:

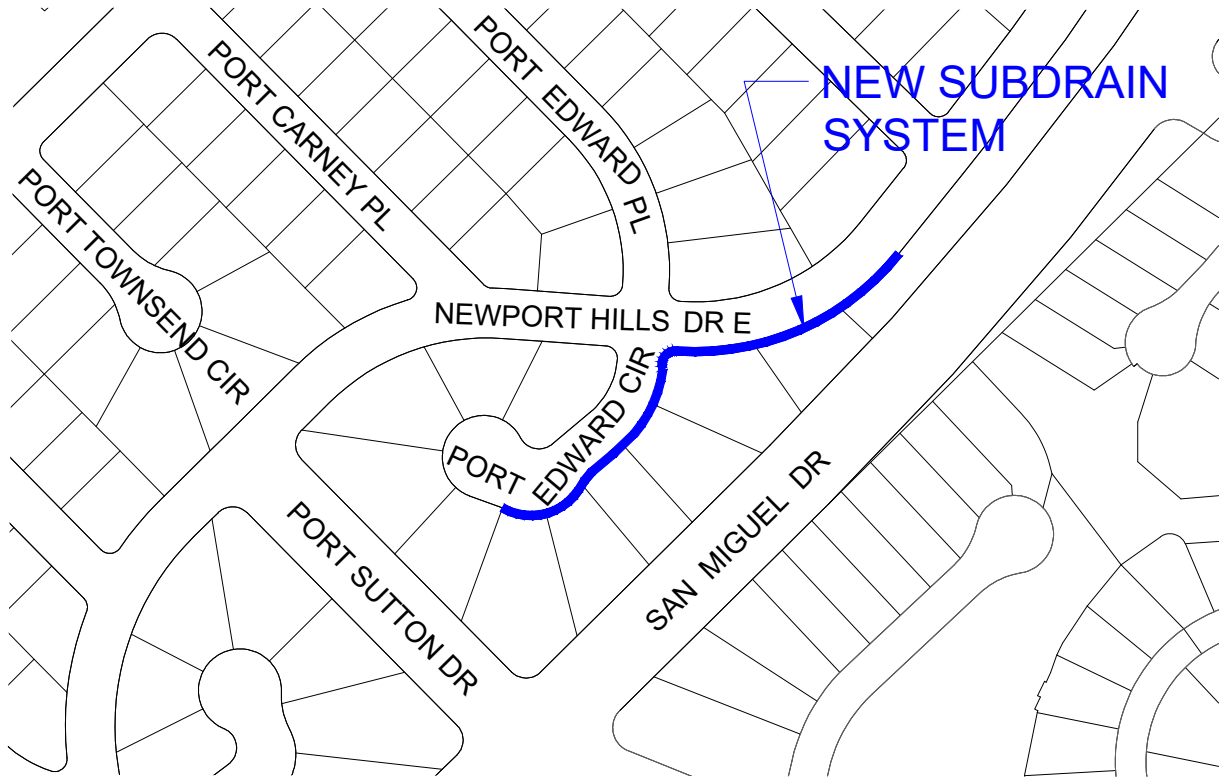
On July 23, 2024, the City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15304 (minor alterations in the condition of land, water, and/or vegetation) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

NOTICING:

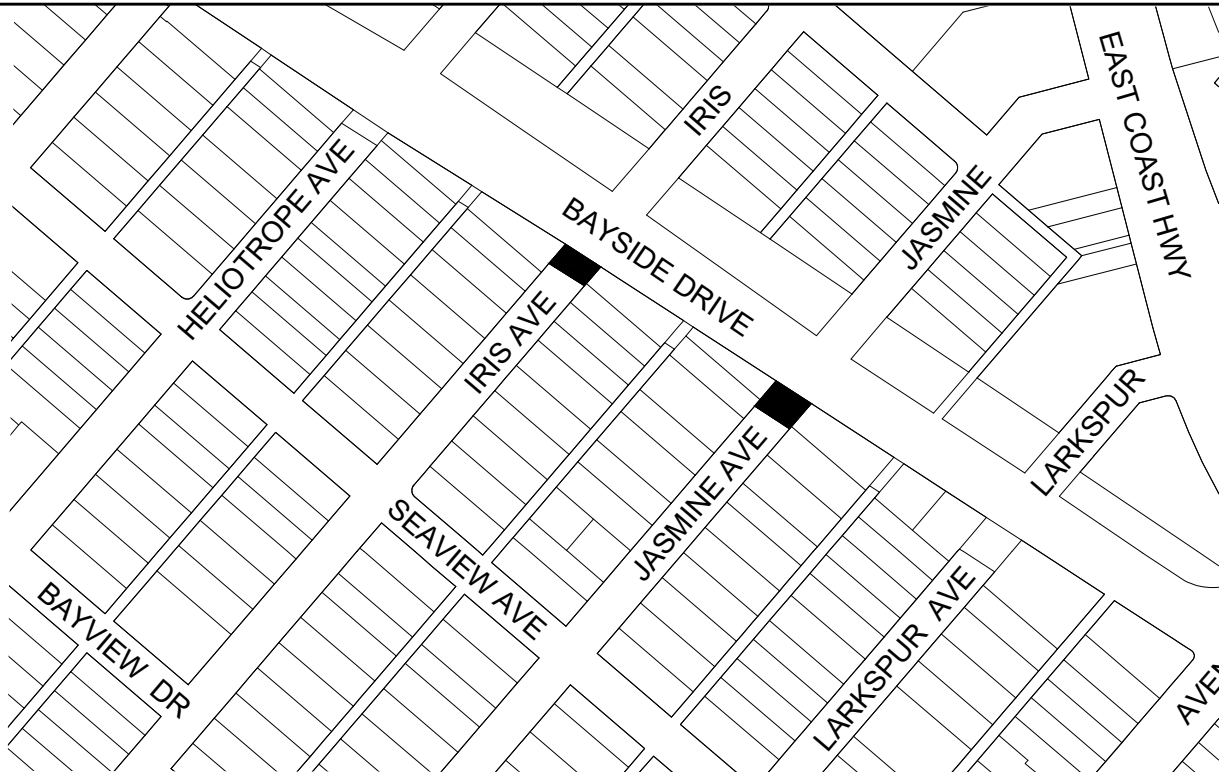
The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENT:

Attachment A – Location Map



PORT EDWARD CIR PROJECT AREA



■ IRIS AVENUE & JASMINE AVENUE PROJECT AREAS



STORM DRAIN SYSTEM UPGRADES

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

LOCATION MAP

C-9148-1

1/14/25

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NEWPORT BEACH

City Council Staff Report

January 14, 2025
Agenda Item No. 9

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: David A. Webb, Public Works Director - 949-644-3311,
dawebb@newportbeachca.gov

PREPARED BY: Tom Sandefur, Assistant City Engineer - 949-644-3321,
tsandefur@newportbeachca.gov

TITLE: 2023-2024 Facilities Painting Project – Notice of Completion for
Contract No. 9393-1 (24F02)

ABSTRACT:

On August 27, 2024, the City Council awarded Contract No. 9393-1 for the 2023-2024 Facilities Painting Project to GCD Painting of Wilmington. The project addressed protective coatings at the City of Newport Beach Utilities Yard, Police Department Headquarters, and Balboa Yacht Basin. The work is now complete and staff requests City Council acceptance and close out of the contract.

RECOMMENDATION:

- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project.

DISCUSSION:

Overall Contract Cost/Time Summary

Awarded Contract Amount	Final Total Contract Amount	Total Contract Change Amount	Percent Contract Cost Change
\$174,000	\$176,100	\$2,100	1.21%
Allowed Contract Time + Approved Extensions (Days) =		70	Actual Time Used (Days) 33

This project addressed protective coatings at the City’s Utilities Yard, Police Department Headquarters, and Balboa Yacht Basin to protect the various building materials from deterioration. This proactive approach shields the metal, wood and other building materials from damage that could result in more costly repair work in the future. The new paint provides an additional benefit of a more aesthetically pleasing appearance of these facilities.

A summary of the contract construction cost is as follows:

Original Bid Amount:	\$	174,000
Actual Cost of Bid Items Constructed:	\$	174,000
Total Change Orders:	\$	2,100
Final Contract Cost:	\$	176,100

There was one change order for \$2,100, which increased the original contract amount by 1.21% and was within the contingency allowance. This change order expanded the work scope to include painting of the cable wires supporting the City’s radio tower as the cables were showing signs of increased corrosion.

A summary of the project schedule milestones is as follows:

Estimated Start of Construction per Annual Baseline Schedule	November 4, 2024
Actual Start of Construction Per Notice to Proceed	October 14, 2024
Estimated Contract Completion Date with Approved Extensions	February 4, 2025
Actual Substantial Construction Completion Date	December 2, 2024

FISCAL IMPACT:

The 2023-2024 Facilities Painting Project was included within the Fiscal Year 2023-24 Capital Improvement Program Budget. Funds for the construction contract were expended from the Facilities Maintenance Master Plan (General Fund) from the following accounts:

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
FMMP	57101-980000-24F02	\$ 174,465.71
FMMP	57101-980000-22F02	\$ 1,634.29
	Total:	\$ 176,100.00

ENVIRONMENTAL REVIEW:

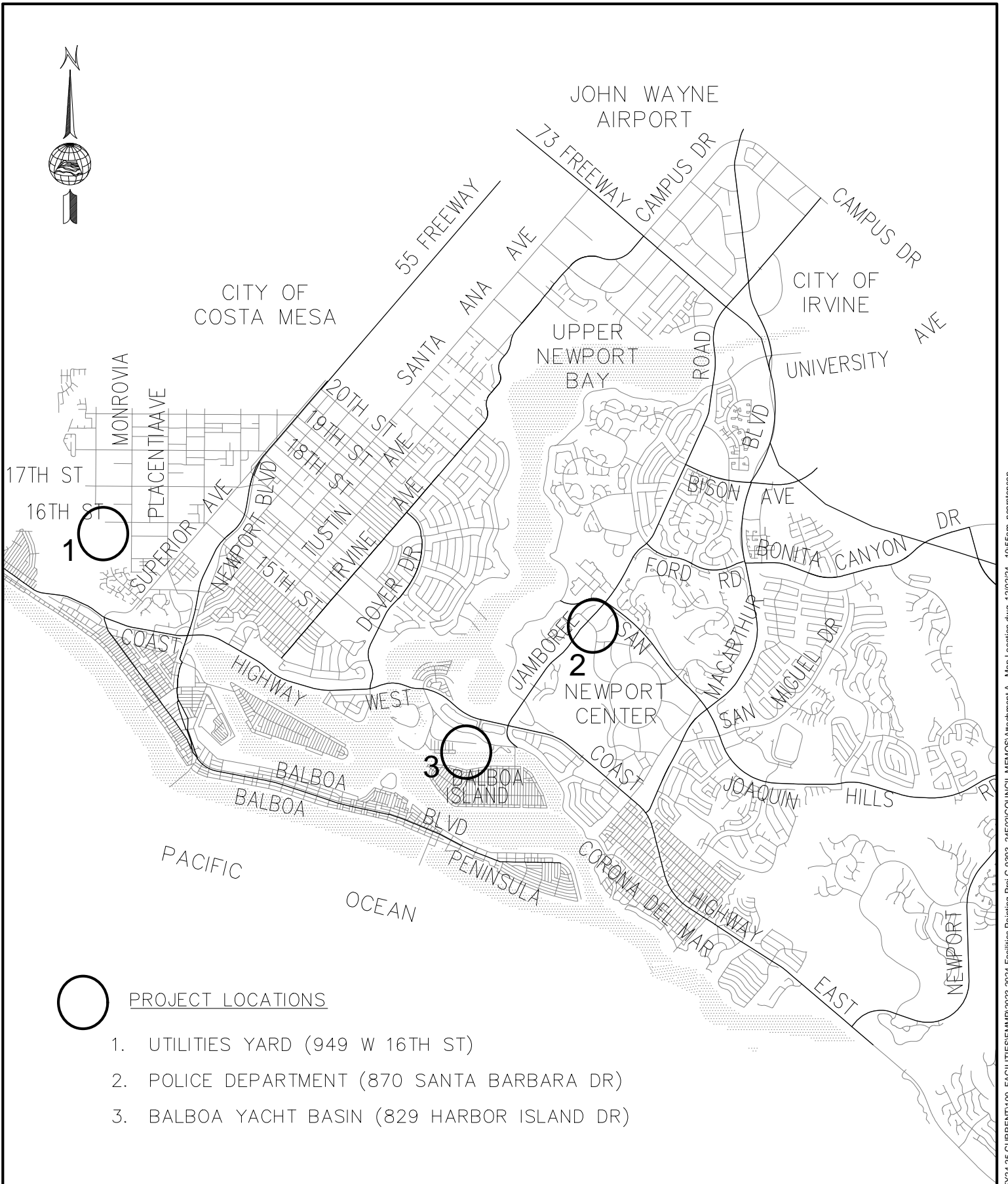
On August 27, 2024, the City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Class 1 Section 15301(d) (rehabilitation of deteriorated facilities involving no expansion of existing use) of the CEQA Guidelines, California Code of Regulations, Title 14, 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).

ATTACHMENT:

Attachment A – Location Map



PROJECT LOCATIONS

1. UTILITIES YARD (949 W 16TH ST)
2. POLICE DEPARTMENT (870 SANTA BARBARA DR)
3. BALBOA YACHT BASIN (829 HARBOR ISLAND DR)

2023-2024 FACILITIES PAINTING PROJECT
LOCATION MAP

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

C-9393-1	24F02	01/14/25
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NEWPORT BEACH

City Council Staff Report

January 14, 2025
Agenda Item No. 10

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: David A. Webb, Public Works Director - 949-644-3311,
dawebb@newportbeachca.gov

PREPARED BY: Tom Sandefur, Assistant City Engineer - 949-644-3321,
tsandefur@newportbeachca.gov

TITLE: 38th Street and Lake Avenue Landscape Improvement Project –
Notice of Completion for Contract No. 9008-1 (24L01)

ABSTRACT:

On May 28, 2024, the City Council awarded Contract No. 9008-1 for the 38th Street and Lake Avenue Landscape Improvement Project to S&H Civilworks of Colton. This project included improving the appearance of the 38th Street beach area and entrance to Newport Island, and providing better beach access. The work is now complete and staff requests the City Council acceptance and close out of the contract.

RECOMMENDATION:

- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project.

DISCUSSION:

Overall Contract Cost/Time Summary

Awarded Contract Amount	Final Total Contract Amount	Total Contract Change Amount	Percent Contract Cost Change
\$193,067.00	\$205,144.99	\$12,077.99	6.26%
Allowed Contract Time + Approved Extensions (Days) =		60	Actual Time Used (Days) 56

The project included new stone cladding on the existing retaining walls to improve the appearance, new stairs for better beach access, a new higher landscaped planter area with a fence, a new foot-wash station, new landscaping, and new irrigation lines. The contracted work has been completed to the satisfaction of the Public Works Department. A summary of the construction costs is as follows:

Original bid amount:	\$	193,067.00
Actual Cost of Bid Items Constructed:	\$	193,067.00
Total Change Orders:	\$	12,077.99
Final contract cost:	\$	205,144.99

There were two change orders totaling \$12,077.99. This amounted to 6.26% of the original contract amount and was within the contingency allowance. The added work covered additional sidewalk and fencing replacement and additional anti-graffiti coating.

A summary of the project schedule milestones is as follows:

Estimated Start of Construction per Annual Baseline Schedule	August 8, 2024
Actual Start of Construction Per Notice to Proceed	August 5, 2024
Estimated Contract Completion Date with Approved Extensions	October 29, 2024
Actual Substantial Construction Completion Date	October 25, 2024

FISCAL IMPACT:

The 38th Street and Lake Avenue Landscape Improvement Project was included within the Fiscal Year 2023-24 Capital Improvement Program Budget. Funds for the construction contract were expended from the Facilities Maintenance Master Plan (General Fund) from the following accounts:

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
Neighborhood Enhancement	01201927-980000-24L01	\$ 70,025.30
Oceanfront Encroachment	16701-980000-24L01	\$ 135,119.69
	Total:	\$ 205,144.99

ENVIRONMENTAL REVIEW:

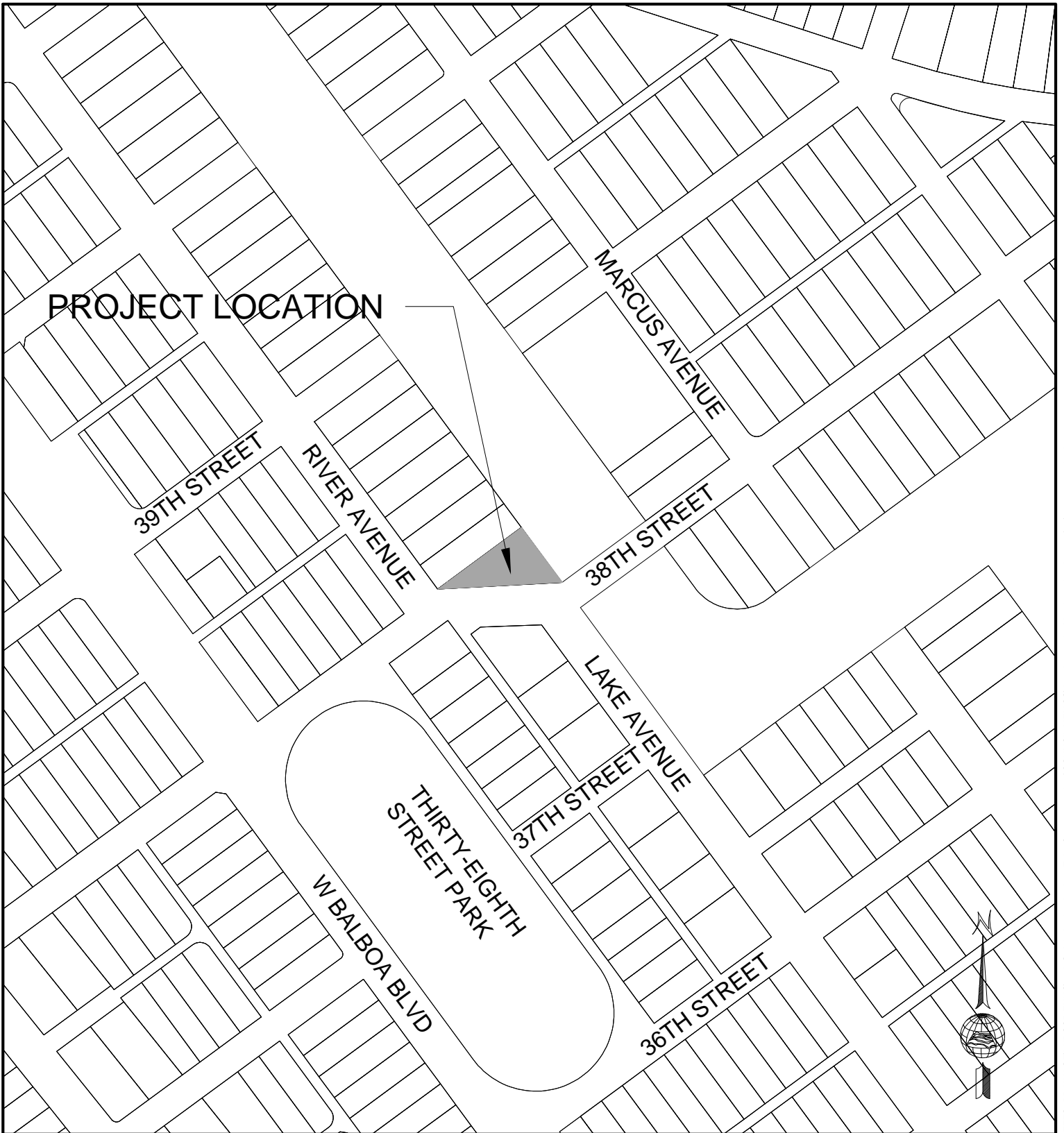
On May 28, 2024, the City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Class 2 Section 15302(c) (replacement of public facilities involving negligible or no expansion of existing use) of the CEQA Guidelines, California Code of Regulations, Title 14, 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).

ATTACHMENT:

Attachment A – Location Map



 PROJECT LOCATION

**38TH STREET AND LAKE AVENUE
LANDSCAPE IMPROVEMENTS
LOCATION MAP**

**CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT**

C-9008-1	23L01	01/14/25	106
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NEWPORT BEACH

City Council Staff Report

January 14, 2025
Agenda Item No. 11

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: David A. Webb, Public Works Director - 949-644-3311,
dawebb@newportbeachca.gov

PREPARED BY: Tom Sandefur, Assistant City Engineer - 949-644-3321,
tsandefur@newportbeachca.gov

TITLE: Police Department Parking Lot Maintenance – Award of Contract
No. 7901-1 (25F02)

ABSTRACT:

The City of Newport Beach received construction bids for the Police Department Parking Lot Maintenance project. Staff requests City Council approval to award the construction contract to Elegant Construction Inc., of Irvine. This project will rehabilitate the existing employee parking lot and expand the front public parking area at the Police Department's headquarters, located at 870 Santa Barbara Drive.

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) Approve the project plans and specifications;
- c) Award Contract No. 7901-1 to Elegant Construction Inc., for the total bid price of \$585,000 for the Police Department Parking Lot Maintenance, and authorize the Mayor and City Clerk to execute the contract; and
- d) Establish a contingency of \$88,000 (approximately 15% of total bid) to cover the cost of unforeseen work not included in the original contract.

DISCUSSION:

Maintenance and site modifications are needed at the Police Department facility, located at 870 Santa Barbara Drive, as part of the Fiscal Year 2024-25 Facilities Maintenance Master Plan (FMMP) Program. Particularly, the Police Department has lacked adequate parking for employees and the public for many years, forcing some employees to park outside of the gated perimeter and on adjacent side streets, as well as requiring visitors to occasionally park across Santa Barbara Drive in the bank lot. The project includes slurry sealing the parking lot to keep it in good working condition, providing increased parking by restriping the lot, adding additional public parking to the front lot, and making additional upgrades to provide required Americans with Disabilities Act (ADA) access from the public sidewalk.

On November 5, 2024, at 2 p.m., the City Clerk opened and read the following bids for this project:

	<u>BIDDER</u>	<u>TOTAL BID AMOUNT</u>
Low	Elegant Construction Inc.	\$ 585,000
2nd	Venture Construction & Management	\$ 699,500
3rd	PaveWest Inc.	\$ 701,479

The City received three bids for this project. The apparent low bidder, Elegant Construction Inc., possesses a California State Contractor’s License Classification “A”, as required by the project specifications. A review of the contractor’s references shows satisfactory completion of similar contracts for other public agencies including the City of Irvine, the City of Huntington Beach, and the South Orange County Community College District.

The apparent low bid received from Elegant Construction Inc. was approximately 46% over the engineer’s estimate of \$400,000. This bid was identical to its previous bid that was rejected on October 8, 2024. Unlike in the first bidding effort, Elegant Construction Inc. now provided required documentation showing relevant experience. The low bid also came in higher than the engineer’s estimate due to higher than anticipated asphalt paving costs, which staff believes is likely associated with the smaller size of the paving area. Pursuant to the contract specifications, the contractor shall have 60 consecutive working days to complete the project. Work is scheduled to start in February 2025.

The project plans and specifications will be available for review at the January 14, 2025, City Council meeting or upon request.

FISCAL IMPACT:

The adopted Capital Improvement Program budget includes sufficient funding for the award of this contract. It will be expensed to the Facilities Maintenance Master Plan (General Funds) accounts in the Public Works Department, 57101-980000-25F02.

The following funds will be expended:

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
Facilities Maintenance Master Plan	57101-980000-25F02	\$ 675,000

Proposed fund uses are as follows:

<u>Vendor</u>	<u>Purpose</u>	<u>Amount</u>
Elegant Construction Inc.	Construction Contract	\$ 585,000
Elegant Construction Inc.	Construction Contingency	\$ 88,000
Various	Printing & Incidentals	\$ 2,000
	Total:	\$ 675,000

Staff recommends establishing \$88,000 (approximately 15% of total bid) for contingency purposes and unforeseen conditions associated with construction.

ENVIRONMENTAL REVIEW:

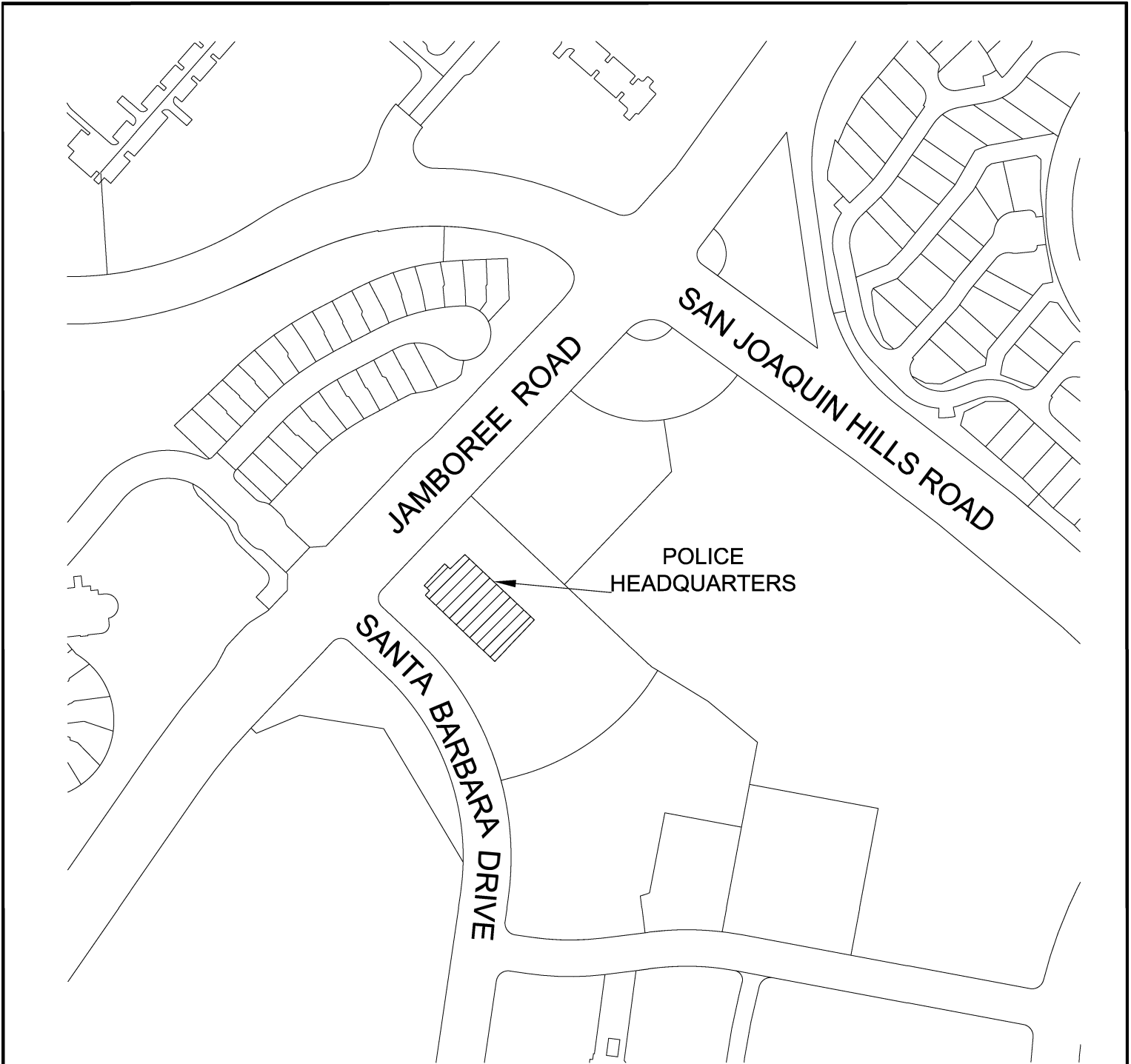
Staff recommends the City Council find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the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

ATTACHMENT:

Attachment A – Location Map



NOT TO SCALE



PROJECT LIMITS

**POLICE DEPARTMENT
PARKING LOT MAINTENANCE
LOCATION MAP**

**CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT**

7901-1

01/14/2025



NEWPORT BEACH

City Council Staff Report

January 14, 2025
Agenda Item No. 12

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: David A. Webb, Public Works Director - 949-644-3311,
dawebb@newportbeachca.gov

PREPARED BY: John Salazar, Streets & Beaches Superintendent - 949-718-3460,
jsalazar@newportbeachca.gov

TITLE: Approval of Maintenance and Repair Services Agreements with EverFence Corporation and Red Hawk Services, Inc. for On-Call Fencing

ABSTRACT:

The City of Newport Beach’s current agreements for on-call fencing maintenance and repair services expire on March 23, 2025. Based on the results of a Request for Proposals (RFP) process, staff recommends awarding five-year agreements for these services to EverFence Corporation and Red Hawk Services, Inc., with a not-to-exceed (NTE) limit of \$300,000 for each agreement.

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 Maintenance and Repair Services Agreement with EverFence Corporation for a five-year term and total not-to-exceed amount of \$300,000, and authorize the Mayor and City Clerk to execute the agreement; and
- c) Approve a Maintenance and Repair Services Agreement with Red Hawk Services, Inc. for a five-year term and total not-to-exceed amount of \$300,000, and authorize the Mayor and City Clerk to execute the agreement.

DISCUSSION:

The City’s current on-call fencing maintenance and repair services agreements expire on March 23, 2025. Based on the results of an RFP, staff recommends awarding new agreements to EverFence Corporation and Red Hawk Services, Inc. as the two highest scoring proposers, for five-year terms and an NTE of \$300,000 for each agreement.

The contractors provide as-needed maintenance and repair services for a variety of different types of fencing and related items at City parks, trails, beaches and facilities.

Occasionally, they may also provide temporary or minor permanent fencing services that arise on capital improvement program (CIP) projects. Major CIP project fencing needs are included as part of the project bid and therefore funded by the CIP project.

Awarding two on-call agreements ensures the City can efficiently address both emergent and planned work without being restricted by a single contractor’s schedule and availability. It also ensures responsiveness, competitive pricing, and quality service, while reducing the risks associated with relying on single providers and potential contractor failure or underperformance. When services are needed, staff will request letter proposals from each contractor to secure the best pricing for each project.

Combined on-call fencing service expenditures from 2020-2024 under current agreements averaged approximately \$100,000 per year with billing rates remaining static during that time. New billing rates, approximately 20% higher than current rates, align with inflation increases based on the Los Angeles-Long Beach-Anaheim-area consumer price index (CPI) during that time.

RFP No. 24-82 was published on August 15, 2024, and the City received three complete proposals. A three-member staff panel first evaluated proposals technically based on qualifications and demonstrated experience, with a maximum possible score of 60 points. All three proposals earned the minimum 70% technically required and were then scored on a combination of various service costs, with a maximum possible score of 40 points. Overall evaluation results are shown in the table below.

Proposer	Technical Score	Cost Score	Total Score	Rank
EverFence Corporation	45.00	39.07	84.07	1
Red Hawk Services, Inc.	55.00	27.60	82.60	2
Harris Steel Fence Co., Inc.	53.00	14.41	67.41	3

FISCAL IMPACT:

The adopted budget includes sufficient funding for these agreements. Work will be expensed to the appropriate accounts in the Public Works Department Operating and/or CIP budgets depending on its nature and location.

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 – Maintenance and Repair Agreement with Everfence Corporation
- Attachment B – Maintenance and Repair Agreement with Red Hawk Services, Inc.

ATTACHMENT A

ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH EVERFENCE CORPORATION FOR ON-CALL FENCING MAINTENANCE AND REPAIR SERVICES

THIS ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 14th day of January, 2025 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and EVERFENCE CORPORATION, a Delaware corporation ("Contractor"), whose address is 12309 Telegraph Road, Santa Fe Springs, CA 90670, 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 Contractor to perform on-call maintenance and/or repair services for City consisting of on-call fencing maintenance, repair, replacement and installation services ("Project").
- C. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the maintenance and/or repair services described in this Agreement.
- D. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by City for the Project, is familiar with all conditions relevant to the performance of services, and has committed to perform all work required for the compensation specified 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 January 13, 2030, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

2.1 Contractor shall perform the on-call services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). Upon written request from the Project Administrator as defined herein, Contractor shall provide a letter proposal for Services requested by the City (hereinafter referred to as the "Letter Proposal"). The Letter Proposal shall include the following:

2.1.1 A detailed description of the Services to be provided;

2.1.2 The position of each person to be assigned to perform the Services, and the name of the individuals to be assigned, if available;

2.1.3 The estimated number of hours and cost to complete the Services;
and

2.1.4 The time needed to finish the specific project.

2.2 No Services shall be provided until the Project Administrator has provided written acceptance of the Letter Proposal. Once authorized to proceed, Contractor shall diligently perform the duties in the approved Letter Proposal.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Contractor shall perform the Services in accordance with the schedule included in Exhibit A and the Letter Proposal. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Contractor to strictly adhere to the schedule set forth in Exhibit A and the Letter Proposal, 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, Contractor shall not be responsible for delays due to causes beyond Contractor'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 Contractor shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein, not later than two (2) 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 Contractor's control.

3.4 For all time periods not specifically set forth herein, Contractor shall respond in the most expedient and appropriate manner under the circumstances, by fax, hand-delivery or mail.

4. COMPENSATION TO CONTRACTOR

4.1 City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Three Hundred Thousand Dollars and 00/100 (\$300,000.00)**, without prior written amendment to the Agreement.

4.2 Upon the first anniversary of the Effective Date and upon each anniversary of the Effective Date thereafter, the billing rates set forth in Exhibit B ("Billing Rates") shall be adjusted in proportion to changes in the Consumer Price Index, subject to the maximum adjustment set forth below. Such adjustment shall be made by multiplying the Billing Rates in Exhibit B by a fraction, the numerator of which is the value of the Consumer Price Index for the calendar month three (3) months preceding the calendar month for which such adjustment is to be made, and the denominator of which is the value of the Consumer Price Index for the same calendar month immediately prior to Effective Date. The Consumer Price Index to be used in such calculation is the "Consumer Price Index, All Items, 1982-84=100 for All Urban Consumers (CPI-U)", for the Los Angeles-Riverside-Orange County Metropolitan Area, published by the United States Department of Labor, Bureau of Labor Statistics. If both an official index and one or more unofficial indices are published, the official index shall be used. If said Consumer Price Index is no longer published at the adjustment date, it shall be constructed by conversion tables included in such new index. In no event, however, shall the amount payable under this Agreement be reduced below the Billing Rates in effect immediately preceding such adjustment. The maximum adjustment increase to the Billing Rates, for any year where an adjustment is made pursuant to this Section, shall not exceed the Consumer Price Index or 2.0% of the Billing Rates in effect immediately preceding such adjustment, whichever is less.

4.3 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name and/or classification of employee 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 Contractor no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.4 City shall reimburse Contractor only for those costs or expenses specifically identified in Exhibit B to this Agreement and the Letter Proposal, or specifically approved in writing in advance by City.

4.5 Contractor 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 Exhibit B and the Letter Proposal.

5. PROJECT MANAGER

5.1 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 Agreement term. Contractor has designated Andrew Kaufman to be its Project Manager. Contractor 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 Contractor, 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. Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the Public Works. City's Director of Public Works 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 Contractor in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Contractor, 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 Contractor's Work schedule.

8. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

8.1 Contractor shall use only the standard materials described in Exhibit A in performing Services under this Agreement. Any deviation from the materials described in Exhibit A shall not be installed or utilized unless approved in advance and in writing by the Project Administrator.

8.2 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the 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, Contractor certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws and legally recognized professional standards.

8.3 Contractor 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 Contractor to practice its profession. Contractor shall maintain a City of Newport Beach business license during the term of this Agreement.

8.4 Contractor shall not be responsible for delay, nor shall Contractor 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 Contractor's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. RESPONSIBILITY FOR DAMAGES OR INJURY

9.1 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 Contractor's performance of the Services 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.

9.2 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.

9.3 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (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 Contractor's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Contractor, 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).

9.4 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 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 Contractor.

9.5 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 Work by Contractor or its agents.

9.6 To the extent authorized by law, as much of the money due Contractor under and by virtue of the Agreement 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.

9.7 The rights and obligations set forth in this Section shall survive the termination of this Agreement.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Contractor on an independent contractor basis and Contractor is not an agent or employee 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 expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Contractor or its employees. Nothing in this Agreement shall be deemed to constitute approval for Contractor or any of Contractor's employees or agents, to be the agents or employees of City. 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 Agreement. Anything in this Agreement that may appear to give City the right to direct Contractor as to the details of the performance of the Work 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 Services.

11. 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 Contractor on the Project.

12. CITY POLICY

Contractor 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

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.

14. 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 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. BONDING

15.1 For any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement: (1) 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 any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), and in the form attached hereto as Exhibit D which is incorporated herein by this reference; and (2) a Faithful Performance Bond in the amount of one hundred percent (100%) of the total amount to be paid Contractor as set forth in any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), and in the form attached hereto as Exhibit E which is incorporated herein by this reference.

15.2 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, (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.

15.3 Contractor shall deliver, concurrently with City's approval of any Letter Proposal over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), the Labor and Materials Payment Bond and Faithful Performance Bond, 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.

16. PREVAILING WAGES

16.1 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 Agreement shall be paid to all workmen employed on the Work to be done according to the Agreement 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 Agreement. 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.

16.2 Unless otherwise exempt by law, Contractor warrants that no contractor or subcontractor was listed on the bid proposal for the Services that it is not currently registered and qualified to perform public work. Contractor further warrants that it is currently registered and qualified to perform "public work" pursuant to California Labor Code section 1725.5 or any successor statute thereto and that no contractor or subcontractor will engage in the performance of the Services unless currently registered and qualified to perform public work.

17. 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 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 cotenancy, 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.

18. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A and the Letter Proposal. Contractor 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.

19. OWNERSHIP OF DOCUMENTS

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Contractor, 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 Contractor or any other party. Contractor shall, at Contractor's expense, provide such Documents to City upon prior written request.

20. 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.

21. RECORDS

Contractor shall keep records and invoices in connection with the Services to be performed under this Agreement. Contractor 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 Contractor under this Agreement. All such records and invoices shall be clearly identifiable. Contractor shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Contractor 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 Contractor under this Agreement.

22. WITHHOLDINGS

City may withhold payment to Contractor 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. Contractor shall not discontinue Work as a result of such withholding. Contractor shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Contractor 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.

23. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

City reserves the right to employ other contractors in connection with the Project.

24. CONFLICTS OF INTEREST

24.1 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 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., Contractor 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. Contractor shall indemnify and hold harmless City for any and all claims for damages resulting from Contractor'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 Contractor to City shall be addressed to City at:

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

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

Attn: Matthew Lloyd Sivewright
Everfence Corporation
120 Newport Center Drive
Newport Beach, CA 92660

26. CLAIMS

26.1 Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Contractor shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Contractor'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 Contractor in writing as unsettled at the time of its final request for payment. Contractor and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Contractor shall be required to file any claim Contractor may have against City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

26.2 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/Consultant 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.).

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 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 reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. LABOR

28.1 Contractor shall conform with all applicable provisions of state and federal law including, but not limited to, applicable provisions of the federal Fair Labor Standards Act ("FLSA") (29 USCA § 201, *et seq.*).

28.2 Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement, Contractor shall immediately give written notice to City, and provide all relevant information.

28.3 Contractor represents that all persons working under this Agreement are verified to be U.S. citizens or persons legally authorized to work in the United States.

28.4 To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees from loss or damage, including but not limited to attorneys' fees, and other costs of defense by reason of actual or alleged violations of any applicable federal, state and local labor laws or law, rules, and/or regulations. This obligation shall survive the expiration and/or termination of the Agreement.

29. STANDARD PROVISIONS

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

29.2 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 and City.

29.3 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.

29.4 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.

29.5 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.

29.6 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.

29.7 Amendments. This Agreement 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.

29.8 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.

29.9 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.

29.10 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.

29.11 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.

29.12 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: 12-17-24

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

By: *[Signature]*
Aaron C. Harp
City Attorney

By: _____
Joe Stapleton
Mayor

*ms
12/17/24*

ATTEST:
Date: _____

CONTRACTOR: EVERFENCE
CORPORATION, a Delaware
corporation
Date: _____

By: _____
Leilani I. Brown
City Clerk

By: _____
Matthew Sivewright
Chief Executive Officer, Secretary,
Chief Financial Officer

[END OF SIGNATURES]

- Attachments:
- Exhibit A – Scope of Services
 - Exhibit B – Schedule of Billing Rates
 - Exhibit C – Insurance Requirements
 - Exhibit D – Labor and Materials Payment Bond
 - Exhibit E – Faithful Performance Bond

EXHIBIT A

SCOPE OF SERVICES

Exhibit A

Scope of Services

Contractor shall provide and furnish labor, materials, special equipment, and permits for the installation and repairs of, but not limited to, wrought iron gates and fence, the installation and repairs of chain link gates and fence, privacy mesh fencing, Vinyl covered chain link fencing, wood panel fencing, peeler core post and wood-rail fencing, concrete post and rail fencing, and tension cables on city owned facilities within the City limits of Newport Beach, California.

- Contractor shall detail any modifications or curtailment of requested tasks and operations in Contractor's Letter Proposal which shall be subject to acceptance by the City's Project Administrator.
- Contractor shall maintain work areas with a well-manicured, clean appearance, and all work shall be performed in a professional manner using quality equipment.
- Contractor shall be responsible for the demolition, removal, haul away, and disposal of construction related debris and materials related to the requested fence repair/installation work.
- Contractor shall be responsible for any damages to public and/or private property caused during the course of the work.
- Contractor shall recognize that during the course of this Agreement, the City may have other contractors conducting other activities and/or operations in the immediate vicinity of requested work. Contractor shall make every effort to coordinate activities with existing operations. Other activities may include, but are not limited to, the following:
 - i. Landscape refurbishment;
 - ii. Modification or repair of existing facilities;
 - iii. Construction; and
 - iv. Storm related operations

Contractor Requirements:

- Contractor shall meet all specifications and requirements contained in this Agreement. No substitutions will be accepted without prior City written approval.
- Contractor shall possess and maintain an active C-13 - Fencing Contractor License issued by the State of California Contractors State License Board.
- Contractor shall respond to requests within forty-eight (48) hours of notification by a representative of the City.

- All tools and materials shall remain in Contractor's possession at all times.
- All Contractor vehicles parked on site shall be secure at all times.
- Contractor shall ensure all precautions for safety are taken.
- Contractor shall obtain necessary building permits at no cost when required.
- Contractor shall possess a City Business License.
- Contractor shall be registered with the Department of Industrial Relations (DIR) for the electronic submitting of their certified payroll for prevailing wage.
- As required, Contractor shall provide traffic control per the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD) "Watch Manual."
- The Contractor is responsible for all underground service alerts prior to digging (DigAlert).



EVERFENCE™

FENCE MADE EASY™

EverFence will provide and furnish (as necessary) labor, materials, special equipment, and permits for the installation and repairs of (but not limited to) wrought iron gates and fence, the installation and repairs of chain link gates and fence, privacy mesh fencing, Vinyl covered chain link fencing, wood panel fencing, peeler core post and wood-rail fencing, concrete post and rail fencing, and tension cables on city owned facilities within the City limits of Newport Beach, California.

About Us:

EverFence Corporation is a reputable fence company with roots in Southern California and offices in Texas as well as Florida. Our five locations in Southern California allow us to serve our customer base quickly and efficiently with the high standards we require of ourselves.

EverFence's local team to Newport Beach consists of our Commercial Division Manager, Commercial Manager, 5 project managers, 3 project coordinators, 5 estimators, 25 crews, accounts, etc.. We have an abundance of knowledge throughout our organization and are extremely confident in our ability to meet timelines and with the high level of quality expected.

Method of Approach:

1) We are extremely confident in our ability to provide coverage and materials in ample time for this project. EverFence is very familiar with these types of projects, and we have a very experienced team coordinating along with multiple facilities in the area.

a) Subcontractors – We will not be using subcontractors on this project as our team and crews are the most experienced with this SOW.

Contractor License:



CONTRACTORS
STATE LICENSE BOARD
ACTIVE LICENSE



License Number **1063022**

Entity **CORP**

Business Name **EVERFENCE CORPORATION**

Classification(s) **C13**



Expiration Date **02/28/2026**

www.csfb.ca.gov

Department of Industrial Relations (DIR):

1) DIR Number: 1000708605 Expires: 06/30/2026

Conclusion:

On behalf of EverFence Corporation, we would like to express our gratitude for the chance to bid on this project. We are eager and enthusiastic about the prospect of working with the City of Newport Beach.

EXHIBIT B

SCHEDULE OF BILLING RATES

Exhibit B - COST FILE

Section 1: Billing Rates

Important Note: Rates are inclusive of all costs including, but not limited to labor, travel, supplies, equipment, materials, and disposal in the performance of the prescribed tasks.

CHAIN LINK FENCE						
Chain link shall be 9 gauge, 2 1/4" mesh size						
ITEM NO.	DESCRIPTION	Unit of Measure	Cost per Unit (1-10 LF)	Cost per Unit (11-50LF)	Cost per Unit (51-100LF)	Cost per Unit (100+LF)
1	Remove and install 4' high chain link fence	LF	\$21.00	\$21.00	\$21.00	\$21.00
2	Remove and install 6' high chain link fence	LF	\$22.00	\$22.00	\$22.00	\$22.00
3	Remove and install 8' high chain link fence	LF	\$26.00	\$26.00	\$26.00	\$26.00
4	Provide and install 4' high chain link fence	LF	\$15.00	\$15.00	\$15.00	\$15.00
5	Provide and install 6' high chain link fence	LF	\$18.00	\$18.00	\$18.00	\$18.00
6	Provide and install 8' high chain link fence	LF	\$20.00	\$20.00	\$20.00	\$20.00

CHAIN LINK POSTS						
Removal						
ITEM NO.	DESCRIPTION	Unit of Measure	Cost per Unit (Each)	Cost per Unit (2-5 Each)	Cost per Unit (6-10 Each)	Cost per Unit (10+ Each)
7	Removal of line or terminal posts all sizes and location	Each	\$350	\$350	\$350	\$350
Line Post Install						
ITEM NO.	DESCRIPTION	Unit of Measure	Cost per Unit (Each)	Cost per Unit (2-5 Each)	Cost per Unit (6-10 Each)	Cost per Unit (10+ Each)
8	1 5/8" diameter x 4' high in concrete/pavement	Each	\$250.00	\$250.00	\$250.00	\$250.00
9	1 5/8" diameter x 4' high in soil	Each	\$245.00	\$245.00	\$245.00	\$245.00
10	1 5/8" diameter x 6' high in concrete/pavement	Each	\$260.00	\$260.00	\$260.00	\$260.00
11	1 5/8" diameter x 6' high in soil	Each	\$255.00	\$255.00	\$255.00	\$255.00
12	1 5/8" diameter x 8' high in concrete/pavement	Each	\$270.00	\$270.00	\$270.00	\$270.00

Line Post Install (cont.)						
ITEM NO.	DESCRIPTION	Unit of Measure	Cost per Unit (Each)	Cost per Unit (2-5 Each)	Cost per Unit (6-10 Each)	Cost per Unit (10+ Each)
13	1 5/8" diameter x 8' high in soil	Each	\$265.00	\$265.00	\$265.00	\$265.00
14	1 7/8" diameter x 4' high in concrete/pavement	Each	\$250.00	\$250.00	\$250.00	\$250.00
15	1 7/8" diameter x 4' high in soil	Each	\$245.00	\$245.00	\$245.00	\$245.00
16	1 7/8" diameter x 6' high in concrete/pavement	Each	\$260.00	\$260.00	\$260.00	\$260.00
17	1 7/8" diameter x 6' high in soil	Each	\$255.00	\$255.00	\$255.00	\$255.00
18	1 7/8" diameter x 8' high in concrete/pavement	Each	\$270.00	\$270.00	\$270.00	\$270.00
19	1 7/8" diameter x 8' high in soil	Each	\$265.00	\$265.00	\$265.00	\$265.00
20	2 3/8" diameter x 4' high in concrete/pavement	Each	\$265.00	\$265.00	\$265.00	\$265.00
21	2 3/8" diameter x 4' high in soil	Each	\$260.00	\$260.00	\$260.00	\$260.00
22	2 3/8" diameter x 6' high in concrete/pavement	Each	\$275.00	\$275.00	\$275.00	\$275.00
23	2 3/8" diameter x 6' high in soil	Each	\$270.00	\$270.00	\$270.00	\$270.00
24	2 3/8" diameter x 8' high in concrete/pavement	Each	\$280.00	\$280.00	\$280.00	\$280.00
25	2 3/8" diameter x 8' high in soil	Each	\$275.00	\$275.00	\$275.00	\$275.00
26	2 7/8" diameter x 4' high in concrete/pavement	Each	\$265.00	\$265.00	\$265.00	\$265.00
27	2 7/8" diameter x 4' high in soil	Each	\$260.00	\$260.00	\$260.00	\$260.00
28	2 7/8" diameter x 6' high in concrete/pavement	Each	\$275.00	\$275.00	\$275.00	\$275.00
29	2 7/8" diameter x 6' high in soil	Each	\$270.00	\$270.00	\$270.00	\$270.00
30	2 7/8" diameter x 8' high in concrete/pavement	Each	\$280.00	\$280.00	\$280.00	\$280.00
31	2 7/8" diameter x 8' high in soil	Each	\$275.00	\$275.00	\$275.00	\$275.00
Terminal Post Install						
ITEM NO.	DESCRIPTION	Unit of Measure	Cost per Unit (Each)	Cost per Unit (2 Each)	Cost per Unit (3-4 Each)	Cost per Unit (4+ Each)
32	2 3/8" diameter x 4' high in concrete/pavement	Each	\$265.00	\$265.00	\$265.00	\$265.00

Terminal Post Install						
ITEM NO.	DESCRIPTION	Unit of Measure	Cost per Unit (Each)	Cost per Unit (2 Each)	Cost per Unit (3-4 Each)	Cost per Unit (4+ Each)
33	2 3/8" diameter x 4' high in soil	Each	\$260.00	\$260.00	\$260.00	\$260.00
34	2 3/8" diameter x 6 high in concrete/pavement	Each	\$275.00	\$275.00	\$275.00	\$275.00
35	2 3/8" diameter x 6' high in soil	Each	\$270.00	\$270.00	\$270.00	\$270.00
36	2 3/8" diameter x 8' high in concrete/pavement	Each	\$280.00	\$280.00	\$280.00	\$280.00
37	2 3/8" diameter x 8' high in soil	Each	\$275.00	\$275.00	\$275.00	\$275.00
38	2 7/8" diameter x 4' high in concrete/pavement	Each	\$265.00	\$265.00	\$265.00	\$265.00
39	2 7/8" diameter x 4' high in soil	Each	\$260.00	\$260.00	\$260.00	\$260.00
40	2 7/8" diameter x 6 high in concrete/pavement	Each	\$275.00	\$275.00	\$275.00	\$275.00
41	2 7/8" diameter x 6' high in soil	Each	\$270.00	\$270.00	\$270.00	\$270.00
42	2 7/8" diameter x 8' high in concrete/pavement	Each	\$280.00	\$280.00	\$280.00	\$280.00
43	2 7/8" diameter x 8' high in soil	Each	\$275.00	\$275.00	\$275.00	\$275.00

Minimum specifications unless otherwise noted on approved permit/plans when applicable:

- Concrete for fence posts shall have a minimum compression strength of 4,000 psi.
- Fence post footings to be a minimum of 3 times the post diameter.
- Fence post footings to be a minimum of 24" deep for 4' and 6' high posts and 36" deep for 8' high posts.

MISCELLANEOUS TASKS						
ITEM NO.	DESCRIPTION	Unit of Measure	Cost per Unit (1-10LF)	Cost per Unit (11-50LF)	Cost per Unit (51-100LF)	Cost per Unit (100+LF)
44	Re-stretch chain link fabric	LF	\$27.00	\$27.00	\$27.00	\$27.00
45	Remove and replace top rail	LF	\$12.00	\$12.00	\$12.00	\$12.00
46	Remove and replace bottom tension wire	LF	\$3.75	\$3.75	\$3.75	\$3.75
47	Privacy Fencing - Slats	LF	\$34.00	\$34.00	\$34.00	\$34.00
48	Privacy Fencing - Vinyl Sheeting	LF	\$24.00	\$24.00	\$24.00	\$24.00
49	Re-Stretch 3/8" Tension cable	LF	\$7.25	\$7.25	\$7.25	\$7.25
50	Remove and install 3/8" Tension cable	LF	\$12.75	\$12.75	\$12.75	\$12.75
51	Re-Stretch 3/16" Tension cable	LF	\$8.25	\$8.25	\$8.25	\$8.25
52	Remove and install 3/16 Tension cable	LF		\$13.75	\$13.75	
53	Remove and Install Gate Chain link fabric shall be 9 gauge - 2 1/4" mesh size	LF	\$100.00	\$100.00	\$100.00	\$100.00
54	Rental Chain Link 6 foot high	LF	\$27.00	\$27.00	\$27.00	\$27.00
55	Privacy Fencing – Fabric	LF	\$6.00	\$6.00	\$6.00	\$6.00

After Hours means Monday - Friday 5:00 pm - 7:00 am, Weekends and Holidays.

- All rates subject to comply with Prevailing Wage requirements and subject to Department of Industrial Relations (DIR) payroll submission.
- Rates are inclusive of materials. Any reimbursements for unanticipated and pre-approved costs will require a receipt with a maximum 15% markup allowable.

Section 2: HOURLY LABOR RATES	
Minimum Call Out:	<u>2</u> Minimum Hours
Rate Type	Hourly Labor Rate
Welding - Regular Rate	\$150.00
Welding - Overtime Rate (Monday - Friday 5:00 pm - 7:00 am, Weekends and Holidays)	\$225.00
Foreman - Regular Rate	\$150.00
Foreman - Overtime Rate (Monday - Friday 5:00 pm - 7:00 am, Weekends and Holidays)	\$225.00
Journeyman - Regular Rate	\$125.00
Journeyman - Overtime Rate (Monday - Friday 5:00 pm - 7:00 am, Weekends and Holidays)	\$188.00
Laborer - Regular Rate	\$100.00
Laborer - Overtime Rate (Monday - Friday 5:00 pm - 7:00 am, Weekends and Holidays)	\$150.00
Parts and Materials Markup % (Maximum 15%)	Total % Markup: 14.5 %

CPI ADJUSTMENT: Billing rates may be given up to a 2% annual CPI increase upon the first anniversary of the contract and each anniversary thereafter in accordance with the terms set forth in the Agreement.

EXHIBIT C

INSURANCE REQUIREMENTS – MAINTENANCE/REPAIR/JANITORIAL SERVICES

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 Agreement, 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, 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.

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 and employees.
 - B. General Liability Insurance. Contractor 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, 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 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.

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 and employees 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 from each of its subcontractors.
 - B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess 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 and employees 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. 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. 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, 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. City reserves the right at any time during the term of the Agreement 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 Agreement 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 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 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 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 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 Agreement, 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 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. Contractor's Insurance. Contractor 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.

EXHIBIT D

**CITY OF NEWPORT BEACH
BOND NO. _____
LABOR AND MATERIALS PAYMENT BOND**

WHEREAS, the City of Newport Beach, State of California, has awarded to EVERFENCE CORPORATION hereinafter designated as the "Principal," an agreement for maintenance and/or repair services consisting of on-call fencing maintenance, repair, replacement and installation services, in the City of Newport Beach, in strict conformity with the Agreement 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 Agreement 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 _____ Dollars (_____), lawful money of the United States of America, said sum being equal to 100% of the amount of any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), payable by the City of Newport Beach under the terms of the Agreement; 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 Agreement 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 Agreement 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

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 E

**CITY OF NEWPORT BEACH
BOND NO. _____
FAITHFUL PERFORMANCE BOND**

The premium charges on this Bond is \$ _____, being at the rate of \$ _____ thousand of the Agreement price.

WHEREAS, the City of Newport Beach, State of California, has awarded to EVERFENCE CORPORATION hereinafter designated as the "Principal," an agreement for maintenance and/or repair services consisting of on-call fencing maintenance, repair, replacement and installation services in the City of Newport Beach, in strict conformity with the Agreement 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 Agreement and the terms thereof require the furnishing of a Bond for the faithful performance of the Agreement.

NOW, THEREFORE, we, the Principal, and _____, duly authorized to transact business under the laws of the State of California as Surety (hereinafter "Surety"), are held and firmly bound unto the City of Newport Beach, in the sum of _____ (_____) lawful money of the United States of America, said sum being equal to 100% of the amount of any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), to be paid to the City of Newport Beach, its successors, and assigns; 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 heirs, executors, administrators, successors, or assigns, fail to abide by, and well and truly keep and perform any or all the Work, covenants, conditions, and agreements in the Agreement 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 its true intent and meaning, or fails to indemnify, defend, and save harmless the City of Newport Beach, its officers, employees and agents, as therein stipulated, then, Surety will faithfully perform the same, in an amount not exceeding the sum specified in this Bond; otherwise this obligation shall become null and void.

As a part of the obligation secured hereby, and in addition to the face amount specified in this Performance Bond, there shall be included costs and reasonable expenses and fees, including reasonable attorneys fees, incurred by City, only in the event City is required to bring an action in law or equity against Surety to enforce the obligations of this Bond.

Surety, for value received, stipulates and agrees that no change, extension of time, alterations or additions to the terms of the Agreement or to the Work 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, alterations or additions of the Agreement or to the Work or to the specifications.

This Faithful Performance Bond shall be extended and maintained by the Principal in full force and effect for one (1) year following the date of formal acceptance of the Project by City.

In the event that the Principal 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 Principal and Surety above named, 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

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)

ATTACHMENT B

ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH RED HAWK SERVICES, INC. FOR ON-CALL FENCING MAINTENANCE AND REPAIR SERVICES

THIS ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 14th day of January, 2025 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and RED HAWK SERVICES, INC., a California corporation ("Contractor"), whose address is 262 E 1st Street, Perris, CA 92570, 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 Contractor to perform on-call maintenance and/or repair services for City consisting of on-call fencing maintenance, repair, replacement and installation services ("Project").
- C. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the maintenance and/or repair services described in this Agreement.
- D. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by City for the Project, is familiar with all conditions relevant to the performance of services, and has committed to perform all work required for the compensation specified 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 January 13, 2030, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

2.1 Contractor shall perform the on-call services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). Upon written request from the Project Administrator as defined herein, Contractor shall provide a letter proposal for Services requested by the City (hereinafter referred to as the "Letter Proposal"). The Letter Proposal shall include the following:

2.1.1 A detailed description of the Services to be provided;

2.1.2 The position of each person to be assigned to perform the Services, and the name of the individuals to be assigned, if available;

2.1.3 The estimated number of hours and cost to complete the Services;
and

2.1.4 The time needed to finish the specific project.

2.2 No Services shall be provided until the Project Administrator has provided written acceptance of the Letter Proposal. Once authorized to proceed, Contractor shall diligently perform the duties in the approved Letter Proposal.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Contractor shall perform the Services in accordance with the schedule included in Exhibit A and the Letter Proposal. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Contractor to strictly adhere to the schedule set forth in Exhibit A and the Letter Proposal, 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, Contractor shall not be responsible for delays due to causes beyond Contractor'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 Contractor shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein, not later than two (2) 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 Contractor's control.

3.4 For all time periods not specifically set forth herein, Contractor shall respond in the most expedient and appropriate manner under the circumstances, by fax, hand-delivery or mail.

4. COMPENSATION TO CONTRACTOR

4.1 City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Three Hundred Thousand Dollars and 00/100 (\$300,000.00)**, without prior written amendment to the Agreement.

4.2 Upon the first anniversary of the Effective Date and upon each anniversary of the Effective Date thereafter, the billing rates set forth in Exhibit B ("Billing Rates") shall be adjusted in proportion to changes in the Consumer Price Index, subject to the maximum adjustment set forth below. Such adjustment shall be made by multiplying the Billing Rates in Exhibit B by a fraction, the numerator of which is the value of the Consumer Price Index for the calendar month three (3) months preceding the calendar month for which such adjustment is to be made, and the denominator of which is the value of the Consumer Price Index for the same calendar month immediately prior to Effective Date. The Consumer Price Index to be used in such calculation is the "Consumer Price Index, All Items, 1982-84=100 for All Urban Consumers (CPI-U)", for the Los Angeles-Riverside-Orange County Metropolitan Area, published by the United States Department of Labor, Bureau of Labor Statistics. If both an official index and one or more unofficial indices are published, the official index shall be used. If said Consumer Price Index is no longer published at the adjustment date, it shall be constructed by conversion tables included in such new index. In no event, however, shall the amount payable under this Agreement be reduced below the Billing Rates in effect immediately preceding such adjustment. The maximum adjustment increase to the Billing Rates, for any year where an adjustment is made pursuant to this Section, shall not exceed the Consumer Price Index or 2.0% of the Billing Rates in effect immediately preceding such adjustment, whichever is less.

4.3 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name and/or classification of employee 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 Contractor no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.4 City shall reimburse Contractor only for those costs or expenses specifically identified in Exhibit B to this Agreement and the Letter Proposal, or specifically approved in writing in advance by City.

4.5 Contractor 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 Exhibit B and the Letter Proposal.

5. PROJECT MANAGER

5.1 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 Agreement term. Contractor has designated Sacott Moore to be its Project Manager. Contractor 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 Contractor, 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. Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the Public Works. City's Director of Public Works 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 Contractor in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Contractor, 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 Contractor's Work schedule.

8. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

8.1 Contractor shall use only the standard materials described in Exhibit A in performing Services under this Agreement. Any deviation from the materials described in Exhibit A shall not be installed or utilized unless approved in advance and in writing by the Project Administrator.

8.2 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the 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, Contractor certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws and legally recognized professional standards.

8.3 Contractor 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 Contractor to practice its profession. Contractor shall maintain a City of Newport Beach business license during the term of this Agreement.

8.4 Contractor shall not be responsible for delay, nor shall Contractor 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 Contractor's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. RESPONSIBILITY FOR DAMAGES OR INJURY

9.1 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 Contractor's performance of the Services 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.

9.2 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.

9.3 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (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 Contractor's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Contractor, 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).

9.4 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 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 Contractor.

9.5 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 Work by Contractor or its agents.

9.6 To the extent authorized by law, as much of the money due Contractor under and by virtue of the Agreement 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.

9.7 The rights and obligations set forth in this Section shall survive the termination of this Agreement.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Contractor on an independent contractor basis and Contractor is not an agent or employee 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 expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Contractor or its employees. Nothing in this Agreement shall be deemed to constitute approval for Contractor or any of Contractor's employees or agents, to be the agents or employees of City. 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 Agreement. Anything in this Agreement that may appear to give City the right to direct Contractor as to the details of the performance of the Work 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 Services.

11. 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 Contractor on the Project.

12. CITY POLICY

Contractor 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

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.

14. 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 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. BONDING

15.1 For any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement: (1) 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 any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), and in the form attached hereto as Exhibit D which is incorporated herein by this reference; and (2) a Faithful Performance Bond in the amount of one hundred percent (100%) of the total amount to be paid Contractor as set forth in any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), and in the form attached hereto as Exhibit E which is incorporated herein by this reference.

15.2 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, (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.

15.3 Contractor shall deliver, concurrently with City's approval of any Letter Proposal over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), the Labor and Materials Payment Bond and Faithful Performance Bond, 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.

16. PREVAILING WAGES

16.1 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 Agreement shall be paid to all workmen employed on the Work to be done according to the Agreement 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 Agreement. 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.

16.2 Unless otherwise exempt by law, Contractor warrants that no contractor or subcontractor was listed on the bid proposal for the Services that it is not currently registered and qualified to perform public work. Contractor further warrants that it is currently registered and qualified to perform "public work" pursuant to California Labor Code section 1725.5 or any successor statute thereto and that no contractor or subcontractor will engage in the performance of the Services unless currently registered and qualified to perform public work.

17. 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 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 cotenancy, 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.

18. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A and the Letter Proposal. Contractor 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.

19. OWNERSHIP OF DOCUMENTS

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Contractor, 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 Contractor or any

other party. Contractor shall, at Contractor's expense, provide such Documents to City upon prior written request.

20. 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.

21. RECORDS

Contractor shall keep records and invoices in connection with the Services to be performed under this Agreement. Contractor 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 Contractor under this Agreement. All such records and invoices shall be clearly identifiable. Contractor shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Contractor 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 Contractor under this Agreement.

22. WITHHOLDINGS

City may withhold payment to Contractor 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. Contractor shall not discontinue Work as a result of such withholding. Contractor shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Contractor 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.

23. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

City reserves the right to employ other contractors in connection with the Project.

24. CONFLICTS OF INTEREST

24.1 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 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., Contractor 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. Contractor shall indemnify and hold harmless City for any and all claims for damages resulting from Contractor'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 Contractor to City shall be addressed to City at:

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

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

Attn: Sacott Moore
Red Hawk Services, Inc.
262 E 1st Street
Perris, CA 92570

26. CLAIMS

26.1 Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Contractor shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Contractor'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 Contractor in writing as unsettled at the time of its final request for payment. Contractor and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Contractor shall be required to file any claim Contractor may have against City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

26.2 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/Consultant 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.).

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 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 reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. LABOR

28.1 Contractor shall conform with all applicable provisions of state and federal law including, but not limited to, applicable provisions of the federal Fair Labor Standards Act ("FLSA") (29 USCA § 201, *et seq.*).

28.2 Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement, Contractor shall immediately give written notice to City, and provide all relevant information.

28.3 Contractor represents that all persons working under this Agreement are verified to be U.S. citizens or persons legally authorized to work in the United States.

28.4 To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees from loss or damage, including but not limited to attorneys' fees, and other costs of defense by reason of actual or alleged violations of any applicable federal, state and local labor laws or law, rules, and/or regulations. This obligation shall survive the expiration and/or termination of the Agreement.

29. STANDARD PROVISIONS

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

29.2 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 and City.

29.3 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.

29.4 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.

29.5 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.

29.6 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.

29.7 Amendments. This Agreement 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.

29.8 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.

29.9 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.

29.10 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.

29.11 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.

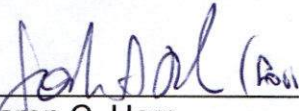
29.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[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: 12-17-24

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

By: 
Aaron C. Harp
City Attorney

By: _____
Joe Stapleton
Mayor

*ms
12/17/24*

ATTEST:
Date: _____

CONTRACTOR: RED HAWK
SERVICES, INC., a California
corporation
Date: _____

By: _____
Leilani I. Brown
City Clerk

By: _____
Scott Aven Moore
Chief Executive Officer, Chief Financial
Officer

Date: _____

By: _____
Jacob Ray Moore
Secretary

[END OF SIGNATURES]

- Attachments: Exhibit A – Scope of Services
 Exhibit B – Schedule of Billing Rates
 Exhibit C – Insurance Requirements
 Exhibit D – Labor and Materials Payment Bond
 Exhibit E – Faithful Performance Bond

EXHIBIT A

SCOPE OF SERVICES

Exhibit A

Scope of Services

Contractor shall provide and furnish labor, materials, special equipment, and permits for the installation and repairs of, including but not limited to, wrought iron gates and fences, the installation and repairs of chain link gates and fences, privacy mesh fencing, Vinyl covered chain link fencing, wood panel fencing, peeler core post and wood-rail fencing, concrete post and rail fencing, and tension cables on city owned facilities within the City limits of Newport Beach, California.

- Contractor shall detail any modifications or curtailment of requested tasks and operations in Contractor's Letter Proposal which shall be subject to acceptance by the City's Project Administrator.
- Contractor shall maintain work areas with a well-manicured, clean appearance, and all work shall be performed in a professional manner using quality equipment.
- Contractor shall be responsible for the demolition, removal, haul away, and disposal of construction related debris and materials related to the requested fence repair/installation work.
- Contractor shall be responsible for any damages to public and/or private property caused during the course of the work.
- Contractor shall recognize that during the course of this Agreement, the City may have other contractors conducting other activities and/or operations in the immediate vicinity of requested work. Contractor shall make every effort to coordinate activities with existing operations. Other activities may include, but are not limited to, the following:
 - i. Landscape refurbishment;
 - ii. Modification or repair of existing facilities;
 - iii. Construction; and
 - iv. Storm related operations

Contractor Requirements:

- Contractor shall meet all specifications and requirements contained in this Agreement. No substitutions will be accepted without prior City written approval.
- Contractor shall possess and maintain an active C-13 - Fencing Contractor License issued by the State of California Contractors State License Board.
- Contractor shall respond to requests within forty-eight (48) hours of notification by a representative of the City.

- All tools and materials shall remain in Contractor's possession at all times.
- All Contractor vehicles parked on site shall be secure at all times.
- Contractor shall ensure all precautions for safety are taken.
- Contractor shall obtain necessary building permits at no cost when required.
- Contractor shall possess a City Business License.
- Contractor shall be registered with the Department of Industrial Relations (DIR) for the electronic submitting of their certified payroll for prevailing wage.
- As required, Contractor shall provide traffic control per the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD) "Watch Manual."
- Contractor is responsible for all underground service alerts prior to digging (DigAlert).

Red Hawk Services, Inc.

DBA RED HAWK FENCE
262 East First Street • Perris, CA 92570

Laborers Local 1184

Phone: 877-657-6400 • Fax: 951-657-6442

Certified SBE 2014810

RED HAWK SERVICES, INC. IS A SOUTHERN CALIFORNIA BASED FENCING COMPANY.
THE VISION FOR RED HAWK FENCE IS SIMPLE.
DELIVER QUALITY RESULTS AND UNMATCHED EXPERTISE
OUR UNIQUE CAPABILITIES BRING SATISFACTION TO EACH AND EVERY CUSTOMER.

Objective: Red Hawk Fence continually strives to provide the preferred fencing contractor standards we maintain for many of the Local Utilities, Municipalities, School District and Construction Projects we service throughout the Southern California Regions. The highest quality standards apply to every aspect of our workmanship.

Summary: Red Hawk Fence has the experience it needs to handle the most challenging projects; we approach each project with a cooperative mindset, working with owners, architects, and contractors toward the common goal – “successful project delivery”.

Red Hawk Fence has successfully executed projects of every size with diverse degrees of complexity for clients in various market segments including Commercial, Industrial, Residential, School Districts, Local Utilities, Municipalities, Military and Caltrans. We are earning an excellent reputation and a loyal customer base by consistently delivering projects on time, on budget, with a commitment to quality in every aspect of the project.

Education: Red Hawk Fence is licensed, bonded & Insured as an A, B, C-13, and C-61/D28 contractor. We are a family run business. Red Hawk Fence is highly dedicated to “safety on the job” and has implemented a safety incentive program, with 3rd party inspectors, allowing us to maintain the highest safety standards. We bring several decades of experience to our endeavors with a commitment to our customers to provide superior service and competitive pricing. Red Hawk Fence is also member of LIUNA Local 1184 and certified SBE.

Professional Experience: Raising the bar; with nearly 30 years average fencing experience with each key employee. Red Hawk Fence has earned a good reputation since we first opened our doors. With a tradition of hard-work, and superior craftsmanship, Red Hawk Fence has the know-how that only comes from years of hands-on construction experience. This experience applies to the small project from residential and local communities, hundred-thousand-dollar projects that attract attention, and for projects that fall in between.

We are proud of our experience, accomplishments, and the high-quality workmanship.



CONTRACTORS
STATE LICENSE BOARD
ACTIVE LICENSE



License Number **1050794** Entity **CORP**

Business Name **RED HAWK SERVICES INC DBA
RED HAWK FENCE**

Classification(s) **A B C13 C61/D28**

Expiration Date **02/28/2025**

www.cslb.ca.gov





**STANDARD OPERATING
PROCEDURES**

Owner: City of Newport Beach

City Hall, Second Floor, Bay D
100 Civic Center Drive
Newport Beach, CA 92660

Contractor: Red Hawk Fence

262 E 1st St.
Perris, CA 92570
Phone: (877) 960-2717

Project: On- Call Fencing Maintenance and Repair Services

Procedures:

1. Contact info- list of Project Managers / Estimators
2. Request a proposal
3. Approve material's submittal
4. Fabrication/ lead time
5. Schedule project
6. Installation
7. Completion/ Final Punch list

S.O.P. prepared by:
Ricardo Gutierrez
Red Hawk Fence
Cell: (951)-503-8325
E-mail: Ricky@Redhawkservices.us

Contact info- list of Project managers to reach to

- Below I have the info for 3 estimators/ project managers.
- In case of emergencies please contact the owner.

Primary Project Manager/ estimator:

Red Hawk Fence

Ricardo Gutierrez

Estimator / Project Manager

Office: (951)657-6400 | Email: Ricky@redhawkservices.us

Cell: (951)503-8325 | Fax: (951)657-6442

Address: 262 E. 1st Street, Perris, CA 92570

Other Project Managers/ estimators:

Red Hawk Fence

Jacob R. Moore

Office: (951)657-6400 | Email: jacob@redhawkservices.us

Cell: (909)272-0945 | Fax: (951)657-6442

Address: 262 E. 1st Street, Perris, CA 92570

Red Hawk Fence

Jarold T. Smollen

Project Manager / Estimator

Automated Gates and Access Control and Fencing Division

CAGOI (Certified Automatic Gate Operator Installer, AFA, IDEA)

CLSB 1050794 DIR 1000405318

Office: 1-877-960-2717 | Email: jarold@redhawkservices.us

Cell: (951) 772-2320 | Fax: (951) 657-6442

Address: 262 E. 1st Street, Perris, CA 92570

OWNER:

Red Hawk Fence

Office: 1-877-960-2717 | Email: scott@redhawkservices.us


Cell: (951) 712-2721 | Fax: (951) 657-6442

Address: 262 E. 1st Street, Perris, CA 92570

Lic # 1050794

Request a proposal

- Once you reach out to our estimators we will gladly meet you on site to walk the job presented.
- Once we calculate the material, equipment, and labor necessary to complete your project we will send out a proposal for your approval. (example attached below).

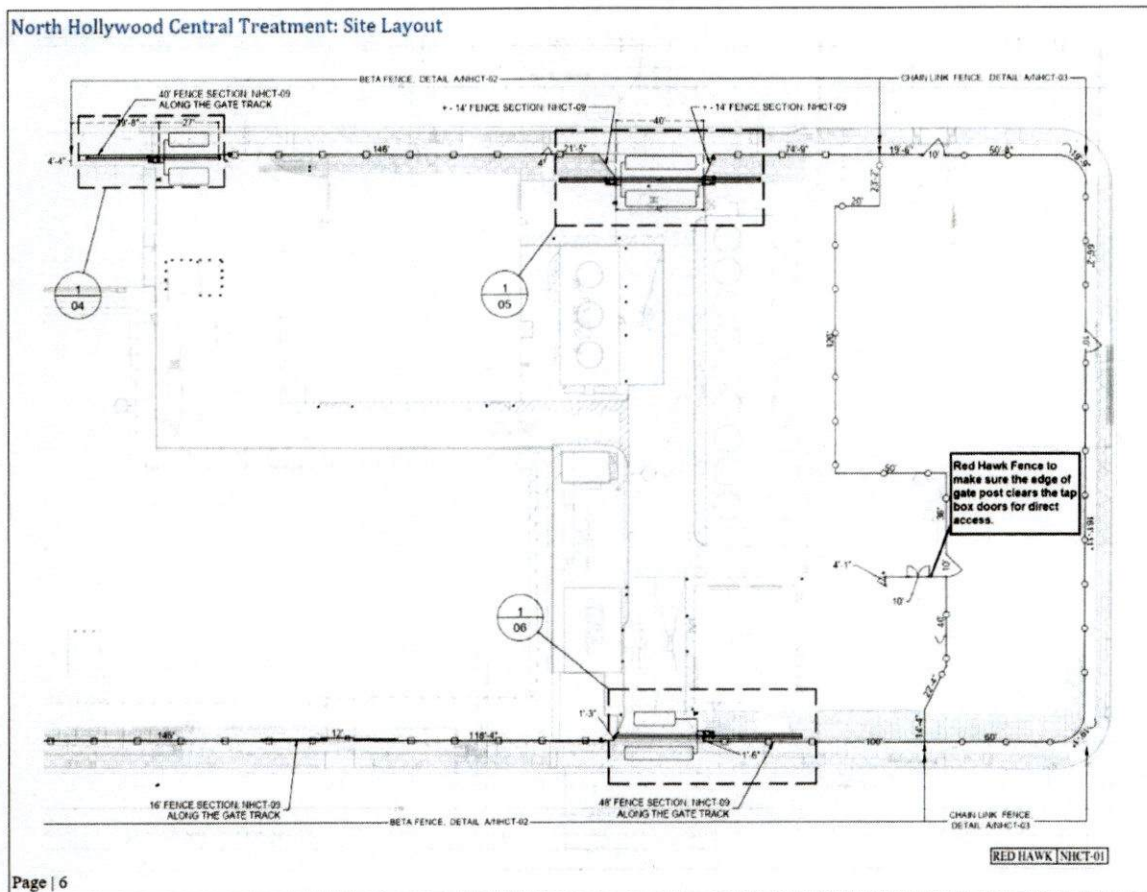
<p>CA License #1050794 DIR #10000405318 Full Workers Comp. & Liability Insurance Insured & Bonded</p>	 RED HAWK FENCE Toll Free 1-877-960-2717 261 E. 1 st Street, Perris, CA 92570	<p>Certifications & Crafts: SBE: 1743230 Union Shop Local 1184</p> <p>Estimator: Ricardo (Ricky) Gutierrez Cell: (951) 503-8325 Ricky@redhawkservices.us</p>
<p>PROPOSAL FOR: City Of Newport Beach- Hand Rail at Balboa Pier Address 1 Balboa Pier, Newport Beach, CA 92661</p>		<p>DATE: 3/17/23 Attn: Ron Hahn Phone: 949-718-3461 E-mail: RHahn@newportbeachea.gov</p>
<p>WORK INCLUDED: Red Hawk Services Inc (DBA Red Hawk Fence) shall provide the construction services including the labor, materials, and equipment, necessary to complete the following scope of work for the above referenced project for the price indicated (see exclusions below).</p> <p>SCOPE OF WORK: Install a new 24' long hand rail. Match Owner's existing hand rail.</p> <ul style="list-style-type: none"> ▪ Flange plate hand rail into existing curb ▪ 4" x 4" flange plates ▪ 3/8" concrete Screw anchors ▪ 2-3/8" x sch. 40 x pipe ▪ Hot dipped Galvanized finish <p style="text-align: center;">TOTAL COST: \$5,854.68</p> <p>Bid per prevailing wage rates</p> <p>CLARIFICATIONS NOTES:</p> <ul style="list-style-type: none"> - Proposal is for (1) mobilizations/demobilizations to/from job site only. Any additional mobilizations/demobilizations will result in additional charges. - Fence line to be free and clear minimum 10' from both sides of the fence line. - Any additional training or orientation required will be at additional cost <p>TIME FRAME:</p> <ul style="list-style-type: none"> - Lead Time: 1-2 weeks. - Substantial Completion of Field Work: (1) working days-1 Crew (If available, additional crews can be mobilized) <p>REFERENCES:</p> <ul style="list-style-type: none"> - Bid per prevailing wage rates - Bid per job walk with owner <p>TERMS: Proposal is good for a period of 30 days from date issued. Materials to be delivered to job site or stored at Red Hawk Services facility. Progress payments throughout duration of project (where applicable). Balance of contract due upon completion of phased work: net 30 days in full upon receipt of final invoice (less any retention).</p> <p>EXCLUSIONS: CAD welding, certified welding, clearing, compaction of soils, concrete washout, core drilling, rebar cages, demolition, dust control, engineering, gate locks, Knox boxes, keys, gate operators, gate closers, vinyl coating, grading, grounding, electrical, clearing grubbing, inspection services, snow curb, turf repairs, permits, sanitation services, saw cutting asphalt concrete, signage, silt fence, spoils removal, surveying, engineering, Buy America Act requirements, Buy American requirements, SWPPP, temporary fencing, traffic control, tree trimming, windscreen, repairs to damaged underground lines in any capacity (Dig Alert #11), water to be supplied by GC/customer.</p> <p><i>Purchaser shall absorb all costs incurred from unknown conditions such as rock removal, poor digging conditions, or poor soil bearing capacity, including but not limited to Jackhammer, back hoe, or auger rental (plus delivery and operator charges), sonotubes (plus delivery and installation) or dynamite. For core drilling and/or rotary hammering, the purchaser shall absorb all cost incurred from the unknown need of cutting through rebar, underground lines, and other installs.</i></p>		
<p>Submitted by Red Hawk Services Inc</p> <p>Estimator: Ricardo (Ricky) Gutierrez Cell: (951) 503-8325 Email: Ricky@redhawkservices.us</p>		<p style="text-align: center;">SIGNATURE OF ACCEPTANCE (Please return one signed copy of this proposal)</p> <p>X _____ Signature Date</p> <p>_____ Mailing Address Contact Phone #</p>

Red Hawk Services Inc | 261 E. 1st Street, Perris, CA 92570 | Ph: 1-877-960-2717

Approve material's submittal

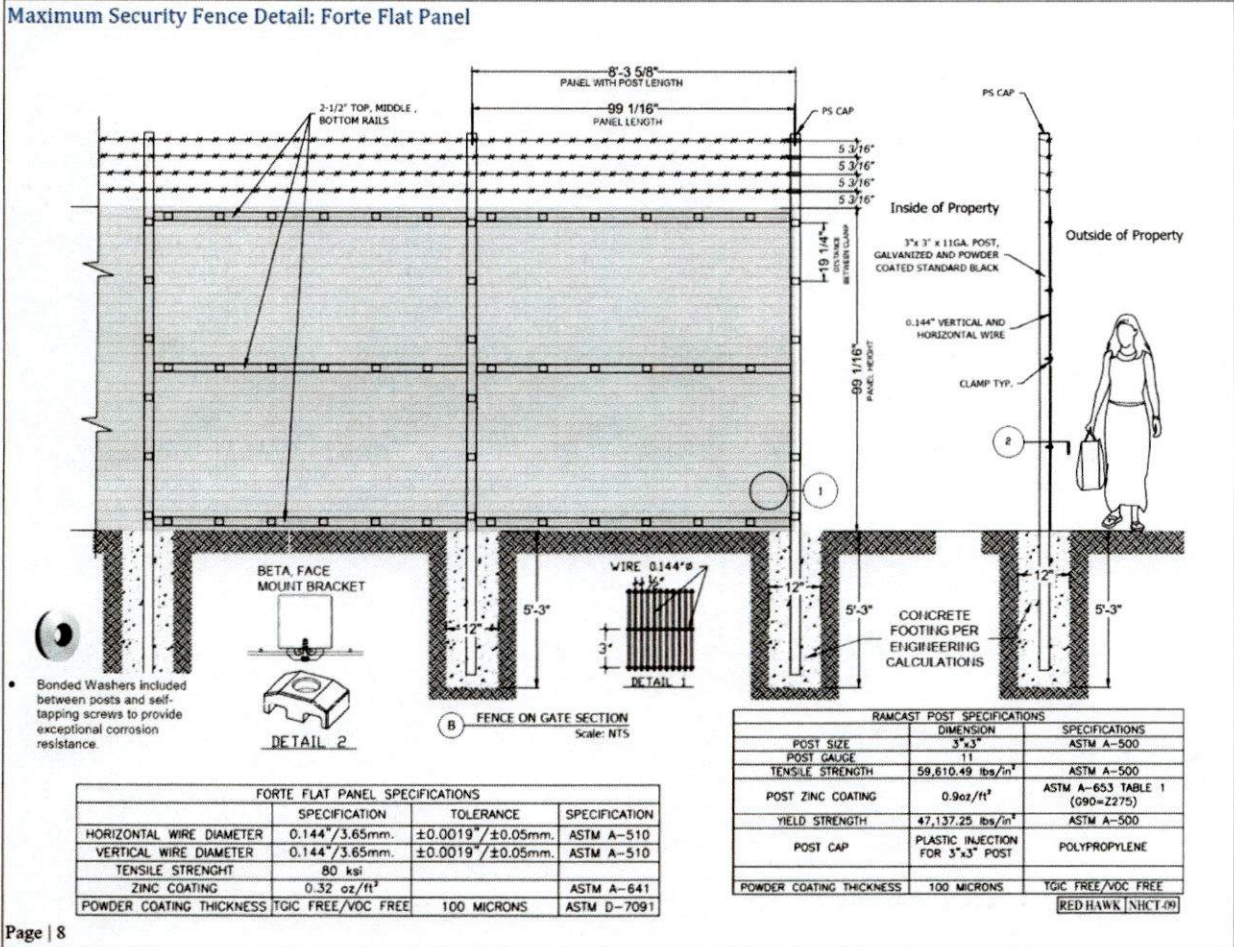
- To guarantee you receive what you want we will create a submittal package specking out every item on the job. (please see example below)
- Submittal includes: CAD drawings of what you want, specifications of material, material certifications, and concrete mix design, etc....
- Once everything looks good to the owner and submittals have been approved we can move forward with fabrication.

LAYOUT:



FENCE TYPE:

Maximum Security Fence Detail: Forte Flat Panel



CONCRETE MIX DESIGN:

Concrete Mix Design 42191A

ROBERTSON'S

ROCK * SAND * BASE MATERIALS
READY MIX CONCRETE



Date: 5/19/2023

Concrete Mix Design #: 42191A

Project: San Fernando Water Remediation - 12895 Sheldon St. - Sun Valley

Contractor: Red Hawk Fence

Description: 3000 psi 1" Mix with ash

Strength (f'c): 3000 psi

W/C ratio: 0.61

Slump: 4"

Sack Content: 5.20 sk.

Max. Size of Agg.: 1"

Gal/sk.: 6.92

Pump Type: Boom pump

Un. Wt.: 146.4

ALL CONCRETE IS MIXED AND DELIVERED IN ACCORDANCE WITH ASTM C-94

Aggregate Weights are SSD: Moisture in Aggregates Must be Considered When Determining Total Mix Water

Contents:	MIX DESIGN PROPORTION			
	Batch Wt.	%used	Sp. Gr.	Volume
Cement (ASTM C-150)	416	85	3.15	2.12
Fly Ash-Class F (ASTM C-618)	73	15	2.33	0.50
Sand	1415	45	2.62	8.66
1-1/2" x 3/4"	0	0	2.67	0.00
1" x #4	1272	40	2.65	7.70
3/8" x #8	477	15	2.65	2.89
Water	36.0 gal			4.81
Entrapped Air	1.25 %			0.34
Wt =	3954		Vol. =	27.00
ADMIXTURES :				
Eucon WR 91 (ASTM C-494)	3.0 oz/cwt			
** Optional Eucon DS for 2-4 hours **	14.7 oz.			

Note: Eucon DS IS optional and must be requested as needed when placing orders for concrete.

Remark: The project engineer should review this mix to ensure compliance to the project specifications

Size	%	AGGREGATE GRADATIONS													
		2"	1 1/2"	1"	3/4"	1/2"	3/8"	No 4	No 8	No 16	No 30	No 50	No 100	No 200	
1 1/2"	0	100	95	33	7	3	1	0	0	0	0	0	0	0	
1"	40	100	100	95	70	36	12	1	0	0	0	0	0	0	
3/8"	15	100	100	100	100	100	96	18	2	1	1	0	0	0	
WCS	45	100	100	100	100	100	100	98	80	60	39	18	6	2	
Combined	100	100	100	98	88	75	64	47	36	27	18	8	3	1	

Sand Source : Robertson's Palmdale
Rock Source : Robertson's Palmdale
Cement : Portland Cement Type II/V
Fly Ash : Class F

Aggregates meet ASTM C-33

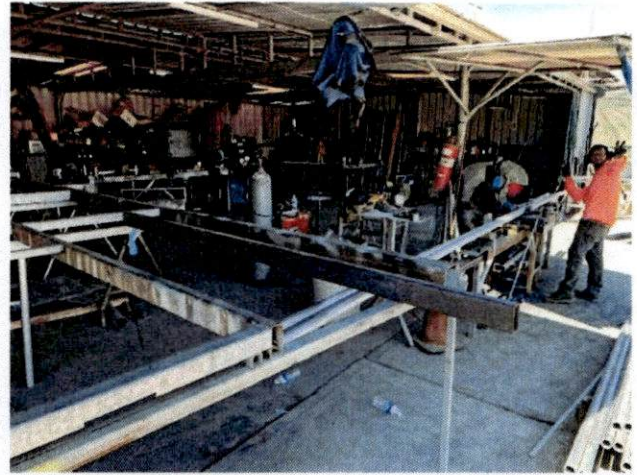
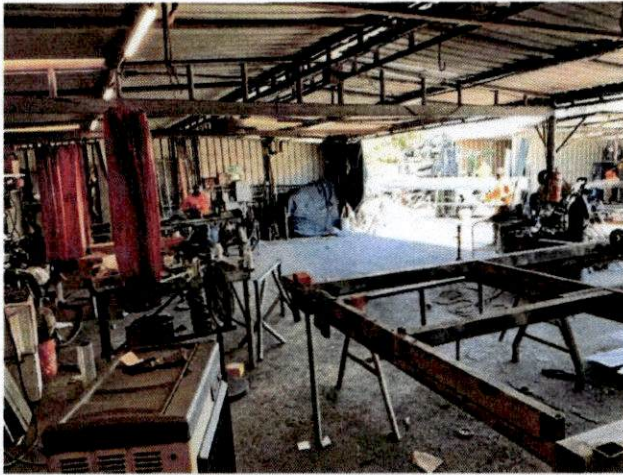
(951) 685-2200 ext 6381

P.O. Box 3600 Corona, CA 92878

Fax (951) 280-1429

Fabrication/ lead time

- Fabrication takes place soon after the approved submittals.
- We will order materials, provide mill certifications if required
- Depending on the customization of required work leads times vary from 2-3 days (chain link gates) to 6-8 weeks for stuff suppliers don't have in stock (custom wrought iron panels and gates)
- We have a full service welding shop with high quality welders/ fabricators that have over 39 years of experience
- We can supply prime and painted , powder coated, hot dipped galvanized finishes on material
- Unless otherwise specified we always use pre galvanized tubing and pipe for long lasting anti-corrosion products.



Scheduled project

- Once we have figured out the lead time on material and fabrication we will be able to provide a schedule as shown below.

Activity Code	Activity Description	Duration	Plan Start	Plan Finish	Actual Start	Actual Finish
	RED HAWK PANELS AND GATES SCHEDULE		03/04/24	06/03/24		
	VA Temple	19d	08/23/24	09/19/24		
	Fabricate	6	08/23/24	08/30/24		
	install (5) opening Panels	4	09/02/24	09/05/24		
	installInstall (3) panels on windows	4	09/06/24	09/11/24		
	install (3) Double Swing Gates	5	09/12/24	09/19/24		

Installation

- We will mobilize as scheduled time.
- (1) hour of safety meeting is included per project if any is required
- Pre-construction job walk will take place with the foreman, project manager, and owner on the first day of installation.
- We have skilled and trained work force that graduated from the laborers union
- Apprentices from laborer unions on all 4 man crews
- We can also provide certified payroll on all our projects if required
- Full PPE for all fencers and project managers when walking the site.
- We can provide temp fence when required

Completion/ Final Punch list

- On the last day we will walk the job site and make sure to fix any concern the owner might have. Post-construction job walk will take place to provide full customer satisfaction.
- Photos will be taken once project is done.
-

EXHIBIT B
SCHEDULE OF BILLING RATES

Exhibit B - COST FILE

Section 1: Billing Rates

Important Note: Rates are inclusive of all costs including, but not limited to labor, travel, supplies, equipment, materials, and disposal in the performance of the prescribed tasks.

CHAIN LINK FENCE						
Chain link shall be 9 gauge, 2 1/4" mesh size						
ITEM NO.	DESCRIPTION	Unit of Measure	Cost per Unit (1-10 LF)	Cost per Unit (11-50LF)	Cost per Unit (51-100LF)	Cost per Unit (100+LF)
1	Remove and install 4' high chain link fence	LF	\$157.61	\$57.47	\$40.89	\$31.53
2	Remove and install 6' high chain link fence	LF	\$158.54	\$61.31	\$44.32	\$34.19
3	Remove and install 8' high chain link fence	LF	\$191.87	\$112.21	\$63.48	\$59.84
4	Provide and install 4' high chain link fence	LF	\$150.02	\$57.00	\$40.19	\$31.19
5	Provide and install 6' high chain link fence	LF	\$153.99	\$59.66	\$42.37	\$32.80
6	Provide and install 8' high chain link fence	LF	\$181.67	\$110.24	\$62.70	\$59.03

CHAIN LINK POSTS						
Removal						
ITEM NO.	DESCRIPTION	Unit of Measure	Cost per Unit (Each)	Cost per Unit (2-5 Each)	Cost per Unit (6-10 Each)	Cost per Unit (10+ Each)
7	Removal of line or terminal posts all sizes and location	Each	\$661.36	\$176.94	\$143.69	\$70.60
Line Post Install						
ITEM NO.	DESCRIPTION	Unit of Measure	Cost per Unit (Each)	Cost per Unit (2-5 Each)	Cost per Unit (6-10 Each)	Cost per Unit (10+ Each)
8	1 5/8" diameter x 4' high in concrete/pavement	Each	\$717.41	\$208.39	\$189.70	\$161.46
9	1 5/8" diameter x 4' high in soil	Each	\$701.97	\$197.95	\$184.59	\$151.61
10	1 5/8" diameter x 6' high in concrete/pavement	Each	\$724.11	\$212.48	\$194.03	\$167.16
11	1 5/8" diameter x 6' high in soil	Each	\$705.41	\$204.64	\$192.25	\$156.59
12	1 5/8" diameter x 8' high in concrete/pavement	Each	\$735.56	\$223.03	\$205.49	\$178.85

Line Post Install (cont.)						
ITEM NO.	DESCRIPTION	Unit of Measure	Cost per Unit (Each)	Cost per Unit (2-5 Each)	Cost per Unit (6-10 Each)	Cost per Unit (10+ Each)
13	1 5/8" diameter x 8' high in soil	Each	\$719.56	\$218.04	\$203.17	\$159.03
14	1 7/8" diameter x 4' high in concrete/pavement	Each	\$722.87	\$213.85	\$195.16	\$166.92
15	1 7/8" diameter x 4' high in soil	Each	\$707.43	\$203.41	\$190.05	\$157.07
16	1 7/8" diameter x 6' high in concrete/pavement	Each	\$729.57	\$217.94	\$199.49	\$172.62
17	1 7/8" diameter x 6' high in soil	Each	\$710.87	\$210.10	\$197.71	\$162.05
18	1 7/8" diameter x 8' high in concrete/pavement	Each	\$741.02	\$228.49	\$210.95	\$184.31
19	1 7/8" diameter x 8' high in soil	Each	\$725.02	\$223.50	\$208.63	\$164.49
20	2 3/8" diameter x 4' high in concrete/pavement	Each	\$730.42	\$221.40	\$202.71	\$174.47
21	2 3/8" diameter x 4' high in soil	Each	\$714.98	\$210.96	\$197.60	\$164.62
22	2 3/8" diameter x 6' high in concrete/pavement	Each	\$737.12	\$225.49	\$207.04	\$180.17
23	2 3/8" diameter x 6' high in soil	Each	\$718.42	\$217.65	\$205.26	\$169.60
24	2 3/8" diameter x 8' high in concrete/pavement	Each	\$748.57	\$236.04	\$218.50	\$191.86
25	2 3/8" diameter x 8' high in soil	Each	\$732.57	\$231.05	\$216.18	\$172.17
26	2 7/8" diameter x 4' high in concrete/pavement	Each	\$744.57	\$235.55	\$216.86	\$188.62
27	2 7/8" diameter x 4' high in soil	Each	\$729.13	\$225.11	\$211.75	\$178.77
28	2 7/8" diameter x 6' high in concrete/pavement	Each	\$751.27	\$239.64	\$221.19	\$194.32
29	2 7/8" diameter x 6' high in soil	Each	\$732.57	\$231.80	\$219.41	\$183.75
30	2 7/8" diameter x 8' high in concrete/pavement	Each	\$732.57	\$231.80	\$219.41	\$183.75
31	2 7/8" diameter x 8' high in soil	Each	\$746.72	\$245.20	\$231.01	\$186.32
Terminal Post Install						
ITEM NO.	DESCRIPTION	Unit of Measure	Cost per Unit (Each)	Cost per Unit (2 Each)	Cost per Unit (3-4 Each)	Cost per Unit (4+ Each)
32	2 3/8" diameter x 4' high in concrete/pavement	Each	\$733.25	\$392.18	\$277.18	\$250.85

Terminal Post Install						
ITEM NO.	DESCRIPTION	Unit of Measure	Cost per Unit (Each)	Cost per Unit (2 Each)	Cost per Unit (3-4 Each)	Cost per Unit (4+ Each)
33	2 3/8" diameter x 4' high in soil	Each	\$713.25	\$376.18	\$264.52	\$241.52
34	2 3/8" diameter x 6 high in concrete/pavement	Each	\$748.36	\$407.29	\$292.18	\$265.96
35	2 3/8" diameter x 6' high in soil	Each	\$728.36	\$391.29	\$279.63	\$256.63
36	2 3/8" diameter x 8' high in concrete/pavement	Each	\$758.15	\$417.08	\$301.97	\$275.75
37	2 3/8" diameter x 8' high in soil	Each	\$738.15	\$401.08	\$289.42	\$266.42
38	2 7/8" diameter x 4' high in concrete/pavement	Each	\$744.77	\$403.70	\$288.70	\$262.37
39	2 7/8" diameter x 4' high in soil	Each	\$724.77	\$387.70	\$276.04	\$253.04
40	2 7/8" diameter x 6 high in concrete/pavement	Each	\$759.88	\$418.81	\$303.70	\$277.48
41	2 7/8" diameter x 6' high in soil	Each	\$739.88	\$402.81	\$291.15	\$268.15
42	2 7/8" diameter x 8' high In concrete/pavement	Each	\$769.67	\$428.60	\$313.49	\$287.27
43	2 7/8" diameter x 8' high in soil	Each	\$749.67	\$412.60	\$300.94	\$277.94

Minimum specifications unless otherwise noted on approved permit/plans when applicable:

- Concrete for fence posts shall have a minimum compression strength of 4,000 psi.
- Fence post footings to be a minimum of 3 times the post diameter.
- Fence post footings to be a minimum of 24" deep for 4' and 6' high posts and 36" deep for 8' high posts.

MISCELLANEOUS TASKS						
ITEM NO.	DESCRIPTION	Unit of Measure	Cost per Unit (1-10LF)	Cost per Unit (11-50LF)	Cost per Unit (51-100LF)	Cost per Unit (100+LF)
44	Re-stretch chain link fabric	LF	\$131.43	\$23.00	\$15.94	\$13.04
45	Remove and replace top rail	LF	\$155.66	\$24.90	\$17.95	\$10.21
46	Remove and replace bottom tension wire	LF	\$131.37	\$19.03	\$10.80	\$7.96
47	Privacy Fencing - Slats	LF	\$141.01	\$28.88	\$24.53	\$22.22
48	Privacy Fencing - Vinyl Sheeting	LF	\$295.64	\$49.60	\$25.70	\$17.49
49	Re-Stretch 3/8" Tension cable	LF	\$131.62	\$19.68	\$14.79	\$8.86
50	Remove and install 3/8" Tension cable	LF	\$137.12	\$25.20	\$20.31	\$14.38
51	Re-Stretch 3/16" Tension cable	LF	\$131.62	\$19.68	\$14.79	\$8.86
52	Remove and install 3/16 Tension cable	LF	\$134.87	\$22.70	\$18.06	\$12.13
53	Remove and Install Gate Chain link fabric shall be 9 gauge - 2 1/4" mesh size	LF	\$330.01	\$47.14	\$22.00	\$16.50
54	Rental Chain Link 6 foot high	LF	\$239.13	\$39.98	\$28.49	\$17.83
55	Privacy Fencing - Fabric	LF	\$69.68	\$31.37	\$18.33	\$14.76

After Hours means Monday - Friday 5:00 pm - 7:00 am, Weekends and Holidays.

- All rates subject to comply with Prevailing Wage requirements and subject to Department of Industrial Relations (DIR) payroll submission.
- Rates are inclusive of materials. Any reimbursements for unanticipated and pre-approved costs will require a receipt with a maximum 15% markup allowable.

Section 2: HOURLY LABOR RATES	
Minimum Call Out:	<u>4</u> Minimum Hours
Rate Type	Hourly Labor Rate
Welding - Regular Rate	150.00
Welding - Overtime Rate (Monday - Friday 5:00 pm - 7:00 am, Weekends and Holidays)	180.00
Foreman - Regular Rate	147.79
Foreman - Overtime Rate (Monday - Friday 5:00 pm - 7:00 am, Weekends and Holidays)	178.28
Journeyman - Regular Rate	139.93
Journeyman - Overtime Rate (Monday - Friday 5:00 pm - 7:00 am, Weekends and Holidays)	168.28
Laborer - Regular Rate	139.93
Laborer - Overtime Rate (Monday - Friday 5:00 pm - 7:00 am, Weekends and Holidays)	168.28
Parts and Materials Markup % (Maximum 15%)	Total % Markup: 10 %

CPI ADJUSTMENT: Billing rates may be given up to a 2% annual CPI increase upon the first anniversary of the contract and each anniversary thereafter as stated in the body of the Agreement.



Red Hawk Services Inc.

DBA Red Hawk Fence

262 E 1st Street, Perris, Ca 92570 (951) 657-6400 • Fax (951) 657-6442
Laborers Local 1184 CA. Lic. #1050794 DIR #1000405318

December 11, 2024

City of Newport Beach
100 Civic Dr.
Newport Beach, CA 92660

RE: Bid RFP 24-82

To Whom It May Concert:

I lowered the cost under "other costs on the COST FILE" document to a \$647.00
Mobilization charge each day.

Thank you,



Scott Moore
President

EXHIBIT C

INSURANCE REQUIREMENTS – MAINTENANCE/REPAIR/JANITORIAL SERVICES

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 Agreement, 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, 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.

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 and employees.
 - B. General Liability Insurance. Contractor 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, 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 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.

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 and employees 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 from each of its subcontractors.
 - B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess 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 and employees 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. 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. 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, 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. City reserves the right at any time during the term of the Agreement 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 Agreement 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 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 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 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 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 Agreement, 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 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. Contractor's Insurance. Contractor 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.

EXHIBIT D

**CITY OF NEWPORT BEACH
BOND NO. _____
LABOR AND MATERIALS PAYMENT BOND**

WHEREAS, the City of Newport Beach, State of California, has awarded to RED HAWK SERVICES, INC., hereinafter designated as the "Principal," an agreement for maintenance and/or repair services consisting of on-call fencing maintenance, repair, replacement and installation services, in the City of Newport Beach, in strict conformity with the Agreement 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 Agreement 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 _____ Dollars (_____), lawful money of the United States of America, said sum being equal to 100% of the amount of any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), payable by the City of Newport Beach under the terms of the Agreement; 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 Agreement 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 Agreement 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

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 E

**CITY OF NEWPORT BEACH
BOND NO. _____
FAITHFUL PERFORMANCE BOND**

The premium charges on this Bond is \$ _____, being at the rate of \$ _____ thousand of the Agreement price.

WHEREAS, the City of Newport Beach, State of California, has awarded to RED HAWK SERVICES, INC., hereinafter designated as the "Principal," an agreement for maintenance and/or repair services consisting of on-call fencing maintenance, repair, replacement and installation services in the City of Newport Beach, in strict conformity with the Agreement 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 Agreement and the terms thereof require the furnishing of a Bond for the faithful performance of the Agreement.

NOW, THEREFORE, we, the Principal, and _____, duly authorized to transact business under the laws of the State of California as Surety (hereinafter "Surety"), are held and firmly bound unto the City of Newport Beach, in the sum of _____ (_____) lawful money of the United States of America, said sum being equal to 100% of the amount of any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), to be paid to the City of Newport Beach, its successors, and assigns; 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 heirs, executors, administrators, successors, or assigns, fail to abide by, and well and truly keep and perform any or all the Work, covenants, conditions, and agreements in the Agreement 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 its true intent and meaning, or fails to indemnify, defend, and save harmless the City of Newport Beach, its officers, employees and agents, as therein stipulated, then, Surety will faithfully perform the same, in an amount not exceeding the sum specified in this Bond; otherwise this obligation shall become null and void.

As a part of the obligation secured hereby, and in addition to the face amount specified in this Performance Bond, there shall be included costs and reasonable expenses and fees, including reasonable attorneys fees, incurred by City, only in the event City is required to bring an action in law or equity against Surety to enforce the obligations of this Bond.

Surety, for value received, stipulates and agrees that no change, extension of time, alterations or additions to the terms of the Agreement or to the Work 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, alterations or additions of the Agreement or to the Work or to the specifications.

This Faithful Performance Bond shall be extended and maintained by the Principal in full force and effect for one (1) year following the date of formal acceptance of the Project by City.

In the event that the Principal 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 Principal and Surety above named, 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

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)



NEWPORT BEACH

City Council Staff Report

January 14, 2025
Agenda Item No. 13

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Seimone Jurjis, Assistant City Manager/Community Development Director - (949) 644-3282, sjurjis@newportbeachca.gov

PREPARED BY: Tonee Thai, Deputy Community Development Director / Chief Building Official - 949-718-1867, tthai@newportbeachca.gov

TITLE: Amendment No. Two to Professional Services Agreement for The Code Group dba VCA Code for Building Safety Related Services

ABSTRACT:

On June 28, 2022, the City of Newport Beach entered into a Professional Services Agreement with The Code Group, doing business as VCA Code, to provide building safety consulting services for the Community Development Department's Building Division. Due to ongoing workload demands and staffing vacancies, these consulting services continue to be necessary. Amendment No. Two to the agreement, which proposes an additional \$250,000, is now presented for the City Council's consideration. The contract amendment will be funded through salary savings.

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 and authorize the Mayor and City Clerk to execute Amendment No. Two to Professional Services Agreement with The Code Group, for Staff Augmentation and Plan Review Services to increase the contract amount by \$250,000, for a not-to-exceed amount of \$1,270,000.

DISCUSSION:

The Community Development Department engages consulting firms to provide plan check services in addition to on-call staff augmentation for inspection and permit technician services. Plan reviews are categorized into three key areas: mechanical-electrical-plumbing, structural, and building/fire-life safety. These consulting firms play an important role in supporting the department's ability to deliver high-quality customer service and meet timely turnaround expectations.

Additionally, staff augmentation helps address staffing needs for building inspections and front counter permit technician positions, ensuring consistent service delivery.

The Community Development Department conducted a Request for Proposals (RFP) process in 2022 to secure staff augmentation and building safety plan check consulting services. After a thorough review process, the City entered into a three-year professional services agreement with The Code Group for a total not-to-exceed amount of \$900,000. In July 2024, Amendment No. One was approved to increase the total compensation by \$120,000 due to higher workload demands.

An additional amendment to the agreement is required to continue assisting applicants with building code plan check services, due to a vacant civil engineering position. The vacant civil engineering position will be filled in January 2025, but training of the new employee will be required before that individual is working to full capacity. Additionally, building inspection and permit technician staffing is needed to assist with a temporary permit technician vacancy and inspection needs.

Amendment No. Two, for an additional \$250,000 is requested to the agreement to continue with plan check and staff augmentation. The revised not-to-exceed amount is \$1,270,000 over the remaining term of the contract. The agreement will terminate on June 30, 2025, unless extended further. Prior to the agreement's termination, staff will conduct a new RFP for building safety related services. Staff anticipates completing the RFP process and recommending consultants by June 2025.

FISCAL IMPACT:

The total cost for the amendment is \$250,000 over the remaining term of the contract. The adopted budget includes salary savings that will offset the cost of services. The costs will be expensed to the professional services account - 0105042-811008.

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. Two to Professional Services Agreement
Attachment B – Amendment No. One to Professional Services Agreement
Attachment C - Professional Services Agreement with The Code Group dba VCA Code

Attachment A

Amendment Two to Professional Services Agreement

**AMENDMENT NO. TWO TO
PROFESSIONAL SERVICES AGREEMENT
WITH THE CODE GROUP, INC. DBA VCA CODE FOR
STAFF AUGMENTATION AND PLAN REVIEW SERVICES**

THIS AMENDMENT NO. TWO TO PROFESSIONAL SERVICES AGREEMENT ("Amendment No. Two") is made and entered into as of this 14th day of January, 2025 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and THE CODE GROUP, INC., a California corporation doing business as ("DBA") VCA CODE ("Consultant"), whose address is 1845 W. Orangewood Avenue, Suite 200, Orange, CA 92868, and is made with reference to the following:

RECITALS

- A. On June 28, 2022, City and Consultant entered into a Professional Services Agreement ("Agreement") to provide staff augmentation and plan review services ("Project").
- B. On July 25, 2024, City and Consultant entered into Amendment No. One to the Agreement ("Amendment No. One") to increase the total compensation due to a higher workload.
- C. The parties desire to enter into this Amendment No. Two to reflect a further increase in the total compensation due to an increased workload.

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

1. COMPENSATION TO CONSULTANT

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 Two Hundred Seventy Thousand Dollars and 00/100 (\$1,270,000.00)**, 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. Two, including all reimbursable items and subconsultant fees, in an amount not to exceed **Two Hundred and Fifty Thousand Dollars and 00/100 (\$250,000.00)**.

2. INTEGRATED CONTRACT

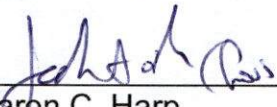
Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment No. Two to be executed on the dates written below.

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

Date: 12/12/24

By: 
Aaron C. Harp
City Attorney

*ms
12/12/24*

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Joe Stapleton
Mayor

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

**CONSULTANT: THE CODE GROUP,
INC.**, a California Corporation doing
business as ("DBA") VCA CODE

Date: _____

By: _____
Thomas VanDorpe, S.E.
Chief Executive Officer, Secretary

[END OF SIGNATURES]

Attachment B

Amendment One to Professional Services Agreement

**AMENDMENT NO. ONE TO
PROFESSIONAL SERVICES AGREEMENT
WITH THE CODE GROUP, INC. DBA VCA CODE FOR
STAFF AUGMENTATION AND PLAN REVIEW SERVICES**

THIS AMENDMENT NO. ONE TO PROFESSIONAL SERVICES AGREEMENT ("Amendment No. One") is made and entered into as of this 25th day of July, 2024 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and THE CODE GROUP, INC., a California Corporation doing business as ("DBA") VCA CODE ("Consultant"), whose address is 1845 W. Orangewood Avenue, Suite 210, Orange, CA 92868, and is made with reference to the following:

RECITALS

- A. On June 28, 2022, City and Consultant entered into a Professional Services Agreement ("Agreement") to provide staff augmentation and plan review services ("Project").
- B. The parties desire to enter into this Amendment No. One to increase the total compensation due to a higher workload.

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

1. COMPENSATION TO CONSULTANT

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 Twenty Thousand Dollars and 00/100 (\$1,020,000.00)**, 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. One, including all reimbursable items and subconsultant fees, in an amount not to exceed **One Hundred Twenty Thousand Dollars and 00/100 (\$120,000.00)**.

2. 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: 7/19/24

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

m2
7/18/24

**CITY OF NEWPORT BEACH,
a California municipal corporation**

Date: 7/23/2024

By: Grace K. Leung
Grace K. Leung
City Manager

ATTEST:

Date: 7.30.2024

By: Leilani I. Brown
Leilani I. Brown
City Clerk

**CONSULTANT: THE CODE GROUP,
INC., a California Corporation doing
business as ("DBA") VCA CODE**

Date: _____

Signed in Counterpart

By: _____
Thomas VanDorpe
Chief Executive Officer, Secretary

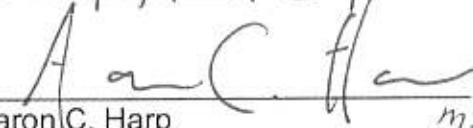


[END OF SIGNATURES]

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: 7/19/24

By: 

Aaron C. Harp
City Attorney

*ms
7/18/24*

**CITY OF NEWPORT BEACH,
a California municipal corporation**

Date: _____

By: _____

Grace K. Leung
City Manager

ATTEST:

Date: _____

By: _____

Leilani I. Brown
City Clerk

**CONSULTANT: THE CODE GROUP,
INC., a California Corporation doing
business as ("DBA") VCA CODE**

Date: July 23, 2024

By: 

Thomas VanDorpe, SE
Chief Executive Officer, Secretary

[END OF SIGNATURES]

Attachment C

Professional Services Agreement with The Group dba VCA Code

**PROFESSIONAL SERVICES AGREEMENT
WITH THE CODE GROUP, INC. DBA VCA CODE FOR
STAFF AUGMENTATION AND PLAN REVIEW SERVICES**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into as of this 28th day of June, 2022 (“Effective Date”), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city (“City”), and THE CODE GROUP, INC. DBA VCA CODE, a California corporation (“Consultant”), whose address is 1845 West Orangetown Avenue, Suite 200, Orange, California 92868, 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 staff augmentation and plan review services (“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 June 30, 2025, unless terminated earlier as set forth herein.

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 all reimbursable items and subconsultant fees, shall not exceed **Nine Hundred Thousand Dollars and 00/100 (\$900,000.00)**, 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 Bob Heinrich 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 Deputy Community Development Director/Chief Building Official 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"), and which relate (directly or indirectly) to the negligence, recklessness, or willful misconduct of the Consultant or 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, or any or all of them, and/or if it is subsequently determined that an employee of Consultant is not an independent contractor.

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, active 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 the Consultant.

10. INDEPENDENT CONTRACTOR

10.1 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.

10.2 Consultant agrees and acknowledges that no individual performing Services or Work pursuant to this Agreement shall: work full-time for more than six (6) months; work regular part-time service of at least an average of twenty (20) hours per week for one year or longer; work nine hundred sixty (960) hours in any fiscal year; or already be a CalPERS member.

10.3 Consultant must submit to and pass a criminal background investigation by providing a complete set of fingerprints to City prior to commencing or performing Services or Work. Consultant is required to submit any fees for the criminal background investigation according to the City's most current administrative fee schedule or successor document. Fingerprints may be required to be updated every five (5) years.

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: Deputy Community Development Director/Chief Building
Official
Community Development Department
City of Newport Beach
100 Civic Center Drive
PO Box 1768
Newport Beach, CA 92658

25.3 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attn: Bob Heinrich
The Code Group, Inc. DBA VCA Code
1845 W. Orangewood Avenue
Orange, CA 92868

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: 6/9/22

By: [Signature]
Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: [Signature]
Kevin Muldoon
Mayor

ATTEST:
Date: 7.13.2022

By: [Signature]
Leilani I. Brown
City Clerk

CONSULTANT: The Code Group, Inc.
DBA VCA Code, a California corporation
Date: 6-30-2022

By: [Signature]
Thomas VanDorpe, S.E.
Chief Executive Officer / Secretary



[END OF SIGNATURES]

- Attachments: Exhibit A – Scope of Services
Exhibit B – Schedule of Billing Rates
Exhibit C – Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

1. BUILDING PLAN REVIEW SERVICES

Consultant shall provide building plan review services to assist the City's Building Division with timely and accurate plan check services for the following scope of plan check. Consultant shall provide consultants on staff. Consultant shall:

- Review residential, commercial and industrial buildings for compliance with the City-adopted codes, including California Building and Residential Codes, Green Code, Mechanical Code, Plumbing Code, and Electrical Code; The City of Newport Beach Municipal Code; and State Energy Conservation requirements.
- Provide one (1) Fire Plans Examiner to review fire code plans for residential, commercial and industrial projects, working off-site and attending meetings, as directed by the Fire Marshal.
- Provide written notification to each applicant, consisting of a complete electronically-generated plan check letter, which outlines the documents reviewed, instructions to the applicant regarding the processing of documents, and a listing of plan check comments. The plan check comments will refer to appropriate sheets, details or calculations pages and the code section of concern. Comments shall specify the apparent code violation.
- Be available, during regular business hours, to discuss and clarify plan check issues with applicants, designers, owners and consultants. Resolution of code issues may be performed by telephone, or meetings, prior to resubmitting corrected plans and documents.
- Attend all required meetings as directed by the Chief Building Official.
- Review soils report, for compliance with CBC, for the proposed scope of work.
- Review grading plans to assure conformance with City codes, written policies and standard specifications and compliance with the recommendations, specifications and details contained in the submitted soils report and assure that all appropriate details are shown on the plans. Review quantity calculations to assure accuracy and completeness.
- Review surveys, in accordance with City Policy.
- Review Erosion Control Plans to verify erosion and sedimentation measures comply with the Best Management Practices per City standards.

Turn-Around Schedule:

Consultant shall complete each plan check, when not conducted in City Hall, within the time specified below:

- First Check: Ten (10) working days from submittal by applicant
- Subsequent Checks: Five (5) working days

Qualifications:

- Experience: Four years of experience checking building plans.
- Training: Bachelor's degree from an accredited college or university with major coursework in civil engineering, structural engineering, or architecture.
- License/Certificate: Possession of a valid California driver's license. Possession of State of California registration as a professional engineer or architect. Possession of an ICC "Building Plans Examiner" certificate. Possession of an ICC "Fire Plans Examiner" certificate for reviewing Fire code-based plans.
- Additional Requirement: Members of the consultant team performing Building Plan Review services on-site, must successfully complete a thorough background review, including being fingerprinted by Newport Beach Police Department.
- Supervision Received and Exercised: Consultant will receive direction from the Chief Building Official or his or her designee.
- Hours of Work: Consultants assisting with Building Plan Review services shall be available during regular business hours.

2. BUILDING INSPECTION SERVICES:

Consultant shall provide building inspection services to assist City staff with timely and accurate inspection services for the following scope of inspections. Consultant's personnel shall be required to report on-site at City Hall, as directed, and perform field inspections as assigned.

- Provide up to two qualified building inspectors. The City needs up to eighty (80) hours of Contract Inspection Services per week.
- Provide inspections of all requested inspections and re-inspections for compliance with City of Newport Beach Municipal Code and State codes and regulations: California Building Code, Residential Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code, Energy Code, Green Building

Standards Code, Disabled Access Regulations, and Title 25; Mobile Home Parks regulations; State Water Resource Control Board regulations related to storm water pollution prevention; Sound Transmission Control regulations; and, locally adopted building ordinances and amendments thereof.

- Consultant's personnel shall not be substituted without approval from the Chief Building Official.
- Maintain all inspection records for all assigned projects, including correction notices and all documentation related to project inspections.
- Coordinate all inspection and re-inspection requests as assigned.
- Coordinate with the Principal Building Inspector, as appropriate, on discretionary decisions or requests for alternate materials.
- Coordinate with the Principal Building Inspector on all Certificate of Occupancy to be sure that all applicable City regulatory agencies have approved the project.

Qualifications:

- Experience: Must have demonstrated work experience performing residential and commercial inspections on a variety of construction projects. Must have excellent customer service skills.
- Training: Equivalent to completion of the twelfth grade.
- License/Certificate: Possession of ICC certification as Combination Building Inspector. Possession of an appropriate valid California driver's license.
- Additional Requirement: On-site members of the consultant team performing Building Inspection services must successfully complete a thorough background review, including being fingerprinted by Newport Beach Police Department.
- Supervision Received and Exercised: Contractor receives general supervision from the Principal Building Inspector.
- Hours of Work: On-site consultants assisting with Building Inspection services shall be available during regular business hours.

3. BUILDING PERMIT TECHNICIAN SERVICES:

Consultant shall provide services to assist City staff with timely and accurate permit technician services for the following scope of permit technician services. Consultant's personnel shall be required to report on-site at City Hall as directed and perform permit technician work as assigned.

- Provide one qualified permit technician. The City needs a full or part time Contract Permit Technician Services.
- Consultant's personnel shall not be substituted without approval from the Chief Building Official.
- Provide support and technical assistance at the public counter, over the telephone and via email; provide general information and assistance to the public regarding requirements for obtaining permits, zone clearances, and business license;
- Assist in responding to requests for information from other departments and governmental agencies regarding the General Plan, Zoning Code, Local Coastal Program, and Subdivision Code;
- Determine building valuations based on established standards; calculate and determine a variety of fees for plan checks, permits, taxes and sanitation district and school district charges;
- Instruct applicants on correct procedures for completing required forms and applications; provide information regarding City, State and Federal regulations pertaining to building, planning, and public works activities;
- Maintain recorded of plans and applications submitted; participate or direct the filing and routing of plans and permits to appropriate City departments and staff;
- Coordinate the plan approval process between various City departments; refer applicants to appropriate City department or outside agency as necessary;
- Notify applicants when plan or permits are ready for pick-up or issuance; provide status updates as required;
- Follow-up on stop work orders and complaints;
- Perform data entry and issue permits via the computerized permitting system;
- Verify worker's compensation insurance and State contractor licensing; and
- Perform related duties as assigned.
- Coordinate with the Permit Technician Supervisor and attend all required meetings as directed by the Chief Building Official.

Qualifications:

- Experience: Must have demonstrated work experience performing permit technician work on a variety of construction projects. Must have excellent customer service skills.
- Training: Equivalent to completion of the twelfth grade.
- License/Certificate: Possession of ICC certification as Permit Technician. Possession of an appropriate valid California driver's license.
- Additional Requirement: On-site members of the consultant team performing Permit Technician services must successfully complete a thorough background review, including being fingerprinted by Newport Beach Police Department.
- Supervision Received and Exercised: Contractor receives general supervision from the Permit Technician Supervisor.
- Hours of Work: On-site consultants assisting with Permit Technician services shall be available during regular business hours.



Cover Letter

April 5, 2022

Attn: Shaun Tormey, Buyer
City of Newport Beach Finance Department
100 Civic Center Drive
Newport Beach, CA 92660

Subject: RFP No. 22-45 Building Plan Review and Inspection Services

Dear Shaun Tormey:

The Code Group, Inc. (VCA Code) is pleased to respond to the City of Newport Beach's Request for Proposal (RFP) for Building Plan Review and Inspection Services. In response, our proposal includes our understanding of the scope of work, statement of qualifications, organizational information, project approach/methodology, and references/recent project history. Required forms and cost proposal are separately attached.

For plan review, the City will benefit from VCA's technically strong team of licensed Plan Check Engineers and ICC Certified Plans Examiners to assist with accurate and timely plan reviews. VCA maintains a team of sixteen (16) highly competent, in-house plan checkers that the City can rely upon for reviewing any type of structure. The Project Director for plan review will be Bob Heinrich, CBO, Principal & President. Mr. Heinrich brings over 30 years of code knowledge, technology, management, and building official experience to the City. With his unique background and expertise, Mr. Heinrich will not only ensure exceptional services but also offer the City any needed guidance.

For staff augmentation, the City will benefit from outstanding staffing services for the Building Division through a dedicated in-house recruiting team, well versed in the industry. With substantial success filling roles that satisfy both the agency and candidates' needs, our staffing department is ready to provide the City with competent and cooperative personnel. The Project Director for staffing will be Rick Bergin, a veteran recruiter with over 18 years of experience in talent acquisition and management. VCA has successfully placed Building Inspectors, Permit Technicians, Plans Examiners, Planners, Code Enforcement Officers, Building Officials, administrative staff, and more.

VCA is financially stable, and we have always met our financial obligations on time. We have never been required to make a payment due to a claim against the firm. There is no pending litigation.

This proposal shall remain valid for 180 days from date of submittal. Please do not hesitate to contact us with any questions or need for clarification. We appreciate your time in reviewing this proposal and look forward to the opportunity to serve the City of Newport Beach and its community.

Sincerely,

Tom VanDerPee, Sr.
Chief Executive Officer

Cover Letter

VCA Code | 1845 W. Orangewood Ave., #210, Orange, CA 92868 | 714.363.4700



Statement of Qualifications

VCA’s commitment to the City: The name VCA has been recognized in the industry for over 40 years, providing solutions in engineering, plan review, staffing, permitting, planning, code enforcement, and more. Today, the principals of VCA operate through the entity The Code Group, Inc. (dba VCA Code) which was incorporated in 2003. Serving 35+ jurisdictions, VCA is ready and capable of providing quality plan check and staffing services as outlined in the RFP’s Scope of Work. We will conform to the exact needs of the City of Newport Beach’s community and are ready to behave as an extension of the City. Through our relationships with municipalities, we understand the frustrations with outsourcing work, and VCA’s unique company organization allows us to alleviate the difficulties normally experienced when working with other consultants.

Our plan check team can review any type of structure for residential, commercial, industrial, fire, and public projects, including highly technical projects such as hotels, medical facilities, libraries, student centers, performing arts centers, reservoirs, dealerships, and more. Residential includes SFD, MFD, affordable housing, mixed-use, podiums, wraps, custom homes, track homes, ADU’s, room additions, remodels, pools, basements, bomb shelters, horse facilities, and more. We continually update an extensive library of all applicable and adopted building codes, modifying review standards to reflect the most recent code changes. The City can rely on VCA to conduct plan reviews in alignment with current standards.

Our staff augmentation services include building inspectors, permit technicians, plans examiners, and more. VCA will only provide candidates that meet the City’s minimum requirements including certifications and licenses. We will comply with all State and Federal employment laws as well as any City requirements including reference checks, fingerprints, background checks, etc. Our recruiting team is dedicated to bringing the best candidates for the job when the City needs them. All of our staff will perform as an extension of the City and interface with the public in a polite and courteous manner. They understand that they wear two hats – one for the City and one for VCA.

Types of Review Include:

- ✓ Full Building
- ✓ Structural
- ✓ Mechanical
- ✓ Electrical
- ✓ Plumbing
- ✓ Fire
- ✓ Grading/Drainage
- ✓ Green
- ✓ Disabled Access
- ✓ And more!

Available Staff Include:

- ◆ Building Inspectors
- ◆ Permit Technicians
- ◆ Building Plans Examiners
- ◆ Fire Plans Examiners
- ◆ Code Enforcement
- ◆ Fire Inspectors
- ◆ CASp Professionals
- ◆ Sustainability Experts
- ◆ And more!

Other municipalities rely on VCA because we deliver excellent services within tight deadlines at a reasonable cost. Unlike competitors, VCA staffs a core in-house team of plan checkers and dedicated recruiters. Our plan check team ensures corrections stay consistent and the whereabouts of assigned plans are easily tracked. By keeping progress and deadlines transparent, our team is able to meet the City’s expectations while maintaining quality of work. We are experienced in working with the types of applicants and projects in the City of Newport Beach. VCA employees value customer service and have worked with seasoned contractors, first-time owner builders, and everyone in between.

Statement of Qualifications



◆ **Familiarity with City**

Not only do we have city clients of similar size and density, VCA currently performs plan review and staffing services for the City as well as employs former Newport Beach, Building Division staff. We possess extensive experience working with beach communities and intimately know unique aspects such as coastal soils, seawalls, and corrosion. Additionally, our staff knows how to handle the types of affluent clientele and unique project demands that the City receives. Our team enjoys working with the Newport Beach staff and constituents, and we will continue using our knowledge of the City and community to provide unrivaled services for the Building Division. Our skilled team of plan checkers, building inspectors, permit technicians, and more are ready to serve the City and all stakeholders.

◆ **Dedicated In-House Recruiters**

Our recruiting team is devoted to handling all staffing needs for the City, resulting in qualified contract staff at a quick turnaround. With our breadth of hiring resources, industry experience, and uniquely collaborative approach, VCA recruiters are able to prioritize compatibility and skills when presenting candidates to the City. We value open communication and will keep the City updated on progress.



◆ **Working with City Staff and Constituents**

With staff consisting of former building officials and public employees, our team will have no issues working closely and collaboratively with the City and its associates. Our knowledge of the codes paired with understanding of the industry allows us to articulate even the most intricate of codes in a concise and digestible manner. Fostering relationships with municipal staff is important to VCA, and we believe in aligning our processes with the City rather than imposing our own, resulting in strong rapport and a harmonious working relationship. We are happy to make any adjustments to better serve the City. Additionally, our team will respond to any inquiries within 24 hours, and any urgent matters will be handled ASAP.

◆ **Electronic Resources**

Experts in software programs and digital plan review, our team is skilled in government permitting programs like Intergov and Accela and also PDF editing software such as Bluebeam and Adobe. Our knowledge allows us to be flexible and adaptable to any systems the City utilizes. The City can comfortably rely on VCA for any technological assistance as Bob Heinrich previously held the position of Director of Technology for ICBO/ICC with an understanding of technology across the United States. In the past, we assisted cities in the set-up and implementation of electronic plan review processes and helped municipal staff with training and best practices with software programs. Our relationship with software vendors gives cities options in technology without a large investment in time or finances. We are open to assisting the City in technological needs and migration.

Statement of Qualifications

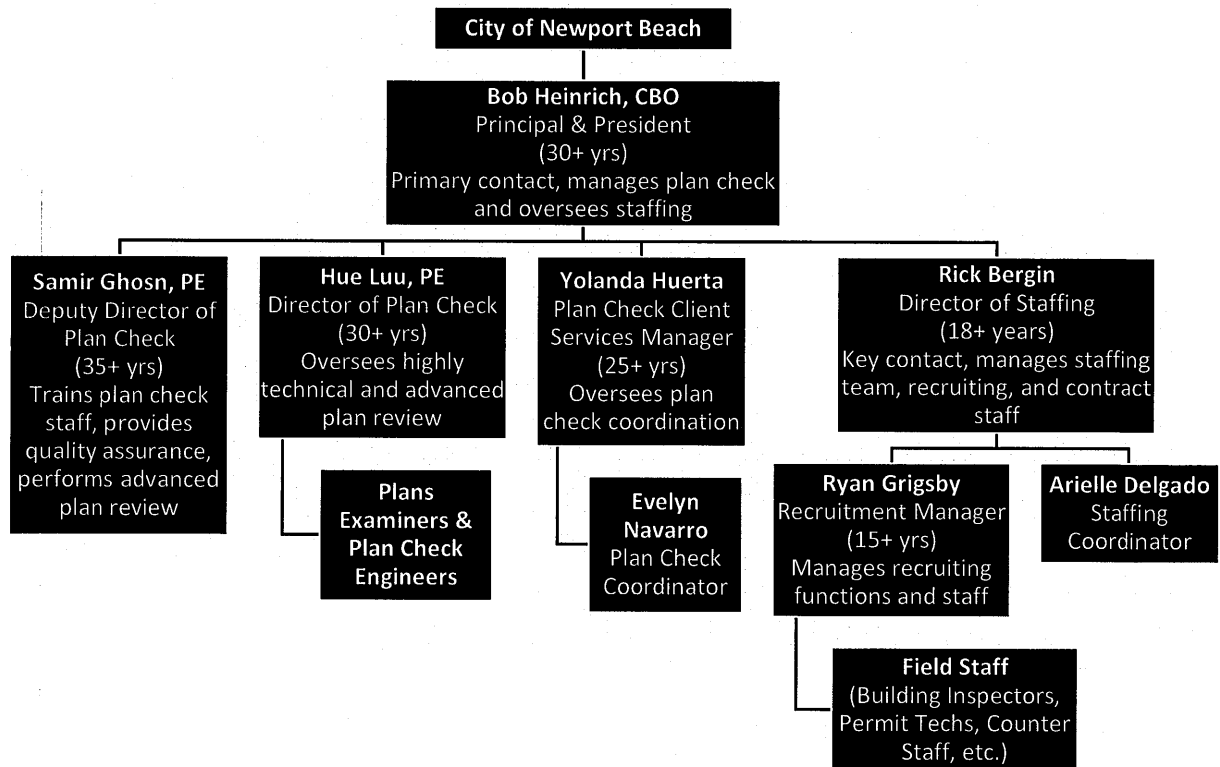
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Organizational Information

VCA's roots trace back to the code consulting firm founded by Dan VanDorpe, PE, CBO in 1979, nearly 43 years ago. VCA's executive team, and many of our employees, are licensed professional structural and civil engineers and ICC certified plan examiners with extensive code knowledge and experience. We've developed a reputation for providing plan review and contract staffing while effectively articulating our knowledge of the codes to a wide range of applicants.

- ◆ **The Code Group, Inc. dba VCA Code** is a California Corporation managed by Tom VanDorpe, SE, CEO.
- ◆ **Principal Place of Business:** 1845 W. Orangewood Ave., Suite 210, Orange, CA 92868 with more than 15,000 SF including a large area for training activities and meetings.
- ◆ **Additional Office:** 1111 Broadway, 3rd Floor, Oakland, CA 94607
- ◆ **Size and Growth:** With 153 employees, the firm consists of licensed structural and civil engineers; and ICC certified individuals such as plans examiners, building officials, building inspectors, permit technicians, code enforcement officers, and AICP Planners ranging from City/Principal, Senior, Associate, & Planning Technicians. We have the capacity and resources to support the City in plan review and staffing services.
- ◆ **Serving 35+ California Jurisdictions:** VCA has built a solid reputation based on integrity, service, code knowledge, and experience. Our cities rely on our services.
- ◆ **Financial Stability:** VCA is financially stable, and we have always met our financial obligations on time. A copy of our latest financial statement is available for review upon request. We have two million dollars in E&O insurance and have never been required to make a payment due to a claim against the firm. There is no pending litigation.



Organizational Information



VCA is pleased to introduce our professional team ready to support the Building Division. The City will be in great hands with Bob Heinrich, CBO, Principal/President and Rick Bergin, Director of Staffing. Mr. Heinrich and Mr. Bergin will be the primary points of contact for service requests.



Bob Heinrich, CBO

President & Principal (Primary Contact)

As the former Building Official of the City of Anaheim and past CEO/COO of ICC and ICBO, Mr. Heinrich brings over 30 years of extensive industry and code knowledge. He brings a wealth of successful management experience, efficiency expertise, and resources for the City to utilize. Bob manages a team of in-house plan checkers organized to ensure accurate and complete plan review using City adopted Codes and Ordinances.

- ◆ ICC Certified Building Official
- ◆ Former CEO/COO of ICC and ICBO
- ◆ BS Civil Engineering



Rick Bergin

Director of Staffing (Key Contact)

With over 18 years of experience in recruiting, placement, and staff development, Mr. Bergin knows the ins and outs on how to find and manage talent all within a budget. He has developed strategic programs and initiatives and, in the past, filled 120+ positions in one year. With a collaborative approach, Mr. Bergin and the VCA recruiting team will ensure the City's staffing needs are met.

- ◆ Former Director of Talent Acquisition
- ◆ Former Business Development & Branch Manager
- ◆ Former Director of Recruitment

The assigned staff to perform the services outlined in the RFP are listed below. Note: should any alternate staff be needed, VCA has a steady pipeline of inspectors, permit technicians, plans examiners, code enforcement officers, etc. to serve the City.

Name	Classification/Title	Qualifications, Licenses, Certifications	Years Exp.
Hue Luu, PE	Director of Plan Check Services / Sr. Plan Check Engineer	<ul style="list-style-type: none"> • Registered Civil Engineer C-66754 • ICC Certified Plans Examiner. ICC-0863153 • BS Architecture & Design, CSU Long Beach 	30
Samir Ghosn, PE	Deputy Director of Plan Check Services / Sr. Plan Check Engineer	<ul style="list-style-type: none"> • Former CBO of Newport Beach • ICC Certified Building Official, Plans Examiner, Residential Fire Sprinkler Inspector/Plans Examiner • MS Civil Engineering, CSU Long Beach 	35

Organizational Information

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Name	Classification/Title	Qualifications, Licenses, Certifications	Years Exp.
Daniel Kennedy, AIA	Sr. Plans Examiner / Architect / CASp / Inspector	<ul style="list-style-type: none"> Licensed CA Architect #C25762 California Accessibility Specialist DSA/AC #CASp-198 Safety Assessment Program #SAP50982 ICC Certified Building Official, Building Plans Examiner, Building Inspector, and Combination Single Family Inspector 	30
Suzanne Kusik, PE	Sr. Plan Check Engineer & OSHPD-3	<ul style="list-style-type: none"> Registered Civil Engineer C-61153 CBO – ICC 1015736 ICC Building Plans Exam. ICC-1015736-B3 BS Civil Engineering, CSU Long Beach 	25
Brett Kaufmann, SE	High-Rise Structural Plans Examiner	<ul style="list-style-type: none"> Registered Structural Engineer S-3939 Registered Civil Engineer C-46685 MS Structural Engineering, UCLA BS Civil Engineering, UCLA 	25
Peter Le, SE	Structural Plans Examiner	<ul style="list-style-type: none"> Registered Structural Engineer S-4726 Registered Civil Engineer C-60684 BS Civil Engineering, UC Irvine 	28
Ramon Rubio, SE	Structural Plans Examiner	<ul style="list-style-type: none"> Registered Structural Engineer S-6480 Registered Civil Engineer C-80580 MS Earthquake/Structural Engineering, UCLA BS Structural Engineering, UCSD 	12
Gary Hawken, CBO	CBO / Plans Examiner / Combination Inspector	<ul style="list-style-type: none"> ICBO/BOCA Certified Building Official ICC Certified Building Code Official ICC/AACE Code Enforcement Administrator CA Building Plans Examiner CA Combination Inspector 	30
Jonathan Gulliver, AIA	Plans Examiner / Architect	<ul style="list-style-type: none"> AIA Licensed Architect C-20658 NCARB Certification 48958 LEED AP Accredited BA Architecture, Cal Poly Pomona 	25
Nasrin Sesar	Plans Examiner	<ul style="list-style-type: none"> ICC Certification: 8261522 Building Plans Examiner CALGreen Inspector/Plans Examiner 	30
Shawn Dalipe	Plans Examiner	<ul style="list-style-type: none"> ICC Certified Plans Examiner 8959728 E.I.T. 15-498-61 BS Civil Engineering, UC Irvine 	7

Organizational Information

VCA Code | 1845 W. Orangewood Ave., #210, Orange, CA 92868 | 714.363.4700



Name	Classification/Title	Qualifications, Licenses, Certifications	Years Exp.
Jack Kuwitzky	Building Inspector & Plans Examiner, Disaster Assistance	<ul style="list-style-type: none"> • ICC: Residential, light Commercial and Industrial, MEPs, TI's, and plan review • CA DSW Coordinator-ICC 81965402 • Historical building inspection 	10
Kontay Sexton, PE	Mechanical / Energy Engineering Services	<ul style="list-style-type: none"> • Registered Mechanical Engineer M-38690 • MBA Renewable Energy Focus, BHT Berlin • MS Mechanical Engineering, UMD College Park • BS Mechanical Engineering, NCSU 	20
Robert Salgado	Fire & Building Inspector / Sr. Plans Examiner	<ul style="list-style-type: none"> • Bachelor of Science, Columbia Southern University, Fire Science • Fire Inspection Academy • Fire Safety Engineering Certificate • ICC Certified Fire Plans Examiner, Fire Inspector I & II, Building Inspector 	30
Moises Eskenazi	Fire & Building Inspector / Sr. Plans Examiner	<ul style="list-style-type: none"> • ICC Commercial Combination Inspector, Electrical, Mechanical, Plumbing, & more • AA Construction Technology, Pasadena City College • ICC-842211 	25
Danny Rodriguez	Sr. Building Inspector	<ul style="list-style-type: none"> • ICC Building Inspector, Plans Examiner – 863360 • Post Disaster Training Certified • NPDES Inspection Certification • Orange Coast College, AA Architectural Technology and Construction 	30
Steven Hartmeyer	Combination Building Inspector	<ul style="list-style-type: none"> • ICC Combination Residential Building Inspector (B1, M1, E1, P1) • Plan review for residential, commercial, solar PV, and EV charging stations • Lead Inspector for commercial, residential, institutional construction projects 	20
Donna Ducharm-Greek	Permit Technician	<ul style="list-style-type: none"> • ICC Certified Permit Technician 8750096 	7
Kathy Mahboubian	Permit Technician	<ul style="list-style-type: none"> • ICC Certified Permit Technician 8004785 	12

Individual resumes for staff can be found in [Appendix A](#).

Subcontractors: No subcontractors have been assigned. Should any be needed in the future to fulfill tasks for the City, VCA will proceed with the proper notification and procedures.

Organizational Information

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Project Approach/Methodology

With a team of licensed professional/structural engineers, ICC plans examiners, ICC fire plans examiners, ICC building inspectors, and ICC permit technicians, VCA is highly capable of performing all services requested in the Scope of Services.

Scope of Services

VCA has read the Scope of Services and agrees that in carrying out responsibilities under this agreement, and in particular with regard to the employment of persons and sub-Consultants working on the contract, we will not discriminate on the basis of race, color, creed, national origin, religion, sex, age, or handicap. In the event any of the work performed here under is subcontracted to another person or firm (with approval of the City as required herein), sub-contract shall contain a similar provision.

VCA will ensure individuals will not work:

- more than 960 hours a year at the City;
- full-time for more than six (6) months;
- regular part-time service of at least twenty (20) hours per week for one year or longer;

VCA will ensure we maintain control of the manner and means of individual's work schedules; and we will ensure individuals, working on City projects, understand they do not work for the City and there is no employee/employer relationship.

VCA will provide personnel that meet the required qualifications, certifications/licenses, and knowledge to perform the following services:

Section A: Building Plan Review Services

- Review residential, commercial and industrial buildings for compliance with the City-adopted codes, including California Building and Residential Codes, Green Code, Mechanical Code, Plumbing Code, and Electrical Code; The City of Newport Beach Municipal Code; and State Energy Conservation requirements.
- Provide one (1) Fire Plans Examiner to review fire code plans for residential, commercial and industrial projects, working off-site and attending meetings, as directed by the Fire Marshal.
- Provide written notification to each applicant, consisting of a complete electronically-generated plan check letter, which outlines the documents reviewed, instructions to the applicant regarding the processing of documents, and a listing of plan check comments. The plan check comments will refer to appropriate sheets, details or calculations pages and the code section of concern. Comments shall specify the apparent code violation.
- Be available, during regular business hours, to discuss and clarify plan check issues with applicants, designers, owners and consultants. Resolution of code issues may be performed by telephone, or meetings, prior to resubmitting corrected plans and documents.
- Attend all required meetings as directed by the Chief Building Official.
- Review soils report, for compliance with CBC, for the proposed scope of work.
- Review grading plans to assure conformance with City codes, written policies and standard specifications and compliance with the recommendations, specifications and details contained



in the submitted soils report and assure that all appropriate details are shown on the plans. Review quantity calculations to assure accuracy and completeness.

- Review surveys, in accordance with City Policy.
- Review Erosion Control Plans to verify erosion and sedimentation measures comply with the Best Management Practices per City standards.
- Turn-Around Schedule: VCA will complete each plan check, when not conducted in City Hall, within ten (10) working days for the first check and five (5) working days for subsequent checks.

Section B: On-Call Structural Review

- Provide on-call plan review of complex structural design for conformance to the latest adopted codes and standards.
- Provide written notification to each applicant, consisting of a complete electronically-generated plan check letter which outlines the documents reviewed, instructions to the applicant regarding the processing of documents, and a listing of plan check comments. The plan check comments will refer to appropriate sheets, details or calculations pages and the code section of concern. Comments shall specify the apparent code violation.
- Be available during regular business hours to discuss and clarify plan check issues with applicants, designers, owners and consultants. Resolution of code issues may be performed by telephone, or meetings prior to resubmitting corrected plans and documents.
- Attend all required meetings as directed by the Chief Building Official.
- Turn-Around Schedule: VCA will complete each review, off site, within ten (10) working days for the first check and five (5) working days for subsequent checks.

Section C: Building Inspection Services

- Provide up to two qualified building inspectors performing up to eighty (80) hours of Contract Inspection Services per week.
- Provide inspections of all requested inspections and re-inspections for compliance with City of Newport Beach Municipal Code and State codes and regulations: California Building Code, Residential Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code, Energy Code, Green Building Standards Code, Disabled Access Regulations, and Title 25; Mobile Home Parks regulations; State Water Resource Control Board regulations related to storm water pollution prevention; Sound Transmission Control regulations; and, locally adopted building ordinances and amendments thereof.
- Personnel will not be substituted without approval from the Chief Building Official.
- Maintain all inspection records for all assigned projects, including correction notices and all documentation related to project inspections.
- Coordinate all inspection and re-inspection requests as assigned.
- Coordinate with the Principal Building Inspector, as appropriate, on discretionary decisions or requests for alternate materials.
- Coordinate with the Principal Building Inspector on all Certificate of Occupancy to be sure that all applicable City regulatory agencies have approved the project.



Section D: Building Permit Technician Services

- Provide one qualified permit technician. The City needs a full or part time Contract Permit Technician Services.
- Personnel will not be substituted without approval from the Chief Building Official.
- Provide support and technical assistance at the public counter, over the telephone and via email; provide general information and assistance to the public regarding requirements for obtaining permits, zone clearances, and business license;
- Assist in responding to requests for information from other departments and governmental agencies regarding the General Plan, Zoning Code, Local Coastal Program, and Subdivision Code;
- Determine building valuations based on established standards; calculate and determine a variety of fees for plan checks, permits, taxes and sanitation district and school district charges;
- Instruct applicants on correct procedures for completing required forms and applications; provide information regarding City, State and Federal regulations pertaining to building, planning, and public works activities;
- Maintain recorded of plans and applications submitted; participate or direct the filing and routing of plans and permits to appropriate City departments and staff;
- Coordinate the plan approval process between various City departments; refer applicants to appropriate City department or outside agency as necessary;
- Notify applicants when plan or permits are ready for pick-up or issuance; provide status updates as required;
- Follow-up on stop work orders and complaints;
- Perform data entry and issue permits via the computerized permitting system;
- Verify worker's compensation insurance and State contractor licensing; and
- Perform related duties as assigned.
- Coordinate with the Permit Technician Supervisor and attend all required meetings as directed by the Chief Building Official.

Approach

Our extensive experience, capabilities, and total quality management control processes are a multi-layer approach. VCA will ensure proper staff allocation and placement through working closely with City staff and understanding the requirements set forth. Located nearby in Orange County, our project team is readily available for telephone or in-person meetings at the City. All VCA employees and contract staff will behave in a professional manner while conducting their duties and working with the public and the City. VCA brings the experience and success of working with multiple jurisdictions while providing high quality work through the following:

- **Compliance with all City Policies and Procedures:** Our employees will adapt to all City processes, mitigating conflicts that could arise from working with a consultant. Unlike competitors, our goal is to provide the City with solutions rather than cause more headaches. We are willing to come to the City to learn any software programs, systems, or other processes to better serve the City.
- **In-House Experts:** With a core team of plan checkers and recruiters working directly out of VCA's Orange County office, applicants and city staff will benefit from quick issue resolution. While many consultants have dispersed organizations, VCA's staff, President, and CEO work directly with the

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Project Approach/Methodology

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City to handle any matters with no cause for delay.

- **Professional Development Training:** VCA's leadership values employee development and supports career advancement through paid training and continuing education.
- **Staffing Commitment:** VCA commits to providing a team with relevant work experience based on City needs. Should a change in personnel be required, VCA will comply with City requirements and seek written consent of the City, including sub-consultants.
- **Code Library:** VCA continually updates an extensive library of all applicable and adopted building codes and reference standards; and modifies and upgrades review standards to reflect code changes and guarantees that plan reviews are in alignment with the current standards.
- **Industry Associations:** VCA has a long-standing participation and technical involvement with the International Code Council (ICC), ICC Orange Empire Chapter, ICC Los Angeles Basin Chapter, CALBO, Structural Engineers Association of California (SEAOC), International Association of Plumbing and Mechanical Officials (IAPMO), and others. These resources and relationships can be utilized for research, thought leadership, and needed information to support VCA's activities for the City.
- **Open Communication:** VCA's office hours are 8:00 a.m. to 5:00 p.m. however, our staff will be available during the hours convenient for the City. We will proactively communicate with City staff, applicants, and attend meetings as necessary to improve the progress of work. VCA will provide emphasis, understanding and special attention to assigned projects while maintaining work quality, meeting deadlines, and staying within budget. Our employees know they must return phone calls and emails ASAP or within 24 hours. VCA effectively utilizes a cross-reference program that ensures ongoing communication, so if an employee is out of the office, they must notify their counterpart, to be aware of the status of any issue. In addition, the City may rely upon both Bob Heinrich and Rick Bergin, who are available 24/7 to assist the City.

Methodology

Unlike competitors, VCA has a core in-house team of sixteen (16) plan checkers to ensure the City receives consistent and timely corrections. These individuals consist of ICC Certified Plans Examiners and licensed professional and structural engineers. They will review each project to meet all requirements of the California Code Regulations (CCR Title 24), including, but not limited to: structural, architectural, mechanical, electrical, plumbing, fire, CASp, grading and drainage, civil, sustainability (Energy and Green Building Codes), geotechnical services, flood zone, liquefaction, storm water, OSHPD-3, ADA, and more.



1. **Beginning with the end in mind:** Accurate and thorough plan review coupled with on-time delivery is our goal. To save time, VCA employs a full-time Plan Check Client Services Manager and coordination staff. This individual is a 25-year veteran Permit Technician who opens each set of plans to review for completeness and ensures all documents and reports are included. If portions



are missing, she immediately notifies the City to attain any outstanding documents. Each plan is entered into our proprietary plan tracking system and assigned out to a plans examiner.

2. **QC & QA:** Our Director of Plan Check, Mr. Hue Luu and Deputy Director of Plan Check, Mr. Samir Ghosn, are well-known in the industry, and their expertise is unparalleled. Mr. Luu and Mr. Ghosn conduct oversight to ensure corrections are accurate and complete. This control and quality assurance ensures plans are thoroughly reviewed, concise, and based on the most current codes and regulations. Mr. Luu and Mr. Ghosn are key assets for VCA and the City.
3. **Meeting Turnaround Times:** VCA will comply with the City’s turnaround times, and we are happy to work with the City on any unique circumstances. With our proprietary tracking software and centralized personnel, the progress and whereabouts of plans are transparent resulting in efficient time management and in-house collaboration on technical topics. VCA recognizes timelines may require adjustment due to factors such as scope size and intricacy in order to uphold customer satisfaction, in which case VCA will attain proper approval from the City.

Plan Review Services	Initial Review	2 nd Review	Subsequent Reviews
Standard Plan Review	10 working days	5 working days	5 working days
Expedited Review (1/2 Time)	5 working days	5 working days	5 working days

Important Notes:

1. All turnaround times may be negotiated depending on size of scope.
 2. VCA Code will comply with all local amendments provided by the City.
 3. VCA will provide plan review services expeditiously based on City requests.
4. **Recheck Procedure:** Plans returned for second and/or third reviews are typically given to the original plan reviewer. The benefits are threefold: 1) their familiarity with the project saves time and money in approving corrections, 2) this helps expedite the review process for applicants, and 3) conversations with applicants are more consistent.
 5. **Virtual Awareness:** VCA created a virtual board, similar to a flight status board at airports to openly display all plans, due dates, and progress. This board is monitored by all plan checkers, our manager, and the Plan Check Director.

Today Is

Total Plans in House :

Agency	Emp	Sub #	Plan ID	PC Number	Job Address	Rec'vd	Due	Days Till Due
MON	NS	3	34769	2021-343	361 Norumbega	11/8	11/15	6
LB	GH	1	34839....	BRMD263...	3360 E 68th St	11/8	11/15	6
LB	GH	1	34840....	BRMD263...	3360 E 68th St	11/8	11/15	6
COR	SD	1	35403	B21-04375	810 Ford Street	10/28	11/15	6
COR	SD	1	35404	B21-04362	810 Ford Street	10/28	11/15	6
MB	NS	1	35229	BLDR-21-...	1530 9th St	10/1	11/15	6
WHO	JK	2	35294	E21-0369	9041 Nemo St	11/8	11/16	7
WHO	JK	2	35295	M21-0270	9041 Nemo St	11/8	11/16	7

6. **Tracking Plans:** Pertinent data is entered into our custom tracking system and a barcode is generated, allowing VCA to monitor plan check activities, the number of reviews, the number of hours, fees, and add any information received from the City or applicants. Any requested data is easily relayed back to the City.



7. **Deferred Submittals and Revisions:** Our plan checkers will review deferred submittal items and any revisions before or during construction.
8. **Other:** VCA's staff will:
 - Consolidate comments from various City departments, resolve internal inconsistencies, and present recommendations and revisions to the applicants.
 - Maintain communications with applicants and staff from the Building Division and other City departments. Respond to inquiries about projects from applicants.
 - Utilize City electronic and paper files to research previous and/or related permits.
 - Be available during an emergency or natural disaster to assist the City with inspection services. VCA has certified disaster specialists.
 - Participate in reviews with technical consultants, health and other government agency inspectors, City staff, and owners.
 - Acknowledge that all documentation will become the property of the City of Newport Beach.
9. **Pickup and Delivery of Plans:** At no cost to the City, VCA will arrange shipping and courier services. Our plan checkers are available Monday through Friday between 8:00 a.m. to 5:00 p.m. Our company policy states all phone calls and emails are to be returned as soon as possible but absolutely within 24 hours.

In contrast to other consultants, VCA has a dedicated in-house recruiting team knowledgeable of the industry who will connect with the City, determine needs, and provide the best contract staff to serve the City of Newport Beach through the following:

1. **Candidate Qualifications:** VCA will only provide candidates that meet the minimum City requirements. Regarding pre-screening, VCA meets each candidate in person, evaluates them about their knowledge of either inspection, plan check, or permitting requirements. VCA also confirms certifications or licenses, and runs any background checks required, or coordinates with the City's live scan process.
2. **Screening Candidates:** VCA complies with all State and Federal employment laws. Our recruiting staff meet face-to-face or through Zoom to determine the best qualified and best fit candidates are presented to the City. VCA shall comply with any City requirements including reference checks, fingerprints, and background checks, coordination of live scans, scheduling meetings with police departments or other entities to run the required background check.
3. **Notification of Changes:** VCA understands that timing matters when it comes to providing qualified contract staff for a jurisdiction. VCA shall promptly notify the City of any changes in personnel prior to award of a contract between City and the VCA. Should any personnel be reassigned prior to the award, VCA shall present the resumes of highly qualified replacements for any function affected.
4. **Staff Stability for the City:** Employee turn-over is detrimental to both cities and consultants. VCA proudly provides benefits to help our employees take care of themselves and their families. We pay for medical, dental, vision, and a 401(k) plan to assist with their retirement. We also pay for the same holidays that city employees get, as well as vacation and paid sick days. These benefits help promote a stable and secure workforce which greatly benefits the City with contract employees who are dedicated and committed to the cities they serve.

EXHIBIT B

SCHEDULE OF BILLING RATES



Cost File

Our firm provides on-site Building Plan Review, Structural Review, Building Inspection, and Permit Technician services.

Outsourced Plan Review Fees

For plan review services, the first three plan checks are included in the initial percentage fee rate and will be billed on the first check. Subsequent checks after the third review will be billed hourly. Hourly plan review is charged at a minimum of two (2) hours. VCA will arrange pick-up and delivery of plans at no additional cost to the City. VCA will provide plan check review services expeditiously at the request of the City.

Full Plan Check

Percentage of Fees Collected	70%
Hourly Rate	\$115.00

Expedited Plan Check

Percentage of Fees Collected Including Expedited Fee	70%
Hourly Rate	\$130.00

Non-Structural Plan Check

Percentage of Fees Collected	50%
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Structural Plan Check

Percentage of Fees Collected	60%
Hourly Rate	\$115.00

MEP Plan Check

Percentage of Fees Collected	50%
Hourly Rate	\$115.00

Fire Plan Check

Percentage of Fees Collected	60%
Hourly Rate	\$125.00



Compensation rates for staffing will depend on function and experience and are determined by an agreement between the City and VCA.

Contract Staff Hourly Rates (On-site)

Job Title / Function	Hourly Rate (OT=1.5x)
Building Inspector	\$75.00 to \$85.00
Sr. / Combination Inspector	\$85.00 to \$95.00
Permit Technician	\$65.00 to \$75.00
Sr. Permit Technician	\$70.00 to \$80.00
Building Plans Examiner	\$115.00 to \$130.00
Fire Plans Examiner	\$120.00 to \$130.00
Plan Check Engineer	\$120.00 to \$145.00
Licensed Structural Engineer	\$140.00 to \$155.00

Additional Staffing Hourly Rates

Job Title / Function	Hourly Rate (OT=1.5x)
Grading Inspector / Soils Inspector	\$95.00 to \$115.00
CASp Services	\$145.00 to \$155.00
Supervisor for Permit Tech / Counter Services	\$95.00 to \$115.00
Code Enforcement Officer	\$70.00 to \$85.00
Code Enforcement Supervisor	\$85.00 to \$95.00
CALGreen Inspector / Manager Services	\$105.00 / \$135.00
City Planner / Project Manager / Planning Manager	\$175.00 to \$195.00
Senior Planner / Principal Planner	\$145.00 to \$165.00
Zoning Administrator	\$125.00 to \$145.00
Associate Planner	\$105.00 to \$135.00
Assistant Planner/Counter Services	\$90.00 to \$105.00
Planning Technician/Assistant	\$70.00 to \$85.00
Administrative Personnel	\$55.00 to \$65.00
Client Consultation at City Hall (CBO/Sr. Management)	\$145.00 to \$195.00
Building Official	\$140.00 to \$175.00

Note: VCA charges the current IRS Mileage Rates for traveling to and from job sites. Mileage shall not be charged to the City when traveling to work onsite at City Hall, picking up or dropping off plans when working off-site, or when using City provided transportation.

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 one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) 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 one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) 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.

Name:	The Code Group, Inc. dba VCA Code 
Account Number:	FV00000453
Address:	1845 W. Orangewood Avenue, Suite 20, Orange, CA, 92868
Status:	Currently in Compliance.

Insured

[Business Unit\(s\)](#)
[DBA Name](#)
[Print Insured Info](#)

Account Information

Account Number:	FV00000453
Risk Type:	Professional Services Agreement
Do Not Call:	<input type="checkbox"/>
Address Updated:	<input type="checkbox"/>

Address Information

Mailing Address	Physical Address
Insured:	The Code Group, Inc. dba VCA Code
Address 1:	1845 W. Orangewood Avenue, Suite 20
Address 2:	
City:	Orange
State:	CA
Zip:	92868
Country:	

Contract Information

Contract Number:	
Contract Start Date:	06/28/2022
Contract End Date:	06/30/2025
Contract Effective Date:	06/28/2022
Contract Expiration Date:	06/30/2025



NEWPORT BEACH

City Council Staff Report

January 14, 2025
Agenda Item No. 14

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: David A. Webb, Public Works Director - 949-644-3311,
dawebb@newportbeachca.gov

PREPARED BY: Chris Miller, Public Works Administrative Manager - 949-644-3043,
cmiller@newportbeachca.gov

TITLE: Memorandum of Agreement with the City of Long Beach Acting By
and Through the Port of Long Beach Board of Harbor Commissioners
Authorizing Disposal of Lower Bay Dredged Material Into the Port's
Pier G Slip Fill Project

ABSTRACT:

The federal government, via the U.S. Army Corps of Engineers, is planning a dredging project within Newport Harbor. The City of Newport Beach, acting as the local sponsor for the project, is responsible for identifying a disposal location for dredged material that is deemed unsuitable for open ocean disposal. To that end, the City certified an Environmental Impact Report to construct a Confined Aquatic Disposal site within Newport Harbor and obtained the necessary entitlements to place the dredged material within that site. However, the project was paused while the U.S. Army Corps of Engineers refined its environmental analysis. In the meantime, City staff continued to look for an alternative disposal solution in addition to the planned Confined Aquatic Disposal.

As a result, an opportunity to dispose unsuitable material within the Port of Long Beach's Pier G Slip Fill Project emerged, and the City and the U.S. Army Corps of Engineers are now preparing to use this alternate disposal site. Therefore, the Port of Long Beach requires a Memorandum of Agreement with the City prior to the disposal of dredged material from Newport Harbor in the Pier G Slip Fill Project.

RECOMMENDATIONS:

- a) Find that, pursuant to Section 21166 of the California Public Resources Code and Section 15162 of the CEQA Guidelines, the certified Environmental Impact Report for the Piers G and J Terminal Redevelopment (SCH No. 2000-021021) addressed all environmental impacts associated with the City of Newport Beach entering into this Memorandum of Agreement, that there are no new or more severe impacts beyond those analyzed in that document, and, as a result, no further environmental review is required by CEQA;
- b) Approve and execute the Memorandum of Agreement with the City of Long Beach acting by and through the Port of Long Beach Board of Harbor Commissioners authorizing disposal of Lower Bay dredged material into the Port's Pier G Slip Fill Project; and

- c) Authorize the City Manager or her designee to execute any future amendments or agreements with the City of Long Beach acting by and through the Port of Long Beach Board of Harbor Commissioners as related to the disposal of Lower Bay dredged material to ensure the City of Newport Beach meets the strict delivery schedule imposed by the Port.

DISCUSSION:

Newport Harbor is one of the largest recreational harbors in the United States. Natural processes of storm water and erosion flowing into the harbor, primarily from San Diego Creek, result in the movement and accumulation of sediment which must be periodically dredged to maintain the federally authorized channel depths for safe navigation. The Federal Channels extend from the Entrance Channel to the Turning Basin (adjacent to the Newport Boulevard Bridge), and from the east anchorage between Bay Island and Lido Isle to the Marina Park area. These channels are the responsibility of and are maintained by the federal government via the U.S. Army Corps of Engineers (USACE).

In 2022, the City contributed \$10 million towards the Confined Aquatic Disposal (CAD), representing approximately 50% of the overall cost. USACE has funded the remaining 50% of the CAD, and continues to seek additional funds through the USACE federal work plan request process.

Sediment studies are conducted to evaluate disposal options as required by the regulatory and resource agencies. The recent sediment sampling effort conducted in September 2024 determined that most of the material (745,000 cubic yards) in Newport Harbor is suitable for disposal at the federally authorized ocean disposal site located six miles from the Entrance Channel. The remaining material (approximately 191,000 cubic yards) is unsuitable for open ocean disposal; therefore, it is the City's responsibility as the local sponsor to identify a disposal location.

In 2021, the City determined that construction of a CAD in Newport Harbor was the most feasible and cost-effective option available at the time for disposal of unsuitable material. Therefore, the City Council certified Environmental Impact Report (EIR) No. EIR2021-001, and all entitlements were secured for the CAD in 2022 and 2023. However, in 2023, USACE suspended the City's CAD permit so USACE could refine its federal environmental analysis.

In the meantime, City staff initiated discussions with the Port of Long Beach (POLB) to explore disposal options within its Pier G Slip Fill Project (Pier G Project). The Pier G Project includes the reconfiguring of the Pier G South Slip, which requires filling an existing container ship slip to create more land-based storage.

The POLB and the terminal operator tenant had originally planned that 100% of the required fill material for the Pier G Project would be from existing locations within the port complex with no external sources of material required to complete the Pier G Project. However, earlier this year after further discussion with the POLB, the POLB agreed to provide capacity of up to 225,000 cubic yards of material from Newport Harbor within the Pier G Project. This is a strategically unique opportunity for the City, and it represents an ideal option for material disposal that was otherwise not available.

For reference, in 2011 and 2012, the POLB and the City collaborated in the same manner when the POLB's Middle Harbor Fill Project was underway. Material from the City's Rhine Channel as well as material from Phase I of the Lower Bay Federal Dredging Project was disposed at the POLB via daily tugboat and disposal scow round trips. This same process will be used to deliver material from the current Lower Bay Project to the Pier G Project.

The POLB has obtained all necessary regulatory agency approvals for the Pier G Project to be used as a placement site for the Newport Bay material. However, before disposal can commence, the POLB requires a Memorandum of Agreement (MOA) to be executed between the two parties. Should the City Council approve the MOA, the POLB Harbor Commissioners will consider approval and execution at their January 27, 2025 meeting. The attached agreement has been reviewed and approved as to form by the City Attorney's Office, and the deal points therein are considered reasonable to both parties.

It is noted, however, that timing is critical. The disposal window to transport material to the POLB is extremely tight, with a current delivery timeline between approximately May 2025 to October 2025, or until an underwater containment dike at Pier G precludes safe navigation for the tugboat and disposal scow. Therefore, the City and USACE are diligently working together to ensure that project planning is completed on time, and the project is bid and awarded with dredging commencing approximately May 2025. Currently, the project is positively tracking towards those goals. However, should this alternative disposal at the POLB not materialize or fall short of the disposal goals, the City would resume efforts to continue proceeding with the original CAD option.

FISCAL IMPACT:

The Lower Bay Dredging Project is estimated to cost approximately \$20 million. Of this amount, approximately \$10 million will be paid by the federal government which is also seeking additional funds via the USACE federal work plan requests. In 2022, the City contributed \$10 million, which was expensed to the Tidelands Capital Fund in the Public Works Department, Account Nos. 10101-980000-18H07 and 10101-980000-22H07. The Tidelands Capital Fund was created to allow for the sequestration of incremental increases from tidelands rent adjustments solely to finance critical in-harbor capital improvements like seawall repairs, piers and dredging. The City's contributed funds are currently with USACE and are immediately available.

In addition, the County has expressed interest in, but has not yet committed to, contributing approximately \$2 million to reimburse the City for dredging within County tidelands. The City will commence negotiations with the County after the project has been awarded and is in progress.

ENVIRONMENTAL REVIEW:

Pursuant to Section 21166 of the California Public Resources Code and Section 15162 of the California Code of Regulations Title 14, Division 6, Chapter 3 (CEQA Guidelines), when an EIR has been certified for a project, no subsequent EIR is required unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

- a. Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- b. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- c. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, shows any of the following:
 - i. The project will have one or more significant effects not discussed in the previous EIR;
 - ii. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - iii. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the Project proponents decline to adopt the mitigation measure or alternative; or
 - iv. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

The POLB certified the Environmental Impact Report EIR for the Piers G and J Terminal Development (SCH No. 2000-021021), which is attached hereto as Attachment B and incorporated herein by reference.

The EIR was prepared in compliance with California Public Resources Code Section 21000 *et seq.* and its implementing State regulations set forth in the CEQA Guidelines. The EIR analyzed the potential impacts of the Pier G Project which consists of filling an existing container ship slip to create more land-based storage with 2,550,000 cubic yards of dredged material. Inclusion of as much as 225,000 cubic yards of dredged material from the USACE project within the Pier G Project does not result in a substantial change to the project that will require major revisions to the EIR, does not result in substantial changes to the circumstances under which the project is undertaken that would require major revisions to the EIR, nor constitute new information. Therefore, in accordance with Section 21166 of the California Public Resources Code and Section 15162 of the CEQA Guidelines, the adoption of the MOA does not require additional environmental review.

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 – Memorandum of Agreement with the Port of Long Beach

Attachment B – Web Link to Environmental Impact Report for Piers G & J Terminal
Development (SCH 2000-021021)

ATTACHMENT A

MEMORANDUM OF AGREEMENT BY AND BETWEEN THE CITY OF LONG BEACH, ACTING BY AND THROUGH ITS BOARD OF HARBOR COMMISSIONERS AND THE CITY OF NEWPORT BEACH

THIS MEMORANDUM OF AGREEMENT ("MOA") is made and entered into, in duplicate, as of the date executed by the Chief Executive Officer of the Long Beach Harbor Department ("Chief Executive"), by and between the CITY OF LONG BEACH, a California municipal corporation and charter city, acting by and through its Board of Harbor Commissioners ("Port") pursuant to authority granted by said Board at its meeting of _____, 202__; and the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City").

RECITALS:

WHEREAS, the Port owns land and water areas within the City of Long Beach Harbor District known as Pier G;

WHEREAS the Port is undertaking a project that will, among other things, reconfigure the Pier G South Slip ("the Project"), as depicted in Exhibit "A" attached hereto;

WHEREAS, the Port anticipates it will satisfy most of its fill material needs from materials generated by the Project, but in the interest of advancing the regional policy of encouraging the beneficial reuse of dredge material, the Port will endeavor to accept dredge material from sources other than the Port by allowing that material to augment the Port's fill material needs;

WHEREAS any import of fill material from outside the Project limits or the City of Long Beach Harbor District shall be subject to the Port's fill material criteria, as well as the logistical, technical, and environmental requirements of the Project, and must comply with all applicable laws, rules, regulations, requirements, licenses, permits, and orders, as may be amended from time to time;

WHEREAS, the City is a grantee of state tidelands and desires to dredge and remove approximately 225,000 cubic yards of material from the Lower Newport Bay channels ("Newport Bay Material");

WHEREAS, while the City is the local, non-federal sponsor for the Lower Newport Bay Maintenance Dredging Project and holds the responsibility for providing a disposal location for the dredged material, the dredging contract will be managed and executed by the U.S. Army Corps of Engineers, Los Angeles District, through the authority granted in the Rivers and Harbors Act of 1945 authorizing the Newport Bay Harbor federal project;

WHEREAS, some of the Newport Bay Material has been determined by regulatory agencies to be unsuitable for unconfined open ocean disposal;

WHEREAS, the Project is available for placement of unsuitable material, and the Port and City desire to use the Project site for the placement of the Newport Bay Material;

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter contained, the Port and City agree as follows:

1. The above recitals are true and correct.
2. The Port has obtained all necessary regulatory agency approvals for the Project to be used as a placement site for the Newport Bay Material.
3. The Port shall allow the City, without any further agreement, permit, or easement from the Port, to place up to 225,000 cubic yards of Newport Bay Material at the Project site. The Port shall not impose any fee or charge, or otherwise require any payment from the City, for placement of that material. The City's placement of dredge material shall be subject to all applicable conditions imposed by the aforementioned regulatory agencies.
4. In the event that the funding for the City's dredging project is insufficient, or if for any other reason, the City cannot deliver some or all of the 225,000 cubic yards of Newport Bay Material to the Project, the Port will be solely responsible for making up any deficit with its own material, and the Port shall hold the City harmless from any costs incurred by the Port as a result, thereof.
5. The City recognizes that time is of the essence in the Project schedule and agrees to place the Newport Bay Material at the Project at the locations and within the time frames specified by the Port. It is agreed by the City that placement of the Newport Bay Material shall be completed before the elevation in the Project fill reaches -10 feet Mean Lower Low Water. If the City cannot deliver the Newport Bay Material to the Project within the time frame specified by the Port, or if the City shall seek other disposal options, this Agreement shall be automatically terminated, and the City shall hold the Port harmless with respect to any costs incurred by the City as a result of such termination.

6. The City agrees to indemnify, defend and hold harmless the Port and its agents, officers and employees, from and against any and all liability, expense, including defense costs and legal fees and claims arising from the City's placement of Newport Bay Material and performance of its obligations under this Agreement. The obligations assumed by the parties in this section shall survive the termination of this Agreement, whether by expiration or otherwise.

7. Any notice, demand, request or formal communication required or authorized by this Agreement to be given or made to or upon either of the parties to this Agreement shall be deemed properly given or made if delivered, by registered mail postage prepaid, or email to each of the following:

Port:

Port of Long Beach
Attn: Deepen Upadhyay, Senior Program Manager
P.O. Box 570
Long Beach, CA 90801
Deepen.Upadhyay@polb.com

City:

City of Newport Beach
Public Works Department
Attn: Chris Miller
100 Civic Center Drive
Newport Beach, CA 92660
cmiller@newportbeachca.gov

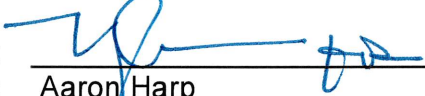
8. This Agreement shall terminate upon the occurrence of either: (1) the successful completion of the proposed construction project using the Project as the placement site for the Newport Bay Material; or (2) the commencement of the placement of the Newport Bay Material at a site other than the Project. The foregoing notwithstanding, either party hereto may terminate this Agreement for a material breach of this Agreement by giving written notice to the other party ninety (90) days prior to the effective date of such termination.

[Signatures on following page]

_____, 2024

By: _____
Name: Leilani Brown
Title: City Clerk

December 19, 2024

By: 
Name: Aaron Harp
Title: City Attorney

_____, 2024

By: _____
Name: Joe Stapleton
Title: Mayor

CITY OF NEWPORT BEACH, a municipal corporation

CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

_____, 2024

By: _____

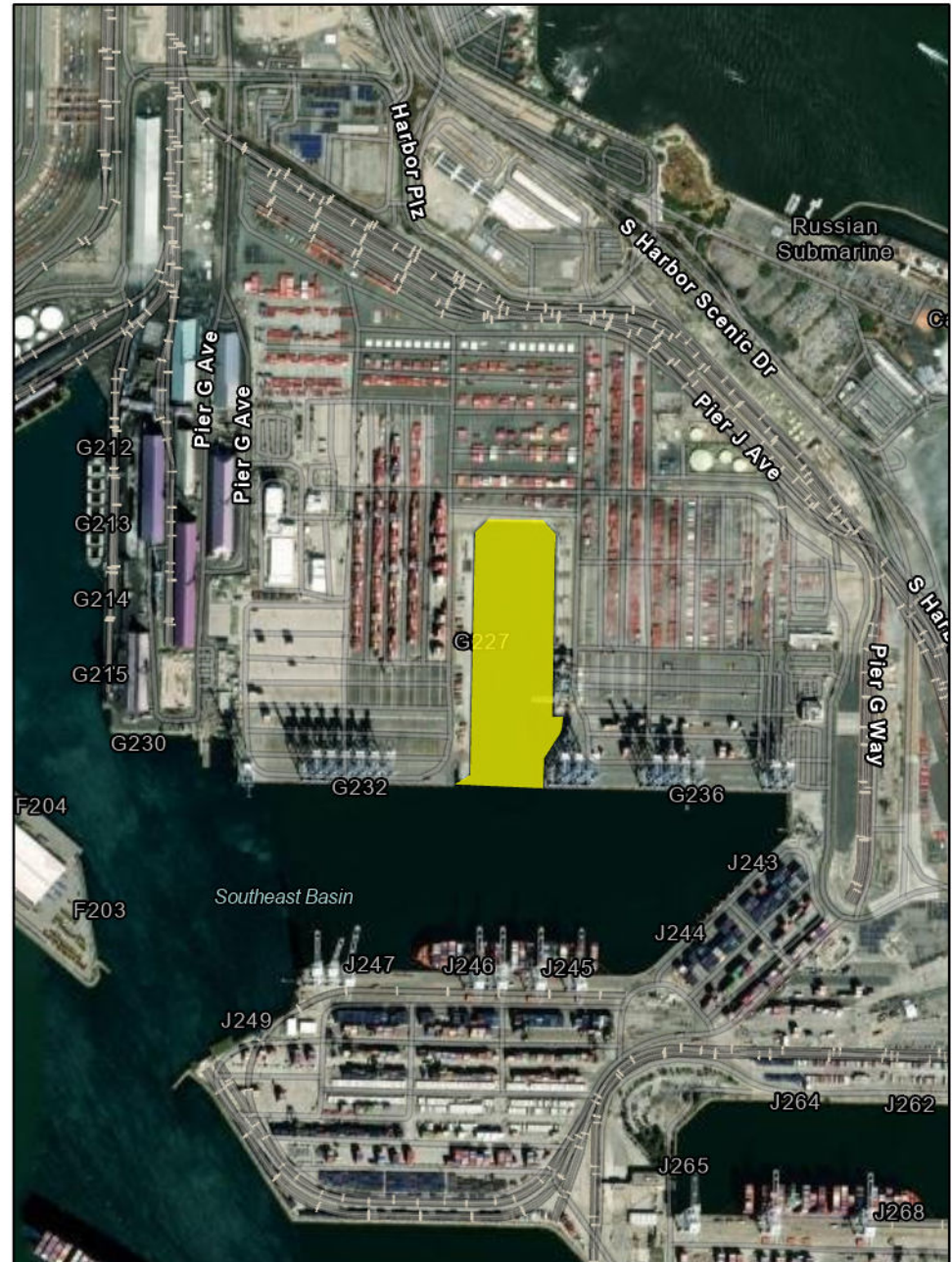
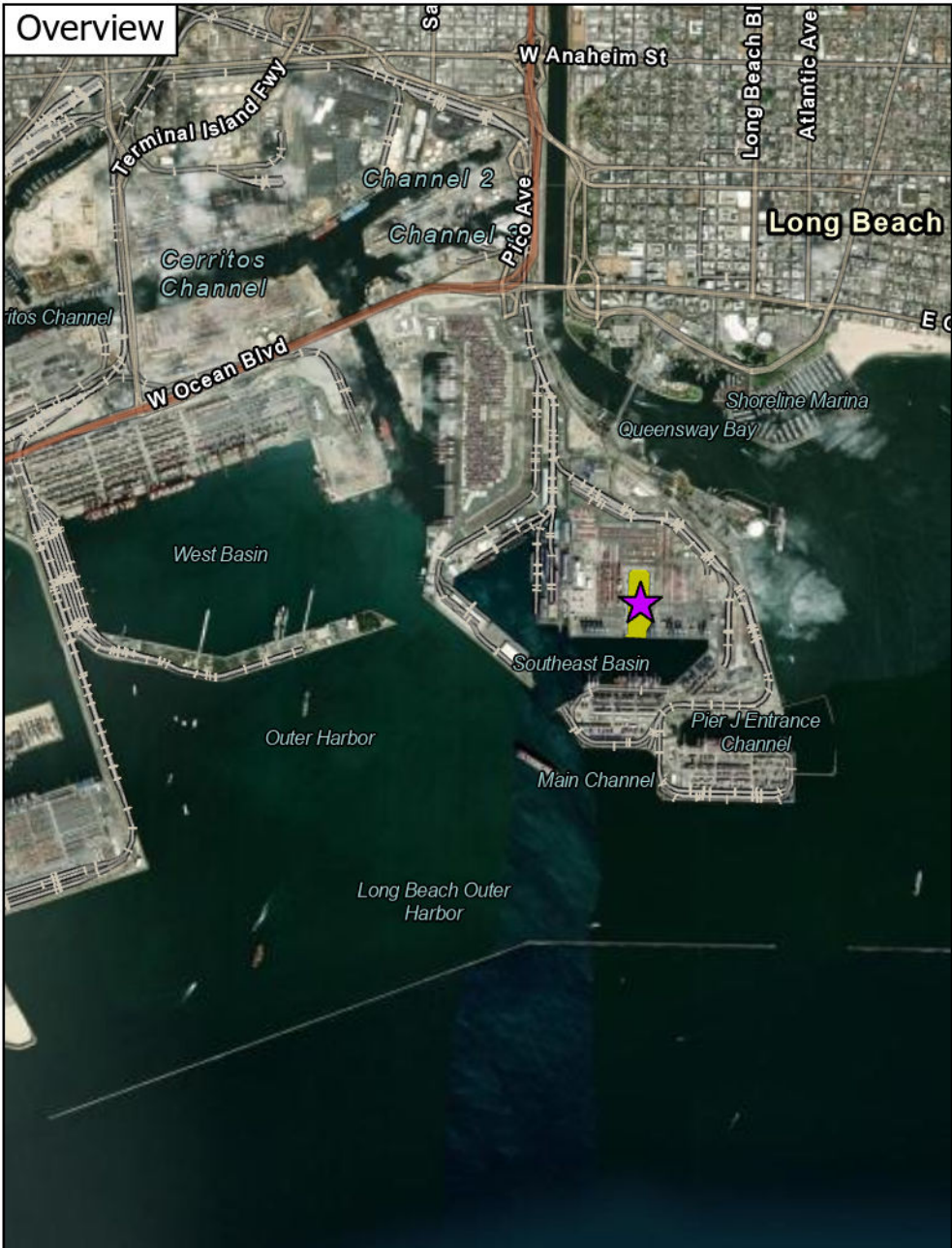
Mario Cordero
Chief Executive Officer
Long Beach Harbor Department

The foregoing document is hereby approved as to form.

DAWN MCINTOSH, City Attorney

_____, 2024

By: _____
Sudhir N. Lay, Deputy



Port of Long Beach

Pier G Slip Fill Project

Attachment B - Environmental Impact Report for Piers G & J Terminal Development
(SCH 2000-021021) files located within the following link:
<https://polb.com/documents/#ceqa-nepa>



On the Agenda: January 14 City Council Meeting

The next meeting of the Newport Beach City Council will be on Tuesday, January 14. A closed session meeting will begin at 4 p.m. The regular meeting begins at 5:30 p.m.

Agenda items include:

- A Memorandum of Agreement with the City of Long Beach (through the Port of Long Beach Board of Harbor Commissioners) authorizing the disposal of lower bay dredged material into the Port's Pier G slip fill project. The agreement would allow dredged material from Newport Harbor, which is unsuitable for ocean disposal, to be used as fill material at Pier G. This method would preclude the Confined Aquatic Disposal solution previously proposed by the City. The lower harbor dredging project, which is being led by the U.S. Army Corps of Engineers, is expected to begin in the spring.
- Confirmation of Mayor Joe Stapleton's appointments. City Council Policy A-2 (Boards, Commissions and Committees) provides for the mayor to annually appoint individuals to serve on various City Council and Citizens Committees, Citizens Advisory Committees, and Joint Governmental Committees. The appointments are proposed by the Mayor and confirmed by the City Council.
- Participation in the Ground Emergency Medical Transport Intergovernmental Transfer program for 2025. The program reimburses cities and public agencies for costs related to the emergency transportation of patients covered by Medi-Cal.

[VIEW THE FULL AGENDA >>](#)

From: [Shana Conzelman](#)
To: [City Clerk's Office](#)
Subject: 1/14/25 Council Agenda Item 14
Date: January 13, 2025 4:59:22 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.
Report phish using the Phish Alert Button above.

Dear Council,

Thank you for your intent to authorize the removal of lower Newport Bay dredged material that is unsuitable for open ocean disposal and place it into the Port of Long Beach Pier G Slip Fill Project.

For those of us who have been closely following, researching, and advocating for a resolution over the past six years, this represents a responsible and definitive step toward cleaning up and restoring the Bay. This proposal reflects a thoughtful and effective solution that prioritizes the health of our harbor and surrounding environment.

That being said, it is essential to have a

contingency plan in place. Should those responsible for meeting the required deadlines face unforeseen challenges, the Long Beach Pier Wind project should serve as a viable backup option.

Please remember this fundamental principle: removing toxins from the Bay only to return them to the Bay is not a true cleanup effort. A comprehensive and lasting solution is critical for the well-being of our community and ecosystem.

Thank you for your leadership and commitment to this vital issue.

Sincerely,
Shana Conzelman
Friends of Newport Harbor

Sent from my iPhone

January 14, 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 III.B CONFERENCE WITH REAL PROPERTY NEGOTIATORS

This appears to be at least the tenth time a closed session has been announced for the Council to privately discuss “price and terms of payment” regarding public right-of-way adjacent to the identical properties, the first announcement having been as [Item IV.A](#) on February 23, 2021. And the only change has been the initial “*approximately 845 square feet*” increasing to the “*approximately 1,105 square feet*” when it came back as [Item IV.A](#) on November 12, 2024.

And while the purpose of the announcement is, in theory, to invite public comment to guide the Council in its decision, at no time has there been any public disclosure of why a sale or lease is being considered. This may be contrasted with earlier, more transparent announcements, for example [Item IV.C](#) from July 26, 2011, where it was at least disclosed that “price and terms of payment” needed to be discussed “*with respect to resolution of boundary dispute between Tidelands and Uplands.*”

Why is public property in play adjacent to 929 Zurich Circle and 944 Via Lido Nord?

Item 1. Minutes for the December 10, 2024 City Council Meeting

The passages shown in *italics* below are from the [draft minutes](#) with suggested corrections shown in **strikeout underline** format. The page numbers refer to Volume 66.

Page 220, Item IX, paragraph 1: “*Dennis Bress thanked the outgoing members of Council for ~~their~~ service and noted continued efforts to work with the Aviation Committee to have ~~aircrafts flyer high aircraft fly higher~~, slower, and quieter.*”

[See [video](#). “[Aircraft](#)” is recognized as a noun that does not require an “s” to make it plural, and Mr Bress did not add one. Similarly, he add “er” to “high” not “fly.”]

Page 222, Item 15 (Administration of Oath of Office):

“His wife, Marin, administered the Oath of Office ...”

“Former Mayor Will O’Neill administered the Oath of Office ...”

[**Comment:** I am not much of a believer in loyalty oaths, but it does seem reasonable for citizens to have some assurance those elected to office are committed to upholding the rules under which governments are expected to operate. Indeed, the [first page](#) of the official minutes of our City Council begins with Notary Public Clyde Bishop administering the Oath of Office¹ to the five newly-elected trustees at their first meeting on September 3, 1906.

¹ The oath, in Article XX, Section 3 of the [California Constitution at that time](#) consisted solely of: “*I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of _____, according to the best of my ability.*”

Since then, through [2012](#), it seems to have been the invariable practice for the City Clerk to administer the oaths. However, in [2014](#), with the election of “Team Newport,” Orange County Superior Court Judge [James E. Rogan](#) administered the oaths. And after that, a variety of judges continued to perform this role with the exception of [2020](#), when former Mayor Evelyn Hart administered the oath to re-elected Council Member Brad Avery, and [2022](#), when former Mayor Steve Rosansky administered the oath to newly-elected Council Member Robyn Grant.

This new practice of having the oath of office administered by private citizens who, whether former elected officials or not, do not seem authorized by law to do so,² seems a bit like attending a wedding at which a private party administers the vows while the minister, judge or government clerk sits to the side as an observer rather than a participant.

It seems strange to me. Is it a new trend?³]

Item XIII. PUBLIC COMMENTS ON CONSENT CALENDAR

Since I believe this may be a first in the City’s history, it seems noteworthy that the public portion of the current agenda contains no items requiring a Council decision other than those on the Consent Calendar.⁴

As a result those watching the meeting without access to the agenda will be at loss to know what, if any, City business was conducted.

It might be noted that Newport Beach didn’t always have a Consent Calendar.

And, as I have noted before, there is at least one other California city, [Benecia](#), where the Mayor reads the titles of the items on the Consent Calendar so that the public at least knows what their Council is consenting to. There are likely others with similar practices. For example, in [Del Mar](#), the City Clerk reads the consent calendar item titles. In both cases, not only the council members, but members of the public are invited to pull items for discussion by their elected representatives. It also appears other cities may be more judicious in what items they place on their consent calendar for approval without discussion.

It seems to me the consent calendar may be overused in Newport Beach, for it seems unlikely none of the seven Council members would have any questions about any of the items on the Consent Calendar, or that all would agree each of those items should be approved exactly as presented. As a result, the public is left with the impression that information is being exchanged,

² In 2022, Krista Weigand administered the oath to newly-elected Council Member Erik Weigand, but she did so as a Trustee of the Newport-Unified School District. The law, [Government Code Sections 1360 - 1369](#), is ambiguous, saying only the oath must be taken “before” a person authorized to administer oaths.

³ For a fee of \$125, the [Santa Cruz County](#) Clerk offers to appoint private citizens 18 or older as “Deputy Commissioner of Marriage for a Day,” authorized to officiate at a specified wedding anywhere in California (as do [Los Angeles County](#), [Nevada County](#), [San Diego County](#) and likely more). [At one time](#), the Orange County Clerk-Recorder offered this service, as well. It is unclear if he still does.

⁴ I recall one or two previous agendas where all the business items were on the consent calendar, but I believe the agenda included either a study session or suggestions for future agenda items, where Council input was solicited.

and decisions made, outside public view. In other words, that the public's business is not being done in public.

Item 4. Resolution Nos. 2025-2 and 2025-3: Amending the General Plan Advisory Committee and the General Plan Update Steering Committee

This seems to me to be an example of the overuse of the consent calendar. As the staff report explains, this is on the agenda because, pursuant to City Council [Policy A-1](#), at the November 19, 2024, meeting, the previous Council voted, without discussion, to bring the subject back at a future meeting “*for discussion and/or action.*” Yet, staff has placed it on the consent calendar, where a specific proposal that has never been publicly discussed is expected to be approved, again without any discussion.

One might think that, at a minimum, before voting the Council members would want to ask about the status of the General Plan Update and its expected timeline. If they did so, they might learn that the entire process is expected to be completed, and the advisory committees dissolved, before the end of the current year.

Given that context, establishing a procedure by which the advisory committees' membership will be reassessed each February seems strange – because there will be no future Februaries other than the coming one.

As to changing the composition *this* February, as a current GPAC member, but commenting as a private citizen, I have seen no reason offered for what seems both unnecessary and disruptive. While the process to date has been a very imperfect one, and could have been better, changing the participants, but not the structure, in the final months hardly seems likely to produce a better result.

On a more technical note, the Council may wish to know how the City Clerk plans to advertise the unscheduled vacancies and how long the application period will be left open. Finding 20 to 30 new members will be difficult, and [Government Code Section 54974](#) requires only that at least 10 working days elapse between the posting and the appointment, but does not seem to say how long the invitation to apply needs to be “open.”

As to the existing members, there seems to be a discrepancy between the proposed resolutions, whose Attachment A's say “*Members who are in good standing at the time their term has expired are eligible for reappointment and **need not reapply***” and the staff report, which says “*As drafted, if a current GPAC or GPUSC member is in good standing **with an application on file that is no more than two years old** at the time of City Council's appointments, there would be no need to submit a new application.*” The City's [GPAC page](#) indicates most of the current members were appointed on November 15, 2022, and its [GPUSC page](#) indicates all three members were appointed on April 12, 2022. All of these people's applications would now be more than two years old, and they would need to reapply according to the staff report, but not according to what would seem to be the plain language of the resolutions. Which is correct?

Additionally, the Council members may wish to discuss whether the rules for achieving geographic and institutional diversity in appointments to the GPAC detailed in the table on page 4-6 of the staff report is still appropriate, and how the table should be used. In particular, many applicants will have multiple affiliations and it is not clear how the limitations to “not more than one” from each “sample” is intended to apply to them.

As to the substance of what the committees do, there is an existing uncertainty in that the GPAC is instructed to make recommendations to the GPUSC, but there is no provision as what the GPUSC is supposed to do with them. Are they obligated to pass them on to the City Council? Or does the GPUSC have veto power over the GPUSC recommendations?

Item 5. Resolution No. 2025-4: Approving an Amendment to the Key and Management Compensation Plan

The staff report (page 5-1) implies the maximum bonus available for scholastic achievement is 8.5%, however the actual proposed language on page 5-6 shows a 7% bonus for achieving the BA/BS level, and a separate 8.5% bonus for the MA/MS/JD level without making it clear if members can qualify for only one or for both. Will that be a problem?

Also shouldn't there be a requirement that the achievement is in a field related to the employee's work?

More generally, the amendment is offered to the Council for approval as a snippet without being able to see the context in which it will occur or the prior language it replaces. Compounding that problem, the public does not seem to be able to easily see or review the current Key & Management Compensation Plan. Instead, on the HR Department's [MOUs & Benefit Summaries](#) page one finds a 2022 version and what seem to be 12 adjustments to it, some of which are not machine searchable, making it particularly challenging to piece together what the current plan is. However, as best I can tell, the (non-machine-readable) [Sixth Amendment](#) made Policy Safety Key & Management employees eligible for the same scholastic achievement benefits as members of the Police Management Association, with language essentially identical to that for Fire Safety Key & Management employees. What was wrong with that? Is Fire Safety Management eligible for a larger benefit than Police Safety Management? If so, how large is the change? And why wouldn't Police Management want the same benefit?

The report does not seem very transparent.

Item 6. Resolution No. 2025-5: Creating the Ad Hoc Council Policy Review Committee

This is another case where, rather than being on the consent calendar, one might think the Council members would want to discuss the matter to give direction to the committee as to the scope of their assignment, and possibly as to who should be on it.

Although I cannot find it mentioned in either the staff report or the proposed resolution, the last comprehensive review of the [Council Policy Manual](#) took place in 2018, and culminated in the massive 338-page [Item 18](#) on the August 8, 2017, agenda, making changes that neither the

public nor the Council members not on the committee had time to thoughtfully consider or review.

I would strongly recommend the present committee be asked to review the policies in more digestible pieces, and through a more public process – including, for example, presentation at a study session at a meeting prior to the meeting at which adoption is proposed.

Item 14. Memorandum of Agreement with the City of Long Beach Acting By and Through the Port of Long Beach Board of Harbor Commissioners Authorizing Disposal of Lower Bay Dredged Material Into the Port’s Pier G Slip Fill Project

Part (2) of Condition 8 on page 14-8, causing the Agreement to terminate on “*the commencement of the placement of the Newport Bay Material at a site other than the Project*” seems slightly strange. Does this mean that if any of the “*approximately 225,000 cubic yards of material from the Lower Newport Bay channels*” identified as “*Newport Bay Material*” is found to be suitable for disposal outside the Port of Long Beach, and disposed of at some alternate location, the Port will refuse to accept any more?

Also, if the Port of Long Beach location becomes unavailable before all the unsuitable material has been disposed of, does the City have a plan to construct a smaller CAD than was originally planned? And, finally, how does this Agreement affect the private homeowners who were promised use of the CAD?

Item 15. Planning Commission Agenda for the January 9, 2025 Meeting

Those new to the Council may be wondering why they are receiving a report on the actions of the Planning Commission and not of any of the City’s other boards or commissions. Originally, this was not on the consent calendar, but scheduled as a full discussion item. And its purpose, then as now, was to apprise Council members of the Planning Commission’s decisions, so they would have a chance to call for review, as allowed, currently, by Municipal Code [Chapter 20.64](#).⁵

In the present case, the Council is receiving reports of two Planning Commission decisions, both of which seem problematic to me.

In the first, the PC approved remodeling of a warehouse as a fitness training facility for exclusive use by students of a neighboring high school, even though the property is designated for industrial uses and other uses “ancillary” or “accessory” to the primary industrial uses. While, as staff indicated, fitness facilities are allowed “by right” in this area, the assumption is they will be serving the needs of the primary industrial users. A facility serving exclusively students from a neighboring district is clearly not supporting the industrial uses. Staff seems to be reading “ancillary” or “accessory” not as “supporting,” but rather as anything that occupies

⁵ One might still wonder why the Council does not receive similar reports regarding decisions by the Harbor Commission, since there is a parallel call for review provision in NBMC [Chapter 17.65](#). Or for decisions of the Parks, Beaches and Recreation Commission, even though the opportunity to review is found only in Council Policies.

less than a majority of the district. To me, that seems clearly not to have been the intent of the code.

In the second hearing, the PC had to deal with a tennis club consisting of two separately-owned parcels, but originally approved and allowed to be subdivided only under the assumption they would be operated together. Without making any changes to that existing permit for the two parcels to operate together, and without seeing any evidence of consent by the owner of one of the parcels, the PC approved a staff-proposed, new, separate permit for the second parcel, allowing it to be used as a separate pickleball facility. The result seems to be both to have caused the other parcel to become landlocked, and to have transferred to it all the entitlements of the original permit. Additionally, it seems quite possible the approval will create land use incompatibilities, with noise from the pickleball activity disturbing future guests at the neighboring hotel and, possibly, residents across Jamboree Road at Sea Island. I took some grief from the Commissioners for suggesting City staff did not have the expertise to independently verify the conclusions of the applicant noise analysis (which nowhere addressed the highly impulsive nature of pickleball noise), but I do believe that to be the case.

Council members may wish to consider calling one of both of these decisions up for review.

Item 16. Confirmation of Nominations to Fill an Unscheduled Vacancy on the Parks, Beaches & Recreation Commission

Since the Council is being asked to “confirm” just two nominations, it would have been helpful to at least list the names of any other citizens who might have applied. It would seem they deserve at least that minimal recognition,⁶ and other Council members may wish to propose adding some of the names from that list.

Item 17. Confirmation of Mayor Joe Stapleton's Appointments

Since this item is scheduled to be adopted without discussion, it presumably involved some non-public discussion of who wanted to serve on what committees. While that is not necessarily illegal, it would seem like a discussion that could better have taken place at the public meeting.

That said, I have, for a number of years, been puzzled by the continuing appointment of a Council member as chair of the [Environmental Quality Affairs Committee](#), especially considering that committee has not met since [August 16, 2016](#) (and before that, on [November 20, 2014](#)) and currently has no members other than the Council appointee (of which there are actually supposed to be two).

I see from the [minutes](#) of the similar [Item 12](#) from January 10, 2023, that I raised the same puzzlement, and that year’s appointee, Mayor Blom, volunteered that “*as Chair of EQAC, he will assess the future of EQAC.*” But as [Item 11](#) on January 9, 2024, he was reappointed as Chair, and, as I [noted](#) then, one might wonder how long the assessment will take? One continues to wonder.

⁶ In other cities, such as Costa Mesa and Laguna Beach, I believe the full council publicly interviews all the applicants before making appointments.



NEWPORT BEACH

City Council Staff Report

January 14, 2025
Agenda Item No. 15

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: Jaime Murillo, Deputy Community Development Director - 949-644-3209, jmurillo@newportbeachca.gov
TITLE: Planning Commission Agenda Report for January 9, 2025

CONSENT ITEMS:

ITEM NO. 1 MINUTES OF DECEMBER 5, 2024

SUMMARY: Draft minutes from the December 5, 2024, meeting of the Planning Commission.

The Planning Commission approved the minutes, with edits, by the following vote:

AYES: Barto, Ellmore, Harris, Langford, Lowrey, Rosene and Salene
NOES: None
ABSENT: None
ABSTAIN: None

ACTION: Approved

PUBLIC HEARING ITEMS:

ITEM NO. 2 PACIFICA CHRISTIAN HIGH SCHOOL USE PERMIT (PA2023-0237)
Site Location: 1499 Monrovia Avenue, 883 West 15th Street, 1515 Monrovia Avenue, 873 to 877 Production Place

SUMMARY: Pacifica Christian currently operates a high school and auxiliary campus with a maximum student enrollment of 385 and a maximum staff of 50. To provide adequate parking for students and staff, Pacifica Christian has off-site parking agreements with two properties within the vicinity of the school. The school and off-site parking agreements are authorized pursuant to the Conditional Use Permit (CUP) filed as PA2023-0078. Condition of Approval No. 16 of the CUP requires the off-site parking location of 873 to 877 Production Place be used only for warehousing and administrative offices and prohibits students from using or accessing the site. The Applicant is requesting that the condition be amended to remove the prohibition on students accessing the site and allow it to be used as an athletic training facility for student athletes, rather than warehousing. While students will be allowed to access the site for after school athletic training purposes, no students will park at the site and no school instruction will occur. In addition to the athletic training facility, the site will continue to provide administrative offices and parking for Pacifica Christian staff. If approved, this CUP would supersede the CUP filed as PA2023-0078.

The Planning Commission conducted a public hearing, considered public input, and approved the project by the following vote:

AYES: Barto, Ellmore, Harris, Langford, Lowrey, Rosene, and Salene
NOES: None
ABSENT: None
RECUSED: None

ACTION: Approved as amended

ITEM NO. 3

TTC NEWPORTER (PA2023-0091)

Site Location: 1111 and 1107 Jamboree Road

SUMMARY: A request for a conditional use permit (CUP) and coastal development permit (CDP) to restripe six existing tennis courts into 22 pickleball courts for a private pickleball club, known as the TTC Newporter. The project also includes minor improvements to the parking lot on the adjacent hotel property located at 1107 Jamboree Road to accommodate the required parking spaces. The proposed hours of operation are between 8:00 a.m. and 8:30 p.m., daily. The request includes a traffic study pursuant to Chapter 15.20 (Traffic Phasing Ordinance) of the Newport Beach Municipal Code (NBMC) as the project will generate a net increase of over 300 average daily trips. No changes are proposed to the existing tennis courts on the adjacent Palisades Tennis Club.

The Planning Commission conducted a public hearing, considered public input, and approved the project by the following vote:

AYES: Barto, Ellmore, Harris, Langford, Lowrey, Rosene, and Salene
NOES: None
ABSENT: None
RECUSED: None

ACTION: Approved



City of Newport Beach

Tentative Agenda Report - 01/05/2025 to 04/08/2025

January 09, 2025 - Planning Commission Meeting

Project title	Activity	Address	Plan #	Staff Assigned	Status	District
1 Pacifica Christian Use Permit Amendment	Public Hearing	<u>1499 MONROVIA AVE</u>	<u>PA2023-0237</u>	Joselyn Perez	<u>MORE INFO</u>	District 2
2 TTC Newporter Pickeball	Public Hearing	<u>1111 JAMBOREE RD</u>	<u>PA2024-0091</u>	Jenny Tran	<u>MORE INFO</u>	District 4

January 14, 2025 - City Council Meeting

1 General Plan Update	Consent - Amend Rules of Procedures for GPAC/GPUSC	<u>1 CITYWIDE PROJECT</u>	<u>PA2022-080</u>	Benjamin Zdeba	<u>MORE INFO</u>	Citywide
2 VCA Code for Building Safety Related Services	Amendment to Professional Services Agreements for The Code Group dba VCA Code	<u>1 CITYWIDE PROJECT</u>	<u>PA2024-0225</u>	Tonee Thai	<u>MORE INFO</u>	District 5

January 16, 2025 - Zoning Administrator Meeting

1 1526 Placentia Ave. Apartments	Public Hearing	<u>1526 PLACENTIA AVE</u>	<u>PA2023-0053</u>	Oscar Orozco	<u>MORE INFO</u>	District 2
2 Helmsman Ale House CDF & LTP	Public Hearing	<u>2920 NEWPORT BLVD, D</u>	<u>PA2023-0227</u>	David Blumenthal	<u>MORE INFO</u>	
3 The Place LTP	Public Hearing	<u>2920 COAST HWY E</u>	<u>PA2023-0230</u>	David Blumenthal	<u>MORE INFO</u>	

The tentative schedule is a tool to assist the preparation of future agendas. It does not provide a complete description of projects and it does not list all projects currently under review that could be scheduled. The tentative schedule changes without notice.



City of Newport Beach

Tentative Agenda Report - 01/05/2025 to 04/08/2025

Project title	Activity	Address	Plan #	Staff Assigned	Status	District
January 23, 2025 - Planning Commission Meeting						
1	3300 Irvine Avenue Site Development Review and CUP	Public Hearing	<u>3300 IRVINE AVE</u>	<u>PA2024-0070</u>	Daniel Kopshever	<u>MORE INFO</u> District 3
2	HO Overlay Amendments	Public Hearing	<u>1 CITYWIDE PROJECT</u>	<u>PA2024-0205</u>	Rosalinh Ung	<u>MORE INFO</u> District 5
January 28, 2025 - City Council Meeting						
1	Balboa Yacht Basin Redevelopment	Lease Agreement with Basin Marine - Consent	<u>829 HARBOR ISLAND DR</u>	<u>RP2024-0003</u>	Lauren Wooding	District 5
2	License Agreement with University of California	Consent	<u>1 NEWPORT PIER</u>	<u>RP2024-0011</u>	Lauren Wooding	District 1
January 30, 2025 - Zoning Administrator Meeting						
1	Cappy's Cafe CDP/MUP	Public Hearing	<u>5930 COAST HWY W</u>	<u>PA2023-0191</u>	Jenny Tran	<u>MORE INFO</u> District 1
2	Clarke Residence CDP	Public Hearing	<u>127 HARBOR ISLAND RD</u>	<u>PA2024-0118</u>	Jerry Arregui	<u>MORE INFO</u> District 5
3	Sixt Rent a Car LTP	Public Hearing	<u>4200 BIRCH ST</u>	<u>PA2024-0209</u>	Daniel Kopshever	<u>MORE INFO</u> District 3
February 06, 2025 - Planning Commission Meeting - Cancelled						

The tentative schedule is a tool to assist the preparation of future agendas. It does not provide a complete description of projects and it does not list all projects currently under review that could be scheduled. The tentative schedule changes without notice.



City of Newport Beach

Tentative Agenda Report - 01/05/2025 to 04/08/2025

Project title	Activity	Address	Plan #	Staff Assigned	Status	District
February 11, 2025 - City Council Meeting						
1 Christian Residence CDP & Council Policy L2 Waiver	Public Hearing	<u>3601 LAKE AVE</u>	<u>PA2024-0105</u>	Jerry Arregui	<u>MORE INFO</u>	District 1
February 13, 2025 - Zoning Administrator Meeting						
1 Bayshore Cafe & Lounge Hours Increase	Minor Use Permit	<u>100 COAST HWY W</u>	<u>PA2024-0132</u>	Laura Rodriguez	<u>MORE INFO</u>	District 2
February 20, 2025 - Planning Commission Meeting						
February 20, 2025 - ALUC Meeting						
1 HO Overlay Amendments	Public Hearing - HO Overlay Amendments Consistency Determinator	<u>1 CITYWIDE PROJECT</u>	<u>PA2024-0205</u>	Rosalinh Ung	<u>MORE INFO</u>	District 5
February 25, 2025 - City Council Meeting						
February 27, 2025 - Zoning Administrator Meeting						
March 06, 2025 - Planning Commission Meeting						

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City of Newport Beach

Tentative Agenda Report - 01/05/2025 to 04/08/2025

Project title	Activity	Address	Plan #	Staff Assigned	Status	District
March 11, 2025 - City Council Meeting						
1 HO Overlay Amendments	Public Hearing - HO Overlay Amendments Introduction	<u>1 CITYWIDE PROJECT</u>	<u>PA2024-0205</u>	Rosalinh Ung	<u>MORE INFO</u>	District 5
March 13, 2025 - Zoning Administrator Meeting						
March 20, 2025 - Planning Commission Meeting						
March 25, 2025 - City Council Meeting						
1 HO Overlay Amendments	Consent - HO Overlay Amendments Second Reading	<u>1 CITYWIDE PROJECT</u>	<u>PA2024-0205</u>	Rosalinh Ung	<u>MORE INFO</u>	District 5
March 27, 2025 - Zoning Administrator Meeting						
April 03, 2025 - Planning Commission Meeting						
April 08, 2025 - City Council Meeting						

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City of Newport Beach

Tentative Agenda Report - 01/05/2025 to 04/08/2025

Project title	Activity	Address	Plan #	Staff Assigned	Status	District
Director or ZA Level Actions						
1	Genesis Automobile Staff Approval	Administrative Action. Staff Approval	<u>410 COAST HWY W</u>	<u>PA2024-0153</u>	Jenny Tran	<u>MORE INFO</u> District 2
Hearing Date to be Determined						
1	Cappy's Cafe	CDP/MUP	<u>5930 COAST HWY W</u>	<u>PA2023-0191</u>	Jenny Tran	<u>MORE INFO</u> District 1
2	Saunders Self Storage		<u>3848 CAMPUS DR</u>	<u>PA2023-0145</u>	Liz Westmoreland	<u>MORE INFO</u> District 3
3	Snow Residence Condominiums	TPM/CDP/Conversion	<u>400 40TH ST</u>	<u>PA2023-0147</u>	Jerry Arregui	<u>MORE INFO</u> District 1
4	Tracy Residence	Variance	<u>1020 WHITE SAILS WAY</u>	<u>PA2023-0200</u>	Jenny Tran	<u>MORE INFO</u> District 6

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City of Newport Beach

Tentative Agenda Report - 01/05/2025 to 04/08/2025

Project title	Activity	Address	Plan #	Staff Assigned	Status	District
Pending Coastal Commission						
1 Coastal Act 30613 CDP Jurisdiction Change	City Project	<u>1 CITYWIDE PROJECT</u>	<u>PA2022-111</u>	Jaime Murillo	<u>MORE INFO</u>	Citywide
2 Commercial Parking Requirements	LCP Amendment	<u>1 CITYWIDE PROJECT</u>	<u>PA2021-104</u>	Benjamin Zdeba	<u>MORE INFO</u>	Citywide
3 Dawson Residence CDP Appeal	Private Project	<u>2741 OCEAN BLVD</u>	<u>PA2022-0315</u>	David Lee	<u>MORE INFO</u>	District 6
4 Housing Element Implementation Program Amendments	LCP Amendment	<u>1 CITYWIDE PROJECT</u>	<u>PA2022-0245</u>	Benjamin Zdeba	<u>MORE INFO</u>	District 5
5 Mooring Field C Optimization Pilot Project	Hearing Pending	<u>1 CITYWIDE PROJECT</u>	<u>PA2024-0139</u>	Paul Blank	<u>MORE INFO</u>	District 5
6 Municipal Code Clean Up	LCP Amendment	<u>1 CITYWIDE PROJECT</u>	<u>PA2022-0219</u>	Jaime Murillo	<u>MORE INFO</u>	
7 Short-Term Lodging Amendment	LCP Amendment	<u>1 CITYWIDE PROJECT</u>	<u>PA2023-0116</u>	Jaime Murillo	<u>MORE INFO</u>	
8 Small Cell Telecom Appea	Private Project	<u>3714 LAKE AVE</u>	<u>PA2019-113</u>	Benjamin Zdeba	<u>MORE INFO</u>	Citywide
9 Special Flood Hazard Areas (VE) Overlay	LCP Amendment	<u>1 CITYWIDE PROJECT</u>	<u>PA2018-075</u>	Liz Westmoreland	<u>MORE INFO</u>	District 1
10 Tennis and Pickleball Club of Newport Beach	LCP Amendment	<u>1602 COAST HWY</u>	<u>PA2021-260</u>	David Lee	<u>MORE INFO</u>	Citywide

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City of Newport Beach

Tentative Agenda Report - 01/05/2025 to 04/08/2025

Planner Contact Information

Name & Title	Phone	Email
Benjamin Zdeba, Planning Manager	949-644-3253	bzdeba@newportbeachca.gov
Cameron Younger, Planning Technician	949-644-3216	cyounger@newportbeachca.gov
Dan Campagnolo, Systems and Administration Manager	949-644-3231	dcampagnolo@newportbeachca.gov
Daniel Kopshever, Assistant Planner	949-644-3235	dkopshever@newportbeachca.gov
David Blumenthal, Contract Planner		dblumenthal@newportbeachca.gov
David Lee, Senior Planner	949-644-3225	dlee@newportbeachca.gov
Jaime Murillo, Deputy CDD Director	949-644-3209	jmurillo@newportbeachca.gov
James Miclat, Planning Technician	949-644-3227	jmiclat@newportbeachca.gov
James Sommers, City Traffic Engineer	949-644-3326	bsommers@newportbeachca.gov
Jenny Tran, Associate Planner	949-644-3212	jtran@newportbeachca.gov
Jerry Arregui, Assistant Planner		jarregui@newportbeachca.gov
Joselyn Perez, Planner, Senior	949-644-3312	jperez@newportbeachca.gov
Kyle Benalcazar, Planning Technician	949-644-3227	kbenalcazar@newportbeachca.gov
Laura Rodriguez, Planning Technician	949-644-3216	lrodriguez@newportbeachca.gov
Lauren Wooding, Real Property Administrator	949-644-3236	lwooding@newportbeachca.gov
Liz Westmoreland, Senior Planner	949-644-3234	lwestmoreland@newportbeachca.gov
Melinda Whelan, Assistant Planner	949-644-3221	mwhelan@newportbeachca.gov
Oscar Orozco, Assistant Planner	949-644-3219	oorozco@newportbeachca.gov
Rosalinh Ung, Principal Planner (PT)	949-644-3208	rung@newportbeachca.gov
Seimone Jurjis, Assistant ACM/CDD Director	949-644-3282	sjurjis@newportbeachca.gov
Tonee Thai, Deputy CDD Director & Building Official	949-718-1867	tthai@newportbeachca.gov

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**NEWPORT BEACH PLANNING COMMISSION AGENDA
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, JANUARY 9, 2025
REGULAR MEETING – 6:00 P.M.**

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. PUBLIC COMMENTS

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

V. REQUEST FOR CONTINUANCES

VI. CONSENT ITEMS

ITEM NO. 1 MINUTES OF DECEMBER 5, 2024

Recommended Action: Approve and file

VII. PUBLIC HEARING ITEMS

Speakers must limit comments to three (3) minutes on all items. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

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.

ITEM NO. 2 PACIFICA CHRISTIAN HIGH SCHOOL USE PERMIT (PA2023-0237)

Site Location: 1499 Monrovia Avenue, 883 West 15th Street, 1515 Monrovia Avenue, 873 to 877 Production Place

Summary:

Pacifica Christian currently operates a high school and auxiliary campus with a maximum student enrollment of 385 and a maximum staff of 50. To provide adequate parking for students and staff, Pacifica Christian has off-site parking agreements with two properties within the vicinity of the school. The school and off-site parking agreements are authorized pursuant to the Conditional Use Permit (CUP) filed as PA2023-0078. Condition of Approval No. 16 of the CUP requires the off-site parking location of 873 to 877 Production Place be used only for warehousing and administrative offices and prohibits students from using or accessing the site. The Applicant is requesting that the condition be amended to remove

the prohibition on students accessing the site and allow it to be used as an athletic training facility for student athletes, rather than warehousing. While students will be allowed to

access the site for after school athletic training purposes, no students will park at the site and no school instruction will occur. In addition to the athletic training facility, the site will continue to provide administrative offices and parking for Pacifica Christian staff. If approved, this CUP would supersede the CUP filed as PA2023-0078.

Recommended Actions:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, because it has not potential to have a significant effect on the environment; and
3. Adopt Resolution No. PC2025-001 approving the Conditional Use Permit filed as PA2023-0237 and superseding the Conditional Use Permit filed as PA2023-0087.

ITEM NO. 3 TTC NEWPORTER (PA2024-0091)

Site Location: 1111 and 1107 Jamboree Road

Summary:

A request for a conditional use permit (CUP) and coastal development permit (CDP) to restripe six existing tennis courts into 22 pickleball courts for a private pickleball club, known as the TTC Newporter. The project also includes minor improvements to the parking lot on the adjacent hotel property located at 1107 Jamboree Road to accommodate the required parking spaces. The proposed hours of operation are between 8:00 a.m. and 8:30 p.m., daily. The request includes a traffic study pursuant to Chapter 15.20 (Traffic Phasing Ordinance) of the Newport Beach Municipal Code (NBMC) as the project will generate a net increase of over 300 average daily trips. No changes are proposed to the existing tennis courts on the adjacent Palisades Tennis Club.

Recommended Actions:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 under Class 32 (In-Fill Development Projects) and under sections 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
3. Adopt Resolution No. PC2025-002 approving a Conditional Use Permit, Coastal Development Permit, and Traffic Study filed as PA2024-0091.

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 4 MOTION FOR RECONSIDERATION

ITEM NO. 5 REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE PLACED ON A FUTURE AGENDA

ITEM NO. 6 REQUESTS FOR EXCUSED ABSENCES

IX. ADJOURNMENT

January 14, 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 III.B CONFERENCE WITH REAL PROPERTY NEGOTIATORS

This appears to be at least the tenth time a closed session has been announced for the Council to privately discuss “price and terms of payment” regarding public right-of-way adjacent to the identical properties, the first announcement having been as [Item IV.A](#) on February 23, 2021. And the only change has been the initial “*approximately 845 square feet*” increasing to the “*approximately 1,105 square feet*” when it came back as [Item IV.A](#) on November 12, 2024.

And while the purpose of the announcement is, in theory, to invite public comment to guide the Council in its decision, at no time has there been any public disclosure of why a sale or lease is being considered. This may be contrasted with earlier, more transparent announcements, for example [Item IV.C](#) from July 26, 2011, where it was at least disclosed that “price and terms of payment” needed to be discussed “*with respect to resolution of boundary dispute between Tidelands and Uplands.*”

Why is public property in play adjacent to 929 Zurich Circle and 944 Via Lido Nord?

Item 1. Minutes for the December 10, 2024 City Council Meeting

The passages shown in *italics* below are from the [draft minutes](#) with suggested corrections shown in **strikeout underline** format. The page numbers refer to Volume 66.

Page 220, Item IX, paragraph 1: “*Dennis Bress thanked the outgoing members of Council for ~~their~~ service and noted continued efforts to work with the Aviation Committee to have ~~aircrafts flyer high aircraft fly higher~~, slower, and quieter.*”

[See [video](#). “[Aircraft](#)” is recognized as a noun that does not require an “s” to make it plural, and Mr Bress did not add one. Similarly, he add “er” to “high” not “fly.”]

Page 222, Item 15 (Administration of Oath of Office):

“His wife, Marin, administered the Oath of Office ...”

“Former Mayor Will O’Neill administered the Oath of Office ...”

[**Comment:** I am not much of a believer in loyalty oaths, but it does seem reasonable for citizens to have some assurance those elected to office are committed to upholding the rules under which governments are expected to operate. Indeed, the [first page](#) of the official minutes of our City Council begins with Notary Public Clyde Bishop administering the Oath of Office¹ to the five newly-elected trustees at their first meeting on September 3, 1906.

¹ The oath, in Article XX, Section 3 of the [California Constitution at that time](#) consisted solely of: “*I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of _____, according to the best of my ability.*”

Since then, through [2012](#), it seems to have been the invariable practice for the City Clerk to administer the oaths. However, in [2014](#), with the election of “Team Newport,” Orange County Superior Court Judge [James E. Rogan](#) administered the oaths. And after that, a variety of judges continued to perform this role with the exception of [2020](#), when former Mayor Evelyn Hart administered the oath to re-elected Council Member Brad Avery, and [2022](#), when former Mayor Steve Rosansky administered the oath to newly-elected Council Member Robyn Grant.

This new practice of having the oath of office administered by private citizens who, whether former elected officials or not, do not seem authorized by law to do so,² seems a bit like attending a wedding at which a private party administers the vows while the minister, judge or government clerk sits to the side as an observer rather than a participant.

It seems strange to me. Is it a new trend?³]

Item XIII. PUBLIC COMMENTS ON CONSENT CALENDAR

Since I believe this may be a first in the City’s history, it seems noteworthy that the public portion of the current agenda contains no items requiring a Council decision other than those on the Consent Calendar.⁴

As a result those watching the meeting without access to the agenda will be at loss to know what, if any, City business was conducted.

It might be noted that Newport Beach didn’t always have a Consent Calendar.

And, as I have noted before, there is at least one other California city, [Benecia](#), where the Mayor reads the titles of the items on the Consent Calendar so that the public at least knows what their Council is consenting to. There are likely others with similar practices. For example, in [Del Mar](#), the City Clerk reads the consent calendar item titles. In both cases, not only the council members, but members of the public are invited to pull items for discussion by their elected representatives. It also appears other cities may be more judicious in what items they place on their consent calendar for approval without discussion.

It seems to me the consent calendar may be overused in Newport Beach, for it seems unlikely none of the seven Council members would have any questions about any of the items on the Consent Calendar, or that all would agree each of those items should be approved exactly as presented. As a result, the public is left with the impression that information is being exchanged,

² In 2022, Krista Weigand administered the oath to newly-elected Council Member Erik Weigand, but she did so as a Trustee of the Newport-Unified School District. The law, [Government Code Sections 1360 - 1369](#), is ambiguous, saying only the oath must be taken “before” a person authorized to administer oaths.

³ For a fee of \$125, the [Santa Cruz County](#) Clerk offers to appoint private citizens 18 or older as “Deputy Commissioner of Marriage for a Day,” authorized to officiate at a specified wedding anywhere in California (as do [Los Angeles County](#), [Nevada County](#), [San Diego County](#) and likely more). [At one time](#), the Orange County Clerk-Recorder offered this service, as well. It is unclear if he still does.

⁴ I recall one or two previous agendas where all the business items were on the consent calendar, but I believe the agenda included either a study session or suggestions for future agenda items, where Council input was solicited.

and decisions made, outside public view. In other words, that the public's business is not being done in public.

Item 4. Resolution Nos. 2025-2 and 2025-3: Amending the General Plan Advisory Committee and the General Plan Update Steering Committee

This seems to me to be an example of the overuse of the consent calendar. As the staff report explains, this is on the agenda because, pursuant to City Council [Policy A-1](#), at the November 19, 2024, meeting, the previous Council voted, without discussion, to bring the subject back at a future meeting “*for discussion and/or action.*” Yet, staff has placed it on the consent calendar, where a specific proposal that has never been publicly discussed is expected to be approved, again without any discussion.

One might think that, at a minimum, before voting the Council members would want to ask about the status of the General Plan Update and its expected timeline. If they did so, they might learn that the entire process is expected to be completed, and the advisory committees dissolved, before the end of the current year.

Given that context, establishing a procedure by which the advisory committees' membership will be reassessed each February seems strange – because there will be no future Februaries other than the coming one.

As to changing the composition *this* February, as a current GPAC member, but commenting as a private citizen, I have seen no reason offered for what seems both unnecessary and disruptive. While the process to date has been a very imperfect one, and could have been better, changing the participants, but not the structure, in the final months hardly seems likely to produce a better result.

On a more technical note, the Council may wish to know how the City Clerk plans to advertise the unscheduled vacancies and how long the application period will be left open. Finding 20 to 30 new members will be difficult, and [Government Code Section 54974](#) requires only that at least 10 working days elapse between the posting and the appointment, but does not seem to say how long the invitation to apply needs to be “open.”

As to the existing members, there seems to be a discrepancy between the proposed resolutions, whose Attachment A's say “*Members who are in good standing at the time their term has expired are eligible for reappointment and **need not reapply***” and the staff report, which says “*As drafted, if a current GPAC or GPUSC member is in good standing **with an application on file that is no more than two years old** at the time of City Council's appointments, there would be no need to submit a new application.*” The City's [GPAC page](#) indicates most of the current members were appointed on November 15, 2022, and its [GPUSC page](#) indicates all three members were appointed on April 12, 2022. All of these people's applications would now be more than two years old, and they would need to reapply according to the staff report, but not according to what would seem to be the plain language of the resolutions. Which is correct?

Additionally, the Council members may wish to discuss whether the rules for achieving geographic and institutional diversity in appointments to the GPAC detailed in the table on page 4-6 of the staff report is still appropriate, and how the table should be used. In particular, many applicants will have multiple affiliations and it is not clear how the limitations to “not more than one” from each “sample” is intended to apply to them.

As to the substance of what the committees do, there is an existing uncertainty in that the GPAC is instructed to make recommendations to the GPUSC, but there is no provision as what the GPUSC is supposed to do with them. Are they obligated to pass them on to the City Council? Or does the GPUSC have veto power over the GPUSC recommendations?

Item 5. Resolution No. 2025-4: Approving an Amendment to the Key and Management Compensation Plan

The staff report (page 5-1) implies the maximum bonus available for scholastic achievement is 8.5%, however the actual proposed language on page 5-6 shows a 7% bonus for achieving the BA/BS level, and a separate 8.5% bonus for the MA/MS/JD level without making it clear if members can qualify for only one or for both. Will that be a problem?

Also shouldn't there be a requirement that the achievement is in a field related to the employee's work?

More generally, the amendment is offered to the Council for approval as a snippet without being able to see the context in which it will occur or the prior language it replaces. Compounding that problem, the public does not seem to be able to easily see or review the current Key & Management Compensation Plan. Instead, on the HR Department's [MOUs & Benefit Summaries](#) page one finds a 2022 version and what seem to be 12 adjustments to it, some of which are not machine searchable, making it particularly challenging to piece together what the current plan is. However, as best I can tell, the (non-machine-readable) [Sixth Amendment](#) made Policy Safety Key & Management employees eligible for the same scholastic achievement benefits as members of the Police Management Association, with language essentially identical to that for Fire Safety Key & Management employees. What was wrong with that? Is Fire Safety Management eligible for a larger benefit than Police Safety Management? If so, how large is the change? And why wouldn't Police Management want the same benefit?

The report does not seem very transparent.

Item 6. Resolution No. 2025-5: Creating the Ad Hoc Council Policy Review Committee

This is another case where, rather than being on the consent calendar, one might think the Council members would want to discuss the matter to give direction to the committee as to the scope of their assignment, and possibly as to who should be on it.

Although I cannot find it mentioned in either the staff report or the proposed resolution, the last comprehensive review of the [Council Policy Manual](#) took place in 2018, and culminated in the massive 338-page [Item 18](#) on the August 8, 2017, agenda, making changes that neither the

public nor the Council members not on the committee had time to thoughtfully consider or review.

I would strongly recommend the present committee be asked to review the policies in more digestible pieces, and through a more public process – including, for example, presentation at a study session at a meeting prior to the meeting at which adoption is proposed.

Item 14. Memorandum of Agreement with the City of Long Beach Acting By and Through the Port of Long Beach Board of Harbor Commissioners Authorizing Disposal of Lower Bay Dredged Material Into the Port's Pier G Slip Fill Project

Part (2) of Condition 8 on page 14-8, causing the Agreement to terminate on “*the commencement of the placement of the Newport Bay Material at a site other than the Project*” seems slightly strange. Does this mean that if any of the “*approximately 225,000 cubic yards of material from the Lower Newport Bay channels*” identified as “*Newport Bay Material*” is found to be suitable for disposal outside the Port of Long Beach, and disposed of at some alternate location, the Port will refuse to accept any more?

Also, if the Port of Long Beach location becomes unavailable before all the unsuitable material has been disposed of, does the City have a plan to construct a smaller CAD than was originally planned? And, finally, how does this Agreement affect the private homeowners who were promised use of the CAD?

Item 15. Planning Commission Agenda for the January 9, 2025 Meeting

Those new to the Council may be wondering why they are receiving a report on the actions of the Planning Commission and not of any of the City's other boards or commissions. Originally, this was not on the consent calendar, but scheduled as a full discussion item. And its purpose, then as now, was to apprise Council members of the Planning Commission's decisions, so they would have a chance to call for review, as allowed, currently, by Municipal Code [Chapter 20.64](#).⁵

In the present case, the Council is receiving reports of two Planning Commission decisions, both of which seem problematic to me.

In the first, the PC approved remodeling of a warehouse as a fitness training facility for exclusive use by students of a neighboring high school, even though the property is designated for industrial uses and other uses “ancillary” or “accessory” to the primary industrial uses. While, as staff indicated, fitness facilities are allowed “by right” in this area, the assumption is they will be serving the needs of the primary industrial users. A facility serving exclusively students from a neighboring district is clearly not supporting the industrial uses. Staff seems to be reading “ancillary” or “accessory” not as “supporting,” but rather as anything that occupies

⁵ One might still wonder why the Council does not receive similar reports regarding decisions by the Harbor Commission, since there is a parallel call for review provision in NBMC [Chapter 17.65](#). Or for decisions of the Parks, Beaches and Recreation Commission, even though the opportunity to review is found only in Council Policies.

less than a majority of the district. To me, that seems clearly not to have been the intent of the code.

In the second hearing, the PC had to deal with a tennis club consisting of two separately-owned parcels, but originally approved and allowed to be subdivided only under the assumption they would be operated together. Without making any changes to that existing permit for the two parcels to operate together, and without seeing any evidence of consent by the owner of one of the parcels, the PC approved a staff-proposed, new, separate permit for the second parcel, allowing it to be used as a separate pickleball facility. The result seems to be both to have caused the other parcel to become landlocked, and to have transferred to it all the entitlements of the original permit. Additionally, it seems quite possible the approval will create land use incompatibilities, with noise from the pickleball activity disturbing future guests at the neighboring hotel and, possibly, residents across Jamboree Road at Sea Island. I took some grief from the Commissioners for suggesting City staff did not have the expertise to independently verify the conclusions of the applicant noise analysis (which nowhere addressed the highly impulsive nature of pickleball noise), but I do believe that to be the case.

Council members may wish to consider calling one of both of these decisions up for review.

Item 16. Confirmation of Nominations to Fill an Unscheduled Vacancy on the Parks, Beaches & Recreation Commission

Since the Council is being asked to “confirm” just two nominations, it would have been helpful to at least list the names of any other citizens who might have applied. It would seem they deserve at least that minimal recognition,⁶ and other Council members may wish to propose adding some of the names from that list.

Item 17. Confirmation of Mayor Joe Stapleton's Appointments

Since this item is scheduled to be adopted without discussion, it presumably involved some non-public discussion of who wanted to serve on what committees. While that is not necessarily illegal, it would seem like a discussion that could better have taken place at the public meeting.

That said, I have, for a number of years, been puzzled by the continuing appointment of a Council member as chair of the [Environmental Quality Affairs Committee](#), especially considering that committee has not met since [August 16, 2016](#) (and before that, on [November 20, 2014](#)) and currently has no members other than the Council appointee (of which there are actually supposed to be two).

I see from the [minutes](#) of the similar [Item 12](#) from January 10, 2023, that I raised the same puzzlement, and that year’s appointee, Mayor Blom, volunteered that “*as Chair of EQAC, he will assess the future of EQAC.*” But as [Item 11](#) on January 9, 2024, he was reappointed as Chair, and, as I [noted](#) then, one might wonder how long the assessment will take? One continues to wonder.

⁶ In other cities, such as Costa Mesa and Laguna Beach, I believe the full council publicly interviews all the applicants before making appointments.



NEWPORT BEACH

City Council Staff Report

January 14, 2025
Agenda Item No. 16

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Leilani I. Brown, City Clerk - 949-644-3005,
lbrown@newportbeachca.gov

PREPARED BY: Jennifer Farris, Assistant City Clerk - 949-644-3006,
jfarris@newportbeachca.gov

TITLE: Confirmation of Nominations to Fill an Unscheduled Vacancy on the
Parks, Beaches & Recreation Commission

ABSTRACT:

Due to Sara J. Weber being elected as the Councilmember for District 7 for the City of Newport Beach, the City Council has the opportunity to fill the vacant position on the Parks, Beaches and Recreation Commission pursuant to the City Charter, City Council Policy A-2 (*Boards, Commissions and Committees*), and the Maddy Act.

RECOMMENDATIONS:

- a) Determine that the 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 it will not result in a physical change to the environment, directly or indirectly; and
- b) Confirm nominations of Kelly Denner and Travis Piridy to fill the vacancy on the Parks, Beaches and Recreation Commission.

DISCUSSION:

Sara J. Weber was appointed to the Parks, Beaches and Recreation Commission (PB&R) on August 27, 2024, for a term that expires on June 30, 2025. However, after being elected to serve as the Councilmember for District 7, she resigned from her position on PB&R.

In compliance with City Council Policy A-2 and the Maddy Act, the City Clerk prepared and posted a Notice of Unscheduled Vacancy on Tuesday, November 26, 2024, in the City Clerk's Office, at the Central Library, on the bulletin board in the City Council Chambers, and on the City's website. In addition, the notice was published in the *Daily Pilot* on Sunday, December 1, 2024. As per the notice, applications were accepted by the City Clerk's Office until noon on Wednesday, December 11, 2024.

Pursuant to City Council Policy A-2, Mayor Joe Stapleton appointed himself, Mayor Pro Tem Lauren Kleiman, and Councilmember Michelle Barto to the Ad Hoc Appointments Committee.

At the conclusion of the application period, the applications were forwarded to the ad hoc committee members for their review and interviews were conducted on Friday, January 3, 2025.

Following a review of the applications, the Ad Hoc Appointments Committee recommends the nomination of Kelly Denner and Travis Pirdy. Copies of the applications are attached hereto as Attachment A.

The appointment to PB&R will take place at the Tuesday, January 28, 2025, City Council meeting. The person appointed to fill the unscheduled vacancy on PB&R can apply for the full four-year term (2025-2029) during the annual vacancy process.

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 – Applications

APPLICATION FOR APPOINTIVE POSITION

FOR OFFICE USE ONLY

Residence District No. 4

Verified by Jm

CITY OF NEWPORT BEACH

100 Civic Center Drive
 Newport Beach, CA 92660
 City Clerk (949) 644-3005
 Fax (949) 644-3039

DIRECTIONS: One application can be used for all the appointive positions you are applying for. Applications should be filled out completely so that the City Council may fully evaluate your qualifications. It is the responsibility of the applicant to familiarize themselves with the duties and responsibilities of the position(s) applied for. Detailed information outlining the responsibilities of the positions can be obtained from the City Clerk's Office or on the City's website: www.newportbeachca.gov (City Government/Boards, Commissions and Committees). Applications will be kept on file for two years for the position(s) applied for. If you are not selected for appointment during that period of time, it will be necessary for you to re-submit an application if you are still interested in being considered.

NOTICE: Section 702 of the City Charter requires that members of Boards or Commissions appointed by the City Council shall be from the qualified electors of the City. This document is a public record and may be posted on the internet.

NAME OF BOARD, COMMISSION OR COMMITTEE:

Name: (Last) (First) (Middle)

Residence Address (required): Zip Code:

How long have you lived in Newport Beach? Home/Cell #:

Business Address: Business Phone:

Email Address:

Have you ever been convicted of any crime or violation of any law or statute other than minor traffic violations?

NO YES (If yes, attach separate sheet with explanation)

NOTICE: Pursuant to Section 702 of the City Charter, no members of boards or commissions shall hold any paid office or employment in the City government.

Do you currently hold any paid office or employment with the City of Newport Beach, including but not limited to contracted services?

NO YES (If yes, attach separate sheet with explanation)

If applying for a position on the Finance Committee, have you ever declared bankruptcy? NO YES

Please state any past, current or foreseeable future financial interests of any kind that may conflict with the Board, Commission or Committee you are applying for.

n/a

Name and Location of Colleges/ Universities Attended	Major	Degree	Last Year Attended
Stanford University	International Relations	BA	2011
University of Virginia Darden School of Business	Business	MBA	2018

Prior or Current Civic Experience (include membership in professional, charity or community organization)	Office Held (if any)	Dates of Membership
Newport Beach Mayors Youth Council	President	2006-2007 (?)
St. Mark Presbyterian Church	Member	2020-present
St. Mark Preschool Board	Board member	2024-present
Newport Beach Distinguished Citizens Program	Participant	Oct-Nov 2024

Occupational History. Begin with your present or most recent position. List all positions separately held for the last five years.

Firm or Organization	Type of Business	Title	Dates of Employment
Edwards Lifesciences	Medical Devices	Director, Marketing	2018-present
Pacific Investment Management Company (PIMCO)	Financial Services	HR Generalist	2012-2016

References. Include names of at least two residents of Newport Beach who are not officially connected with the City.

1. Name Address Phone No.
2. Name Address Phone No.

Summarize why you wish to serve the City of Newport Beach on a board, commission or committee. Include any special qualifications you have which are particularly appropriate to the position for which you are applying.

I grew up in Newport Beach, played AYSO soccer at the parks, jumped off the pier and did the Monster Mile as a Junior Guard, spent many hours exploring the tide pools at Little Corona and playing in the waves at Big Corona. I got engaged by the rocks at Little Corona because my now husband knew that was one of my favorite places. I have spent many hours walking and running along the Newport Beach shoreline where I can clear my mind and feel connected to nature. Buck Gully quickly became a favorite local escape when I finally discovered its existence a few years ago. My husband and I routinely work out at Irvine Terrace park using the outdoor fitness equipment.

My family and I now live in the Bluffs neighborhood in the serene setting of the Back Bay. 3-4 times a week we are out on the Back Bay trail running, walking, or biking and enjoying the sights and sounds of nature. My 5-yr old daughter is now playing on the same AYSO fields that I once did and my 2.5-yr old son is enrolled in his very first multi-sports camp at Marina Park this upcoming March. It is so special to me to share the same love for the outdoors and physical activity with my kids. My grandparents benefited from the wonderful facilities at the Oasis senior center and my parents are likely to start using sometime in the next few years.

Newport Beach is full of recreation and natural treasures for all ages, and I am personally invested in ensuring these resources facilities are stewarded well for families and people of all ages to enjoy. I genuinely believe that the beaches, parks and recreational facilities are the heart of what make Newport Beach the very best community to live, work and play. These settings are where memories are made, friendships are forged, adventure is sought and found, connections are made with nature, hearts and bodies are exercised, and community comes together.

Beyond my personal motivations for joining this commission, my professional experience in both the HR space and now marketing and commercial strategy has equipped me to bring a balanced people-first perspective and a structured approach to decision making. I believe my experience in Marketing will also be an asset to the commission as we seek to engage the community in the various city offerings.

I would consider it a privilege and an honor to serve on this commission and appreciate your consideration. Please reach out if you would like any other information on my background or motivation in applying for this position.

I certify that all statements made on this application are true and correct to the best of my knowledge. I have read and understand the duties and responsibilities of the particular position(s) that I am applying for and authorize the release of this information on the internet.

[BOX MUST BE CHECKED IF SUBMITTING ELECTRONICALLY]



Signature

Date

APPLICATION FOR APPOINTIVE POSITION

FOR OFFICE USE ONLY

Residence District No. 5

Verified by JM

CITY OF NEWPORT BEACH

100 Civic Center Drive
 Newport Beach, CA 92660
 City Clerk (949) 644-3005
 Fax (949) 644-3039

DIRECTIONS: One application can be used for all the appointive positions you are applying for. Applications should be filled out completely so that the City Council may fully evaluate your qualifications. It is the responsibility of the applicant to familiarize themselves with the duties and responsibilities of the position(s) applied for. Detailed information outlining the responsibilities of the positions can be obtained from the City Clerk's Office or on the City's website: www.newportbeachca.gov (City Government/Boards, Commissions and Committees). Applications will be kept on file for two years for the position(s) applied for. If you are not selected for appointment during that period of time, it will be necessary for you to re-submit an application if you are still interested in being considered.

NOTICE: Section 702 of the City Charter requires that members of Boards or Commissions appointed by the City Council shall be from the qualified electors of the City. This document is a public record and may be posted on the internet.

NAME OF BOARD, COMMISSION OR COMMITTEE:

Name: (Last) (First) (Middle)

Residence Address (required): Zip Code:

How long have you lived in Newport Beach? Home/Cell #:

Business Address: Business Phone:

Email Address:

Have you ever been convicted of any crime or violation of any law or statute other than minor traffic violations?

NO YES (If yes, attach separate sheet with explanation)

NOTICE: Pursuant to Section 702 of the City Charter, no members of boards or commissions shall hold any paid office or employment in the City government.

Do you currently hold any paid office or employment with the City of Newport Beach, including but not limited to contracted services?

NO YES (If yes, attach separate sheet with explanation)

If applying for a position on the Finance Committee, have you ever declared bankruptcy? NO YES

Please state any past, current or foreseeable future financial interests of any kind that may conflict with the Board, Commission or Committee you are applying for.

Name and Location of Colleges/ Universities Attended	Major	Degree	Last Year Attended
University of California, Los Angeles	Film	BFA	2010
National University	Education	Credential	Present

Prior or Current Civic Experience (include membership in professional, charity or community organization)	Office Held (if any)	Dates of Membership

Occupational History. Begin with your present or most recent position. List all positions separately held for the last five years.

Firm or Organization	Type of Business	Title	Dates of Employment
Irvine Unified School District	Education	PE Coach/Sub Teacher	9/01/19-Present
Newport Beach Fire Department	Public Safety	Ocean Lifeguard	6/01/01-6/01/22
Corona Del Mar Water Polo	Athletics	Coach	2/01/18-3/01/20

References. Include names of at least two residents of Newport Beach who are not officially connected with the City.

1. Name Address Phone No.
2. Name Address Phone No.

Summarize why you wish to serve the City of Newport Beach on a board, commission or committee. Include any special qualifications you have which are particularly appropriate to the position for which you are applying.

It has occurred to me in this divisive and strange time that it is very easy to be enraged or encouraged depending on what you take in. However, what people fail to see are opportunities of agency to affect positive change as opposed to merely being sidelined as things happen. As someone who has lived in this great city for thirty nine years and worked for it previously for twenty, I see this position as a great opportunity to enhance and improve upon the quality of life we are striving for while preserving these integral parts that make up Newport Beach. I have been fortunate to view the history of our city as an employee, a resident, and someone charged with protecting our visitors. Newport Beach is an incredible place to live and I believe I can help protect and preserve it.

I certify that all statements made on this application are true and correct to the best of my knowledge. I have read and understand the duties and responsibilities of the particular position(s) that I am applying for and authorize the release of this information on the internet.

[BOX MUST BE CHECKED IF SUBMITTING ELECTRONICALLY]

Signature Date

January 14, 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 III.B CONFERENCE WITH REAL PROPERTY NEGOTIATORS

This appears to be at least the tenth time a closed session has been announced for the Council to privately discuss “price and terms of payment” regarding public right-of-way adjacent to the identical properties, the first announcement having been as [Item IV.A](#) on February 23, 2021. And the only change has been the initial “*approximately 845 square feet*” increasing to the “*approximately 1,105 square feet*” when it came back as [Item IV.A](#) on November 12, 2024.

And while the purpose of the announcement is, in theory, to invite public comment to guide the Council in its decision, at no time has there been any public disclosure of why a sale or lease is being considered. This may be contrasted with earlier, more transparent announcements, for example [Item IV.C](#) from July 26, 2011, where it was at least disclosed that “price and terms of payment” needed to be discussed “*with respect to resolution of boundary dispute between Tidelands and Uplands.*”

Why is public property in play adjacent to 929 Zurich Circle and 944 Via Lido Nord?

Item 1. Minutes for the December 10, 2024 City Council Meeting

The passages shown in *italics* below are from the [draft minutes](#) with suggested corrections shown in ***strikeout underline*** format. The page numbers refer to Volume 66.

Page 220, Item IX, paragraph 1: “*Dennis Bress thanked the outgoing members of Council for ~~their~~ service and noted continued efforts to work with the Aviation Committee to have ~~aircrafts flyer high aircraft fly higher~~, slower, and quieter.*”

[See [video](#). “[Aircraft](#)” is recognized as a noun that does not require an “s” to make it plural, and Mr Bress did not add one. Similarly, he add “er” to “high” not “fly.”]

Page 222, Item 15 (Administration of Oath of Office):

“His wife, Marin, administered the Oath of Office ...”

“Former Mayor Will O’Neill administered the Oath of Office ...”

[**Comment:** I am not much of a believer in loyalty oaths, but it does seem reasonable for citizens to have some assurance those elected to office are committed to upholding the rules under which governments are expected to operate. Indeed, the [first page](#) of the official minutes of our City Council begins with Notary Public Clyde Bishop administering the Oath of Office¹ to the five newly-elected trustees at their first meeting on September 3, 1906.

¹ The oath, in Article XX, Section 3 of the [California Constitution at that time](#) consisted solely of: “*I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of _____, according to the best of my ability.*”

Since then, through [2012](#), it seems to have been the invariable practice for the City Clerk to administer the oaths. However, in [2014](#), with the election of “Team Newport,” Orange County Superior Court Judge [James E. Rogan](#) administered the oaths. And after that, a variety of judges continued to perform this role with the exception of [2020](#), when former Mayor Evelyn Hart administered the oath to re-elected Council Member Brad Avery, and [2022](#), when former Mayor Steve Rosansky administered the oath to newly-elected Council Member Robyn Grant.

This new practice of having the oath of office administered by private citizens who, whether former elected officials or not, do not seem authorized by law to do so,² seems a bit like attending a wedding at which a private party administers the vows while the minister, judge or government clerk sits to the side as an observer rather than a participant.

It seems strange to me. Is it a new trend?³]

Item XIII. PUBLIC COMMENTS ON CONSENT CALENDAR

Since I believe this may be a first in the City’s history, it seems noteworthy that the public portion of the current agenda contains no items requiring a Council decision other than those on the Consent Calendar.⁴

As a result those watching the meeting without access to the agenda will be at loss to know what, if any, City business was conducted.

It might be noted that Newport Beach didn’t always have a Consent Calendar.

And, as I have noted before, there is at least one other California city, [Benecia](#), where the Mayor reads the titles of the items on the Consent Calendar so that the public at least knows what their Council is consenting to. There are likely others with similar practices. For example, in [Del Mar](#), the City Clerk reads the consent calendar item titles. In both cases, not only the council members, but members of the public are invited to pull items for discussion by their elected representatives. It also appears other cities may be more judicious in what items they place on their consent calendar for approval without discussion.

It seems to me the consent calendar may be overused in Newport Beach, for it seems unlikely none of the seven Council members would have any questions about any of the items on the Consent Calendar, or that all would agree each of those items should be approved exactly as presented. As a result, the public is left with the impression that information is being exchanged,

² In 2022, Krista Weigand administered the oath to newly-elected Council Member Erik Weigand, but she did so as a Trustee of the Newport-Unified School District. The law, [Government Code Sections 1360 - 1369](#), is ambiguous, saying only the oath must be taken “before” a person authorized to administer oaths.

³ For a fee of \$125, the [Santa Cruz County](#) Clerk offers to appoint private citizens 18 or older as “Deputy Commissioner of Marriage for a Day,” authorized to officiate at a specified wedding anywhere in California (as do [Los Angeles County](#), [Nevada County](#), [San Diego County](#) and likely more). [At one time](#), the Orange County Clerk-Recorder offered this service, as well. It is unclear if he still does.

⁴ I recall one or two previous agendas where all the business items were on the consent calendar, but I believe the agenda included either a study session or suggestions for future agenda items, where Council input was solicited.

and decisions made, outside public view. In other words, that the public's business is not being done in public.

Item 4. Resolution Nos. 2025-2 and 2025-3: Amending the General Plan Advisory Committee and the General Plan Update Steering Committee

This seems to me to be an example of the overuse of the consent calendar. As the staff report explains, this is on the agenda because, pursuant to City Council [Policy A-1](#), at the November 19, 2024, meeting, the previous Council voted, without discussion, to bring the subject back at a future meeting “*for discussion and/or action.*” Yet, staff has placed it on the consent calendar, where a specific proposal that has never been publicly discussed is expected to be approved, again without any discussion.

One might think that, at a minimum, before voting the Council members would want to ask about the status of the General Plan Update and its expected timeline. If they did so, they might learn that the entire process is expected to be completed, and the advisory committees dissolved, before the end of the current year.

Given that context, establishing a procedure by which the advisory committees' membership will be reassessed each February seems strange – because there will be no future Februaries other than the coming one.

As to changing the composition *this* February, as a current GPAC member, but commenting as a private citizen, I have seen no reason offered for what seems both unnecessary and disruptive. While the process to date has been a very imperfect one, and could have been better, changing the participants, but not the structure, in the final months hardly seems likely to produce a better result.

On a more technical note, the Council may wish to know how the City Clerk plans to advertise the unscheduled vacancies and how long the application period will be left open. Finding 20 to 30 new members will be difficult, and [Government Code Section 54974](#) requires only that at least 10 working days elapse between the posting and the appointment, but does not seem to say how long the invitation to apply needs to be “open.”

As to the existing members, there seems to be a discrepancy between the proposed resolutions, whose Attachment A's say “*Members who are in good standing at the time their term has expired are eligible for reappointment and **need not reapply***” and the staff report, which says “*As drafted, if a current GPAC or GPUSC member is in good standing **with an application on file that is no more than two years old** at the time of City Council's appointments, there would be no need to submit a new application.*” The City's [GPAC page](#) indicates most of the current members were appointed on November 15, 2022, and its [GPUSC page](#) indicates all three members were appointed on April 12, 2022. All of these people's applications would now be more than two years old, and they would need to reapply according to the staff report, but not according to what would seem to be the plain language of the resolutions. Which is correct?

Additionally, the Council members may wish to discuss whether the rules for achieving geographic and institutional diversity in appointments to the GPAC detailed in the table on page 4-6 of the staff report is still appropriate, and how the table should be used. In particular, many applicants will have multiple affiliations and it is not clear how the limitations to “not more than one” from each “sample” is intended to apply to them.

As to the substance of what the committees do, there is an existing uncertainty in that the GPAC is instructed to make recommendations to the GPUSC, but there is no provision as what the GPUSC is supposed to do with them. Are they obligated to pass them on to the City Council? Or does the GPUSC have veto power over the GPUSC recommendations?

Item 5. Resolution No. 2025-4: Approving an Amendment to the Key and Management Compensation Plan

The staff report (page 5-1) implies the maximum bonus available for scholastic achievement is 8.5%, however the actual proposed language on page 5-6 shows a 7% bonus for achieving the BA/BS level, and a separate 8.5% bonus for the MA/MS/JD level without making it clear if members can qualify for only one or for both. Will that be a problem?

Also shouldn't there be a requirement that the achievement is in a field related to the employee's work?

More generally, the amendment is offered to the Council for approval as a snippet without being able to see the context in which it will occur or the prior language it replaces. Compounding that problem, the public does not seem to be able to easily see or review the current Key & Management Compensation Plan. Instead, on the HR Department's [MOUs & Benefit Summaries](#) page one finds a 2022 version and what seem to be 12 adjustments to it, some of which are not machine searchable, making it particularly challenging to piece together what the current plan is. However, as best I can tell, the (non-machine-readable) [Sixth Amendment](#) made Policy Safety Key & Management employees eligible for the same scholastic achievement benefits as members of the Police Management Association, with language essentially identical to that for Fire Safety Key & Management employees. What was wrong with that? Is Fire Safety Management eligible for a larger benefit than Police Safety Management? If so, how large is the change? And why wouldn't Police Management want the same benefit?

The report does not seem very transparent.

Item 6. Resolution No. 2025-5: Creating the Ad Hoc Council Policy Review Committee

This is another case where, rather than being on the consent calendar, one might think the Council members would want to discuss the matter to give direction to the committee as to the scope of their assignment, and possibly as to who should be on it.

Although I cannot find it mentioned in either the staff report or the proposed resolution, the last comprehensive review of the [Council Policy Manual](#) took place in 2018, and culminated in the massive 338-page [Item 18](#) on the August 8, 2017, agenda, making changes that neither the

public nor the Council members not on the committee had time to thoughtfully consider or review.

I would strongly recommend the present committee be asked to review the policies in more digestible pieces, and through a more public process – including, for example, presentation at a study session at a meeting prior to the meeting at which adoption is proposed.

Item 14. Memorandum of Agreement with the City of Long Beach Acting By and Through the Port of Long Beach Board of Harbor Commissioners Authorizing Disposal of Lower Bay Dredged Material Into the Port’s Pier G Slip Fill Project

Part (2) of Condition 8 on page 14-8, causing the Agreement to terminate on “*the commencement of the placement of the Newport Bay Material at a site other than the Project*” seems slightly strange. Does this mean that if any of the “*approximately 225,000 cubic yards of material from the Lower Newport Bay channels*” identified as “*Newport Bay Material*” is found to be suitable for disposal outside the Port of Long Beach, and disposed of at some alternate location, the Port will refuse to accept any more?

Also, if the Port of Long Beach location becomes unavailable before all the unsuitable material has been disposed of, does the City have a plan to construct a smaller CAD than was originally planned? And, finally, how does this Agreement affect the private homeowners who were promised use of the CAD?

Item 15. Planning Commission Agenda for the January 9, 2025 Meeting

Those new to the Council may be wondering why they are receiving a report on the actions of the Planning Commission and not of any of the City’s other boards or commissions. Originally, this was not on the consent calendar, but scheduled as a full discussion item. And its purpose, then as now, was to apprise Council members of the Planning Commission’s decisions, so they would have a chance to call for review, as allowed, currently, by Municipal Code [Chapter 20.64](#).⁵

In the present case, the Council is receiving reports of two Planning Commission decisions, both of which seem problematic to me.

In the first, the PC approved remodeling of a warehouse as a fitness training facility for exclusive use by students of a neighboring high school, even though the property is designated for industrial uses and other uses “ancillary” or “accessory” to the primary industrial uses. While, as staff indicated, fitness facilities are allowed “by right” in this area, the assumption is they will be serving the needs of the primary industrial users. A facility serving exclusively students from a neighboring district is clearly not supporting the industrial uses. Staff seems to be reading “ancillary” or “accessory” not as “supporting,” but rather as anything that occupies

⁵ One might still wonder why the Council does not receive similar reports regarding decisions by the Harbor Commission, since there is a parallel call for review provision in NBMC [Chapter 17.65](#). Or for decisions of the Parks, Beaches and Recreation Commission, even though the opportunity to review is found only in Council Policies.

less than a majority of the district. To me, that seems clearly not to have been the intent of the code.

In the second hearing, the PC had to deal with a tennis club consisting of two separately-owned parcels, but originally approved and allowed to be subdivided only under the assumption they would be operated together. Without making any changes to that existing permit for the two parcels to operate together, and without seeing any evidence of consent by the owner of one of the parcels, the PC approved a staff-proposed, new, separate permit for the second parcel, allowing it to be used as a separate pickleball facility. The result seems to be both to have caused the other parcel to become landlocked, and to have transferred to it all the entitlements of the original permit. Additionally, it seems quite possible the approval will create land use incompatibilities, with noise from the pickleball activity disturbing future guests at the neighboring hotel and, possibly, residents across Jamboree Road at Sea Island. I took some grief from the Commissioners for suggesting City staff did not have the expertise to independently verify the conclusions of the applicant noise analysis (which nowhere addressed the highly impulsive nature of pickleball noise), but I do believe that to be the case.

Council members may wish to consider calling one of both of these decisions up for review.

Item 16. Confirmation of Nominations to Fill an Unscheduled Vacancy on the Parks, Beaches & Recreation Commission

Since the Council is being asked to “confirm” just two nominations, it would have been helpful to at least list the names of any other citizens who might have applied. It would seem they deserve at least that minimal recognition,⁶ and other Council members may wish to propose adding some of the names from that list.

Item 17. Confirmation of Mayor Joe Stapleton's Appointments

Since this item is scheduled to be adopted without discussion, it presumably involved some non-public discussion of who wanted to serve on what committees. While that is not necessarily illegal, it would seem like a discussion that could better have taken place at the public meeting.

That said, I have, for a number of years, been puzzled by the continuing appointment of a Council member as chair of the [Environmental Quality Affairs Committee](#), especially considering that committee has not met since [August 16, 2016](#) (and before that, on [November 20, 2014](#)) and currently has no members other than the Council appointee (of which there are actually supposed to be two).

I see from the [minutes](#) of the similar [Item 12](#) from January 10, 2023, that I raised the same puzzlement, and that year’s appointee, Mayor Blom, volunteered that “*as Chair of EQAC, he will assess the future of EQAC.*” But as [Item 11](#) on January 9, 2024, he was reappointed as Chair, and, as I [noted](#) then, one might wonder how long the assessment will take? One continues to wonder.

⁶ In other cities, such as Costa Mesa and Laguna Beach, I believe the full council publicly interviews all the applicants before making appointments.



NEWPORT BEACH

City Council Staff Report

January 14, 2025
Agenda Item No. 17

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Leilani I. Brown, City Clerk - 949-644-3005,
lbrown@newportbeachca.gov

PREPARED BY: Leilani I. Brown, City Clerk

TITLE: Confirmation of Mayor Joe Stapleton's Appointments

ABSTRACT:

City Council Policy A-2 (*Boards, Commissions and Committees*) provides for the mayor to annually appoint individuals, subject to City Council confirmation, to serve on the various City Council/Citizens Committees, Citizens Advisory Committees, and Joint Governmental Committees.

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) Confirm Mayor Joe Stapleton's appointments under City Council Policy A-2, as provided in this staff report.

DISCUSSION:

The following are Mayor Stapleton's appointments and require City Council confirmation:

I. CITY COUNCIL/CITIZENS COMMITTEES (Standing or Ad Hoc)

A. Aviation Committee

1. Councilmember Noah Blom - Chair
2. Mayor Pro Tem Lauren Kleiman - Vice Chair

II. CITIZENS ADVISORY COMMITTEES (Standing or Ad Hoc)

A. Environmental Quality Affairs Committee (EQAC)

1. Councilmember Noah Blom - Chair

B. Finance Committee

1. Mayor Joe Stapleton (Chair)
2. Councilmember Robyn Grant
3. Councilmember Sara J. Weber

C. Newport Coast Advisory Committee

1. Mayor Pro Tem Lauren Kleiman
2. Councilmember Sara J. Weber
3. Newport Coast Resident Jennifer Carey

D. Water Quality/Coastal Tidelands Committee

1. Councilmember Michelle Barto - Chair
2. Mayor Joe Stapleton - Vice Chair

III. JOINT GOVERNMENTAL COMMITTEES (Permanent or Standing)

A. Association of California Cities – Orange County (ACC-OC)

1. Councilmember Robyn Grant
2. Councilmember Erik Weigand (Alt.)

B. Orange County Housing Commission - Advisory Committee

1. Community Development Department Staff Member Melinda Whelan
2. Community Development Department Staff Member Ben Zdeba (Alt.)

C. Orange County Mosquito and Vector Control District Board of Trustees

1. Councilmember Erik Weigand*

D. Orange County Sanitation District

1. Councilmember Erik Weigand *
2. Councilmember Michelle Barto (Alt.)*

E. San Joaquin Hills Transportation Corridor Agency Board of Directors

1. Councilmember Robyn Grant*
2. Councilmember Sara J. Weber (Alt.)*

F. Santa Ana River Flood Protection Agency

1. Councilmember Erik Weigand
2. Councilmember Michelle Barto (Alt.)

G. Southern California Association of Governments (SCAG)

1. Mayor Pro Tem Lauren Kleiman*
2. Councilmember Robyn Grant (Alt.)*

H. Watershed Executive Committee

1. Councilmember Michelle Barto
2. Mayor Joe Stapleton (1st Alt.)
3. City Manager Grace K. Leung (2nd Alt.)

In the previous listings, names that are underlined are individuals who are not members of the City Council.

* Per FPPC Regulation 18702.5(b)(3), the appointed positions identified above with an asterisk (*) may receive compensation are reported on FPPC Form 806 (Agency Report of Public Official Appointments). The City Clerk will post the form on the City's website.

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).



On the Agenda: January 14 City Council Meeting

The next meeting of the Newport Beach City Council will be on Tuesday, January 14. A closed session meeting will begin at 4 p.m. The regular meeting begins at 5:30 p.m.

Agenda items include:

- A Memorandum of Agreement with the City of Long Beach (through the Port of Long Beach Board of Harbor Commissioners) authorizing the disposal of lower bay dredged material into the Port's Pier G slip fill project. The agreement would allow dredged material from Newport Harbor, which is unsuitable for ocean disposal, to be used as fill material at Pier G. This method would preclude the Confined Aquatic Disposal solution previously proposed by the City. The lower harbor dredging project, which is being led by the U.S. Army Corps of Engineers, is expected to begin in the spring.
- Confirmation of Mayor Joe Stapleton's appointments. City Council Policy A-2 (Boards, Commissions and Committees) provides for the mayor to annually appoint individuals to serve on various City Council and Citizens Committees, Citizens Advisory Committees, and Joint Governmental Committees. The appointments are proposed by the Mayor and confirmed by the City Council.
- Participation in the Ground Emergency Medical Transport Intergovernmental Transfer program for 2025. The program reimburses cities and public agencies for costs related to the emergency transportation of patients covered by Medi-Cal.

[VIEW THE FULL AGENDA >>](#)

January 14, 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 III.B CONFERENCE WITH REAL PROPERTY NEGOTIATORS

This appears to be at least the tenth time a closed session has been announced for the Council to privately discuss “price and terms of payment” regarding public right-of-way adjacent to the identical properties, the first announcement having been as [Item IV.A](#) on February 23, 2021. And the only change has been the initial “*approximately 845 square feet*” increasing to the “*approximately 1,105 square feet*” when it came back as [Item IV.A](#) on November 12, 2024.

And while the purpose of the announcement is, in theory, to invite public comment to guide the Council in its decision, at no time has there been any public disclosure of why a sale or lease is being considered. This may be contrasted with earlier, more transparent announcements, for example [Item IV.C](#) from July 26, 2011, where it was at least disclosed that “price and terms of payment” needed to be discussed “*with respect to resolution of boundary dispute between Tidelands and Uplands.*”

Why is public property in play adjacent to 929 Zurich Circle and 944 Via Lido Nord?

Item 1. Minutes for the December 10, 2024 City Council Meeting

The passages shown in *italics* below are from the [draft minutes](#) with suggested corrections shown in ***strikeout underline*** format. The page numbers refer to Volume 66.

Page 220, Item IX, paragraph 1: “*Dennis Bress thanked the outgoing members of Council for ~~their~~ service and noted continued efforts to work with the Aviation Committee to have ~~aircrafts flyer high aircraft fly higher~~, slower, and quieter.*”

[See [video](#). “[Aircraft](#)” is recognized as a noun that does not require an “s” to make it plural, and Mr Bress did not add one. Similarly, he add “er” to “high” not “fly.”]

Page 222, Item 15 (Administration of Oath of Office):

“His wife, Marin, administered the Oath of Office ...”

“Former Mayor Will O’Neill administered the Oath of Office ...”

[**Comment:** I am not much of a believer in loyalty oaths, but it does seem reasonable for citizens to have some assurance those elected to office are committed to upholding the rules under which governments are expected to operate. Indeed, the [first page](#) of the official minutes of our City Council begins with Notary Public Clyde Bishop administering the Oath of Office¹ to the five newly-elected trustees at their first meeting on September 3, 1906.

¹ The oath, in Article XX, Section 3 of the [California Constitution at that time](#) consisted solely of: “*I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of _____, according to the best of my ability.*”

Since then, through [2012](#), it seems to have been the invariable practice for the City Clerk to administer the oaths. However, in [2014](#), with the election of “Team Newport,” Orange County Superior Court Judge [James E. Rogan](#) administered the oaths. And after that, a variety of judges continued to perform this role with the exception of [2020](#), when former Mayor Evelyn Hart administered the oath to re-elected Council Member Brad Avery, and [2022](#), when former Mayor Steve Rosansky administered the oath to newly-elected Council Member Robyn Grant.

This new practice of having the oath of office administered by private citizens who, whether former elected officials or not, do not seem authorized by law to do so,² seems a bit like attending a wedding at which a private party administers the vows while the minister, judge or government clerk sits to the side as an observer rather than a participant.

It seems strange to me. Is it a new trend?³]

Item XIII. PUBLIC COMMENTS ON CONSENT CALENDAR

Since I believe this may be a first in the City’s history, it seems noteworthy that the public portion of the current agenda contains no items requiring a Council decision other than those on the Consent Calendar.⁴

As a result those watching the meeting without access to the agenda will be at loss to know what, if any, City business was conducted.

It might be noted that Newport Beach didn’t always have a Consent Calendar.

And, as I have noted before, there is at least one other California city, [Benecia](#), where the Mayor reads the titles of the items on the Consent Calendar so that the public at least knows what their Council is consenting to. There are likely others with similar practices. For example, in [Del Mar](#), the City Clerk reads the consent calendar item titles. In both cases, not only the council members, but members of the public are invited to pull items for discussion by their elected representatives. It also appears other cities may be more judicious in what items they place on their consent calendar for approval without discussion.

It seems to me the consent calendar may be overused in Newport Beach, for it seems unlikely none of the seven Council members would have any questions about any of the items on the Consent Calendar, or that all would agree each of those items should be approved exactly as presented. As a result, the public is left with the impression that information is being exchanged,

² In 2022, Krista Weigand administered the oath to newly-elected Council Member Erik Weigand, but she did so as a Trustee of the Newport-Unified School District. The law, [Government Code Sections 1360 - 1369](#), is ambiguous, saying only the oath must be taken “before” a person authorized to administer oaths.

³ For a fee of \$125, the [Santa Cruz County](#) Clerk offers to appoint private citizens 18 or older as “Deputy Commissioner of Marriage for a Day,” authorized to officiate at a specified wedding anywhere in California (as do [Los Angeles County](#), [Nevada County](#), [San Diego County](#) and likely more). [At one time](#), the Orange County Clerk-Recorder offered this service, as well. It is unclear if he still does.

⁴ I recall one or two previous agendas where all the business items were on the consent calendar, but I believe the agenda included either a study session or suggestions for future agenda items, where Council input was solicited.

and decisions made, outside public view. In other words, that the public's business is not being done in public.

Item 4. Resolution Nos. 2025-2 and 2025-3: Amending the General Plan Advisory Committee and the General Plan Update Steering Committee

This seems to me to be an example of the overuse of the consent calendar. As the staff report explains, this is on the agenda because, pursuant to City Council [Policy A-1](#), at the November 19, 2024, meeting, the previous Council voted, without discussion, to bring the subject back at a future meeting “*for discussion and/or action.*” Yet, staff has placed it on the consent calendar, where a specific proposal that has never been publicly discussed is expected to be approved, again without any discussion.

One might think that, at a minimum, before voting the Council members would want to ask about the status of the General Plan Update and its expected timeline. If they did so, they might learn that the entire process is expected to be completed, and the advisory committees dissolved, before the end of the current year.

Given that context, establishing a procedure by which the advisory committees' membership will be reassessed each February seems strange – because there will be no future Februaries other than the coming one.

As to changing the composition *this* February, as a current GPAC member, but commenting as a private citizen, I have seen no reason offered for what seems both unnecessary and disruptive. While the process to date has been a very imperfect one, and could have been better, changing the participants, but not the structure, in the final months hardly seems likely to produce a better result.

On a more technical note, the Council may wish to know how the City Clerk plans to advertise the unscheduled vacancies and how long the application period will be left open. Finding 20 to 30 new members will be difficult, and [Government Code Section 54974](#) requires only that at least 10 working days elapse between the posting and the appointment, but does not seem to say how long the invitation to apply needs to be “open.”

As to the existing members, there seems to be a discrepancy between the proposed resolutions, whose Attachment A's say “*Members who are in good standing at the time their term has expired are eligible for reappointment and **need not reapply***” and the staff report, which says “*As drafted, if a current GPAC or GPUSC member is in good standing **with an application on file that is no more than two years old** at the time of City Council's appointments, there would be no need to submit a new application.*” The City's [GPAC page](#) indicates most of the current members were appointed on November 15, 2022, and its [GPUSC page](#) indicates all three members were appointed on April 12, 2022. All of these people's applications would now be more than two years old, and they would need to reapply according to the staff report, but not according to what would seem to be the plain language of the resolutions. Which is correct?

Additionally, the Council members may wish to discuss whether the rules for achieving geographic and institutional diversity in appointments to the GPAC detailed in the table on page 4-6 of the staff report is still appropriate, and how the table should be used. In particular, many applicants will have multiple affiliations and it is not clear how the limitations to “not more than one” from each “sample” is intended to apply to them.

As to the substance of what the committees do, there is an existing uncertainty in that the GPAC is instructed to make recommendations to the GPUSC, but there is no provision as what the GPUSC is supposed to do with them. Are they obligated to pass them on to the City Council? Or does the GPUSC have veto power over the GPUSC recommendations?

Item 5. Resolution No. 2025-4: Approving an Amendment to the Key and Management Compensation Plan

The staff report (page 5-1) implies the maximum bonus available for scholastic achievement is 8.5%, however the actual proposed language on page 5-6 shows a 7% bonus for achieving the BA/BS level, and a separate 8.5% bonus for the MA/MS/JD level without making it clear if members can qualify for only one or for both. Will that be a problem?

Also shouldn't there be a requirement that the achievement is in a field related to the employee's work?

More generally, the amendment is offered to the Council for approval as a snippet without being able to see the context in which it will occur or the prior language it replaces. Compounding that problem, the public does not seem to be able to easily see or review the current Key & Management Compensation Plan. Instead, on the HR Department's [MOUs & Benefit Summaries](#) page one finds a 2022 version and what seem to be 12 adjustments to it, some of which are not machine searchable, making it particularly challenging to piece together what the current plan is. However, as best I can tell, the (non-machine-readable) [Sixth Amendment](#) made Policy Safety Key & Management employees eligible for the same scholastic achievement benefits as members of the Police Management Association, with language essentially identical to that for Fire Safety Key & Management employees. What was wrong with that? Is Fire Safety Management eligible for a larger benefit than Police Safety Management? If so, how large is the change? And why wouldn't Police Management want the same benefit?

The report does not seem very transparent.

Item 6. Resolution No. 2025-5: Creating the Ad Hoc Council Policy Review Committee

This is another case where, rather than being on the consent calendar, one might think the Council members would want to discuss the matter to give direction to the committee as to the scope of their assignment, and possibly as to who should be on it.

Although I cannot find it mentioned in either the staff report or the proposed resolution, the last comprehensive review of the [Council Policy Manual](#) took place in 2018, and culminated in the massive 338-page [Item 18](#) on the August 8, 2017, agenda, making changes that neither the

public nor the Council members not on the committee had time to thoughtfully consider or review.

I would strongly recommend the present committee be asked to review the policies in more digestible pieces, and through a more public process – including, for example, presentation at a study session at a meeting prior to the meeting at which adoption is proposed.

Item 14. Memorandum of Agreement with the City of Long Beach Acting By and Through the Port of Long Beach Board of Harbor Commissioners Authorizing Disposal of Lower Bay Dredged Material Into the Port's Pier G Slip Fill Project

Part (2) of Condition 8 on page 14-8, causing the Agreement to terminate on “*the commencement of the placement of the Newport Bay Material at a site other than the Project*” seems slightly strange. Does this mean that if any of the “*approximately 225,000 cubic yards of material from the Lower Newport Bay channels*” identified as “*Newport Bay Material*” is found to be suitable for disposal outside the Port of Long Beach, and disposed of at some alternate location, the Port will refuse to accept any more?

Also, if the Port of Long Beach location becomes unavailable before all the unsuitable material has been disposed of, does the City have a plan to construct a smaller CAD than was originally planned? And, finally, how does this Agreement affect the private homeowners who were promised use of the CAD?

Item 15. Planning Commission Agenda for the January 9, 2025 Meeting

Those new to the Council may be wondering why they are receiving a report on the actions of the Planning Commission and not of any of the City's other boards or commissions. Originally, this was not on the consent calendar, but scheduled as a full discussion item. And its purpose, then as now, was to apprise Council members of the Planning Commission's decisions, so they would have a chance to call for review, as allowed, currently, by Municipal Code [Chapter 20.64](#).⁵

In the present case, the Council is receiving reports of two Planning Commission decisions, both of which seem problematic to me.

In the first, the PC approved remodeling of a warehouse as a fitness training facility for exclusive use by students of a neighboring high school, even though the property is designated for industrial uses and other uses “ancillary” or “accessory” to the primary industrial uses. While, as staff indicated, fitness facilities are allowed “by right” in this area, the assumption is they will be serving the needs of the primary industrial users. A facility serving exclusively students from a neighboring district is clearly not supporting the industrial uses. Staff seems to be reading “ancillary” or “accessory” not as “supporting,” but rather as anything that occupies

⁵ One might still wonder why the Council does not receive similar reports regarding decisions by the Harbor Commission, since there is a parallel call for review provision in NBMC [Chapter 17.65](#). Or for decisions of the Parks, Beaches and Recreation Commission, even though the opportunity to review is found only in Council Policies.

less than a majority of the district. To me, that seems clearly not to have been the intent of the code.

In the second hearing, the PC had to deal with a tennis club consisting of two separately-owned parcels, but originally approved and allowed to be subdivided only under the assumption they would be operated together. Without making any changes to that existing permit for the two parcels to operate together, and without seeing any evidence of consent by the owner of one of the parcels, the PC approved a staff-proposed, new, separate permit for the second parcel, allowing it to be used as a separate pickleball facility. The result seems to be both to have caused the other parcel to become landlocked, and to have transferred to it all the entitlements of the original permit. Additionally, it seems quite possible the approval will create land use incompatibilities, with noise from the pickleball activity disturbing future guests at the neighboring hotel and, possibly, residents across Jamboree Road at Sea Island. I took some grief from the Commissioners for suggesting City staff did not have the expertise to independently verify the conclusions of the applicant noise analysis (which nowhere addressed the highly impulsive nature of pickleball noise), but I do believe that to be the case.

Council members may wish to consider calling one of both of these decisions up for review.

Item 16. Confirmation of Nominations to Fill an Unscheduled Vacancy on the Parks, Beaches & Recreation Commission

Since the Council is being asked to “confirm” just two nominations, it would have been helpful to at least list the names of any other citizens who might have applied. It would seem they deserve at least that minimal recognition,⁶ and other Council members may wish to propose adding some of the names from that list.

Item 17. Confirmation of Mayor Joe Stapleton's Appointments

Since this item is scheduled to be adopted without discussion, it presumably involved some non-public discussion of who wanted to serve on what committees. While that is not necessarily illegal, it would seem like a discussion that could better have taken place at the public meeting.

That said, I have, for a number of years, been puzzled by the continuing appointment of a Council member as chair of the [Environmental Quality Affairs Committee](#), especially considering that committee has not met since [August 16, 2016](#) (and before that, on [November 20, 2014](#)) and currently has no members other than the Council appointee (of which there are actually supposed to be two).

I see from the [minutes](#) of the similar [Item 12](#) from January 10, 2023, that I raised the same puzzlement, and that year’s appointee, Mayor Blom, volunteered that “*as Chair of EQAC, he will assess the future of EQAC.*” But as [Item 11](#) on January 9, 2024, he was reappointed as Chair, and, as I [noted](#) then, one might wonder how long the assessment will take? One continues to wonder.

⁶ In other cities, such as Costa Mesa and Laguna Beach, I believe the full council publicly interviews all the applicants before making appointments.



NEWPORT BEACH

City Council Staff Report

January 14, 2025
Agenda Item No. 18

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Jeff Boyles, Fire Chief - 949-644-3101, jboyles@nbfd.net

PREPARED BY: Raymund Reyes, Administrative Manager - 949-644-3352, rreyes@nbfd.net

TITLE: Ground Emergency Medical Transport Intergovernmental Transfer Voluntary Participation for Calendar Year 2025

ABSTRACT:

In 2019, Governor Gavin Newsom signed Assembly Bill No. 1705 (AB 1705) into law, authorizing the replacement of two existing Medi-Cal reimbursement programs with a single program under a new Public Provider GEMT Intergovernmental Transfer (PP-GEMT-IGT) process. This program is voluntary and its success is dependent on the participation of all transporting agencies. The City of Newport Beach participated in the inaugural Calendar Year (CY) 2023 program as well as the CY 2024 program. Total reimbursement (including pending amounts) indicate reimbursement amounts beyond original estimates. The Fire Department is requesting continued participation for CY 2025.

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 the City of Newport Beach's voluntary participation in the Public Provider GEMT Intergovernmental Transfer program per AB 1705 for Calendar Year 2025, and authorize the City Manager to execute the Public Provider Intergovernmental Transfer Program for Ground Emergency Medical Transportation Services Certification Forms and pay all necessary invoices.

DISCUSSION:

The Medi-Cal program is the State of California's Medicaid program and is administered by the California Department of Health Care Services (DHCS.) Medi-Cal provides qualified California residents with healthcare coverage. This coverage can extend to Emergency Medical Services (EMS), including those provided by the City's Fire Department. Unlike patients with private insurance (or in most cases, Medicare), Medi-Cal patients do not have a co-pay and medical providers like the City must accept Medi-Cal payments as payment in full.

Medi-Cal is partially governed and funded by federal Medicaid provisions. Medi-Cal plan holders account for approximately 10%-15% of all City medical transports and the City is reimbursed for EMS services directly from the State's Medi-Cal program. Medi-Cal has historically paid a capitated base rate of \$118.20 per transport since 1999; this is significantly lower than the actual costs for the City to provide transport service. The California Department of Healthcare Services' (DHCS) Quality Assurance Fee (QAF), Ground Emergency Medical Transport (GEMT), and Intergovernmental Transfer (IGT) programs provide additional revenue to help offset the cost of service.

Passed in 2019 but not implemented until 2023, AB 1705 implemented a new Medi-Cal Public Provider Intergovernmental Transfer Program (PP-GEMT-IGT) for public ground emergency medical transportation providers. The program replaced the outgoing QAF and GEMT programs and provides additional payments to public providers who transport Medi-Cal patients. IGT remains viable and the City continues to participate in this program.

PP-GEMT-IGT is funded by a combination of ambulance transport agency funds and a federal Centers for Medicare and Medicaid Services (CMS) match, called a Federal Financial Participation (FFP.) The State's general funds cannot be utilized for this reimbursement program, so public ambulance providers voluntarily provide the State with the amount needed (roughly \$110 million) through an Inter-Governmental Transfer. DHCS then uses the non-federal funds to draw down available matching federal funds and uses the combined sum to pay the add-on amount per eligible Medi-Cal transports. DHCS manages the reimbursement processes and charges an administrative fee of 10% of the non-federal share amount.

This add-on amount is currently \$946.92, bringing the total add-on amount (including the base rate) to \$1,065.12. The City Council previously approved participation for both CY 2023 and CY 2024. Based on amounts received to date and pending amounts forthcoming, the program appears to be successful. Staff requests City Council approval to participate in the CY 2025 program.

FISCAL IMPACT:

Because DHCS elected to submit payments via an add-on amount, the month or even year in which add-on fees are collected are not necessarily reflective of the time when the transport occurred. Whereas DHCS' IGT program consists of a single payment to the State followed by a single reimbursement back to the City for completed transports in a prior calendar year, PP-GEMT-IGT add-on payments are included with the \$118.20 base rate amounts and remitted to the City as part of the normal billing collection process. This can result in a delay between the month that the transport occurred and the receipt of any payments. As a result, pending amounts yet to be collected cumulatively roll forward, and revenues could be reflective of add-on amounts for either year.

Ground Emergency Medical Transport Intergovernmental Transfer
Voluntary Participation for Calendar Year 2025

January 14, 2025

Page 3

PP-GEMT-IGT ADD ON FEES FOR CY 2023, CY 2024					
<i>Calendar Year Program</i>	<i>Payments to DHCS (Not including 10% admin fee)</i>	<i>Original Estimated Revenue</i>	<i>Add-On Fees Collected through Oct 2024</i>	<i>Add-on Fees Pending Receipt (through Oct 2024)</i>	<i>PP-GEMT-IGT Prospective Total Revenue for CY2023, CY2024</i>
2023	\$399,377	\$1,181,208	\$565,514	\$1,728,075	\$3,032,787
2024	\$390,461	\$1,155,655	\$739,198		
TOTALS:	\$789,837	\$2,336,863	\$1,304,712	\$1,728,075	

**This amount includes approximately \$3,521 in leftover QAF reimbursements received from DHCS during the PP-GEMT-IGT implementation process.*

Even so, the program seems to have surpassed original estimates. Add-on fees already collected have exceeded the City’s original contribution amounts, with a pending add-on amount owed of \$1,728,074.62. Based on the pending amounts yet to be received, revenue estimates may be upwards of \$695,923.96 higher than originally anticipated for CY 2023 and CY 2024 combined.

<i>DHCS Payments to Date</i>	<i>PP-GEMT-IGT Prospective Total Revenue to Date</i>	<i>Projected <u>Net</u> Revenue (including pending amounts)</i>
\$789,837 **	\$3,032,787	\$2,242,950

***While DHCS has invoiced the City for CY 2023 and CY2024 amounts; agencies have not yet been invoiced any 10% administrative fee amounts.*

To participate as a funding entity for CY 2025, the City must transfer local funds up to an estimated total contribution amount of \$364,855, which includes the 10% administrative fee estimate. Based on current DHCS figures, the number of possible transports and the current program reimbursements, the City may expect to receive a total of \$1,310,133 from the CY 2025 program, resulting in an approximate net revenue of \$945,278. It is important to note that depending on total agency participation, the actual payment amounts due during the year may be higher or lower.

DHCS recently published a public notice for the CY 2025 State Plan Amendment (SPA), SPA 25-0002. This SPA includes a proposed add-on reimbursement amount of \$1,478.68 for CY 2025 (an increase from \$946.92 to \$1,360.48.) The SPA is expected to be submitted to CMS in the first quarter of CY 2025. However, approval from CMS is not anticipated until late CY 2025. If approved by CMS, retroactive adjustments reflecting the CY 2025 add-on amount will be applied for the period of January 1, 2025, through December 31, 2025.

Retroactive reimbursements would follow the standard process of Medi-Cal Managed Care Plans reconciling payments based on the updated add-on amount. Adjustments will be applied to each eligible GEMT claim processed during the retroactive service period, once the rates are finalized and approved by CMS. Assuming the amendment passes,

the City could be required to process additional payments to the State, but could also see increased add-on revenues in a later fiscal year.

The adopted budget includes sufficient funding for the first two quarterly payments due in January and April 2025. Payments will be expensed from the PP-GEMT-IGT account in the Fire Department's EMS Division, 01040404-821010. The two remaining payments in July and October 2025 will be incorporated into the Fiscal Year 2025-26 adopted budget. Anticipated revenues from the CY 2025 program have been incorporated into the current year budget (for amounts estimated to be received prior to June 30, 2025) and the Fiscal Year 2025-26 budget process.

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 – Certification for CY 2025 PP-GEMT-IGT Program
Attachment B – Public Notice Re. State Plan Amendment 25-0002

ATTACHMENT A

DEPARTMENT OF HEALTH CARE SERVICES PUBLIC PROVIDER INTERGOVERNMENTAL TRANSFER PROGRAM FOR GROUND EMERGENCY MEDICAL TRANSPORTATION SERVICES CERTIFICATION FORM FOR STATE CALENDAR YEAR 2025

I, the undersigned, hereby declare and certify on behalf of the City of Newport Beach (the "Public Entity") as follows:

1. As a public administrator, a public officer, or other public individual, I am duly authorized to make this certification.
2. The Public Entity elects to make this intergovernmental transfer (IGT) to the Department of Health Care Service (DHCS) as a voluntary contribution to the non-federal share (NFS) of Medi-Cal expenditures for purposes of Assembly Bill 1705 (2019) pursuant to Sections 14105.94, 14105.945, 14129, 14129.3, and 14164 of the Welfare and Institutions (W&I) Code. All funds transferred pursuant to this certification qualify for federal financial participation (FFP) pursuant to Section 1903(w) of the Social Security Act and Title 42 of the Code of Federal Regulations, Section 433 Subpart B, and are not derived from impermissible sources such as recycled Medicaid payments, federal money excluded from use as the NFS, impermissible health care-related taxes, or non-bona fide provider-related donations.
3. Voluntary contributions attributable to the period of January 1, 2025, through December 31, 2025, will be made via recurring transfers as indicated on the invoices provided to the Public Entity by DHCS. The voluntary contributions made by the Public Entity may also include fee-for-service (FFS) adjustments related to the calendar year (CY) 2023 and managed care (MC) adjustments related to the CY 2024 rating period's NFS reconciliation as described in paragraph seven below. Please note, the total IGT amount at the bottom of this IGT certification will continue to be itemized on your invoice which is sent to you along with this IGT certification form 45-days in advance of the IGT contribution due date. The Public Entity acknowledges that any transfers made pursuant to this certification during this time period are considered an elective IGT made pursuant to W&I Code sections 14105.945 and 14164, to be used by DHCS, subject to paragraph four herein, exclusively as the source for the NFS of ground emergency medical transport public provider supplemental payments in both Medi-Cal FFS payments and the portion of the risk-based capitation rate to Medi-Cal managed care health plans associated with reimbursement made in accordance with Section 14105.945, subdivision (h)(1) (hereafter, the AB 1705 Public Provider Ground Emergency Medical Transportation (PP-GEMT) Program or PP-GEMT Program), and DHCS costs associated with administering the PP-GEMT Program.
4. DHCS may accept this voluntary contribution to the extent it is able to obtain FFP for the PP-GEMT Program as permitted by federal law. In the event DHCS is unable to obtain FFP for the PP-GEMT Program, or the full payments cannot otherwise be made to and retained by eligible public providers, and, therefore, all

DEPARTMENT OF HEALTH CARE SERVICES
PUBLIC PROVIDER INTERGOVERNMENTAL TRANSFER PROGRAM FOR
GROUND EMERGENCY MEDICAL TRANSPORTATION SERVICES
CERTIFICATION FORM FOR STATE CALENDAR YEAR 2025

or a portion of the transferred amount cannot be used as the NFS of payments, DHCS will notify the Public Entity via e-mail and return the applicable portion of the unused IGT amount.

5. The Public Entity acknowledges that, in accordance with W&I Code section 14105.945, subdivision (h)(2), DHCS shall assess a ten percent (10%) fee on each transfer of public funds to the state to pay for health care coverage and to reimburse DHCS its costs associated with administering the PP-GEMT Program.
6. The Public Entity acknowledges that the IGT is to be used by DHCS for the filing of a claim with the federal government for federal funds and understands that any misrepresentation regarding the IGT may violate federal and state law.
7. The amount voluntarily transferred to DHCS is based on the estimated Medi-Cal FFS and Medi-Cal MC NFS of ground emergency medical transport payments, as referenced in paragraph three herein. The amounts to be voluntarily transferred to DHCS will be based on an estimate, the Public Entity acknowledges that a reconciliation of the voluntary NFS contributions to the actual NFS expenditures will occur. To the degree necessary to fund the NFS for the PP-GEMT Program, amounts due to or owed by the Public Entity as a result of the reconciliation may be offset against, or added to, future transfers as applicable and as determined by DHCS. DHCS may accept a voluntary contribution to the extent it is able to obtain FFP for PP-GEMT payments as permitted by federal law.
8. The Public Entity acknowledges that all records of funds transferred are subject to review and audit upon DHCS' request. The Public Entity will maintain documentation supporting the allowable funding source of the IGTs.
9. Upon notice from the federal government of a disallowance or deferral related to this IGT, the Public Entity responsible for this IGT shall be the entity responsible for the federal portion of that expenditure.

I hereby declare under penalty of perjury under the law of the United States that the foregoing is true and correct to the best of my knowledge. I further understand that the known filing of a false or fraudulent claim, or making false statements in support of a claim, may violate the Federal False Claims Act or other applicable statute and federal law and may be punishable thereunder.

DEPARTMENT OF HEALTH CARE SERVICES
PUBLIC PROVIDER INTERGOVERNMENTAL TRANSFER PROGRAM FOR
GROUND EMERGENCY MEDICAL TRANSPORTATION SERVICES
CERTIFICATION FORM FOR STATE CALENDAR YEAR 2025

Executed on this _____ day of _____, 2025 at _____, California.

Signature of Authorized Person: _____

Name of Authorized Person: Grace K. Leung

Title of Authorized Person: City Manager

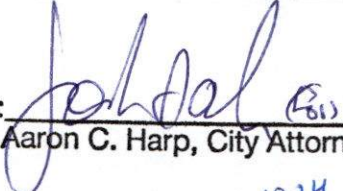
Name of Public Entity: City of Newport Beach

NPI of Public Entity: 1679579296

Amount of IGT: \$82,686.25

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 12-18-24

By: 
Aaron C. Harp, City Attorney

#

12-18-24
AF



**PUBLIC PROVIDER GROUND EMERGENCY MEDICAL TRANSPORTATION (PP-GEMT) PROGRAM
MANAGED CARE AND FEE FOR SERVICE — INVOICE**

Entity Information:
Entity Name: City Of Newport Beach
NPI: 1679579296

Due Date:	1/17/2025
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Payment Details:		
Year:	2025	Collection #: 1
Total Amount Due:	\$82,686.25	

Program/Payee Information:
Vendor Name: California Department of Health Care Services
PP-GEMT Program Email: AB1705@dhcs.ca.gov

Banking Information:	
Bank Name:	US Bank
<i>Please await Wire Request Memo for payment instructions</i>	
Payment Methods Accepted:	ACH or Wire Transfer

Payment Instructions:
Attention: Please review, sign, and submit the Intergovernmental Transfer (IGT) Certification form by **January 3, 2025**, to AB1705@dhcs.ca.gov. IGT Certification forms are required to be submitted prior to each collection due date. Once the IGT Certification form is received, DHCS will send a Wire Request Memo providing payment details and instructions.
Please do not send your IGT payment until you have received the Wire Request Memo as payment details are subject to change.

IGT Non-Federal Share (NFS) Breakdown By DHCS Delivery System		
<u>Managed Care (MC)</u>		
MC NFS #1		\$71,549.02
MC Admin Fee #1		\$0.00
<u>Fee For Service (FFS)</u>		
FFS NFS #1		\$11,137.23
FFS Admin Fee #1		\$0.00
Total* IGT Transfer Amount:		\$82,686.25

**Any differences are due to rounding.*

CY 2025 Invoicing Schedule		
CY 2025 Invoice #1	Invoice Packets Sent	12/3/2024
	IGT Certifications Due	1/3/2025
	Payment Due	1/17/2025
CY 2025 Invoice #2	Invoice Packets Sent	3/4/2025
	IGT Certifications Due	4/4/2025
	Payment Due	4/18/2025
CY 2023 FFS Recon	Date of Service	Jan - Dec 2023
CY 2024 MC Recon #1	Date of Service	Jan - Jun 2024
CY 2025 Invoice #3	Invoice Packets Sent	6/3/2025
	IGT Certifications Due	7/4/2025
	Payment Due	7/18/2025
CY 2025 Invoice #4	Invoice Packets Sent	9/2/2025
	IGT Certifications Due	10/3/2025
	Payment Due	10/17/2025
CY 2024 MC Recon #2	Date of Service	Jul - Dec 2024



NOTICE OF GENERAL PUBLIC INTEREST

RELEASE DATE: DECEMBER 10, 2024

PROPOSED STATE PLAN AMENDMENT TO EXTEND THE PUBLIC PROVIDER GROUND EMERGENCY MEDICAL TRANSPORT INTERGOVERNMENTAL TRANSFER PROGRAM

This notice is to provide information of public interest about a proposed State Plan Amendment (SPA) by the Department of Health Care Services (DHCS). SPA 25-0002 proposes to continue the Public Provider Ground Emergency Medical Transport Intergovernmental Transfer (PP-GEMT IGT) Program in calendar year (CY) 2025 to continue providing an add-on increase for eligible Ground Emergency Medical Transport (GEMT) services for dates of service January 1, 2025 to December 31, 2025.

California Welfare and Institutions Code (WIC) section 14105.945, enacted by Assembly Bill (AB) 1705 (Chapter 544, Statutes of 2019), authorizes DHCS to implement the PP-GEMT IGT Program for public providers of GEMT services. Providers are eligible to participate in the program if they meet all of the following criteria: (1) provide GEMT services to Medi-Cal beneficiaries, (2) are enrolled as a Medi-Cal provider for the period being claimed, and (3) are owned or operated by the state, a city, county, city and county, fire protection, special, community services, or health care district, or a federally recognized Indian tribe. The add-on increase will be in addition to the fee-for-service fee schedule rates for GEMT services billed using the procedure codes listed below.

Pursuant to SPA 22-0015, the Department was authorized to provide an add-on through the PP-GEMT IGT Program for dates of service January 1, 2023 through December 31, 2023. SPA 22-0015 established an initial add-on rate of \$946.92 for each qualifying transport for CY 2023 pursuant to the requirements of WIC section 14105.945(d)(1) and (2). Pursuant to WIC section 14105.945(d)(3), for subsequent rating periods, DHCS is authorized to periodically adjust the initial add-on rate to account for inflation, trend adjustments, or other material changes. In SPA 24-0002, which is pending Centers for Medicare and Medicaid Services (CMS) approval, DHCS proposes to adjust the initial add-on rate for CY 2024 pursuant to Section 14105.945(d)(3). Through this SPA, DHCS proposes to adjust the initial PP-GEMT IGT Program add-on for CY 2025 pursuant to



Section 14105.945(d)(3). Effective January 1, 2025, through December 31, 2025, eligible public providers may receive an add-on increase for the following procedure codes:

Procedure Code	Description	Estimated Medi- Cal PP-GEMT IGT Add-on Amount
A0429	Basic Life Support	\$1,478.68
A0427	Advanced Life Support, Level 1	\$1,478.68
A0433	Advanced Life Support, Level 2	\$1,478.68
A0434	Specialty Care Transport	\$1,478.68
A0225	Neonatal Emergency Transport	\$1,478.68

Public providers are not eligible to participate in the GEMT Quality Assurance Fee (QAF) program for periods when the PP-GEMT IGT Program is in effect.

DHCS estimates that the annual aggregate Medi-Cal expenditures for GEMT services will increase by \$24.5 million in total funds for Calendar Year 2025.

The effective date of the proposed SPA is January 1, 2025. All proposed SPAs are subject to approval by the CMS.

Public Review and Comments

Upon submission to CMS, a copy of proposed SPA #25-0002 will be published at the following internet address:

<https://dhcscagovauthoring/formsandpubs/laws/Pages/Pending-2025.aspx>

If you would like to view the SPA in person once it becomes available, please visit your local county welfare department. You may also request a copy of proposed SPA #25-0002 using the mailing or email address listed below.

Written comments may be sent to the following address:

Department of Health Care Services
 Fee-For-Service Rate Development Division
 Attn: Michelle Tamai
 P.O. Box 997413, MS 46000
 Sacramento, California 95899-7417

Comments may also be emailed to PublicInput@dhcs.ca.gov. Please indicate SPA #25-0002 in the subject line or message.

A copy of submitted public comments to SPA #25-0002 may be requested in writing to the mailing or email address identified above.



On the Agenda: January 14 City Council Meeting

The next meeting of the Newport Beach City Council will be on Tuesday, January 14. A closed session meeting will begin at 4 p.m. The regular meeting begins at 5:30 p.m.

Agenda items include:

- A Memorandum of Agreement with the City of Long Beach (through the Port of Long Beach Board of Harbor Commissioners) authorizing the disposal of lower bay dredged material into the Port's Pier G slip fill project. The agreement would allow dredged material from Newport Harbor, which is unsuitable for ocean disposal, to be used as fill material at Pier G. This method would preclude the Confined Aquatic Disposal solution previously proposed by the City. The lower harbor dredging project, which is being led by the U.S. Army Corps of Engineers, is expected to begin in the spring.
- Confirmation of Mayor Joe Stapleton's appointments. City Council Policy A-2 (Boards, Commissions and Committees) provides for the mayor to annually appoint individuals to serve on various City Council and Citizens Committees, Citizens Advisory Committees, and Joint Governmental Committees. The appointments are proposed by the Mayor and confirmed by the City Council.
- Participation in the Ground Emergency Medical Transport Intergovernmental Transfer program for 2025. The program reimburses cities and public agencies for costs related to the emergency transportation of patients covered by Medi-Cal.

[VIEW THE FULL AGENDA >>](#)