



**CITY OF NEWPORT BEACH
CITY COUNCIL – SPECIAL MEETING AGENDA**

**CITY COUNCIL CHAMBERS
100 CIVIC CENTER DRIVE, NEWPORT BEACH, CA 92660**

TUESDAY, SEPTEMBER 27, 2022 – 4:00 P.M.

City Council Members:

**Kevin Muldoon, Mayor
Noah Blom, Mayor Pro Tem
Brad Avery, Council Member
Joy Brenner, Council Member
Diane B. Dixon, Council Member
Duffy Duffield, Council Member
Will O'Neill, Council Member**

NOTICE TO THE PUBLIC

The agenda was prepared by the City Clerk's Office located at 100 Civic Center Drive, Bay E, 2nd Floor. If you have any questions, please contact City Clerk staff at (949) 644-3005. Agendas, minutes and staff reports are also available on the City's website: <http://www.newportbeachca.gov/agendas>.

The Newport Beach City Council is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the City Council special meeting agenda be posted at least twenty-four (24) hours in advance of the meeting.

The City Council of Newport Beach welcomes and encourages community participation. Public comments are generally limited to three (3) minutes per person to allow everyone to speak. Written comments are encouraged as well.

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 Leilani Brown, City Clerk, 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. CALL THE MEETING TO ORDER

II. ROLL CALL

III. CURRENT BUSINESS

1. Resolution No. 2022-61: Initiation of Zoning Code and Local Coastal Program Amendments Related to Fractional Homeownership (PA2022-0202)

- a) Determine this action exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3;
- b) Adopt Resolution No. 2022-61, *A Resolution of the City Council of the City of Newport Beach, California, Initiating Amendments to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the City of Newport Beach Municipal Code Related to Fractional Homeownership (PA2022-0202)*; and
- c) Provide other direction to staff as deemed necessary by the City Council.

IV. ADJOURNMENT

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

NEWPORT BEACH

City Council Staff Report

September 27, 2022
Agenda Item No. 1

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov

PREPARED BY: Chelsea Crager, Senior Planner
ccrager@newportbeachca.gov

PHONE: 949-644-3227

TITLE: Resolution No. 2022-61: Initiation of Zoning Code and Local Coastal Program Amendments Related to Fractional Homeownership (PA2022-0202)

ABSTRACT:

For the City Council's consideration is the initiation of amendments to Newport Beach Municipal Code (NBMC) to address fractional ownership. Specifically, Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the NBMC will need to be amended to regulate the use of properties that are considered fractional homeownership.

RECOMMENDATION:

- a) Determine this action exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3;
- b) Adopt Resolution No. 2022-61, *A Resolution of the City Council of the City of Newport Beach, California, Initiating Amendments to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the City of Newport Beach Municipal Code Related to Fractional Homeownership (PA2022-0202)*; and
- c) Provide other direction to staff as deemed necessary by the City Council.

DISCUSSION:

On November 16, 2021, the City Council conducted a study session to discuss fractional homeownership. Information was presented that there was one fractional ownership operator within the jurisdictional boundaries of the City and that four homes had either been fully sold or marketed for sale as fractional homeownership. The City Council directed staff to monitor fractional ownership activity in the City and investigate how other jurisdictions were dealing with such issues and report back.

Staff retained the services of Sagecrest Planning+Environmental (Sagecrest) to study jurisdictions with known fractional ownership properties. The study found that of the 22 jurisdictions surveyed, 15 classify these properties as a form of timeshare.

On September 13, 2022 the City Council held a study session to discuss the results of the Sagecrest study. Public testimony provided during the study session included concerns about increases in traffic and noise, as well as fractional ownership properties having an adverse impact on the character of the existing residential neighborhoods. In some instances, fractional ownership properties operate in a similar manner as short-term lodgings by limiting occupancy by owners of a fractional interest in a property to less than 30 consecutive days. Over the past 10 months, the number of fractional ownership operators has increased to five and fractional ownership residential properties within the City has nearly tripled with at least 11 fractional homeownership residential properties currently fully sold or marketed in the City.

At the conclusion of the study session, the City Council directed staff to return with: 1) a moratorium to pause the transactions of new fractional ownerships; and 2) an initiation of a code amendment to revise the NBMC.

This agenda item focuses on the code initiation only as the moratorium is still being developed. Should the City Council choose to initiate these proposed amendments, the specific text changes will be drafted and considered by both the Planning Commission and the City Council at future public hearings. Additionally, amendments to the certified LCP will require certification by the California Coastal Commission (CCC) to become effective.

FISCAL IMPACT:

There is no fiscal impact related to this item.

ENVIRONMENTAL REVIEW:

The initiation of zoning and LCP amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) 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. No final action on any amendments will occur at this meeting and the initiation of the amendment does not have any legally binding effect upon future consideration of the amendments themselves. The City of Newport Beach will conduct an environmental review prior to the consideration of approval of the amendments.

NOTICING:

The Municipal Code does not require notice for the initiation of amendments. Notice of this item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Should the City Council initiate the amendment, public notice will be provided for subsequent public hearings before the Planning Commission and the City Council as required by the Municipal Code. Additionally, notice of the LCP amendments will be sent to all persons and agencies on the Notice of the Availability mailing list.

ATTACHMENT:

Attachment A – Resolution No. 2022-61

ATTACHMENT A

RESOLUTION NO. 2022- 61

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, INITIATING AMENDMENTS TO TITLE 20 (PLANNING AND ZONING) AND TITLE 21 (LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN) OF THE NEWPORT BEACH MUNICIPAL CODE RELATED TO FRACTIONAL HOMEOWNERSHIP (PA2022-0202)

WHEREAS, Newport Beach Municipal Code ("NBMC") Section 20.66.020 provides that the City Council of the City of Newport Beach ("City Council") may initiate an amendment to Title 20 (Planning and Zoning) of the NBMC with or without a recommendation from the Planning Commission;

WHEREAS, City Council Policy K-1 (General Plan and Local Coastal Program) requires an amendment to the City of Newport Beach ("City") certified Local Coastal Program codified in Title 21 (Local Coastal Program Implementation Plan) of the NBMC to be initiated by the City Council; and

WHEREAS, the City Council desires to amend Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the NBMC related to fractional homeownership.

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

Section 1: The City Council hereby initiates amendments to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the NBMC related to fractional homeownership.

Section 2: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

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 categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3. Section 15262 exempts projects involving feasibility or planning studies for possible future actions which the agency, board, or commission has not approved or adopted.

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 27th day of September, 2022.

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney



CITY OF NEWPORT BEACH CITY COUNCIL AGENDA

SEPTEMBER 27, 2022

CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE, NEWPORT BEACH, CA 92660

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

**KEVIN MULDOON, Mayor
NOAH BLOM, Mayor Pro Tem
BRAD AVERY, Council Member
JOY BRENNER, Council Member
DIANE B. DIXON, Council Member
DUFFY DUFFIELD, Council Member
WILL O'NEILL, Council Member**

**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.

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 items 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.

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**NEWPORT BEACH CITY COUNCIL AGENDA
CITY COUNCIL CHAMBERS
100 CIVIC CENTER DRIVE, NEWPORT BEACH, CA 92660
SEPTEMBER 27, 2022**

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

I. ROLL CALL – 5:00 p.m.

II. PUBLIC COMMENTS ON AGENDA AND NON-AGENDA ITEMS

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 (3) 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

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 Charles Sakai, Esq., Negotiators.

Employee Organizations: Newport Beach City Employees Association (NBCEA), and Newport Beach Professional and Technical Employees Association (NBPTEA).

IV. RECESS

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

VI. ROLL CALL

VII. CLOSED SESSION REPORT

VIII. INVOCATION – Representative from First Church of Christ, Scientist Newport Beach

IX. PLEDGE OF ALLEGIANCE

X. PRESENTATION

- Friends of the Library Check Presentation

XI. NOTICE TO THE PUBLIC

The City Council of Newport Beach welcomes and encourages community participation. Public comments are generally limited to three (3) 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. MATTERS WHICH COUNCIL MEMBERS HAVE ASKED TO BE PLACED ON A FUTURE AGENDA (NON-DISCUSSION ITEM)

- Consider creating a three-member Ad Hoc Citizens Advisory Committee, consisting of residents with background in public safety and criminal justice, to address residential burglary concerns and advise neighborhoods on preventative measures [Muldoon]

XIV. PUBLIC COMMENTS ON CONSENT CALENDAR

*This is the time in which Council Members may pull items from the **CONSENT CALENDAR** for discussion (**ITEMS 1 – 14**). Public comments are also invited on Consent Calendar items. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record. If any item is removed from the Consent Calendar by a Council Member, members of the public are invited to speak on each item for up to three (3) 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. Council Members 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.*

XV. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. Minutes for the September 13, 2022 City Council Meeting

Waive reading of subject minutes, approve as written, 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.

RESOLUTIONS FOR ADOPTION

3. Resolution No. 2022-62: Request to Add Code Enforcement Officer I Position to the Community Development Department

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- b) Adopt Resolution No. 2022-62, *A Resolution of the City Council of the City of Newport Beach, California, Adding a Code Enforcement Officer Position to the Community Development Department*; and
- c) Approve Budget Amendment No. 23-022 transferring \$86,016 from the Code Enforcement Professional Services account to various salary and benefit accounts.

4. Resolution No. 2022-63: Acceptance of Oil Spill Response Equipment Staging Grant Funding from the California Department of Fish and Wildlife Office of Spill Prevention and Response

- 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. 2022-63, *A Resolution of the City Council of the City of Newport Beach, California, Accepting Grant Funds from the California Department of Fish and Wildlife, Office of Spill Prevention and Response for Oil Spill Response Equipment Staging*; and

- c) Approve Budget Amendment No. 23-019 recognizing \$5,000.00 in grant revenue from the California Department of Fish and Wildlife (10045451-431455) and appropriating \$5,000.00 to Account No. 10045451-881002.

5. Resolution No. 2022-64: Supporting Restoring Local Authority in the Regulation of Group Residential Uses

- 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. 2022-64, *A Resolution of the City Council of the City of Newport Beach, California, Supporting the Restoration of Local Authority to Regulate Residential Care Facilities and Calling Upon the State of California to Increase its Oversight and Enforcement of Residential Care Facilities Until Local Authority is Restored.*

CONTRACTS AND AGREEMENTS

6. Fire Station No. 2 Project (Project 15F13) – Notice of Completion for Contract No. 8269-2

- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
- b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
- c) Release Faithful Performance Bond one-year after acceptance by the City Council.

7. Slurry Seal Program (Project No. 22R04) – Notice of Completion for Contract No. 8710-1

- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
- b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
- c) Release Faithful Performance Bond one year after acceptance by the City Council.

8. Approval of Professional Services Agreement with Griffin Structures for Library Lecture Hall Construction Management (Project No. 19F11)

- 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) Approve a Professional Services Agreement (PSA) with Griffin Structures for the Library Lecture Hall construction management contract for a not-to-exceed amount of \$680,000, and authorize the Mayor and City Clerk to execute the agreement.

9. Approval of Amendment No. Three to Agreement for Beach Container Refuse Collection Service with Rainbow Disposal Co., Inc.

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(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 Amendment No. Three to Agreement with Republic Services, Inc. for Beach Container Refuse Collection Service to modify the compensation terms, increase the total not-to-exceed amount by \$1,153,439 for a total not-to-exceed amount of \$3,051,063, and extend the term to February 28, 2026; and
- c) Authorize the Mayor and City Clerk to execute the amendment.

10. School Resource Officer Program Agreement

- 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) Approve the Agreement between the City of Newport Beach and NMUSD to participate in the School Resource Officer Program, and authorize the Mayor to execute the agreement on behalf of the City of Newport Beach.

11. Contract with Arts Orange County to Manage Phase VIII of the Sculpture Exhibition in Civic Center Park

- 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 a contract with Arts Orange County for project management of Phase VIII of the Sculpture Exhibition in Civic Center Park for a total amount not to exceed \$119,000, and authorize the Mayor and City Clerk to sign the agreement.

MISCELLANEOUS

12. Budget Amendment to Accept a Check from the Friends of the Newport Beach Library and Appropriate Funds to the Library's Fiscal Year 2022-23 Maintenance and Operation Budget

- 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) Accept a check in the amount of \$200,000 from the Friends of the Newport Beach Library and approve Budget Amendment No. 23-013 to increase expenditures by the same amount in Division 0106052 (Friends of the Library).

13. Confirmation of Appointments to the the Ad Hoc Municipal Code and 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; and
- b) Confirm Mayor Kevin Muldoon's appointments of himself, Mayor Pro Tem Noah Blom, and Council Member Will O'Neill (Chair) to the Ad Hoc Municipal Code and Council Policy Review Committee.

14. Acceptance of the State of California Office of Traffic Safety Selective Traffic Enforcement Program Grant PT23055

- 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) Authorize the City Council to accept a \$350,000 Selective Traffic Enforcement Program (STEP) award granted to the NBPd by the OTS per City Council Policies F-3 and F-25. To comply with City Council Policy F-3, the City Council must formally accept the award of \$350,000 and create a new appropriation to expend the funds; and
- c) Approve Budget Amendment No. 23-015 increasing NBPd revenue estimates and expenditure appropriations by \$350,000.

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

XVI. ITEMS REMOVED FROM THE CONSENT CALENDAR

XVII. 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 (3) minutes. Before speaking, please state your name for the record.

XVIII. PUBLIC HEARINGS

15. Ordinance Nos. 2022-19 and 2022-20: Tennis Club at Newport Beach Project Amendment (PA2021-260)

- a) Conduct a public hearing;
- b) Adopt Resolution No. 2022-65, *A Resolution of the City Council of the City of Newport Beach, California, Adopting an Addendum to Mitigated Negative Declaration No. ND2010-008 for the Tennis Club at Newport Beach Located at 1602 East Coast Highway (PA2021-260)*;
- c) Adopt Resolution No. 2022-66, *A Resolution of the City Council of the City of Newport Beach, California, Approving a General Plan Amendment, Amendment to Major Site Development Review No. SD2011-002, Amendment to Coastal Development Permit No. CD2017-039, Amendment to Vesting Tentative Tract Map No. NT2005-003, and Amendment to Limited Term Permit No. XP2011-004 for the Tennis Club at Newport Beach Located at 1602 East Coast Highway (PA2021-260)*;
- d) Adopt Resolution No. 2022-67, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of a Local Coastal Program Amendment to the California Coastal Commission to Amend the Newport Beach Country Club Planned Community Development Plan (PC-47) for the Tennis Club Located at 1602 East Coast Highway (PA2021-260)*;
- e) Waive full reading, direct the City Clerk to read by title only, and introduce Ordinance No. 2022-19, *An Ordinance of the City Council of the City of Newport Beach, California, Approving an Amendment to the Newport Beach Country Club Planned Community Development Plan (PC-47) for the Tennis Club at Newport Beach Located at 1602 East Coast Highway (PA2021-260)*, and pass on to second reading on October 11, 2022; and
- f) Waive full reading, direct the City Clerk to read by title only, and introduce Ordinance No. 2022-20, *An Ordinance of the City Council of the City of Newport Beach, California, Approving the Second Amendment to the Development Agreement (DA2008-001) for the Tennis Club at Newport Beach Located at 1602 East Coast Highway (PA2021-260)*, and pass on to second reading on October 11, 2022.

16. Call for Review – Denial of Reforestation Request for 938 Sandcastle Drive

- a) Determine this action is categorically exempt from the California Environmental Quality Act (“CEQA”) pursuant to Sections 15301 (Existing Facilities) and 15304 (Minor Alterations to Land) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because the activities are in the classes of projects which have been determined not to have a significant effect on the environment;
- b) Conduct a public hearing on this Reforestation Request for 938 Sandcastle Drive; and
- c) Review and reconsider the Parks, Beaches & Recreation Commission denial of the applicant’s request for removal and replacement of a City Magnolia (*Magnolia grandiflora*) tree located at 938 Sandcastle Drive, and:
 - i. If it is desired to preserve the Magnolia tree, adopt Resolution No. 2022-68, *A Resolution of the City Council of Newport Beach, California, Denying the Applicants’ Appeal of the Parks, Beaches and Recreation Commission’s Decision to Prohibit the Removal of a City Magnolia Tree at 938 Sandcastle*; **OR**
 - ii. If it is desired to allow the removal and replacement of the City Magnolia tree, direct City of Newport Beach (City) staff to return with a resolution reversing the decision of the Parks, Beaches & Recreation Commission.

17. Ordinance No. 2022-21: Non-Exclusive Commercial Solid Waste Franchise Agreements

- a) Conduct a public hearing to consider the award of Non-Exclusive Commercial Solid Waste Franchises pursuant to Resolution No. 2022-55;
- b) 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
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2022-21, *An Ordinance of the City Council of the City of Newport Beach, California, Granting Non-Exclusive Franchise Agreements for Commercial Solid Waste and Divertible Materials Handling Services Within the City of Newport Beach*, and pass to second reading on October 11, 2022.

18. Community Development Block Grant Program Year 2021-22, Consolidated Annual Performance and Evaluation Report

- a) Conduct a public hearing to receive comments on the Program Year 2021-22 CAPER;
- b) Find this activity exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly;
- c) Approve the Program Year 2021-22 CAPER; and
- d) Authorize the City Manager or her designee to submit the Program Year 2021-22 CAPER to HUD.

XIX. 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 Council Members who voted with the prevailing side.

XX. ADJOURNMENT

Testimony given before the City Council is recorded.
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PLEASE TURN CELL PHONES OFF OR SET IN SILENT MODE

CITY OF NEWPORT BEACH

City Council Meeting Minutes Study Session and Regular Meeting September 13, 2022

I. ROLL CALL – 4:05 p.m.

Present: Mayor Kevin Muldoon, Mayor Pro Tem Noah Blom, Council Member Brad Avery, Council Member Joy Brenner, Council Member Diane Dixon, Council Member Duffy Duffield, Council Member Will O'Neill

II. CURRENT BUSINESS

SS1. Clarification of Items on the Consent Calendar – None

SS2. Fractional Home Ownership Update

Community Development Director Jurjis and Consultant David Blumenthal utilized a presentation to discuss the findings of the 22 cities surveyed, map of the 11 known fractional home ownership locations in the City, and case studies from St. Helena, Palm Springs, and Park City, Utah.

Carmen Rawson sought information regarding timeshares in the City, cited chapters in the Newport Beach Municipal Code (NBMC) relative to timeshares, areas where timeshares are permitted, listed three fractional ownership companies breaking the NBMC, and defined timeshares and types of timeshares. In response to Council Member O'Neill's question, Ms. Rawson referenced NBMC Chapters 21.18 and 21.70.

Nancy Scarbrough noted sentiment shared among residents regarding fractional ownership during recent community events, asked that Council consider the residents' dissatisfaction, and City staff to further explore options to regulate or restrict fractional home ownership.

Bridget O'Connor opposed the fractional home ownership model.

Gary Cruz asked Council to curb shared ownership in the City.

Denise Macias opposed fractional ownership.

Gabe Dima-Smith, Pacaso representative, clarified Pacaso's business model and indicated that the owners are interested in enjoying second-home ownership for single-family residential use, and that short-term rental is prohibited under the business model.

Lisa Mathias opposed the use of single-family dwellings in the R1 zone for shared property development.

An unidentified speaker expressed opposition to fractional home ownership.

Denys Oberman expressed the opinion that entities acting as consolidators are using a short-term lodging model, asked Council for clarity on characterizing fractional home ownership as short-term lodging, and not allow them in residential zones and dense family-oriented residential neighborhoods.

Roberta Schmidt referenced a Pacaso statement in the *Orange County Register*, noting a typical rental time of one week, and shared her concerns for keeping a community feel, knowing your neighbors, nearby fractional owners coming and going, community growth and stability.

Mark Markos expressed opposition to fractional home ownership. In response to Mayor Muldoon's request, Mr. Marcos indicated that a fractional home ownership sublease can be found online and agreed to forward a copy to staff.

Angela Caliger expressed opposition to fractional home ownership.

Brita Leffler advocated for preserving historical construction and banning fractional home ownership development.

Bob Yant relayed a non-supportive community opinion and suggested utilizing a cease and desist order or regulation enforcement to stop fractional home ownership in the City.

Ann Archie described late night noise and noted concern for the quality of life for residents living around fractional home ownership properties.

Jack Brown described people coming and going in the fractional home ownership near his home.

Russ Dahl expressed the seriousness of this issue and how it changes the complexity of the neighborhood.

Roberta Schmidt noted benefits to Pacaso in a fractional home ownership real estate transaction.

Philip Mark expressed concern relative to how the fractional home ownership count has grown from two to twelve, questioned why the NBMC is not being enforced, asked for quick action, and for the City Attorney to review the NBMC to determine applicability.

Beverly Johnson, Compass Realty agent, stated that Compass Realty does not have any fractional home ownership listings and is seeking reasonable comparisons.

Philomena Mark urged Council to take action regarding fractional home ownership developments, noted quality of life disruptions from a nearby fractional home ownership property, and asked Council to ban further development.

Mayor Muldoon recessed the meeting at 4:42 p.m. and reconvened the meeting at 4:53 p.m. with all members of the City Council in attendance.

In response to Council Member O'Neill's questions, City Attorney Harp confirmed that Newport Beach defines code sections differently than other cities and that, while a NBMC section references fractional home ownership for timeshare projects, the code refers to a development, pointed out that over 30% of homes in Newport Beach are held in a LLC configuration, noted issues with applicability of provisions, indicated that Sonoma and St. Helena regulate their ordinances by looking at the operational plan and uses to craft regulations, relayed due process and regulation validity issues in the St. Helena lawsuit, indicated that a concise definition is required with an update to the NBMC and Local Coastal Program (LCP), recommended regulating use without capturing others in it, and agreed to work on regulations for consideration by the City Council. Council Member O'Neill supported regulations that would be similar to defining fractional home ownerships as a timeshare plan and thought the current model does not match the General Plan or zoning code, and encouraged residents to call code enforcement on all code violations. City Attorney Harp suggested bringing the matter to the Planning Commission after initiating the amendment.

Council Member Dixon agreed with Council Member O'Neill, thanked the residents for attending the meeting, noted impacts throughout the City, suggested staff look at what other

jurisdictions have done and come back with recommendations, and suggested adopting a moratorium in the meantime.

Council Member Avery noted that, even before Pacaso, the City was starting to lose local control to the State, experienced more density and traffic, agreed with implementing a moratorium, cautioned the potential cost to the City, supported looking at what other cities have done and updating the NBMC, and mitigate the impacts.

In response to Council Member Brenner's questions, Community Development Director Jurjis indicated that the City has not studied the State of Washington to confirm if they have banned fractional home ownership.

City Attorney Harp noted that a cease and desist order would be based on current NBMC provisions and confirmed that a moratorium places a hold on development and would be the path to immediate action.

Council Member Brenner expressed concerns for neighborhoods affected by short-term lodging, the Regional Housing Needs Assessment (RHNA), residential care facilities, and homelessness, and relayed the importance of finding a solution as soon as possible.

Council Member Duffield expressed the opinion that further study is needed to amend the NBMC and supported considering a moratorium.

Mayor Muldoon summarized the direction to staff to explore a regulation timeshare plan with the Planning Commission, conduct more studies on Sonoma and other communities, enact a moratorium and prohibition in the R-1 zone, and to move with expediency.

In response to Council Member O'Neill's question, City Attorney Harp detailed the standards for a moratorium.

In response to Council Member Dixon's question, City Attorney Harp clarified that the City Council must initiate the code change first before going to the Planning Commission.

Mayor Muldoon clarified that the moratorium would come to Council for a vote and the code amendment first needs to be initiated by Council before going to the Planning Commission.

III. PUBLIC COMMENTS ON AGENDA AND NON-AGENDA ITEMS

Steven Gerard distributed a flyer, invited the City to become a Personhood City and attend the Kirk Cameron movie titled *Lifemark*, asked that this be placed on a future agenda, and sang a song.

Regarding Item 18 (Amending and Re-Adopting the 2021-2029 6th Cycle Housing Element), an unidentified speaker from the Southwest Region of Carpenters expressed concern relative to the environmental impacts of the Housing Element and an interest in having local and skilled workforce requirements added into projects moving forward since he believed it would benefit the climate, boost economic development, and mitigate transportation and greenhouse gases.

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

IV. CLOSED SESSION – After Study Session – Council Chambers Conference Room

A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Government Code § 54956.8): 1 matter

Property: 1201 Dove Street, Newport Beach, California 92660 (APN 427-221-06).

City Negotiators: Seimone Jurjis, Community Development Director and Lauren Wooding Whitlinger, Real Property Administrator.

Negotiating Parties: Parke Miller.

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

V. **RECESSED – 5:26 p.m.**

VI. **RECONVENED AT 5:45 P.M. FOR REGULAR MEETING**

VII. **ROLL CALL**

Present: Mayor Kevin Muldoon, Mayor Pro Tem Noah Blom, Council Member Brad Avery, Council Member Joy Brenner, Council Member Diane Dixon, Council Member Duffy Duffield, Council Member Will O'Neill

VIII. **CLOSED SESSION REPORT**

City Attorney Harp announced that no reportable actions were taken.

IX. **INVOCATION – Pastor Phil Eyskens, Lighthouse of Costa Mesa Church of the Nazarene, Costa Mesa**

X. **PLEDGE OF ALLEGIANCE – Council Member Brenner**

XI. **NOTICE TO THE PUBLIC**

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

Council Member O'Neill:

- Announced the start of school, reminded drivers to observe the 25 mph zones, and asked parents to talk to their children about e-bike safety
- Attended the 9/11 Ceremony conducted by the Newport Beach Elks Lodge
- Announced a bike fatality and fire at Promontory Point on Sunday and acknowledged public safety

Council Member Duffield:

- Attended the Water Quality/Coastal Tidelands Committee meeting and reported an "A" grade for all bodies of water in the City

Council Member Dixon:

- Recognized volunteers over the summer and Labor Day weekend that assisted at Lido Isle Bridge and Newport Island Bridge to discourage bridge jumping and provided lifeguard data
- Attended the Buck Gully 10th Anniversary Celebration, swearing-in of new Newport Beach Police Department officers, the annual luncheon to honor volunteers of the Project Adult Literacy program, concert at Marina Park, and the 9/11 Ceremony conducted by the Newport Beach Elks Lodge

Council Member Brenner:

- Met with Denis Labonge and Amber Snyder regarding the Fire Safety Council and home hardening efforts
- Attended the General Plan Update Planning Committee meeting, Sherman Gardens Annual Garden Party, League of California Cities Conference, two-day Source-to-Sea Water Conference

(water-sourcetosea.org), and eight candidate forums with more upcoming that the community can attend

- Utilized a slide to announce a District 6 Town Hall Zoom Meeting on September 22, 2022, at 5:30 p.m. (newportbeachca.gov/townhall)
- Requested a future agenda item to consider directing staff to review the status of a general aviation issue regarding private jet bias and bring back a report to Council with a plan of action and remedies

Council Member Avery:

- Attended the candidate forum for the Newport Heights Homeowners Association at St. Andrews Presbyterian Church and encouraged attendance at other forums

Mayor Muldoon:

- Attended the 9/11 Ceremony conducted by the Newport Beach Elks Lodge
- Requested a future agenda item to consider creating an ad hoc committee , consisting of residents with background in public safety and criminal justice, to address residential burglary concerns and advise neighborhoods on preventative measures
- Utilized a slide to announce a Concert on the Green on September 18, 2022, at 6:00 p.m.

XIII. MATTERS WHICH COUNCIL MEMBERS HAVE ASKED TO BE PLACED ON A FUTURE AGENDA (NON-DISCUSSION ITEM)

- Consider partnering with Pedego and the Newport-Mesa Unified School District to provide E-Bike education to the community with events at various locations in the City, including the Civic Center – Community Room, OASIS Senior Center, Junior High Schools, and High Schools [Muldoon]

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

- Consider the adoption of a resolution requesting that: (1) the State return authority for the regulation of residential care facilities to cities; (2) the State authorize City personnel to investigate violations of State law and enforce State laws; and (3) until local control is restored, that the California Department of Health Care Services and Department of Social Services; (a) immediately investigate any complaint that a residential care facility (subject to state regulation) has violated the law; (b) ensure that timely enforcement actions are brought against violators; and (c) that the stiffest penalties allowed under the law are imposed on violators to help protect those in recovery as well as adjacent neighbors [Brenner]

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

XIV. PUBLIC COMMENTS ON CONSENT CALENDAR

Jim Mosher noted a past Council practice of allowing the public to ask for a separate discussion and vote on Consent Calendar items, alerted Council of revisions to the State Density Bonus Law (Item 3), believed Council had little information on why the firm for the Fee Study was chosen (Item 12), relayed that the Planning Commission agenda is missing the Study Session about residential care facilities and a possible new ordinance (Item 13), and indicated having not been aware of a Council ad hoc committee relative to residential care facilities.

XV. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. **Minutes for the August 23, 2022 City Council Meeting [100-2022]**
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.

ORDINANCE FOR ADOPTION

3. Ordinance No. 2022-18: A Code Amendment Updating Density Bonus Regulations to Comply with State Law (PA2020-032)

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment; and
- b) Conduct second reading and adopt Ordinance No. 2022-18, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Zoning Code Amendment No. CA2020-004 Amending Chapter 20.32 (Density Bonus) and Other Related Provisions of the Newport Beach Municipal Code Related to Density Bonuses to Comply with State Law (PA2020-032).*

RESOLUTIONS FOR ADOPTION

4. Resolution No. 2022-57: Adopting a Memorandum of Understanding with the Association of Newport Beach Ocean Lifeguards (ANBOL) and Associated Salary Schedule (C-2058A) [38/100-2022]

- 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 2022-57, *A Resolution of the City Council of the City of Newport Beach, California, Adopting a Memorandum of Understanding Between the City of Newport Beach and the Association of Newport Beach Ocean Lifeguards and Amending the Salary Schedule;* and
- c) Approve Budget Amendment No. 23-016 appropriating \$80,617 in increased expenditures in various City division salary and benefits accounts from unappropriated General Fund balance.

5. Resolution No. 2022- 58: Creating an Ad Hoc Committee to Review the Municipal Code [100-2022]

- 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. 2022-58, *A Resolution of the City Council of the City of Newport Beach, California, Creating an Ad Hoc Committee to Review the Municipal Code and City Council Policies and Make Recommendations to the City Council Regarding Possible Modifications Thereto and the Advisability of Using Sunset Provision;* and
- c) Direct the Board of Library Trustees, City Arts Commission, Harbor Commission, Parks, Beaches, and Recreation Commission, and the Planning Commission to each form an ad hoc committee for the purposes of reviewing the Municipal Code and City Council Policies within that particular body's expertise and submit back to City Council by June 30, 2023 recommendations concerning: (1) deleting or reducing language; and (2) the advisability of applying sunset provisions for new or existing Municipal Code provisions.

6. Resolution No. 2022-59: Creating the General Plan Advisory Committee (GPAC) [24/100-2022]

- 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. 2022-59, *A Resolution of the City Council of the City of Newport Beach, California, Creating the General Plan Advisory Committee.*

CONTRACTS AND AGREEMENTS

- 7. Balboa Pier and Channel Place Park Restrooms Rehabilitation Project (Project No. 20F02) – Notice of Completion for Contract No. 8700-1 [38/100-2022]**
 - a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
 - b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
 - c) Release Faithful Performance Bond one year after acceptance by the City Council.
- 8. Ocean Piers Maintenance Project (Project No. 22H03) – Notice of Completion for Contract No. 7884-2 [38/100-2022]**
 - a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
 - b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
 - c) Release Faithful Performance Bond one year after acceptance by the City Council.
- 9. City Bridge Deck Maintenance Project – Award of Contract No. 7679-2 (21R13) [38/100-2022]**
 - a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (c) (repair and maintenance of existing street with no expansion of use) of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment;
 - b) Approve the project drawings and specifications;
 - c) Award Contract No. 7679-2 to Peterson-Chase General Engineering Construction, Inc. for the total base bid price of \$270,800, and authorize the Mayor and City Clerk to execute the contract; and
 - d) Establish a contingency of \$40,620 (approximately 15 percent of total bid) to cover the cost of unforeseen work not included in the original contract.
- 10. Award of On-Call Maintenance/Repair Services Agreement with Surfside Restoration & Waterproofing, Inc., for Seawall Repair Services (C-8520-2) [38/100-2022]**
 - 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 Maintenance/Repair Services Agreement with Surfside Restoration & Waterproofing, Inc., for seawall repair services, for a five-year contract term with a total contract compensation amount of \$500,000, and authorize the Mayor and City Clerk to execute the Agreement.
- 11. Approval of Professional Services Agreement with RJM Design Group, Inc (Contract No. 8891-1) for Arroyo Park Synthetic Turf Replacement (Project No. 23P11) [38/100-2022]**
 - 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 Professional Services Agreement with RJM Design Group, Inc. of San Juan Capistrano, California, for the Arroyo Park Synthetic Turf Replacement project for a total not-to-exceed amount of \$168,425, and authorize the Mayor and City Clerk to execute the Agreement.
- 12. Award of Professional Contract to ClearSource Financial Consulting for Citywide User Fee Study and Cost Allocation Plan Services (C-8951-1) [38/100-2022]**
 - 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) Authorize the Mayor and City Clerk to sign a three-year term contract, with two optional one-year extensions with ClearSource Financial Consulting for a total not-to-exceed amount of \$298,610 to perform the fee study and cost allocation plan work; and
- c) Approve Budget Amendment No. 23-017 appropriating \$33,223 in increased expenditures in Account No. 0103031-811008 from the General Fund unappropriated fund balance.

MISCELLANEOUS

13. Planning Commission Agenda for the September 8, 2022 Meeting [100-2022]

Receive and file.

14. Pulled from the Consent Calendar

15. City Hall and Limited Off-Site Holiday Closure from Saturday, December 24, 2022, through Monday, January 2, 2023 [100-2022]

- 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 closing the Civic Center and providing limited services at off-site facilities from Saturday, December 24, 2022, through Monday, January 2, 2023.

16. General Plan Update Steering Committee (GPUSC) Bi-Monthly Update to the City Council [100-2022]

- 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) Receive and file the report.

17. Final Tract Map No. 19222 for a Residential Condominium Development Located at 900 Newport Center Drive (C-8952-2) [38/100-2022]

- a) Find that potential environmental impacts have been previously mitigated through the implementation of the policies of the General Plan as evaluated in Program Environmental Impact Report for the 2006 General Plan Update (SCH No. 2006011119) (PEIR);
- b) Review and approve the Subdivision Agreement for Final Tract Map No. 19222 pursuant to Section 19.36.010 of the Municipal Code, and authorize the Mayor and City Clerk to execute the Subdivision Agreement;
- c) Review and approve the required construction securities for Final Tract Map No. 19222 pursuant to Section 19.36.030 of the Municipal Code, and authorize the Public Works Director to execute and release securities; and
- d) Review and approve the Final Tract Map No. 19222 located at 900 Newport Center Drive pursuant to Section 19.60.010 of the Municipal Code.

Motion by Mayor Pro Tem Blom, seconded by Mayor Muldoon, to approve the Consent Calendar, except for the item removed (Item 14); and noting the amendments to Item 1.

The motion carried unanimously.

XVI. ITEM REMOVED FROM THE CONSENT CALENDAR

14. Response to the 2021-2022 Orange County Grand Jury Report “How is Orange County Addressing Homelessness?” [100-2022]

City Manager Leung provided an update on what is being done to address homelessness in Orange County, including more shelters in South Orange County, collaborative efforts between and within cities and counties, long term strategies and solutions, timeliness, bed availability, transition to

permanent housing, the Be Well program kick-off, a homelessness ad hoc committee, community education, collaboration with experts to create strategies, and a website dashboard with outreach efforts and related statistics.

In response to Council Member Dixon's question, Homeless Coordinator Basmacıyan reported that 12 members of the community attended the CityNet community education event, noted that panhandling is protected under the First Amendment, signage is posted to discourage giving to panhandlers, and discussed public safety. Council Member Dixon relayed having noticed improved homeless counts and landscaping conditions during her recent visit to McFadden Square but expressed concern about a chronic homeless problem at Marina Park. Homeless Coordinator Basmacıyan indicated that the primary homeless person in Marina Park is in active case management with CityNet, the increased summer activity is allowable as long as the park curfew and NBMC are honored, and confirmed a decreased homeless count since Labor Day.

In response to Council Member Brenner's question, Homeless Coordinator Basmacıyan indicated that she will notify the community when the CityNet event is available for viewing on NBTv. Council Member Brenner acknowledged the cleanliness at McFadden Square and spikes removed on the Ben Carlson statue.

Jim Mosher asked how many people are on the ad hoc committee and the process for appointment.

Council Member Brenner reported that the ad hoc committee structure is being changed to a collaborative one. Homeless Coordinator Basmacıyan added that the meetings are closed to the public and take place quarterly with this month's focus on faith leaders and local agency partners, and the new structure of the committee will be comprised of Newport Beach residents with expertise in homelessness and three members of the City Council.

Mayor Muldoon recommended the letter to the Presiding Judge be amended to reflect the signature of City Manager Leung.

Motion by Council Member Dixon, seconded by Council Member Duffield, 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) authorize the City Manager to sign the cover letter and remit the responses of the City of Newport Beach to the Presiding Judge of the Orange County Superior Court.

The motion carried unanimously.

XVII. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Charles Klobe, President of Still Protecting Our Newport (SPON), announced that the annual meeting will take place on September 24, 2022 at the Environmental Nature Center.

XVIII. PUBLIC HEARING

18. Resolution No. 2022-60: Amending and Re-Adopting the 2021-2029 6th Cycle Housing Element [100-2022]

Community Development Director Jurjis reported having received a letter from the Housing and Community Development Department (HCD) stating that the City's Housing Element meets all the statutory requirements and contains adequate sites planned for 2,700 affordable housing units, making Newport Beach the fifth city to be certified in Orange County. He thanked Deputy Community Development Director Campbell, Principal Planner Murillo, and Principal Planner Zdeba for their work.

Council Member Dixon expressed appreciation to staff, and in response to her inquiry, Community Development Director Jurjis stated that, with the Housing Element complete, staff will focus on the General Plan Update supported by the General Plan Steering Committee and Policy Advisory Committee, the priority is to update the Land Use Element and complete the Environmental Impact Report (EIR) in time for a March 2024 vote, which will be a Greenlight vote, and reported that the remaining Elements will go at their own pace. He further noted the need for a stable project description on the EIR and confirmed that the special election will be for the Land Use Element that will incorporate the housing units.

Council Member Brenner complimented staff for their work on the Housing Element.

Mayor Muldoon opened the public hearing.

Jim Mosher noted that the document for approval contains many policies that are not written, reviewed, or recommended by the public, but written by staff and the State, suggested Council engage in the Greenlight issue, noted discrepancies in the Greenlight vote triggers and its application, expressed concern for litigation that could jeopardize the Greenlight provision, and recommended that staff and the City Council discuss the consequences of a rejected RHNA mandate by the vote of the people.

Suzanne Forrester, VP of Banning Ranch Conservancy, provided an update on the Banning Ranch acquisition effort, pointed out confusing language in the Housing Element (Appendix B, page 91), noted that the State funding and grant restrictions do not include housing opportunity that follows the land in perpetuity, and requested the language be updated to reflect Banning Ranch land as an open space park and nature preserve in the City's General Plan, Land Use Element, and Housing Element.

Dave Tanner provided a handout, requested that Banning Ranch be removed from the Housing Element Update, suggested the entire Housing Element, General Plan Update, and the appropriate NBMC updates be addressed by a single Environmental Impact Report (EIR) within the CEQA document, the whole project be subject to a vote of the public pursuant to the City Charter, and after reading the letter from HCD, asked for clarification on when the rezoning, use, and density will take effect.

Hearing no further testimony, Mayor Muldoon closed the public hearing.

Motion by Mayor Pro Tem Blom, seconded by Council Member O'Neill, to a) find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and b) adopt Resolution No. 2022-60, *A Resolution of the City Council of the City of Newport Beach, California, Amending and Re-Adopting the 6th Cycle Housing Element for the 2021-2029 Period as General Plan Amendment No. GP2021-005 (PA2017-141)*.

The motion carried unanimously.

XIX. MOTION FOR RECONSIDERATION – None

XX. ADJOURNMENT – Adjourned at 6:39 p.m. in memory of Queen Elizabeth II

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 September 8, 2022, at 4:00 p.m.

Kevin Muldoon, Mayor

Leilani I. Brown, City Clerk



CITY OF

NEWPORT BEACH

City Council Staff Report

September 27, 2022
Agenda Item No. 3

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov

PREPARED BY: Tonee Thai, Deputy Community Development Director-Building/ Chief Building Official, tthai@newportbeachca.gov

PHONE: 949-718-1867

TITLE: Resolution No. 2022-62: Request to Add Code Enforcement Officer I Position to the Community Development Department

ABSTRACT:

Over the past year, the Code Enforcement Division has provided nighttime and weekend code enforcement services through the use of a contract code enforcement officer. For the City Council's consideration is a resolution to add one Code Enforcement Officer I position to the Community Development Department (CDD). If the additional position is approved, then the contract position will be removed.

RECOMMENDATION:

- 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. 2022-62, *A Resolution of the City Council of the City of Newport Beach, California, Adding a Code Enforcement Officer Position to the Community Development Department*; and
- c) Approve Budget Amendment No. 23-022 transferring \$86,016 from the Code Enforcement Professional Services account to various salary and benefit accounts.

DISCUSSION:

Due to the enhanced enforcement for short term lodging complaints received through the 24-hour hotline, CDD contracted with Willdan Engineering to provide one contract code enforcement officer to assist in providing evening and weekend enforcement services between the hours of 2 p.m. and 12 a.m. Contract staff also respond to complaints related to illegal street vending, lighting complaints, use permit violations, and restaurant noise complaints. From January 2022 to August 31, 2022, there are 2,394 active cases, of which, 222 were assigned to the contract code enforcement officer.

In response to increased unpermitted street vending activity on public beaches, the contracted code enforcement officer cited a number of unpermitted street vendors. The current contract officer's performance in this role has resulted in positive comments from the chief lifeguard and the president of the Balboa Village Merchants Association. In one case, the contract officer responded to a call from the Newport Beach Police Department to assist in stopping a beach party with live entertainment and alcohol one hour prior to the event starting.

It has been, and continues to be, a challenge to find qualified contract staff to perform the needed code enforcement services. The difficulty is compounded by existing staff having to regularly rotate and train new contract staff to comply with the work duration limitations. Facts that support hiring of a full-time City employee rather than relying on contract staff are: 1) the relatively small pool of individuals that have the right experience; 2) the Penal Code Section 832 certification, which is a minimum requirement of the position; 3) the service schedule CDD provides the community, which includes late evening and weekends; and 4) reducing staff turnover and the time to train new people in the position.

FISCAL IMPACT:

The cost to contract out a full-time code enforcement officer is \$135,200 per year. The fully loaded annual cost for a Code Enforcement Officer I position is \$114,688. However, because the fiscal year is already approximately 25% complete, the attached Budget Amendment only allocates \$86,016 to fund the cost of the position for the remainder of the fiscal year. Staff is recommending utilization of professional service funds currently allocated to funding the contract code enforcement officer position to pay for the cost of the staff Code Enforcement Officer I position. Therefore, no additional funding from the General Fund is required.

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, Division 6, 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. 2022-62
Attachment B – Salary Structure and Job Description
Attachment C – Budget Amendment

Attachment A

Resolution No. 2022- 62: Adding a Code Enforcement Officer Position
to the Community Development Department

RESOLUTION NO. 2022-62

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADDING A CODE ENFORCEMENT OFFICER POSITION TO THE COMMUNITY DEVELOPMENT DEPARTMENT

WHEREAS, City of Newport Beach ("City") Charter Section 601 requires the City Council to provide the number, titles, qualifications, powers, duties and compensation of all officers and employees;

WHEREAS, over the past few years, the Code Enforcement Division's workload has increased, and enforcement hours have expanded to weekends and evening shifts;

WHEREAS, the Code Enforcement Division uses the services of contract staff to provide the weekend and evening services; and

WHEREAS, to ensure the City is able to provide timely responses and meet its current and future obligations, the City Manager recommends that one Code Enforcement Officer be added to the Community Development Department to replace contract staff.

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

Section 1: One Code Enforcement Officer position shall be added to the Community Development Department, Code Enforcement Division.

Section 2: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 3: 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 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: 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 27th day of September, 2022.

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachment B

Full-Time Code Enforcement Officer I Salary Structure and Job Description



CODE ENFORCEMENT OFFICER I

Class Code:
400023

Bargaining Unit: Professional & Technical Association

CITY OF NEWPORT BEACH
Established Date: Jan 15, 2013
Revision Date: Jul 30, 2014

SALARY RANGE

\$28.58 - \$40.22 Hourly
\$2,286.14 - \$3,217.30 Biweekly
\$4,953.31 - \$6,970.83 Monthly
\$59,439.74 - \$83,649.90 Annually

DEFINITION:

To assist in the enforcement of various sections of the Newport Beach Municipal Code relating to property maintenance, zoning, health and safety, specified building codes, noise, water conservation & water quality, business regulations, nuisances, and traffic/street issues; identify, inspect, and assist violators in correcting violations of the City's codes and ordinances; seek voluntary compliance or issue Notices of Violations or citations; and perform related work as required.

DISTINGUISHING CHARACTERISTICS:

Code Enforcement Officer – Trainee: This is the training level position in the Code Enforcement Officer series and is distinguished from Code Enforcement Officer I by the limited scope and complexity of duties performed. Incumbents initially perform work under close supervision and work is observed and reviewed both during performance and upon completion. Upon supervisor recommendation and satisfactory performance in the Code Enforcement Officer Trainee position, the incumbent may progress to the Code Enforcement Officer I after minimum qualifications for the position are met.

Code Enforcement Officer I: This is the entry level position in the Code Enforcement Officer series and is responsible for performing the full range of code and water quality enforcement activities. This level is distinguished from the Code Enforcement Officer II in that the more complex duties and responsibilities are not assumed at this level, nor is functional and technical supervision exercised.

SUPERVISION RECEIVED AND EXERCISED: The Code Enforcement Officer Trainee receives general direction and close supervision from the Code Enforcement Supervisor while learning job related tasks. The Code Enforcement Officer I receives general supervision from the Code Enforcement Supervisor.

ESSENTIAL DUTIES:

The following essential functions are typical for this classification. Incumbents may not perform all of the listed functions and/or may be required to perform additional or different functions from those below, to address business needs and changing business practices:

- With courtesy and tact, enforce Newport Beach Municipal Codes relating to property maintenance, zoning, specified building codes, nuisances, public rights-of-way, water quality

and conservation, health and safety;

- Conduct field inspections and surveys of residential, industrial and/or commercial properties to determine compliance with appropriate codes, ordinances, regulations and conditions of approval for discretionary permits; perform National Pollution Discharge Elimination Systems compliance inspections as required; conduct routine follow-up inspections to verify compliance;
- Issue Notices of Violation, Administrative Citations and letters to property owners/tenants and businesses whose properties are not or may not be in compliance with current codes, ordinances, regulations and conditions of approval for discretionary permits;
- Initiate contact with property owners, tenants and defendants and respond to inquiries from property owners and the public regarding compliance with zoning regulations, property maintenance standards, regulatory practices and current code enforcement cases; respond to citizen complaints regarding potential code violations;
- Serve as liaison and educator to the community, including residents, visitors, and businesses in order to increase voluntary and cooperative compliance with City codes, ordinances, and regulations;
- Assist and represent the City in prosecution of violations, including direct testimony in court or before an Administrative Hearing Officer;
- Meet with City staff and legal counsel regarding complaints; coordinate activities with other code enforcement staff and department personnel;
- Maintain accurate, complete records of complaints, inspections, violations and citations; prepare written reports detailing code enforcement activity
- Participate in available training and instructional classes and seminars;
- Regularly and predictably attend work; and
- Perform related duties as assigned.

QUALIFICATIONS:

To perform this job successfully, an individual must be able to perform each essential function. The requirements listed below are representative of the knowledge, skill, and/or ability required.

Knowledge of:

Code Enforcement Officer Trainee:

Basic principles and practices of public program administration and municipal government operations;

Effective customer service skills and techniques;

Record keeping principles and practices; and

Modern office procedures, methods and computer equipment.

Code Enforcement Officer I (in addition to the Knowledge required for Code Enforcement Officer Trainee):

State and municipal requirements as they relate to the Newport Beach Municipal Code and City, State and Federal Codes, permits, laws, and regulations as they relate to the protection of surface water quality, storm water, and water conservation; and

Principles, practices, methods and techniques of the various aspects of code enforcement including some familiarity with proper due process.

Ability to:

Enforce the Newport Beach Municipal Code, including land use, development and property maintenance;

Apply City, State and Federal Codes, permits, laws, and regulations as they relate to the protection of surface water quality, storm water, and water conservation;

Learn principles, practices, methods and techniques of the various aspects of code enforcement including proper due process;

Research City records and determine conditions that apply to the development and use of private property; Drive a vehicle legally and safely under various conditions;

Exercise good judgment in a variety of situations;

Diffuse tense or stressful situations and gain cooperation through discussion and persuasion;

Communicate clearly and concisely, both orally and in writing;

Appear for work on time;

Follow directions from a supervisor;

Understand and follow posted work rules and procedures; Accept constructive criticism; and

Establish and maintain cooperative working relationship with those contacted in the course of work.

This position may be required to work nights, weekends, holidays, and overtime hours as needed.

EXPERIENCE & EDUCATION AND LICENSE/CERTIFICATE:

A combination of experience and education that would likely provide the required knowledge and abilities may be qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

Code Enforcement Officer Trainee: Six months experience involving heavy public contact, including general compliance, investigatory, or enforcement experience. Municipal government experience desirable.

Code Enforcement Officer I: One year responsible work experience enforcing building, zoning, use permits, and related codes. Code enforcement experience in municipal government highly desirable.

Education: Equivalent to completion of the twelfth grade. College level course work in criminal justice, science, business or public administration desirable; a Bachelor's degree is

highly desirable.

License/Certification: Due to the performance of some field duties which require the operation of a personal or City vehicle, a valid and appropriate California driver's license and an acceptable driving record are required.

Possession of Penal Code Section 832 certification within twelve months of hire.

Please Note: Candidates deemed most qualified, as reflected in their application materials, will be invited to continue in the recruitment process. The prospective candidate must successfully complete a thorough background review, including being fingerprinted by the Newport Beach Police Department. The resulting report of your conviction history, (if any), will be evaluated along with the other information received in connection with your application. Except as otherwise required by law, a criminal conviction will not necessarily disqualify you from the position. The nature, date, surrounding circumstances, and the relevance of the offense to the position applied for may, however, be considered.

Disaster Service Worker: In accordance with Government Code Section 3100, City of Newport Beach Employees, in the event of a disaster, are considered disaster service workers and may be asked to respond accordingly.



City of Newport Beach

BUDGET AMENDMENT

2022-23

BA#: 23-022

Department: Community DevelopmentRequestor: Seimone JurjisONE TIME: ☐ Yes ☒ No☐ CITY MANAGER'S APPROVAL ONLY☒ COUNCIL APPROVAL REQUIRED

Approvals

Finance Director: Date 9/15/22

City Clerk:

Date

EXPLANATION FOR REQUEST:

To transfer existing budget appropriations from professional services to salary and benefit accounts to fund one full time Code Enforcement Officer I for the remainder of FY23.

- ☒ from existing budget appropriations
☐ from additional estimated revenues
☐ from unappropriated fund balance

REVENUES

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
				-	
				-	
				-	
				-	
				-	
				-	
				-	
				-	
Subtotal					\$ -

EXPENDITURES

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
010	01050503	711001		CODE ENFORCEMENT - SALARIES MISCELLANEOUS	63,678.00
010	01050503	721001		CODE ENFORCEMENT - CAFETERIA ALLOWANCE FT	16,866.00
010	01050503	727016		CODE ENFORCEMENT - MEDICARE FRINGES	1,168.00
010	01050503	722001		CODE ENFORCEMENT - PENSION EE NORMAL COST MISC	4,139.00
010	01050503	724001		CODE ENFORCEMENT - PENSION EE CONTRIB MISC	(8,278.00)
010	01050503	723003		CODE ENFORCEMENT - PENSION ER NORMAL COST SAFETY	6,119.00
010	01050503	728003		CODE ENFORCEMENT - COMPENSATED ABSENCES	2,229.00
010	01050503	727013		CODE ENFORCEMENT - EMP ASSISTANCE PROGRAM	16.00
010	01050503	727012		CODE ENFORCEMENT - LIFE INSURANCE	79.00
010	01050503	811008		CODE ENFORCEMENT - SERVICES PROFESSIONAL	(86,016.00)
				-	
				-	
Subtotal					\$ -

FUND BALANCE

Fund #	Object	Description	Increase or (Decrease) \$
010	300000	GENERAL FUND - FUND BALANCE CONTROL	-
		-	-
		-	-
		-	-
		-	-
		-	-
Subtotal			\$ -

No Change In Fund Balance



CITY OF

NEWPORT BEACH

City Council Staff Report

September 27, 2022
Agenda Item No. 4

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Paul Blank, City Harbormaster - 949-270-8159,
pblank@newportbeachca.gov

PREPARED BY: Melanie Franceschini, Management Analyst
mfranceschini@newportbeachca.gov

PHONE: 949-644-3028

TITLE: Resolution No. 2022-63: Acceptance of Oil Spill Response
Equipment Staging Grant Funding from the California Department of
Fish and Wildlife Office of Spill Prevention and Response

ABSTRACT:

The Harbor Department recently applied for and successfully obtained grant funding from the California Department of Fish and Wildlife's Office of Spill Prevention and Response. The funding provided by the grant will be used to supplement the City of Newport Beach's (City's) existing oil spill response equipment, located and pre-positioned at Marina Park, for immediate deployment by the Harbor Department in response to any oil or fuel spills in Newport Harbor.

RECOMMENDATION:

- 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. 2022-63, *A Resolution of the City Council of the City of Newport Beach, California, Accepting Grant Funds from the California Department of Fish and Wildlife, Office of Spill Prevention and Response for Oil Spill Response Equipment Staging*;
- c) Approve Budget Amendment No. 23-019 recognizing \$5,000.00 in grant revenue from the California Department of Fish and Wildlife (10045451-431455) and appropriating \$5,000.00 to Account No. 10045451-881002.

DISCUSSION:

Newport Harbor is one of the largest small-craft recreational harbors on the West Coast, as well as a welcoming port to all boaters who cruise the local waters. The harbor also serves as a home to approximately 1,200 moorings, 1,000 residential piers, a dozen commercial marinas, several yacht clubs, scores of charter vessel operations, and various marine other activities operations. With 23 square miles of ocean waters, and a harbor roughly the size of Central Park, the need to protect local waters and resources, along with the adjacent county and state tidelands and waters, from oil or fuel spills, is highly important.

In November 2017, Public Works Department staff submitted an application to the California Department of Fish and Wildlife's (DFW) Office of Spill Prevention and Response (OSPR) for an Oil Spill Response Equipment Grant. The City was awarded a grant in the amount of \$35,000 in February 2018. The grant monies were expended to procure a standard oil spill response equipment package, including a mobile trailer, decontamination equipment, various booms, and other specialized equipment.

Since then, and as recently as the end of June 2022, Harbor Department staff received initial and refresher training courses, held by the DFW OSPR team on use of the spill response trailer and equipment. The City's latest deployment of supplies and equipment includes the following:

- a. A vessel transiting the harbor on the way to a shipyard had inappropriately sent fuel to an incorrect tank, resulting in overflow through a vent into the harbor. An absorbent boom was used to contain the spill once the vessel was stopped. Absorbent pads were also used to remove leaked diesel fuel from the surface of the water.
- b. A motor vehicle drove off a community pier and into the harbor. Containment boom sections were used to control fluid leaks and absorbent pads were used to remove leaked oil from the surface of the water.

After the June 2022 refresher training course, the Harbor Department submitted a new application to the DFW OSPR to obtain grant funding for the purchase of additional oil spill response equipment. DFW OSPR approved the grant application and has awarded the City with \$5,000 for the additional equipment.

All purchases under this grant shall be made per the City's administrative purchasing procedures and consist of DFW OSPR approved suppliers. There are no matching fund requirements or out of pocket expenditures to the City. Once the equipment is purchased and received, the DFW OSPR will provide a full reimbursement. The equipment shall be owned by the City and may be used without obligation or limitation.

If in need, and in situations in which the equipment is not in use by the City, DFW OSPR and their contractors may access the equipment, and then clean and/or replace after use.

FISCAL IMPACT:

The Budget Amendment increases estimated revenue from the California Department of Fish and Wildlife by \$5,000 and appropriates the grant funds. The revenue will be posted to the Other Government Grants account in the Harbor Department, 10045451-431455, and the purchase will be expensed to the Non-Capital Equipment account in the Harbor Department, 10045451-881002.

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 – Oil Spill Response Equipment Grant Application
Attachment B – Oil Spill Response Equipment Staging Grant Agreement
Attachment C – Budget Amendment
Attachment D – Resolution No. 2022-63



Grant Application

Oil Spill Response Equipment

Please fill out the grant application below and email to cindy.murphy@wildlife.ca.gov or peter.barker@wildlife.ca.gov or mail the completed form to Cindy Murphy, Department of Fish and Wildlife's Office of Spill Prevention and Response, 1010 Riverside Parkway, West Sacramento, CA 95605. If you need additional information, please contact Cindy Murphy at telephone number 916-375-4746 or Pete Barker at 916-375-4740.

Application Information:		
Agency or Tribe Name: City of Newport Beach, Harbor Department		
Address: 1600 W Balboa Blvd		
City: Newport Beach	State: CA	Zip code: 92663
Contact Name: Paul Blank, Harbormaster		
Phone Number: 949.270.8158	Alternate Number: 949.270.8159	Fax Number:
Email: pblank@newportbeachca.gov		

Where The Equipment Will Be Located?
All equipment will be stored in our existing Spill Response trailer which is adjacent to the Harbor Department offices here at Marina Park - 1600 W Balboa Blvd., Newport Beach

How Will The Equipment Be Deployed?
<p><i>Explain who will deploy the equipment and what support equipment (such as boats) will be used.</i></p> <p>Harbor Department personnel that have training in spill response will deploy the equipment and supplies as needed. Currently we have three full time team members and twenty part-time team members who have been trained. The Department operates three patrol boats and one land-based vehicle all of which are capable of deploying the equipment and materials when needed.</p>

***If you need this publication in an alternate format, please contact:
Cindy Murphy at (916) 375-4746 or Peter Barker at 916-375-4740***

Date Received:

Date Reviewed:

ATTACHMENT B



State of California - Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
P.O. Box 944209
Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 2, 2022

Paul Blank
City of Newport Beach Harbor Department
100 Civic Center Drive
Newport Beach, CA 92660

Re: Q2275072 – Oil Spill Response Equipment Staging, Orange County

ACKNOWLEDGEMENT OF WORK COMMENCEMENT AUTHORIZATION DISCLAIMER

Where approval from the California Department of Fish and Wildlife (CDFW) applies, the attached payable grant shall be of no force or effect until it is signed by both parties (CDFW and grantee). The signing of this payable grant by your organization does not authorize the commencement of work.

By signing this letter, your organization acknowledges and agrees not to begin work until all approvals have been obtained, the payable grant has been fully executed, and the grantee has been given authorization to begin work. Should any work begin before all approvals are obtained or authorization is given, services will be considered voluntary.

Please be advised that failure to sign and return this letter will delay approval of your payable grant.

Authorized Signature

Date

Printed Name and Title of Person Signing



State of California - Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
P.O. Box 944209
Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



**OFFICE OF SPILL PREVENTION AND RESPONSE
OIL SPILL RESPONSE EQUIPMENT STAGING, ORANGE COUNTY
GRANT AGREEMENT NUMBER – Q2275072**

GRANTOR: State of California, acting by and through
The California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 94244-2090

GRANTEE: City of Newport Beach
Harbor Department
100 Civic Center Drive
Newport Beach, CA 92660

SECTION 1 – LEGAL BASIS OF AWARD

Pursuant to Government Code 8670.8.3, the California Department of Fish and Wildlife (CDFW or Grantor) is authorized to enter into this Grant Agreement (Agreement) and to make an award to the City of Newport Beach Harbor Department (Grantee) for the purposes set forth herein. Grantee accepts the grant on the terms and conditions of this Agreement. Accordingly, Grantor and Grantee (Parties) hereby agree as follows:

SECTION 2 – GRANT AWARD

2.01 Grant: In accordance with the terms and conditions of this Agreement, including Section 5.07 – General Terms and Conditions, Grantor shall provide Grantee with a maximum of \$5,000 (Grant Funds) to financially support and assist Grantee's implementation of Oil Spill Response Equipment Staging, Orange County (Project).

2.02 Term: The term of this agreement is October 1, 2022, or upon approval, whichever is later, through June 30, 2023.

SECTION 3 – ELIGIBLE USES OF GRANT

Only Grantee expenditures that are necessary to implement the Project, comply with applicable federal and State of California law, and made in accordance with Section 6 – Project Statement and Section 9 – Budget and Payment as set forth within this Agreement are eligible for reimbursement from the Grant Funds.

SECTION 4 – GRANTEE'S REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants to Grantor as follows:

- 4.01 **Existence and Power:** Grantee is a governmental entity validly existing, and in good standing under the laws of California. Grantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
- 4.02 **Binding Obligation:** This Agreement has been duly authorized, executed and delivered on behalf of Grantee and constitutes the legal, valid, and binding obligation of Grantee, enforceable in accordance with the Agreement's terms.

SECTION 5 – GRANTEE’S AGREEMENTS

- 5.01 **Purpose:** This Agreement is entered into by the Parties for the purpose of providing financial support to Grantee to complete the Project, specifically the activities identified within Section 6 – Project Statement.
- 5.02 **Project:** Grantee shall complete activities as set forth in Section 6 – Project Statement.
- 5.03 **Use of Project Funds:** Grantee agrees that only Grantee expenditures that are necessary to implement the Project, comply with applicable federal and State of California law, and made in accordance with Section 6 – Project Statement and Section 9 – Budget and Payment as set forth within this Agreement are eligible for reimbursement from the Grant Funds. Grantee acknowledges that it may not transfer Grant Funds between or among budget line items without written approval from the CDFW Grant Manager in accordance with Section 9 – Budget and Payment.
- 5.04 **Payment Schedule:** Payments shall be made to Grantee according to the payment and report schedule identified in Section 9 – Budget and Payment.
- 5.05 **Eligibility of Funds:** In the event that the California Budget Act does not provide sufficient appropriations to allow Grantor to fund the Project at the level specified in Section 2 – Grant Award and Section 9 – Budget and Payment of this Agreement, Grantor reserves the right to modify this Agreement to reflect a reduction in available funds, as an alternative to termination.
- 5.06 **Submission of Reports:** Grantee shall comply with the format, content, and timing requirements set out in Section 8 – Reports. Failure to submit timely and accurate reports shall be considered evidence of non-compliance with this Agreement and shall permit termination of this Agreement by Grantor.
- 5.07 **General Terms and Conditions:** Public Entities General Grant Provisions (Exhibit 1.a) and Notice of Economic Sanctions (Exhibit 3) are attached hereto and made a part of this Agreement.

- 5.08 Amendments:** This Agreement may only be amended in accordance with Section 5.07 – General Terms and Conditions. Grantee shall submit any request to amend any term of this Agreement in writing to the CDFW Grant Manager no later than 120 days prior to the end of the term of this Agreement. Grantee must include an explanation of and justification for any such request.
- 5.09 Acknowledgement of Credit:** Grantee shall include signage, to the extent practicable, informing the public that the Project received funds through the CDFW. Further, Grantee shall include appropriate acknowledgement of credit to the Office of Spill Prevention and Response (OSPR) Grant Program and its implementing agency, the CDFW, for Grantor's financial support when using any data and/or information developed under this Agreement (e.g., in posters, reports, publications, presentations).
- 5.10 Labor Code Requirements; Prevailing Wage:** State grants may be subject to California Labor Code requirements, which include prevailing wage provisions. Certain State grants administered by the CDFW are not subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code. For more details, please refer to California Fish and Game Code Section 1501.5 and the Department of Industrial Relations website at <http://www.dir.ca.gov>. The grantee shall pay prevailing wage to all persons employed in the performance of any part of the Project if required by law to do so.
- 5.11 California Business and Professions Code Compliance:** Grantee shall be responsible for obtaining the services of an appropriately licensed professional or appropriately licensed professionals if required by the California Business and Professions Code, including but not limited to Section 6700 et seq. (Professional Engineers Act) and Section 7800 et seq. (Geologists and Geophysicists Act).

If Grantee fails to perform in accordance with the compliance provisions of this Agreement, Grantor shall have sole discretion to delay, interrupt, or suspend the work for which the Grant Funds are supplied.

SECTION 6 – PROJECT STATEMENT

- 6.01 Introduction:** During an oil spill, California operates within the Incident Command System (ICS), a mechanism used to bring multiple jurisdictions under one standard operating arena. The ICS is managed by the Unified Command, in most cases, is comprised of a designated official from the United States Coast Guard, the OSPR and the Responsible Party (Spiller); the three members make all decisions on how the oil spill incident operations are planned, executed, and demobilized.

Several Oil Spill Response Organizations (OSRO) are available to provide response and clean-up of oil spills throughout the State. However, in certain remote locations, the OSRO's have difficulty or are unable to pre-stage response equipment. To address this problem, OSPR has established a grant program that

will provide local government agencies with funding to purchase spill response equipment, so they can initiate a first response prior to the OSRO's arrival.

- 6.02 Objectives:** Grant funding will enhance the availability of oil response equipment around the state and will provide local governments an opportunity to protect their economic resources. Grantee will purchase the response equipment as identified in Equipment Specifications (Attachment I).
- 6.03 Project Description:** Grantee's Project Manager will be responsible for all aspects of the administration of this grant which include; procurement, staging and usage of the equipment.
- 6.04 Location:** The equipment will be staged at the City of Newport Marina, located at 1600 W. Balboa Blvd. Newport Beach, CA 92663, Orange County.
- 6.05 Materials and Equipment:** See Equipment Specifications (Attachment I).
- 6.06 Project Implementation:** Consistent with Grantee's proposal for the Project, Grantee will complete the following tasks in accordance with Section 6.08 – Schedule of Due Dates and Deliverables:

Task 1 – Equipment Ordering

1. Place order per OSPR equipment specifications which is attached hereto as Equipment Specifications (Attachment I) and made a part of this agreement.

Task 2 – Equipment Delivery

Coordinate delivery of equipment.

1. Submit report to the CDFW Grant Manager with equipment staging location.
2. The CDFW Grant Manager will perform an inspection of the equipment.

Task 3 – Project Management and Administration

1. Furnish the necessary personnel, equipment, material and/or service(s) necessary for routine or incidental deployment of the equipment provided in this agreement.
2. Equipment may be deployed in the event of an oil spill within Grantee's jurisdiction, for the shelf life of the equipment. Grantee will notify the CDFW Grant Manager within 15 days by phone or e-mail, when the equipment is used in conjunction with an oil spill response. Grantee also agrees to notify the CDFW Grant Manager if the equipment is relocated to a different staging location within the jurisdiction.

3. Provide the CDFW Grant Manager with equipment access such as facility/storage security access codes, keys to gate and trailer locks or designate staff to be on-site to allow the necessary access.
4. Grantee's Project Manager will be responsible for all aspects of the administration of this grant, including procurement, invoicing, final reporting, staging, and usage of the equipment.

6.07 Schedule of Due Dates and Deliverables:

<u>Task</u>	<u>Description</u>	<u>Deliverables</u>	<u>Estimated Completion Dates</u>
1	Equipment Ordering	Equipment	May 15, 2023
2	Equipment Delivery	Location Report	May 15, 2023
3	Project Management and Administration	Invoice	May 30, 2023
		Final Report	May 30, 2023

SECTION 7 – CONTACTS

The point of contact may be changed at any time by either party by providing a 10 day advance written notice to the other party. The Parties hereby designate the following points of contact during the Term of this Agreement:

CDFW Grant Manager:		Grantee Project Manager:	
Name:	Cindy Murphy	Name:	Paul Blank
Title:	Associate Governmental Program Analyst	Title:	Harbormaster
Address:	P.O. Box 944209 Sacramento, CA 94244-2090	Address:	100 Civic Center Drive Newport Beach, CA 92660
Phone:	(916) 324-6250	Phone:	(949) 270-8158
Email:	cindy.murphy@wildlife.ca.gov	Email:	pblank@newportbeachca.gov

Direct all administrative inquiries to:

CDFW Grant Coordinator:		Grantee Project Coordinator:	
Name:	Julia-Malia Olea	Name:	Cynthia Shintaku
Title:	Contract/Grant Coordinator	Title:	Harbor Department Assistant
Address:	P.O. Box 944209 Sacramento, CA 94244-2090	Address:	100 Civic Center Drive Newport Beach, CA 92660
Phone:	(916) 375-5967	Phone:	(949) 270-8159
Email:	julia-malia.olea@wildlife.ca.gov	Email:	cshintaku@newportbeachca.gov

SECTION 8 – REPORTS

- 8.01 Final Report:** No Progress Reports are required; however, Grantee shall submit a Final Report by the date listed in Section 6.07 – Schedule of Due Dates and Deliverables. The report shall summarize the life of the Agreement and describe the work and results pursuant to Section 6 – Project Statement. The Final Report will be submitted, electronically, to the CDFW Grant Manager upon completion of the Project tasks. The CDFW Grant Manager will provide Grantee a sample Final Report template, upon request. The Final Report will consist of one electronic version in Microsoft Word (or compatible format), upon the completion of the Project.
- 8.02 Document Accessibility:** CDFW follows the Web accessibility standards of California Government Code Sections 7405 and 11135, and the Web Content Accessibility Guidelines (WCAG). Since all Office of Spill Prevention and Response Oil Spill Response Equipment Staging Final Reports will be posted to CDFW's website, grantees must ensure that the WCAG standards for adequate accessibility to people with disabilities are met for all Reports and associated submittals. Final Reports, and all associated documents, should be submitted as Word Documents for ease of editing to meet WCAG standards.

SECTION 9 – BUDGET AND PAYMENT

- 9.01 Budget Details and Funding Summary:** Grantor will provide an amount not to exceed \$5,000 as detailed below in the Line-Item Budget Detail (Budget) below. Grantee or its partners will provide up to \$0 in funds or in-kind services as cost share to complete tasks described in Section 6 – Project Statement. Actual expenditures will not be determined until the competitive process and equipment procurement has occurred. The procurement will consist of such items as a mobile storage trailer, boom, absorbents, anchors, personal protective equipment, equipment deployment training (if applicable) and all other items as outlined in Equipment Specifications (Attachment I).

Line-Item Budget Detail	
A. PERSONNEL SERVICES	
N/A	\$0
Total Personnel Services	\$0
B. OPERATING EXPENSES: GENERAL	
Equipment identified in Attachment I	\$5,000
Subtotal Operating Expenses: General	\$5,000
C. OPERATING EXPENSES: SUBCONTRACTORS	
N/A	\$0
Subtotal Operating Expenses: Subcontractors	\$0
D. OPERATING EXPENSES: EQUIPMENT	

Line-Item Budget Detail	
N/A	\$0
Subtotal Operating Expenses: Equipment	\$0
E. INDIRECT COSTS	
Indirect Charge Rate 0% (Applies to Sections A + B only)	\$0
F. GRAND TOTAL (A+B+C+D+E)	\$5,000

9.01.1 Budget Flexibility: Grantee must submit all budget line item revision requests, in writing, to the CDFW Grant Manager, prior to implementing any changes. All proposed budget changes require prior approval from the CDFW Grant Manager, regardless of budgetary impact. Informal Budget adjustments between existing line items may be permitted. Any revision to the Line Item Budget Detail must comply with Section 5.09 – Amendments. Considerations for informal Budget adjustments, if granted, must include:

1. Revisions which are consistent with the purpose, objectives, and description of the Project as detailed in Section 6 – Project Statement;
2. Revisions that do not increase or decrease the total Agreement amount;
3. Revisions that do not substitute key personnel; and
4. Line item shifts **within** a budget category (e.g., Field Supplies to Travel) up to \$25,000 or 10% of the Agreement amount, whichever is less.

Formal Budget adjustments will be considered by the Grantor, with prior approval from the CDFW Grant Manager. An amendment to the Agreement is required if a formal Budget adjustment is approved. Considerations for formal amendments, if granted, include:

1. Shifting Grant Funds between budget categories (e.g., Personnel Services to Operating Expenses);
2. Increasing or decreasing the total Agreement amount;
3. Substituting key personnel; or
4. Line item shifts **within** a budget category (e.g. Field Supplies to Travel) that exceeds \$25,000 or 10% of the Agreement amount, whichever is less.

9.02 Payment Provisions:

9.02.1 Disbursements: Grant disbursements will be made to Grantee in one lump sum payment in arrears, upon receipt of an original itemized invoice and required documentation as identified in Section 6.07 – Schedule of Due Dates and Deliverables.

Grant disbursements will be mailed to the following Grantee address:

Grantee Name:	City of Newport Beach Harbor Department
Attention:	Cynthia Shintaku
Address:	100 Civic Center Drive Newport Beach, CA 92660

9.02.2 Invoice Documentation: The invoice for payment must be accompanied by the Final Report. If there is cost share involved with the project, the final invoice must include a budget summary of cost share expenditures by fund source. The CDFW Grant Manager will provide Grantee with a sample invoice template upon request. The Final Invoice must be submitted to the CDFW Grant Manager by the date identified in Section 6.07 – Schedule of Due Dates and Deliverables. The invoice package must be sent hard copy or email to the CDFW Grant Manager, as identified in Section 7 – Contacts.

Requirements: The invoice shall contain the following information:

1. The word “Invoice” should appear in a prominent location at the top of the page(s);
2. Printed name of Grantee on company letterhead;
3. Grantee’s business address, including P.O. Box, City, State, and Zip Code;
4. Name of the CDFW Region/Division being billed;
5. The invoice date and the time period covered; i.e., the term “from” and “to”;
6. This Agreement number and the sequential number of the invoice (i.e., Q2275072-Invoice 1);
7. The invoice must be itemized using the categories and following the format of the Budget;
8. The total amount due. This should be in a prominent location in the lower right-hand portion of the last page and clearly distinguished from other figures or computations appearing on the invoice. The total amount due shall include all costs incurred by Grantee under the terms of this grant;
9. The original signature of Grantee; and
10. Grantee must provide supporting documentation for the invoice and actual receipts.

Q2275072

CITY OF NEWPORT BEACH HARBOR DEPARTMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of Grantor date set forth below the signature.

AUTHORIZED AGENT FOR GRANTEE

By:

Signature: _____

Printed Name: Paul Blank

Title: Harbormaster

Date: _____

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

By:

Signature: _____

Printed Name: Melinda Peacock

Title: Branch Chief, Business Management Branch

Date: _____

This agreement is exempt from DGS-OLS approval, per SCM 4.06.



City of Newport Beach

BUDGET AMENDMENT

2022-23

BA#: **23-019**Department: HarborRequestor: Melanie FranceschiniONE TIME: ☒ Yes ☐ No☐ CITY MANAGER'S APPROVAL ONLY☒ COUNCIL APPROVAL REQUIRED**Approvals**

Finance Director:

Date 9/6/22

City Clerk:

Date

EXPLANATION FOR REQUEST:

Accepting and appropriating grant monies from the State of California Department of Fish and Wildlife, Office of Spill Prevention and Response for the purchase of oil spill response equipment.

- ☐ from existing budget appropriations
☒ from additional estimated revenues
☐ from unappropriated fund balance

REVENUES

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
100	10045451	431455		HARBOR DEPARTMENT - OTHER GOVT GRANTS	5,000.00
Subtotal					\$ 5,000.00

EXPENDITURES

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
100	10045451	881002		HARBOR DEPARTMENT - NON CAPITAL EQUIPMENT	5,000.00
Subtotal					\$ 5,000.00

FUND BALANCE

Fund #	Object	Description	Increase or (Decrease) \$
100	300000	TIDE & SUBMERGED LANDS FUND - FUND BALANCE CONTROL	-
			-
			-
			-
			-
			-
			-
			-
			-
Subtotal			\$ -

No Change In Fund Balance

ATTACHMENT D

RESOLUTION NO. 2022 - 63

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ACCEPTING GRANT FUNDS FROM THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE, OFFICE OF SPILL PREVENTION AND RESPONSE FOR OIL SPILL RESPONSE EQUIPMENT STAGING

WHEREAS, the City of Newport Beach ("City") is desirous of preserving and promoting uses that contribute to the charm and character of Newport Harbor;

WHEREAS, the City is committed to maintaining the water quality and local natural resources of Newport Harbor and its surrounding waters;

WHEREAS, the State of California Department of Fish and Wildlife is authorized to distribute grants through the Office of Spill Prevention and Response to local agencies that may be at risk of an oil spill occurring in their jurisdiction or are in close proximity to ecologically sensitive sites;

WHEREAS, in 2018 the City applied and received an initial grant in the amount of \$35,000.00 from the California Department of Fish and Wildlife, Office of Spill Prevention and Response ("State") to purchase oil spill response equipment and secure the necessary training;

WHEREAS, the City recently applied to the State for additional grant funds for additional oil spill response equipment; and

WHEREAS, the State has approved the City to receive \$5,000.00 in grant funds ("Grant") for oil spill response equipment procurement and its staging and usage, and now requires a resolution accepting these grant funds.

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

Section 1: The City Council does hereby accept the Grant, made available through the Oil Spill Response Equipment Staging Grant and administered by the Office of Spill Prevention and Response.

Section 2: The City Manager or her designee is hereby authorized to execute any documents necessary for the City to secure payment of the Grant and effectuate the purposes for which the Grant was awarded.

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 27th day of September, 2022.

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney



CITY OF

NEWPORT BEACH

City Council Staff Report

September 27, 2022
Agenda Item No. 5

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,
tfinnigan@newportbeachca.gov

PHONE: 949-644-3035

TITLE: Resolution No. 2022-64: Supporting Restoring Local Authority in the
Regulation of Group Residential Uses

ABSTRACT:

At its September 13, 2022 meeting, the Newport Beach City Council voted unanimously, via a straw poll, in favor of staff returning with a resolution for its consideration that would, if adopted, express the City of Newport Beach's (City's) support for restoring local authority over the regulation of group residential care facilities and call upon the State of California (State) to increase its oversight and enforcement of such facilities until local control is restored.

RECOMMENDATION:

- 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. 2022-64: *A Resolution of the City Council of the City of Newport Beach, California, Supporting the Restoration of Local Authority to Regulate Group Residential Care Facilities and Calling Upon the State of California to Increase its Oversight and Enforcement of Residential Care Facilities Until Local Authority is Restored.*

DISCUSSION:

At the request of Council Member Joy Brenner, at the September 13, 2022 City Council meeting, the Council considered placing a resolution on a future agenda that, if adopted, would express the City of Newport Beach's support for restoring local authority in the regulation of group residential care facilities and call upon the State of California to increase its oversight and enforcement of such facilities until local control is restored. The Council voted unanimously, 7-0, in favor of staff bringing forward such a resolution for its consideration.

The early 2000s brought a proliferation of group homes – particularly those used for alcohol and drug recovery – to Newport Beach. The overconcentration and lack of regulations became a significant concern for many neighborhoods. The City and community members worked together and in 2008, Newport Beach was among the first cities in California to adopt an ordinance to better regulate certain types of group homes within Newport Beach. The number of community concerns and complaints related to City-permitted group homes decreased dramatically and today, the City receives very few, if any, complaints related to the operation of these homes.

California law, however, precludes cities from regulating, in any manner, State-licensed residential care facilities with six or fewer residents. These homes, depending on the services provided, are licensed and regulated by the Department of Health Care Services (DHCS) or the Department of Social Services (DSS). The City routinely receives complaints related to the operation of several State-licensed homes. Staff and residents have found it exceptionally difficult to communicate with, or work in concert with, the State agencies to resolve the concerns. Investigations take months and enforcement and corrective actions are seemingly rare, if at all.

The City has proven through the implementation of its 2008 ordinance and the resulting Conditional Use Permit process that local control can and does result in the operation of group residential uses that meet the needs of those in recovery while also protecting the residential character of Newport Beach neighborhoods.

Resolution No. 2022-64 (attached) expresses the City's strong support for the State to restore the ability of cities to regulate all types of residential care facilities and to authorize cities to take appropriate enforcement action when violations of State law occur. Further, the resolution relays the City's request for 1) DHCS and DSS to immediately investigate any complaint that a state-licensed residential care facility has violated the law; 2) ensure that timely enforcement actions are brought against violators; and 3) ensure that the stiffest penalties allowed under the law are imposed on violators to protect those in recovery and adjacent neighbors.

If Council approves the resolution, staff will send copies to the City's elected State representatives.

FISCAL IMPACT:

There is no direct fiscal impact related to the adoption of the resolution. However, staff from the Community Development Department, City Attorney's Office and City Manager's Office spend time and City resources working with the City Council Ad Hoc on Group Residential Uses and citizens to address concerns related to certain State-licensed group residential facilities within Newport Beach.

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. 2022-64

ATTACHMENT A

RESOLUTION NO. 2022- 64

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, SUPPORTING THE RESTORATION OF LOCAL AUTHORITY TO REGULATE RESIDENTIAL CARE FACILITIES AND CALLING UPON THE STATE OF CALIFORNIA TO INCREASE ITS OVERSIGHT AND ENFORCEMENT OF RESIDENTIAL CARE FACILITIES UNTIL LOCAL AUTHORITY IS RESTORED

WHEREAS, cities are best situated to be aware of and respond to the impacts of residential care facilities upon the health, safety, and general quality of life of the surrounding residents and to take action to protect the clients of residential care facilities; and

WHEREAS, state law preempts the ability of cities to properly regulate certain residential care facilities licensed by the state and address the impacts on surrounding residents from those facilities as well as protect the clients of the residential care facilities.

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

Section 1: The City of Newport Beach supports the restoration of local authority and requests that the State of California: (a) return the authority to regulate all residential care facilities to cities; and (b) authorize city personnel to investigate alleged violations of state law by owners and operators of state licensed residential care facilities and take appropriate enforcement action when violations are found to have occurred.

Section 2: Until the state returns the authority to regulate all residential care facilities to cities, the City of Newport Beach requests that the California Department of Health Care Services and Department of Social Services: (a) immediately investigate any complaint that a state licensed residential care facility has violated the law; (b) ensure that timely enforcement actions are brought against violators; and (c) that the stiffest penalties allowed under law are imposed on violators to help protect those in recovery as well as adjacent neighbors.

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.

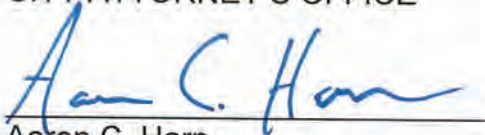
ADOPTED this 27th day of September, 2022.

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

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



Aaron C. Harp
City Attorney



NEWPORT BEACH

City Council Staff Report

September 27, 2022
Agenda Item No. 6

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Peter Tauscher, Senior Civil Engineer,
ptauscher@newportbeachca.gov

PHONE: 949-644-3316

TITLE: Fire Station No. 2 Project (Project 15F13) – Notice of Completion for
Contract No. 8269-2

ABSTRACT:

On November 10, 2020, the City Council awarded Contract No. 8269-2 for the Newport Beach Fire Station No. 2 project to Robert Clapper Construction Services, Inc. (RCC). The work is now complete and staff requests City Council acceptance and closeout of the contract.

RECOMMENDATION:

- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
- b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
- c) Release Faithful Performance Bond one-year after acceptance by the City Council.

DISCUSSION:

Overall Contract Cost/Time Summary

Awarded Contract Amount	Final Total Contract Amount	Total Contract Change Amount	Percent Contract Cost Change
\$6,289,000	\$6,790,161.69	\$501,161.69	8.0%
Allowed Contract Time + Approved Extensions (Months) =		18	Actual Time Used (Months) 18

The work necessary for the completion of this contract consisted of preparing the site for the new buildings; surveying; grading the site; pouring foundations; constructing a fire station and public restroom facilities; landscaping the site; and installing/coordinating with utilities.

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

Original Bid Amount:	\$ 6,289,000.00
Actual Cost of Bid Items Constructed:	\$ 6,289,000.00
Total Change Orders:	\$ 501,161.69
Final Total Contract Amount:	\$ 6,790,161.69

The final total contract amount is \$6,790,161.69, which was approximately 8.0 percent higher than the original bid amount. The cost increase was primarily due to adding offsite work to the project scope, upgrading the self-contained breathing apparatus refill equipment, changes to the exterior architecture, and addressing building fire rating. After the project was awarded, Fire Department staff requested adding a vehicle exhaust system that removes vehicle exhaust fumes from the apparatus bay directly to outside the building. Pursuant to Council Policy F-14 (Authority to Contract), the City Manager was able to approve this change order, adding 1.8 percent to the Council approved 10-percent contingency. The Fire Department provided the necessary funding to increase the project contingency allowance to 11.8 percent.

A summary of the project schedule milestones is as follows:

Estimated Start of Construction per Annual Baseline Schedule	January 19, 2021
Actual Start of Construction Per Notice to Proceed	January 19, 2021
Extended Contract Completion Date Inclusive of Extra Work	July 11, 2022
Actual Substantial Construction Completion Date	July 11, 2022

RCC completed the work within the approved contract time.

FISCAL IMPACT:

Funds for the construction contract were expended from the following account(s):

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
Fire Station CIP Fund	53201-980000-15F13	\$ 6,665,653.69
Fire Operations – Equipment NOC	01040401-911024	\$ 125,000.00
Total:		\$ 6,790,161.69

ENVIRONMENTAL REVIEW:

On November 10, 2020, the City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 (In-Fill Development Projects) of the CEQA Guidelines. This exemption applies to in-fill development projects in urban areas that are consistent with the General Plan and applicable development standards.

NOTICING:

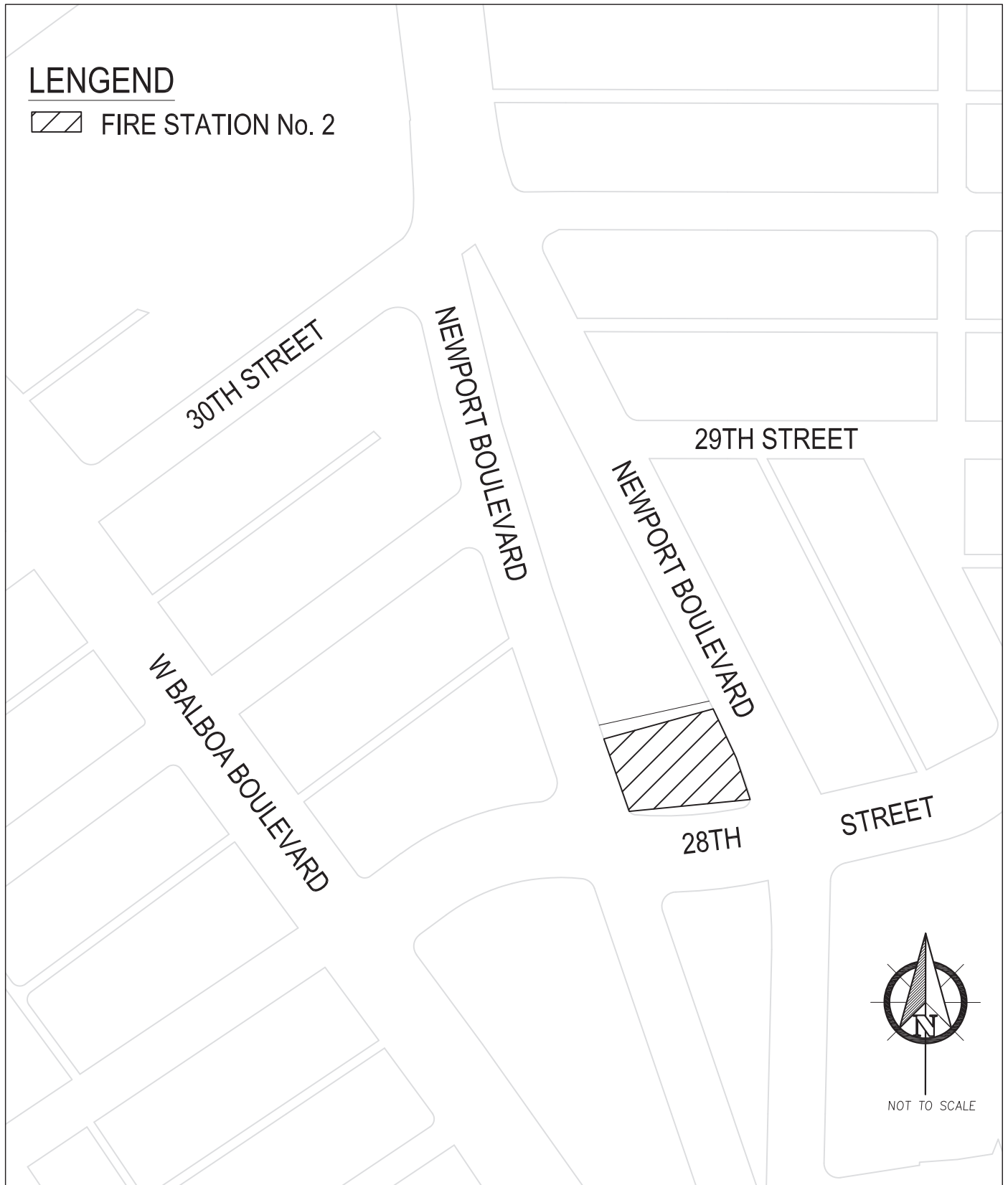
The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENT:

Attachment A – Location Map

LENGEND

 FIRE STATION No. 2



LIDO FIRE STATION NO. 2
REPLACEMENT
LOCATION MAP

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

C-8169-2

9/27/2022



NEWPORT BEACH

City Council Staff Report

September 27, 2022
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: Andy Tran, Senior Civil Engineer,
atran@newportbeachca.gov

PHONE: 949-644-3315

TITLE: Slurry Seal Program (Project No. 22R04) – Notice of Completion for
Contract No. 8710-1

ABSTRACT:

On April 12, 2022, the City Council awarded Contract No. 8710-1 for the Fiscal Year 2021-22 Slurry Seal Program to American Asphalt South, Inc. 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;
- b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
- c) Release Faithful Performance Bond one year after acceptance by the City Council.

DISCUSSION:

Overall Contract Cost/Time Summary

Awarded Contract Amount	Final Total Contract Amount	Total Contract Change Amount	Percent Contract Cost Change
\$977,352.00	\$996,825.61	\$19,473.61	2.00%
Allowed Contract Time + Approved Extensions (Days) =		40	Actual Time Used (Days) 39

The Slurry Seal Program included distributing construction notices to affected residents and businesses; clearing existing pavement of debris, soils and other loose materials; removing existing traffic striping, pavement markings, and raised pavement markers; weed removal and crack sealing; edge grinding; placing asphalt slurry seal; placing asphalt seal coat; installing new traffic striping, pavement markings and raised pavement markers; and other incidental items of work necessary to complete the work within the Newport Heights and Cliff Haven communities. The project also included seal coating and striping the parking lot at the City of Newport Beach's (City's) John Wayne Park.

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

Original Bid Amount:	\$ 977,352.00
Actual Cost of Bid Items Constructed:	\$ 946,911.24
Total Change Orders:	\$ 49,914.37
Final Total Contract Amount:	\$ 996,825.61

The final total contract amount was \$996,825.61, approximately 2.0 percent higher than the original bid amount. This cost increase was primarily due to additional slurry seal work requested by staff. This additional work included slurry sealing 28th Street between Newport Boulevard North and Newport Boulevard South adjacent to the Peninsula Fire Station No. 2. Additionally, during the slurry seal operation, the contractor encountered delays due to several City water main breaks on Cliff Drive and Clay Street. Following repair of the water main breaks, American Asphalt South remobilized to the Newport Heights community to complete the slurry seal for these areas.

A summary of the project schedule milestones is as follows:

Estimated Start of Construction per Annual Baseline Schedule	June 13, 2022
Actual Start of Construction Per Notice to Proceed	June 13, 2022
Extended Contract Completion Date Inclusive of Extra Work	August 8, 2022
Actual Substantial Construction Completion Date	August 6, 2022

The contractor was able to substantially complete all of the contract work within the prescribed contract time; and was able to successfully adhere to the City's specific scheduling requirements. This included slurry sealing several streets adjacent to the three schools in Newport Heights prior to the start of the school year.

FISCAL IMPACT:

Funds for the construction contract were expended from the following account:

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
General Fund CIP	01201927-980000-22R04	\$ 996,825.61
	Total:	\$ 996,825.61

ENVIRONMENTAL REVIEW:

On April 12, 2022, 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



VICINITY MAP

NOT TO SCALE

**SLURRY SEAL PROGRAM
LOCATION MAP**

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

C-8710-1

9/27/22



CITY OF

NEWPORT BEACH

City Council Staff Report

September 27, 2022
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: Peter Tauscher, Senior Civil Engineer,
ptauscher@newportbeachca.gov

PHONE: 949-644-3316

TITLE: Approval of Professional Services Agreement with Griffin Structures
for Library Lecture Hall Construction Management (Project
No. 19F11)

ABSTRACT:

The Public Works Department solicited proposals from qualified firms for the construction management of the Library Lecture Hall project. Twelve firms submitted proposals. After a review of the proposals, Griffin Structures (Griffin) was determined to be the most qualified to provide the requested construction management services for the Library Lecture Hall project.

RECOMMENDATION:

- 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) Approve a Professional Services Agreement (PSA) with Griffin Structures for the Library Lecture Hall construction management contract for a not-to-exceed amount of \$680,000, and authorize the Mayor and City Clerk to execute the agreement.

DISCUSSION:

On November 30, 2021, staff made a presentation to the City Council regarding the Library Lecture Hall concept plan, budget and schedule. Council approved the concept design and budget and directed staff to proceed with the construction documents and obtain bids for construction. One of the items in the budget was for hiring a construction management firm. Generally, it is preferred to award the construction management contract prior to soliciting for bids so the bidding documents can be reviewed for constructability and budget accountability. The construction management firm will team with City of Newport Beach (City) staff and the design consultant in preparing the project for bidding. Following the bidding process, the construction manager will continue assisting the City with management and oversight of construction and post-construction activities.

The project is scheduled for construction bid solicitation in late fall 2022 and to return to the Council for contract award in early 2023. Following award, construction will begin and is expected to have a duration of approximately 15 months.

A Request for Proposals (RFP) was originally issued to provide construction management services for Fire Station No. 2 and the Library Lecture Hall. A total of 12 proposals were received. The proposals were evaluated by staff and seven of these proposals earned a minimum of 70 percent of the technical score. Three consultants ranked noticeably higher than the other firms and were separated by less than one percent. Erickson-Hall was awarded the Fire Station No. 2 construction management contract. Of the other two top-rated firms from the RFP process, a review of the Griffin Structures proposal determined it would be the best-suited construction management firm for the Library Lecture Hall project. The resulting scoring is as follows:

PROPOSER	TOTAL SCORE (Out of 300)	OVERALL RANK
Erickson-Hall Construction	267	1
Griffin Structures, Inc.	266	2
TELACU Construction Management	264	3
Cumming Corporation	242	4
Kitchell	241	5
Safework, Inc.	236	6
Wildan Engineering	227	7

Griffin will serve as an extension of staff in managing the day-to-day project aspects, therefore the ability to integrate with City policies and procedures was emphasized. While several of these firms presented a capable team, staff feels Griffin is superior, citing its well-suited project team members; in-depth and thorough construction management plan and approach; experience with a large number of similar, high-end projects; work experience as a construction manager; as well as the firm's dedication to strong and extensive schedule/cost control.

In addition, Griffin has successfully delivered similar construction projects for other local agencies including Palos Verdes, Santa Clarita and Rancho Cucamonga. The firm also has experience working for the City, successfully serving as the construction manager and completing the multi-phase Marina Park project on time and on budget. Therefore, staff recommends approving a PSA with Griffin Structures as the construction manager for the Library Lecture Hall project for a total amount not-to-exceed \$680,000.

The negotiated fee is about 5.5 percent of the estimated construction budget, which is in line with the industry standard for a project of this scale.

The proposed construction management services scope of work includes, but is not limited to the following:

- Provide design and constructability reviews of the bid packages
- Assist with public bidding, including pre-qualification of bidders and award process
- Conduct all on-site administration, observation and management
- Continually manage project construction cost and schedule
- Provide quality assurance and quality control
- Administer and document weekly construction coordination meetings with the contractor, design consultants, and City
- Review payment invoices, change orders and facilitate negotiations
- Manage, track, follow-up, and close-out all Requests for Information (RFIs) related to design clarifications, material submittals, approvals, etc.
- Analyze and update construction schedule and coordinate phasing plans
- Provide post-construction services, including construction punch-list management and completion
- Oversee substantial and final completion processes, and project acceptance and close-out

FISCAL IMPACT:

The adopted budget includes sufficient funding for this service. It will be expensed to Account No. 16601-980000-19F11 (American Rescue Plan Act (ARPA)) for the Library Lecture Hall project. The not-to-exceed fee is \$680,000, which is approximately 5.5 percent of the construction budget. For projects of this magnitude, 5 to 6 percent construction management costs are reasonable, and in this case the City has included scope for the construction manager to assist in constructability review and bidding.

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:

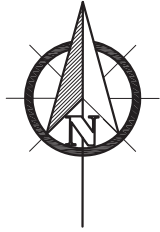
The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

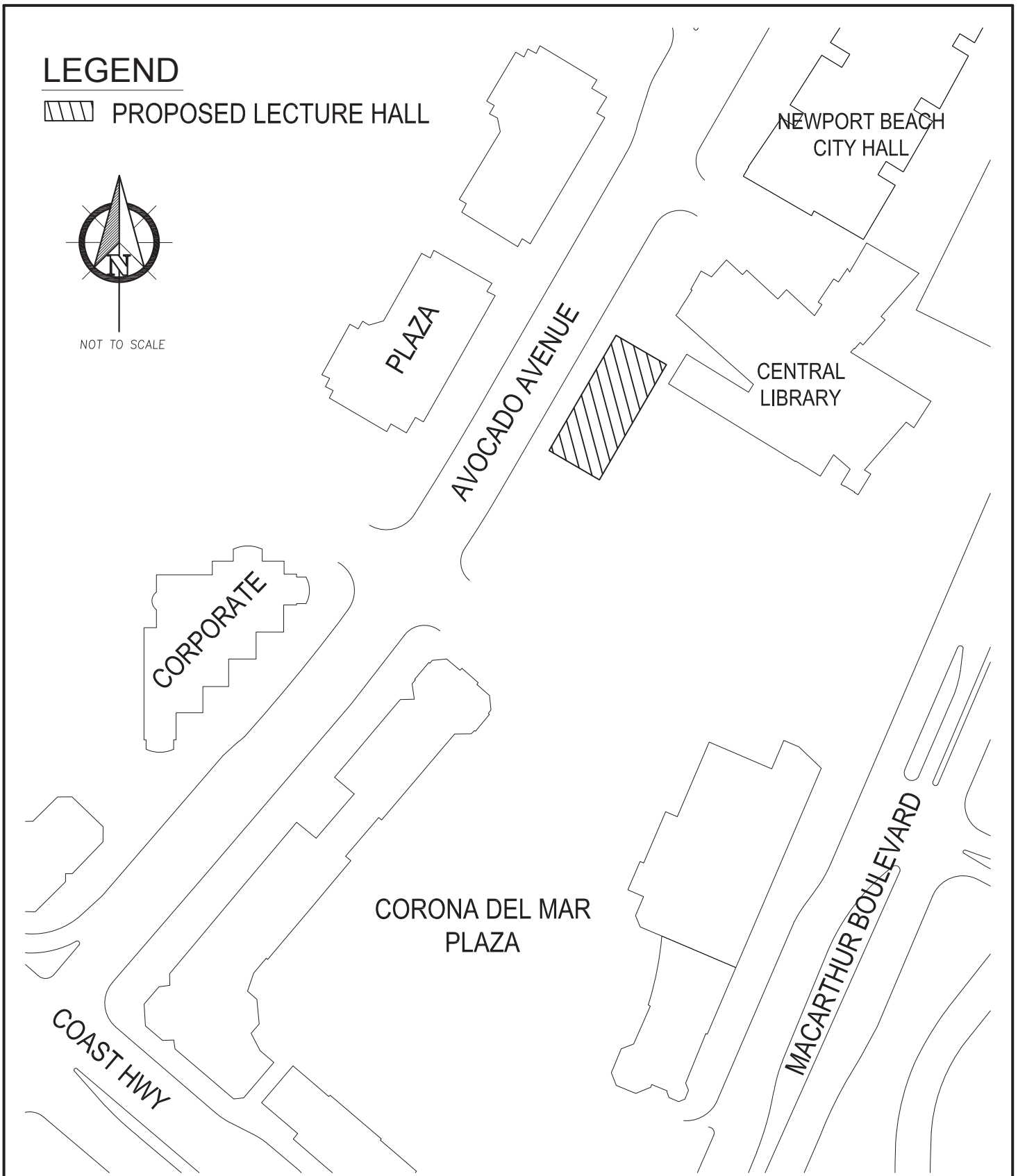
Attachment A – Location Map
Attachment B – Professional Services Agreement

LEGEND

 PROPOSED LECTURE HALL



NOT TO SCALE



CITY OF NEWPORT BEACH
CENTRAL LIBRARY LECTURE HALL
LOCATION MAP

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

C-7444-2

9/27/22

ATTACHMENT B

PROFESSIONAL SERVICES AGREEMENT WITH GRIFFIN STRUCTURES, INC. FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE CENTRAL LIBRARY LECTURE HALL

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 27th day of September, 2022 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and GRIFFIN STRUCTURES, INC., a California corporation ("Consultant"), whose address is 1 Technology Drive, Suite 1829, Irvine, California 92618, 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 construction management services for the Central Library Lecture Hall ("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 October 1, 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 **Six Hundred Eighty Thousand Dollars and 00/100 (\$680,000.00)**, 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 Jon Hughes 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 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 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 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 Consultant's presence or activities conducted on the Project (including the negligent, reckless, and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them).

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

10. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil

service status or other right of employment shall accrue to Consultant or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

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

12. CITY POLICY

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

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

14. INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

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

16. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

17. OWNERSHIP OF DOCUMENTS

17.1 Each and every report, draft, map, record, plan, document and other writing produced, including but not limited to, websites, blogs, social media accounts and applications (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Additionally, all material posted in cyberspace by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents, including all logins and password information to City upon prior written request.

17.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant, and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

17.3 All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

18. OPINION OF COST

Any opinion of the construction cost prepared by Consultant represents the Consultant's judgment as a design professional and is supplied for the general guidance of City. Since Consultant has no control over the cost of labor and material, or over

competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinions as compared to Consultant or contractor bids or actual cost to City.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

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

25. CONFLICTS OF INTEREST

25.1 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.

25.2 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.

26. NOTICES

26.1 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.

26.2 All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Director of Public Works
Public Works
City of Newport Beach
100 Civic Center Drive
PO Box 1768
Newport Beach, CA 92658

26.3 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attn: Jon Hughes
Griffin Structures, Inc.
1 Technology Drive, Suite I-829
Irvine, CA 92618

27. CLAIMS

27.1 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.).

27.2 To the extent that Consultant'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 Consultant to file a claim in strict conformance with the Government Claims Act. To the extent that Contractor/Consultant's claim is not a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, Consultant shall be required to file such claim with the City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

28. TERMINATION

28.1 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.

28.2 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.

29. PREVAILING WAGES

29.1 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 Consultant 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 Consultant 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 Consultant 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.

29.2 Unless otherwise exempt by law, Consultant 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. Consultant 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.

30. STANDARD PROVISIONS

30.1 Recitals. City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

30.2 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.

30.3 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.

30.4 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.

30.5 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.

30.6 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.

30.7 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.

30.8 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.

30.9 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.

30.10 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.

30.11 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.

30.12 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: 9/14/22

By:  _____
Aaron C. Harp
City Attorney

9/13/22 DAG

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Kevin Muldoon
Mayor

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CONSULTANT: Griffin Structures, Inc., a
California corporation

Date: _____

By: _____
Jon Hughes
Executive Vice President

Date: _____

By: _____
Kelly Boyle
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

I. PRE-CONSTRUCTION PHASE

- **Constructability Review**

- Perform constructability review of the project contract documents.
- Provide input for methods of construction.
- Evaluate duration of construction.
- Review the Architect's contract document submissions and provide written comments on adherence to the City's requirements, schedule, budget, constructability, and value engineering recommendations.
- Coordinate with the various disciplines, including civil, grading, demolition, structural, architectural mechanical, electrical, HVAC, plumbing, interior finishes, FF&E, and landscape and oversee all activities.
- Provide value engineering review and recommendations during the design process.

- **Cost Evaluation/Adjustment**

- Advise the City and Architect if it appears that the Construction Cost may exceed the budgeted amount as set forth in the Project Budget and make recommendations for corrective action to bring the Construction costs with the City Budget.

II. PLAN CHECK AND BIDDING PHASE

- **Pre-Qualification of Bidders**

- Assist City with pre-qualifying contractors for various components for each projects per criteria set forth by the City.
- Make suggestion as to what trades should be considered through a formal prequalification process (may only be specific to the LLH Project).

- **Public Relations Activities**

- Assist the City in public relations including, but not limited to, preparing information of each project and attending site, internal and public meetings.
- Consultant will be the point of contact for the community during all phases of construction in regards to any questions, complaints, safety issues, noise problems, dust problems and similar matters.

- **Contractor Bidding**

- Oversee contractor bidding, including pre-bid site walk and bidder orientation, coordination of inquiries, oversee bid RFI's and the issuance of addenda, and bid evaluations.
- Assist City in recommendations for award and preparation of staff report for Council award.

- **Rebidding**

- Should the project require rebidding, Consultant will oversee the rebid process and support the City and project team to make the necessary modifications to the bid package in anticipation of a rebid process. Once the rebid process is initiated, Consultant will provide the same bid support as described above.

III. CONSTRUCTION PHASE

- **Pre-Construction Meeting**

- Prepare agenda and lead pre-construction meeting
- Attend pre-construction orientation meeting.
- Orient the successful contractors to the various reporting procedures and site rules prior to the commencement of actual construction.
- Prepare meeting minutes.

- **Contract Administration**

- Administer the construction Contract.
- Enforce and oversee Contractor preparation of construction staging areas on-site.
- Enforce and oversee Contractor preparation of site for construction.
- Enforce and oversee Contractor preparation of fencing, barricades or other items reasonably necessary for efficient construction.
- Provide management or related services to coordinate work of the contractors and the activities and responsibilities of the Architect and City to complete each project in accordance with the contract documents.

- **Construction Manager**

- Provide competent full time construction manager to oversee all activities in the field and serve as City's representative in the coordination of all activities of the project team.

- **Submittal Procedures**

- Establish and implement procedures with the City and Architect to coordinate and review shop drawing submittals.
- Coordinate and oversee Architectural review request for information (RFI), materials and samples, product data, change orders, payment requests, material delivery dates and other procedures.
- Maintain logs of all RFI, change orders, payment requests and other necessary documents.
- Establish a procedure for and collect certified payroll from the Contractors.

- **Meetings**

- Coordinate and conduct pre-construction, construction and weekly job site progress meetings with the contractors, Architect and City.
- Record, transcribe and distribute meeting minutes to all attendees, the City and all other appropriate parties.
- Assist in the resolution of any technical construction issues.
- Arrange and/or attend any other necessary meeting as required.

- **Quality Assurance/Quality Control (QA/QC)**

- Establish and implement a Quality Assurance management plan.
- Observe, verify and document the specified level of construction quality.
- Observe and track construction deficiencies and oversee corrections in accordance with project documents utilizing standardized field observation reports

- **Coordination of Technical Inspection & Testing**

- Work with contractors to coordinate all testing required by the Contract Documents, Architects, or other third parties to obtain the release of any required permit.
- Assist the City in selecting any special consultants or testing laboratories if needed.

- **Construction Observation**

- Ensure the construction conforms to the approved plans and specifications.
- Confirm the materials and equipment incorporated in the work are handled, stored and installed properly and adequately and in compliance with the Contract Documents.
- Guard against defects and deficiencies and advise the City of any deviations, defects or deficiencies observed in the work.

- **Non-Conforming Work**

- Review Contractors' recommendations for corrective action on observed non-conforming work.
- Make recommendations to the City and Architect in instances where work is defective or not in conformance with the Contract Documents.
- Observe the Contractors' work to verify all authorized changes are properly incorporated.

- **Exercise of Contract Prerogatives**

- Advise and make recommendations to the City for implementing City's Contract prerogatives. Examples of recommendations are giving the Contractor notice to accelerate the progress when the schedule goals are in jeopardy due to Contractor's delay or withhold payments to Contractor to ensure Contract compliance.

- **Implementation of Master Project Schedule**

- Establish, implement and update the Master Project Schedule to set timeline and milestones.
- Manage and track the activities of Contractors such as sequences and duration, allocation of labor and materials, processing of shop drawings, product data and samples, delivery of products requiring long lead time procurement, and other items to ensure compliance with the City's occupancy requirements.

- **Monitor Estimates of Construction Cost**

- Provide regular monitoring of the approved estimate of Construction Cost.

- **Construction Progress Review**

- Maintain daily log documenting a record of weather, Contractors present on the site, number of workers, work accomplished, problems encountered, and relevant data or additional data as the City may require.
- Prepare daily inspection records with pictures.

- **Maintain On-Site Records**
 - Verify and ensure all on-site drawings and Contract Documents are accurate and current.
- **Schedule of Values & Processing of Payments**
 - Review and recommend Contractors' schedule for the tasks included in that contractor's schedule of events.
 - Review and make recommendations to the City regarding payments to the contractors.
- **Evaluate Change Order Proposal Costs**
 - Evaluate Contractors' costs for proposed change orders and make a recommendation to the City regarding the acceptance of any proposals for a change order.
 - Facilitate negotiations on any change order costs and time extensions.
- **Change Order Reports**
 - Ensure and administer all change orders authorized and approved by the City.
 - Prepare and distribute a summary change order report on a monthly basis.
 - Identify and document the effect of the change order on the Contract price and Master Project Schedule.
- **Project Status Reports**
 - Prepare and distribute weekly Project Status Report.
 - Project Status Report will include an itemized summary and update of all key items necessary to adhere to the Master Project Schedule.

IV. PROJECT CLOSE-OUT & POST-CONSTRUCTION SERVICES

- **Completion of Contracts & Project**
 - Assist Architect in preparing a list of incomplete or unsatisfactory items (Punch-list) and prepare a schedule for the completion of each item.
 - Establish a 90 and 360-day Punch-List follow-up.
 - Prepare a summary of the status of each contractor and sub-contractor Assist the Architect to monitor completion of pending items.
- **As-Built Documents & Operation Manuals**
 - Verify accuracy of as-built documents.

- Review and coordinate final construction document specifications, shop drawings, and submittals.
- Ensure delivery of program warranties.
- Ensure delivery of operations and maintenance manuals.
- **Training Sessions**
 - Coordinate and schedule training sessions with manufacturers to provide training for the City maintenance and operations staff.
 - Document all City training sessions and arrange for supplementary information, where needed.
- **Initial Start-up & Testing**
 - Coordinate with Architect and City's maintenance staff to observe the Contractors' proper installation of utilities, operational systems and equipment.
 - Assist the City with the initial start-up and testing.
 - Manage the coordination and installation of the appropriate furniture, fixture and equipment.
- **Project As-Built, Close Out, & Warranties**
 - Review contractual requirements for as-built drawings, close out documents and warranties.
 - Document and compile all required documentation for deliver to the City.
 - Coordinate and assist City in the move-in.
- **User Complaints**
 - Assist with response to initial post-occupancy complaints regarding missing or malfunction building components and equipment and contractor/vendor warranty items.

V. SCHEDULE RECOVERY MANAGEMENT

- Consultant shall maintain strict adherence to the Contractor update requirements and by applying schedule analysis. Consultant shall help identify potential delays before they happen.
- Consultant shall implement key strategies to shift the critical path away from the potential issue at hand, which allows for the project to move forward while carefully addressing the challenge identified. In the rare occurrence where a recovery schedule is in fact needed,

Consultant's team will work closely with the project team to identify all possible scenarios that allow for a solution.

- This includes: reviewing trade stacking, access strategies, long lead installations, submittal review times, potential reorganization of phasing etc. In the end it is the Contractor's responsibility to deliver the project on time, and the Consultant will utilize every tool available to enforce that requirement.

VI. METHODOLOGY TO GENERATE BIDDER INTEREST

- Consultant shall use its database of Contractors to generate significant bidder interest. Typically, with a project of this complexity, a 2 phased approach that includes performing a Contractor prequalification phase followed by a bid phase will be used. It is during the prequalification phase that Consultant will work to maximize bidder interest.
- This includes, but is not limited to the following; making direct calls to potential bidders, advertising the project on multiple publications, preparing a very attractive RFQ that incentivizes the bidders to participate, and constant follow through during the RFQ process.

VII. CONSTRUCTION DISRUPTION MITIGATION

- It might be said that ALL construction management is "construction disruption mitigation". Given the highly iterative and complex nature of construction projects, the myriad of participants in the process, and the depth of the supply chain required construction projects have a unique vulnerability to disrupting events.
- Consultant shall mitigate these potential disruptions by apply 3 key concepts at all times;
 - Clear and coherent communication with all team members
 - a fact-based forward-looking approach that seeks to identify potential issues 3-6 months in advance, and
 - a collaborative and team building management philosophy that engages the strengths of all members.
- By applying these principals, Consultant shall be able to maintain clean and manageable documentation, make actionable recommendations, early solutions to potential problems, maintain project schedule and ultimately deliver a project that is on or under budget.

EXHIBIT B

SCHEDULE OF BILLING RATES

Item No.	PROJECT PHASE	PRINCIPAL IN CHARGE	PROJECT EXECUTIVE	CONSTRUCTION MANAGER
		Jon Hughes \$240/hr.	Robert Godfrey \$225/hr.	Cody Roth \$205/hr.
1	PRECONSTRUCTION SERVICES	24	270	90
1.1	Constructability Review	Incl	Incl	Incl
1.2	Cost Evaluation/Adjustment	Incl	Incl	Incl
1.3	Pre-Qualification of Bidders	Incl	Incl	Incl
1.4	Public Relations Activities	Incl	Incl	Incl
1.5	Pre-Bid Site Walk	Incl	Incl	Incl
1.6	Coordination and Inquiries	Incl	Incl	Incl
1.7	Addenda Review	Incl	Incl	Incl
1.8	Contracts and Mobilization			
2	CONSTRUCTION MANAGEMENT	60	130	2580
2.1	Pre-Construction Meeting	Incl	Incl	Incl
2.2	Contract Administration	Incl	Incl	Incl
2.3	Full Time Construction Manager	Incl	Incl	Incl
2.4	Submittal Procedures	Incl	Incl	Incl
2.5	Meetings	Incl	Incl	Incl
2.6	Quality Assurance	Incl	Incl	Incl
2.7	Coordination of Technical Inspections and Testing	Incl	Incl	Incl
2.8	Construction Observation	Incl	Incl	Incl
2.9	Non-Conforming Work	Incl	Incl	Incl
2.10	Exercise of Contract Prerogatives	Incl	Incl	Incl
2.11	Implementation of Master Project Schedule	Incl	Incl	Incl
2.12	Monitor Estimates of Construction Cost	Incl	Incl	Incl
2.13	Construction Progress Review	Incl	Incl	Incl
2.14	Maintain On-Site Records	Incl	Incl	Incl
2.15	Schedule of Values and Processing Payments	Incl	Incl	Incl
2.16	Evaluate Change Order Proposal Costs	Incl	Incl	Incl
2.17	Change Order Reports	Incl	Incl	Incl
2.18	Project Status Reports	Incl	Incl	Incl
3	TASK 4: PROJECT CLOSEOUT	4	4	90
3.1	Completion of Contracts and Project	Incl	Incl	Incl
3.2	As-Built Documents & Operation Manuals	Incl	Incl	Incl
3.3	Training Sessions	Incl	Incl	Incl
3.4	Initial Start-Up and Testing	Incl	Incl	Incl
3.5	Project As-Built, Close Out, and Warranties	Incl	Incl	Incl
3.6	User Complaints	Incl	Incl	Incl
	Total Hours	68	414	2760
	Subtotals	\$21,120	\$95,400	\$566,800
	DESIGN & PROJECT/CONSTRUCTION MANAGEMENT TOTAL	NO CHARGE		\$661,200
4	REIMBURSABLE COSTS			\$18,800
4.1	Submittal Exchange			\$10,000
4.2	Insurance			\$6,600
4.3	Misc. Printing and Office Supplies			\$2,200
	GRAND TOTAL			\$680,000

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 and employees.
 - 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 and employees 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 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. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least

fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
- C. Right to Review Subcontracts. Consultant agrees that upon request, all agreements with subcontractors or others with whom Consultant enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- D. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-

insurance will not be considered to comply with these requirements unless approved by City.

- G. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.
- H. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- I. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.



CITY OF

NEWPORT BEACH

City Council Staff Report

September 27, 2022
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: Micah Martin, Deputy Public Works Director
mmartin@newportbeachca.gov

PHONE: 949-644-3055

TITLE: Approval of Amendment No. Three to Agreement for Beach
Container Refuse Collection Service with Rainbow Disposal Co., Inc.

ABSTRACT:

The City of Newport Beach (City) utilizes a contractor to collect refuse from designated bins located on City beaches on a regularly scheduled basis. The current contract with Rainbow Disposal Co. (Rainbow) for this service was approved in January 2011 and expires on December 31, 2022. Rainbow has since merged with Republic Services, Inc. (Republic). Staff is requesting an amendment to the current agreement with Republic to extend the term until February 28, 2026 with annual Consumer Price Index (CPI) adjustments through the extended term. This amendment will also require an increase to the not-to-exceed amount to provide for the additional years of service.

RECOMMENDATION:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(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 Amendment No. Three to Agreement with Republic Services, Inc. for Beach Container Refuse Collection Service to modify the compensation terms, increase the total not-to-exceed amount by \$1,153,439 for a total not-to-exceed amount of \$3,051,063, and extend the term to February 28, 2026; and
- c) Authorize the Mayor and City Clerk to execute the amendment.

DISCUSSION:

To keep the City beaches clean and safe, Republic currently provides trash collection and disposal services for trash carts on City beaches from the Santa Ana River Jetty in West Newport to Corona del Mar State Beach. Collection services are provided for 170 trash carts scheduled two times per week in the winter, and for 204 trash carts scheduled five times per week in the summer.

Over the past few years, warmer weather has arrived earlier than usual. Summer crowds have arrived at City beaches earlier in the season and the volume of visitors has remained high later into the fall months. Also, since the pandemic, staff has seen an uptick in the number of beach visitors. Staff added refuse carts and increased collections to keep the beaches free of litter and debris. Twenty-four additional carts were placed on the sand at Newport Pier during the summer months and 10 were placed at the Corona del Mar State Beach. Collection days were expanded up to seven days a week depending on volume and demand during peak summer months. This has helped decrease excessive litter and overflowing trash receptacles on the beaches and surrounding areas. Staff has also seen an increase in the need for additional cart cleanings due to sanitation needs, graffiti and excessive use.

The original contract rate was set in 2011, only accounting for the collection of material in beach carts. The contract was amended in 2019 to separate the cost associated with the emptying or 'tipping' of carts, and the cleaning of carts. The contract was further amended in 2020 to account for the added cost of an extended peak season. Throughout the contract and ensuing amendments, rates were capped by a 3% maximum escalator, though CPI had exceeded this rate at times. As the contract term was set to conclude at the end of 2022, the City negotiated a contract extension with representatives of Republic. This negotiation resulted in a 3% CPI increase to existing rates, effective October 1, 2022, followed by a February 1, 2023 implementation of adjusted rates for cart tipping and cleanout to compensate for increased operation costs. Throughout the remainder of the contract term, the rates for cart tip and cleanout shall only increase by a maximum of 3% annually as per the original contract terms. The 2023 level of service for the emptying, or 'tipping', of carts, as well as two annual cart cleanouts is estimated to be \$364,961.

	Tip Rate	Cart Cleanout Rate
Current Rate	\$6.81	\$17.39
October 2022 - 3% Increase	\$7.02	\$17.91
February 2023 - Adjusted	\$7.55	\$19.34

The not-to-exceed contract amount also accommodates increased services as needed, up to seven days per week if necessary. The increase provides flexibility to add and service additional refuse carts on an as-needed basis. This includes up to 8,000 service collections during the life of the contract and the supplemental cleaning of up to 3,000 carts or a mixture thereof.

As part of the City Council Working Group on Solid Waste and Recycling issues, staff has been tasked with consolidating various refuse contracts to improve efficiency and management, where feasible. By extending this Beach Container Refuse Collection Service agreement with Republic, the planned end of the contract will align with the Refuse Container Removal Services contract (street refuse can collection), currently assigned to CR&R, allowing the potential to merge the two refuse collection contracts in 2026.

Both contracts require specialized equipment and merging both contracts will spread initial capital costs over both services and provide consistency in the service and contract administration.

Staff recommends that the City Council approve Amendment No. Three for the Republic Beach Container Refuse Collection contract and increase the total not-to-exceed amount by \$1,153,439, placing the new contract total at \$3,051,063, and extending the term by approximately three years, to February 28, 2026. The contracted billing rates include an annual adjustment factor of CPI or 3%, whichever is less.

FISCAL IMPACT:

The adopted budget includes sufficient funding for this amendment. It will be expensed to the Refuse Beach Trashcan Collection account in the Public Works Department, 0108051-811031.

ENVIRONMENTAL REVIEW:

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

NOTICING:

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

ATTACHMENT:

Attachment A – Amendment No. Three

ATTACHMENT A

AMENDMENT NO. THREE TO AGREEMENT FOR BEACH CONTAINER REFUSE COLLECTION SERVICE WITH RAINBOW DISPOSAL CO., INC.

THIS AMENDMENT NO. THREE TO BEACH CONTAINER REFUSE COLLECTION SERVICE AGREEMENT ("Amendment No. Three") is made and entered into as of this 27th day of September, 2022 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and RAINBOW DISPOSAL CO., INC., a California corporation ("Contractor"), whose address on file with the Secretary of State is 18500 North Allied Way, Phoenix, Arizona 85054, with a local address of 17121 Nichols Lane, Huntington Beach, California 92647, and is made with reference to the following:

RECITALS

- A. On January 11, 2011, City and Contractor entered into an Agreement for Beach Container Refuse Collection Service ("Agreement") for refuse collection, disposal and maintenance services for beach containers on a regular basis ("Project").
- B. On August 13, 2019, City and Contractor entered into Amendment No. One to the Agreement ("Amendment No. One") to increase the total compensation based upon an unanticipated increase in the volume of services, to amend the Administration and Notices sections of the Agreement, and to add sections related to No Attorneys Fees and Counterparts.
- C. On October 13, 2020, City and Contractor entered into Amendment No. Two ("Amendment No. Two") to increase the total compensation based upon an unanticipated increase in the volume of services, to update Exhibit B, extend the term of the Agreement to December 31, 2022, amend Hold Harmless section, and update insurance requirements.
- D. The parties desire to enter into this Amendment No. Three to increase the total compensation, update the Scope of Services, amend the Schedule of Billing Rates, and extend the term of the Agreement to February 28, 2026.

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

1. TERM

Section 1 of the Agreement is amended in its entirety and replaced with the following: "The term of this Agreement shall commence on the Effective Date, and shall terminate on February 28, 2026, unless terminated earlier as set forth herein."

2. SERVICES TO BE PERFORMED

Exhibit A to the Agreement shall be amended in its entirety and replaced to include the Scope of Services, attached hereto as Exhibit A and incorporated herein by reference

("Services" or "Work"). The City may elect to delete certain Services within the Scope of Services at its sole discretion.

3. COMPENSATION TO CONTRACTOR

Exhibit B to the Agreement shall be supplemented to include the Schedule of Billing Rates, attached hereto as Exhibit B and incorporated herein by reference ("Services" or "Work"). Exhibit B to the Agreement, Exhibit B to Amendment No. One, Exhibit B to Amendment No. Two and Exhibit B to this Amendment No. Three shall collectively be known as "Exhibit B."

Section 4 of the Agreement is amended in its entirety and replaced with the following:

"City shall pay Contractor for the Services on a 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. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Three Million Forty Five Thousand Five Hundred Five Dollars and 73/100 (\$3,045,505.73)**, 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.

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."

The total amended compensation reflects Contractor's additional compensation for additional Services to be performed in accordance with this Amendment No. Three, including all reimbursable items and subconsultant fees, in an amount not to exceed **One Million One Hundred Forty Seven Thousand Eight Hundred Eighty One Dollars and 43/100 (\$1,147,881.43)**.

4. INTEGRATED CONTRACT

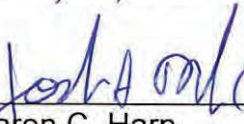
Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment No. Three to be executed on the dates written below.

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

Date: 9/19/22

By:  (For)
Aaron C. Harp
City Attorney

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Kevin Muldoon
Mayor

**CONTRACTOR: RAINBOW DISPOSAL
CO., INC.,** a California corporation

Date: _____

By: _____
David Hauer
Market Vice President

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services
 Exhibit B – Schedule of Billing Rates

EXHIBIT A

SCOPE OF SERVICES

Furnish all labor, equipment, materials and supervision to perform maintenance as described herein including, but not limited to, the following:

1. Furnish containers according to City-approved specification.
2. Collect refuse from designated containers and area immediately surrounding designated containers on beach on a regularly scheduled basis.
3. Notify City Operations Support Superintendent within 2 hours of bulky items or hazardous materials in designated containers and area immediately surrounding designated containers on the beach.
4. Clean interior and exterior of all employed containers on beach twice yearly. Once between May 1-31 and again between Labor Day and September 30. Any service requests for cleaning over and above the annual schedule listed above shall be charged the cart clean-out rate listed on Exhibit B – Schedule of Billing Rates.
5. Remove/repair/clean graffiti off/on designated containers on the beach within 24 hours of notice.
6. Summer Season Schedule shall commence on the Sunday preceding March 15th and shall continue until the first Saturday after September 15th, (27 weeks total). The Non-Summer Season Schedule shall commence for the remaining 25 weeks of the year.
7. The Summer Season Schedule service days shall be: Monday, Tuesday, Friday, Saturday and Sunday. The City may request additional service days (Wednesday and/or Thursday) upon request.
8. The Non-Summer Season Schedule service days shall be Monday and Friday.
9. Contractor shall properly collect and dispose of all solid waste collected by taking it to a fully permitted Orange County ("County") certified/licensed landfill or to a fully permitted licensed transfer station, which is lawfully authorized to accept that specific type of solid waste material and has been approved by the City. Contractor agrees to assist the County in verifying tonnage collected by Contractor and providing information required by the County. Contractor will provide, upon request, refuse tonnage collected within the County, and outside the County (if relevant to confirming tonnage origination), separated by jurisdiction, by load type (residential, commercial, roll-off box), and by facility to which it was delivered (specify which landfill or transfer station). Contractor will provide customer service levels and route

lists. Contractor will cooperate with County audits to verify reported origin of tonnage by making records and personnel available to the County and/or its auditors.

10. Contractor shall abide by all applicable legislation as it pertains to waste hauling and diversion requirements. This includes, but is not limited to, California Senate Bill No. 1383, Short-Lived Climate Pollutants law. Contractor will be required to transport all non-organic material collected to an approved Material Recover Facility for processing. Where applicable and pre-approved, an organics diversion program must be implemented. Contractor must demonstrate the ability to provide this service, provide the location(s) where this service will be provided, and the name and address of any location(s) where the collected organic waste will be taken for processing.



Beach Bin Service Areas

Machine-Cleaned (Total 170 bins)

- Area 1 (42, Summer 52)
- Area 2 (29)
- Area 3 (21)
- Area 4 (16)
- Area 5 (24, Summer 48)
- Area 6 (38)
- Summer Bins

Hand-Cleaned Areas (2) Use Caution

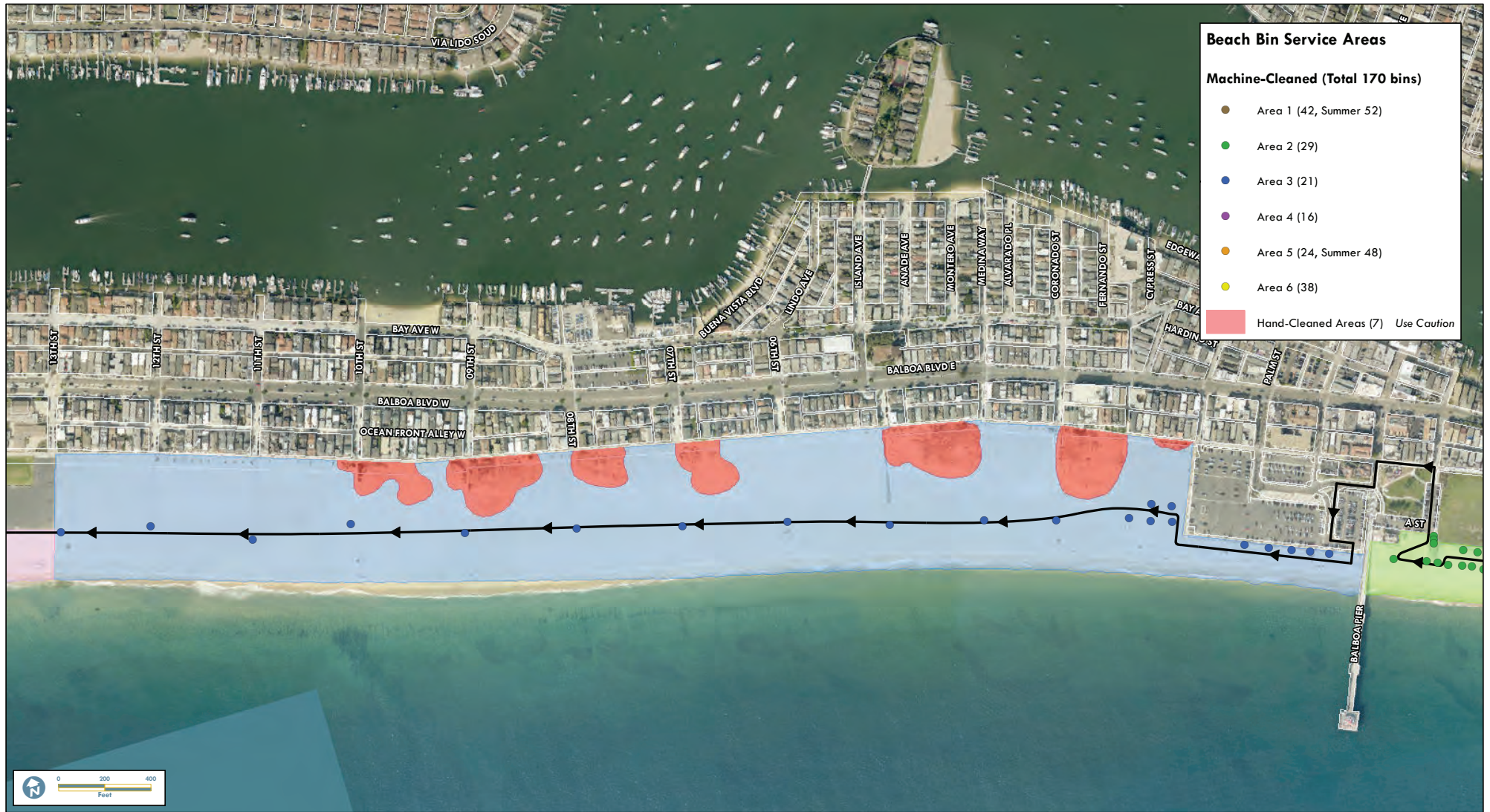


Area 1 - Beach Bin Service Areas



City of Newport Beach
GIS Division
September 06, 2022

BeachBinServiceAreasRoute_Area1.mxd



Area 3 - Beach Bin Service Areas





Area 4 - Beach Bin Service Areas



City of Newport Beach
GIS Division
September 06, 2022



Area 5 - Beach Bin Service Areas



Area 6 - Beach Bin Service Areas

EXHIBIT B

SCHEDULE OF BILLING RATES

I. Rates Effective October 1, 2022:

TIP RATE
\$7.02
CART CLEANOUT RATE
\$17.91

II. Rates Effective February 1, 2023:

TIP RATE
\$7.55
CART CLEANOUT RATE
\$19.34



CITY OF

NEWPORT BEACH

City Council Staff Report

September 27, 2022
Agenda Item No. 10

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Jon Lewis, Chief of Police - 949-644-3701, jlewis@nbpd.org

PREPARED BY: Joe Cartwright, Deputy Chief

PHONE: 949-644-3750, jcartwright@nbpd.org

TITLE: School Resource Officer Program Agreement

ABSTRACT:

The Police Department requests the City Council approve a new School Resource Officer (SRO) agreement with the Newport-Mesa Unified School District (NMUSD), a renewal of the existing terms, and deployment of three SROs.

RECOMMENDATION:

- 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) Approve the Agreement between the City of Newport Beach and NMUSD to participate in the School Resource Officer Program, and authorize the Mayor to execute the agreement on behalf of the City of Newport Beach.

DISCUSSION:

On September 27, 1999, the City Council approved an agreement between the City of Newport Beach (City) and NMUSD to provide two full-time police officers to work as SROs at the City's two public high schools: Corona del Mar High School and Newport Harbor High School. The agreement also specified that the Corona del Mar High School SRO would provide similar services to Ensign Middle School. The original agreement term took effect on February 7, 2000 and expired on February 7, 2003. After it expired, the City approved annual amendments to the original agreement to continue the services of this program.

During the 2011 annual request for amendment by NMUSD, the City Attorney's Office recommended creating a new agreement that more accurately described the services provided and the agreement was revised. Since the original agreement, some services have changed, including discontinuation of D.A.R.E. instruction at the two high schools and the assignment of the high school SROs to also service both middle schools.

Ultimately, the Corona del Mar High School SRO was re-assigned to service Corona del Mar Middle School and the Newport Harbor High School SRO was assigned to service Ensign Middle School.

On June 12, 2018, the City Council approved the FY 2018-19 budget, which included the addition of a third SRO under the same terms as the two existing SROs, including equally shared funding with NMUSD. This existing agreement with NMUSD expired on June 30, 2022. It allows the Police Department to assign one SRO to Newport Harbor High School, one SRO to Corona del Mar High and Middle Schools, and one SRO to cover the high schools when the designated high school SRO is not on duty. The “cover SRO” is based at Ensign Middle School and also serves NMUSD elementary schools within the City as needed. These SRO assignments are subject to change at the discretion of the Chief of Police.

The proposed agreement with NMUSD is a renewal of the existing terms and deployment with the same three SROs, with additional language that allows a decrease in the funding provided by NMUSD during unplanned long-term school closures over 30 days.

The goal of the SRO program is to work collaboratively within the school community to provide safe learning environments, foster positive relationships with students, educators, parents and community members, and to develop strategies to resolve problems that affect our youth, so that they can reach their full potential. The role of the SRO includes promoting a positive image of law enforcement to school children and school communities.

FISCAL IMPACT:

The adopted budget includes sufficient funding for this agreement. Per the agreement, the full salary and benefits for three School Resource Officers (police officers) will be funded equally through the Police Department’s budget (50 percent) and the NMUSD (50 percent). Funding for the three police officers is included in the Police Department’s FY 2022-23 budget, as are revenues from the NMUSD in the amount of \$269,973.00. The expenses will be charged to salary and benefits accounts in the Police Department, Detective Division (Organization Code 01035355).

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 – Agreement

ATTACHMENT A

AGREEMENT BETWEEN THE CITY OF NEWPORT BEACH AND THE NEWPORT-MESA UNIFIED SCHOOL DISTRICT TO PARTICIPATE IN THE SCHOOL RESOURCE OFFICER PROGRAM

THIS AGREEMENT FOR SCHOOL RESOURCE OFFICER PROGRAM ("Agreement") is made and entered into as of this 1st day of July, 2022 ("Effective Date") by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and NEWPORT-MESA UNIFIED SCHOOL DISTRICT, a political subdivision of the State of California ("District"), whose address is 2985 Bear Street, Costa Mesa, CA 92626 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. District is a political subdivision of the State of California located in Orange County, California, and is organized and exists pursuant to the laws of the State of California.
- C. District is in need of special services available through the School Resource Officer Program (the special services are described in Section 2 and are referred to collectively as the "Services").
- D. District is authorized to enter into this Agreement pursuant to the laws of the State of California.
- E. City employs sworn peace officers specially trained, experienced and competent to provide the Services and City is willing to provide Services to District on the terms and in the manner provided in this Agreement.
- F. This Agreement is not intended to modify any program or service provided by City to District as of the Effective Date except as expressly provided.

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 expire on June 30, 2023 unless extended pursuant by written agreement of the parties or terminated as specified in Section 7.

2. CITY SERVICES

2.1 Services - General. City will provide three (3) full time sworn peace officers with the Newport Beach Police Department to function as School Resource Officers ("Officers"). The School Resource Officers shall perform services under the supervision and control of the Newport Beach Chief of Police ("Chief of Police"). The type and manner of performance of the Services should be consistent with the expressed goals and objectives of the District. The Services contemplated by this Agreement are limited to the District schools located within the City, including Newport Harbor High School ("NHHS"), Corona Del Mar High and Middle Schools ("CDMHS/MS"), Ensign Middle School, and any District elementary schools in the City in need of SRO presence.

2.2 Services - Mandatory. City shall perform the following services:

2.2.1 Establish and maintain a liaison between District personnel, Newport Beach Police Department personnel, and elements of the juvenile justice system.

2.2.2 Serve as a resource to District employees such as administrators, faculty and security personnel as well as students and their guardian(s) on all law enforcement-related issues including crime prevention and investigation.

2.2.3 Assign one Officer to NHHS, one Officer to CDMHS/MS, and one Officer to cover the high schools when the designated high school Officer is not on duty. The cover Officer is based at Ensign Middle School and will also serve District elementary schools within the City as needed. These Officer assignments are subject to change in the discretion of the Chief of Police.

2.3 Services - Discretionary. City may, in the sole discretion of the Officers and/or their supervisor, perform the following services:

2.3.1 Conduct patrol activity in and around NHHS, CDMHS/MS, Ensign Middle School, and District elementary school campuses within the City.

2.3.2 Conduct preliminary and follow-up investigations of crimes that occur on or near the NHHS, CDMHS/MS, Ensign Middle School, and District elementary schools within the City.

2.3.3 Spend a minimum of seventy-five percent (75%) of their time allocated in this Agreement in and around their assigned campus, where an Officer is assigned to a particular high school.

2.3.4 Act and work as school officials and assist the Superintendent, principals, faculty, and staff in enforcing the campus code of conduct and other school rules in order to maintain a safe learning environment. When it pertains to preventing a disruption that would, if ignored, place students, faculty, and staff at risk of harm, the Officers will work to resolve the problem to preserve the school climate. In all other

cases, disciplining students is a District responsibility, and the Officers will intervene and take students who violate the code of conduct to the school principal, or designee, where school discipline can be meted out.

2.3.5 To the extent that the District chooses to secure the services of Officers from the Newport Beach Police Department, the Officers are considered designated school officials for student records purposes and shall have access to students' education records when there is a legitimate educational interest in the records. Pursuant to the Federal Educational and Rights and Privacy Act of 1974 (FERPA), the Officers are prohibited from re-disclosing a student's educational record or knowledge learned from the student's educational record to any other outside sources, including the local police department, unless the disclosure meets an exception to FERPA's disclosure/re-disclosure prohibition.

2.4 Services - Security. The Services performed by Officers pursuant to this Agreement are not intended to supplant those provided by existing District security personnel. District may request security services from City pursuant to other provisions of this Agreement.

3. DISTRICT DUTIES

3.1 In addition to other duties specified in this Agreement, District shall do the following:

3.1.1 Staff Liaison. District will designate its Director of Student and Community Services, or an alternate as designated by the Superintendent, as a liaison to the NBPd to facilitate communication between District personnel and the Officers as well as to coordinate the Officers' involvement with District activities and events.

3.1.2 District Personnel - Cooperation. District personnel shall cooperate with the Officers to facilitate their performance of Services pursuant to this Agreement.

4. OPERATIONAL PROCEDURES

4.1 Uniformed Officers. The Officers will perform their duties in full police uniform. This uniform will include safety equipment designated for use by sworn field personnel pursuant to Newport Beach Police Department policy or practice.

4.2 Services- Timing. City shall provide the three (3) Officers to District four (4) days a week and ten (10) hours each day. City shall use its best efforts to ensure that Services are provided to the same campus by the same person except when he/she is on paid leave or otherwise absent. Subject to provisions of relevant City personnel policies or labor agreement, City shall use its best efforts to schedule the Officers' time off to coincide with weekends/school holidays. City shall also use its best efforts to schedule Officers so that at least one of the three (3) Officers is on duty each day that school is in session and that each Officer can be present during special school activities.

5. FUNDING

5.1 Funding of Personnel. District shall pay City fifty percent (50%) of the total compensation paid to the three (3) Officers by City. The term "total compensation" includes salary and benefits as those exist on the Effective Date and as modified from time to time during the term of this Agreement. The Officers current Rate is attached hereto as Exhibit A and incorporated herein by reference. Officer rates listed on Exhibit A shall be subject to change at the discretion of the Chief of Police.

5.2 Funding - Supplemental Services. District may request City provide additional services (services in addition to those performed during the normal four (4) day, ten (10) hour work week) by an Officer during evening or weekend events such as PTA meetings, Back-to-School nights, Open House(s), sporting event(s), dance(s), prom(s) or other District-sponsored events. City shall use its best efforts to provide the requested services by the Officer assigned to the campus at which the event or activity is scheduled. District shall pay City all costs that City incurs in providing additional services as requested by the District representative, with the understanding that City is generally required to pay Officers at least one and one-half (1 ½) times their regular rate of pay for overtime.

5.3 District Payments. District shall pay its share of the total compensation of the three (3) Officers within thirty (30) days of receipt of invoices submitted quarterly (ninety (90) days after the initial invoice). District shall pay for supplemental services within thirty (30) days of receipt of an invoice from City.

5.4 Closures. While District and City currently share the costs of Officers equally, should there be an extended closure of District schools (longer than 30 days) due to an unforeseen event that diminishes the need of Officers on school campuses and allows City to redeploy Officers to other agency duties, City will assume 80% of the costs of Officers after the 30th consecutive day of such a closure while the District will continue to be responsible for 20% of the such costs. Equally shared costs pursuant to Section 5.1 of Officers between the District and the City would resume once the District begins normal operation, which includes the re-entry of students onto District campuses.

6. SPECIAL PROVISIONS

6.1 Selection of Officer. The Chief of Police will determine those individuals best suited for the assignment and advise the District of the eligible candidates. The Chief of Police shall select the Officers to be assigned from the eligible candidates (or from other qualified staff, should no one express an interest), after consideration of any input from the District representative.

6.2 Special Events. The School Resource Officer Program shall not supplant or alter the existing District practice of hiring Newport Beach Police Department personnel for the purpose of policing special events. However, if the District has requested the Officer's presence at an event, or requested supplemental services to be

provided by the Officer, he/she may be used as one officer hired to police a special event at his/her assigned campus.

6.3 Grant Administrative Requirements. The City and District will be responsible for their own respective grant monies received, if any, including all administrative duties and responsibilities. This includes receipt and disbursement of funds, financial reporting, and grant management issues.

7. TERMINATION

District or City may terminate this Agreement without cause any time subsequent to one hundred twenty (120) days after the Effective Date, by giving ninety (90) days written notice to the other Party. In the event of termination, District shall compensate City for Services performed to the date of termination. City shall continue to provide Services after notice to terminate and during the ninety (90) day notice period unless District, in the notice, requests City not perform Services. The notice shall be deemed given when personally delivered to the District or City representative or three (3) days after the date the notice is deposited in the United States mail, first-class postage prepaid, and addressed to the appropriate representative as specified in this Agreement.

8. INDEMNIFICATION

8.1 District Obligations. District agrees to defend, indemnify and hold City, its elected and appointed officials, officers, and employees harmless against and from any and all losses, claims, actions, damages, expenses or liabilities, including reasonable attorney's fees, to which City may become subject in connection with District's negligence related to the scope of District's activities pursuant to this Agreement. This Agreement does not, however, extend to claims or actions that result from the negligence of the City, its elected and appointed officials, officers, and employees. District assumes workers' compensation liability for injury or death of its officers, agents, employees and volunteers, and assumes no workers' compensation responsibility for the City.

8.2 City's Obligations. City agrees to defend, indemnify and hold District, its officers, agents, employees and volunteers harmless against and from any and all losses, claims, actions, damages, expenses or liabilities, including reasonable attorney's fees, to which District may become subject in connection with City's negligence related to the scope of City's activities pursuant to this Agreement. This Agreement does not, however, extend to claims or actions that result from the negligence of the District, officers, agents, employees and volunteers. City assumes workers' compensation liability for injury or death of its elected and appointed officials, officers, and employees, and assumes no workers' compensation responsibility for the officers, agents, employees and volunteers of the District.

9. ASSIGNMENT

This Agreement may not be assigned or transferred by either Party without the express written consent of the other Party.

10. NOTICE/REPRESENTATIVES

The City and District have designated the following representatives to receive notices and act in their agency's behalf in the administration of this Agreement:

City:

Chief of Police
Newport Beach Police Department
870 Santa Barbara Drive
Newport Beach, CA 92660

District:

Superintendent of Schools
Newport Mesa Unified School District
2985 Bear Street
Costa Mesa, CA 92626

11. NO THIRD PARTY BENEFICIARY

This Agreement, including, but not limited to, the indemnification provisions, is for the benefit of the parties only and does not create, nor is it intended to create, any benefit or liability to third parties.

12. STANDARD PROVISIONS

12.1 Recitals. City and District acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

12.2 Compliance with all Laws. District 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.

12.3 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.

12.4 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.

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

12.6 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.

12.7 Amendments. This Agreement may be modified or amended only by a written document executed by both District and City and approved as to form by the City Attorney.

12.8 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.

12.9 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.

12.10 Equal Opportunity Employment. District represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

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


12.12 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 MOU to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 7/12/2022

By: 
Aaron C. Harp
City Attorney

07.12.22
dmz

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
A California municipal corporation and
charter city
Date: _____

By: _____
Kevin Muldoon
Mayor

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT, a political subdivision of the
State of California

Date: 8-17-22

By: 
Dr. Sara Jocham
Assistant Superintendent of
Student Support Services

Approved or ratified by the Newport-Mesa
Unified School District Board.

Date: 8.16.2022

[END OF SIGNATURES]

Attachments: Exhibit A: School Resource Officer Employee Benefit Analysis

EXHIBIT A

City Of Newport Beach
School Resource Officer Employee Benefit Analysis
Fiscal Year 2022-23 Budget Projections

	Police Officer A		Police Officer B		Police Officer C	
	Annual	Hourly	Annual	Hourly	Annual	Hourly
	172,545	82.95	185,160	89.02	182,241	87.62
Total Compensation						



NEWPORT BEACH

City Council Staff Report

September 27, 2022
Agenda Item No. 11

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Melissa Hartson, Library Services Director - 949-717-3801,
mhartson@newportbeachca.gov

PREPARED BY: Melissa Hartson, Library Services Director,
mhartson@newportbeachca.gov

PHONE: 949-717-3810

TITLE: Contract with Arts Orange County to Manage Phase VIII of the
Sculpture Exhibition in Civic Center Park

ABSTRACT:

The Newport Beach City Arts Commission requests that the City Council approve a contract with Arts Orange County for \$119,000 for Phase VIII of the Sculpture Exhibition in Civic Center Park. This amount includes project coordination and management fees, in addition to installation and de-installation fees.

RECOMMENDATION:

- 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 a contract with Arts Orange County for project management of Phase VIII of the Sculpture Exhibition in Civic Center Park for a total amount not to exceed \$119,000, and authorize the Mayor and City Clerk to sign the agreement.

DISCUSSION:

The Sculpture Exhibition in Civic Center Park is an integral feature of the Newport Beach Civic Center project. The Civic Center Park project was designed by the renowned landscape architectural firm, Peter Walker and Partners (PWP). PWP developed a master plan for art in the park, and identified various spots in the park where art, particularly sculpture, could be exhibited.

The City Arts Commission determined that a rotating exhibition was a pragmatic approach to bring sculpture to the City of Newport Beach (City) in a cost-efficient manner.

The acquisition program that the City Arts Commission developed in 2013 for the exhibition created a model in which pieces are loaned for a two-year period. Sculptors of works chosen for the exhibition are provided with a small honorarium, not to exceed \$5,000, to loan their work to the City. The City is responsible for installing the art, while sculptors are responsible for the maintenance and repair of their work. Pieces are rotated into the exhibition annually and displayed for two years. Phases overlap for a one-year period so that 20 pieces are typically on display.

Admission is free and the exhibition continues to be enjoyed by residents and visitors. The exhibition offers the temporary display of public art that allows the City to avoid the obligation and expense of owning public art. The City Arts Commission selects a well-balanced representation of public art that appeals to a diverse audience, while including artistic merit, durability, practicality, and site responsiveness as criteria in the selection. The rotational nature of the exhibit ensures that residents and guests are exposed to a variety of work.

Park visitors are encouraged to download the free Sculpture Exhibition in Civic Center Park app to take a roughly 30-minute guided tour through the 14-acre park.

A temporary/rotational exhibit of this nature is a first for Orange County and has proven to be a popular amenity that has garnered significant favorable media coverage. The sculpture garden has become an integral element to the enjoyment of the park by residents and guests throughout the year, and the “museum without walls” has become a favored destination for residents and guests interested in public art.

Arts Orange County

The City Arts Commission requests that the City Council approve a contract with Arts Orange County for \$119,000.00 for Phase VIII. The budget remains unchanged from Phase VII.

SCHEDULE OF BILLING RATES			
PHASE	ITEM	DETAIL	COST
	8 Installation of Phase 8 Sculptures (June 2023)	10 Sculptures	\$ 25,000.00
	8 Site Preparation	Concrete pads, footings	\$ 15,000.00
	8 Equipment Rental	Cranes, forklifts	\$ 6,500.00
	8 Project Management & Curation	Management Fee	\$ 35,000.00
	8 Contingency		\$ 8,000.00
Phase Sub-Total			\$ 89,500.00
	8 De-installation of Phase 8 Sculptures (2025)	10 Sculptures	\$20,000.00
	8 Project Management & Curation	Management Fee	\$9,500.00
Phase Sub-Total			\$29,500.00
PROJECT TOTAL:			\$119,000.00

The City Arts Commission selected Arts Orange County (Arts OC) to provide public art coordination and site management services for the first seven phases of the Sculpture Exhibition in Civic Center Park after issuing Requests for Proposals in 2013 and 2016. Given the consultant's background experience and expertise, and its availability, staff is requesting a Professional Services Agreement with Arts OC for this work. The Arts OC project team successfully managed all previous phases of the exhibition and has strong working relationships with the City Arts Commission and City staff.

Arts Orange County was established in 1995 as the nonprofit, countywide arts council of Orange County, California. Arts Orange County has been recognized by the California Arts Council as a model agency based on the quality of its work and has served as the officially designated arts agency and state-local partner of the County of Orange since its inception.

Private Funding

As in previous phases, the City Arts Commission will utilize private funds to augment the total cost of Phase VIII. The Newport Beach Arts Foundation has already committed \$10,000.00 toward the project. These donated funds will be used to pay artist honorariums.

Community Input

Since the exhibition's inception, the City Arts Commission has increased public engagement by offering residents opportunities to become part of the selection process. The following elements introduced with Phase VII will continue:

- The City Arts Commission will not utilize an ad hoc subcommittee for selecting the pieces for Phase VIII. Instead, during a regular meeting, the entire City Arts Commission will determine which pieces to include in an online public survey. The results from completed surveys will determine which pieces will be installed in the Phase VIII Sculpture Exhibition.
- The City Arts Commission and a curatorial panel will approve pieces for inclusion in the online public survey, based on the following criteria:
 1. Artistic Merit – the artist has strong professional qualifications, and the artwork is of high quality and demonstrates originality and artistic excellence.
 2. Durability – the artwork is made of high-quality materials, requires minimal maintenance, and can withstand the outdoor elements of coastal Orange County.
 3. Practicality – the artwork is appropriate for audiences of all ages and does not exhibit unsafe conditions that may bear on public liability.

4. Site Appropriateness – the scale of the artwork is suitable for the environment and the artwork is suitable for viewing from all angles.
- The approved pieces will be included in the online public survey. The public, through the online survey, will choose 10 artworks and three alternates. The most popular pieces, as determined through the online survey, will be selected for the Exhibition, pending final approval by the City Council.
 - The City Arts Commission and City staff will publicize opportunities for public participation in the entire process to the maximum extent feasible.

FISCAL IMPACT:

There are sufficient funds in the Cultural Arts budget to fund Phase VIII. Funds will be expended from the Sculpture Exhibition in Civic Center Park Phase VIII account (Account No. 01060603-811059) in the General Fund.

ENVIRONMENTAL REVIEW:

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

NOTICING:

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

ATTACHMENT:

Attachment A – Professional Services Agreement

ATTACHMENT A

PROFESSIONAL SERVICES AGREEMENT WITH ARTS ORANGE COUNTY FOR SCULPTURE EXHIBITION – PHASE VIII

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 27th day of September, 2022 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and ARTS ORANGE COUNTY, a California non-profit corporation ("Consultant"), whose address is 17620 Fitch, Suite 255, Irvine, California 92614-6081, 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. On July 23, 2013, City Council authorized implementation of a temporary sculpture exhibit with a maximum of ten (10) sculptures in year one and an additional ten (10) sculptures in year two (Phase I and Phase II). The total project time, including de-installation of those sculptures, was estimated to be from July 2013 through April 2017.
- C. On April 11, 2017, City Council authorized implementation of installation of a temporary sculpture exhibit (Phase III), which also included the de-installation of the Phase II sculptures by August 2017, and the de-installation of the Phase III sculptures by August 2019.
- D. On February 12, 2019, City Council authorized implementation of a temporary sculpture exhibit (Phase IV), which also included the de-installation of those sculptures by June 2021.
- E. On October 8, 2019, City Council authorized implementation of a temporary sculpture exhibit (Phase V), which also included the de-installation of those sculptures by May 2022.
- F. On July 28, 2020, City Council authorized implementation of a temporary sculpture exhibit (Phase VI), which also included the de-installation of those sculptures by May 2023.
- G. On September 28, 2021, City Counsel authorized implementation of a temporary sculpture exhibit (Phase VII), which also included the de-installation of those sculptures by May 2024.
- H. City desires to engage Consultant to provide Newport Beach Civic Center Sculpture Exhibit arts coordination and project management services for Phase VIII, which will include the coordination of the installation of a maximum of ten (10)

sculptures and the subsequent de-installation of those Phase VIII sculptures by June 2025. ("Project").

- I. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- J. 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 September 1, 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 **One Hundred Nineteen Thousand Dollars and 00/100 (\$119,000.00)**, 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 Richard Stein 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 Library Services Department. City's Library Services Director 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 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 Consultant's presence or activities conducted on the Project (including the negligent, reckless, and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them).

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

10. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Consultant or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

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

12. CITY POLICY

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

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

14. INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

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

16. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

17. OWNERSHIP OF DOCUMENTS

17.1 Each and every report, draft, map, record, plan, document and other writing produced, including but not limited to, websites, blogs, social media accounts and applications (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Additionally, all material posted in cyberspace by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents, including all logins and password information to City upon prior written request.

17.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant, and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

17.3 All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

18. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

19. INTELLECTUAL PROPERTY INDEMNITY

Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement or alleged infringement of any United States' letters patent, trademark, or copyright, including costs, contained in Consultant's Documents provided under this Agreement.

20. RECORDS

Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant

under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

21. WITHHOLDINGS

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue Work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

22. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

23. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

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

24. CONFLICTS OF INTEREST

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

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

25. NOTICES

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

25.2 All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Library Services Director
Library Services 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: Richard Stein
Arts Orange County
17620 Fitch Avenue, Suite 255
Irvine, CA 92614-6081

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. PREVAILING WAGES

If any of the Work contemplated under the Agreement is considered a "public work", pursuant to the applicable provisions of the Labor Code of the State of California, including but not limited to Section 1720 *et seq.*, not less than the general prevailing rate of per diem wages including legal holidays and overtime Work for each craft or type of workman shall be paid to all workmen employed on such. 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.

29. STANDARD PROVISIONS

29.1 Recitals. City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

29.2 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.

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 Consultant 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. 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.

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: 9/12/22

By:  (for)
Aaron C. Harp
City Attorney 9/12/22 DAG

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Kevin Muldoon
Mayor

**CONSULTANT: ARTS ORANGE
COUNTY**, a California non-profit
corporation

Date: _____

By: _____
Richard Stein
Chief Executive Officer

Date: _____

By: _____
Susan K. Hori
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

Consultant shall provide public art coordination and site management services for the Newport Beach Civic Center outdoor sculpture park. Under general direction, the Consultant shall assist in the coordination and implementation of the public art sculpture program for the City of Newport Beach. Consultant shall report directly to the Library Services Director or his/her designee and provide direct support in administering and managing all aspects of the public art sculpture program.

1. Installation and De-Installation Schedule

Installation/De-installation Project	Anticipated Schedule
Installation of Phase VIII Sculptures	June 2023
De-Installation of Phase VIII Sculptures	June 2025

2. Consultant Responsibilities and Provisions

Consultant shall:

- 2.1 Be responsible for overseeing and managing the planning, selection, and installation of public art for the Sculpture Exhibit;
- 2.2 Serve in an advisory capacity on public art best practices;
- 2.3 Facilitate orientation meetings to establish sculpture exhibition goals and expectations, and appoint artist selection panel;
- 2.4 Coordinate schedules and plans with City representatives;
- 2.5 Draft forms such as: master calendar of project, list of potential artists and art registries;
- 2.6 Managing the Call for Artists Entry and ensure that it reaches the largest number of artists possible;
- 2.7 Monitor the artists' submissions for completeness, and communicate with artists as necessary;
- 2.8 Coordinate the art selection process;
- 2.9 Present artist entries to the City of Newport Beach Arts Commission for evaluation;

- 2.10 Work with the City and the City of Newport Beach Arts Commission to present the selected pieces to the City Council for approval;
- 2.11 Provide oversight of all activities associated with artists' work, including contracts, artwork shipment, installation and de-installation, budgets, and schedules;
- 2.12 Developing and implementing a Media Plan for the Public Art Sculpture Exhibit;
- 2.13 Coordinate with the City of Newport Beach Public Works Department for matters related to site construction and infrastructure feasibility;
- 2.14 Supervise the design and installation of any sculpture pads that may be required;
- 2.15 Oversee installation & de-installation of artworks, including obtaining all necessary permits;
- 2.16 Manage schedule and payments to the installation team;
- 2.17 Advise City staff on identification plaques for individual artworks, sculpture guide, materials for docents and educational kit;
- 2.18 Ensure that all administrative and operational procedures related to the Public Art Sculpture Exhibit are in accordance with City policies and procedures;
- 2.19 Facilitate communication with the artist and City staff for recording MyNB audio guide; and
- 2.20 Supervise installation of City commissioned identification plaques.

3. Community Input

The Arts Commission proposes to increase public engagement in the project by offering residents opportunities to become part of the selection process. This will be accomplished by integrating these elements into the process:

- 3.1 Creating an online survey in which the public can select the pieces for exhibition;
- 3.2 Holding one regular Arts Commission study session meeting where the public will be invited to express their preferences for the submitted art prior to panel consideration;

- 3.3 Holding one curatorial selection panel meeting where public can express their preferences;
- 3.4 Devoting one Arts Commission meeting for the public to express their opinion of the panel's recommendations; and
- 3.5 Publicizing opportunities for public participation in the entire process to the maximum extent feasible.

The City Arts Commission is committed to taking this new public input into consideration in Phase VIII of the Sculpture Garden, with a specific goal of adding elements that engender the most public support.

EXHIBIT B

SCHEDULE OF BILLING RATES

SCHEDULE OF BILLING RATES			
PHASE	ITEM	DETAIL	COST
8	Installation of Phase 8 Sculptures (June 2023)	10 Sculptures	\$ 25,000.00
8	Site Preparation	Concrete pads, footings	\$ 15,000.00
8	Equipment Rental	Cranes, forklifts	\$ 6,500.00
8	Project Management & Curation	Management Fee	\$ 35,000.00
8	Contingency		\$ 8,000.00
Phase Sub-Total			\$ 89,500.00
8	De-installation of Phase 8 Sculptures (2025)	10 Sculptures	\$ 20,000.00
8	Project Management & Curation	Management Fee	\$ 9,500.00
Phase Sub-Total			\$ 29,500.00
PROJECT TOTAL:			\$119,000.00

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 and employees.
 - 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 and employees 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 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. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least

fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
- C. Right to Review Subcontracts. Consultant agrees that upon request, all agreements with subcontractors or others with whom Consultant enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- D. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-

insurance will not be considered to comply with these requirements unless approved by City.

- G. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.
- H. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- I. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.



CITY OF

NEWPORT BEACH

City Council Staff Report

September 27, 2022
Agenda Item No. 12

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Melissa Hartson, Library Services Director - 949-717-3801,
mhartson@newportbeachca.gov

PREPARED BY: Melissa Hartson, Library Services Director,
mhartson@newportbeachca.gov

PHONE: 949-717-3810

TITLE: Budget Amendment to Accept a Check from the Friends of the
Newport Beach Library and Appropriate Funds to the Library's Fiscal
Year 2022-23 Maintenance and Operation Budget

ABSTRACT:

Staff requests approval of a budget amendment to accept a check from the Friends of the Newport Beach Library (Friends) to enhance the collections and programs of the Newport Beach Public Library (Library).

RECOMMENDATION:

- 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) Accept a check in the amount of \$200,000 from the Friends of the Newport Beach Library and approve Budget Amendment No. 23-013 to increase expenditures by the same amount in Division 0106052 (Friends of the Library).

DISCUSSION:

A donation from the Friends in the amount of \$200,000 is intended to fund materials and programs from the Library's Wish List for FY 2022-23, which was approved by the Board of Library Trustees.

The Friends' mission is to enhance the excellent services that the City of Newport Beach already supports. This gift will augment the Library's collections at all locations, in all formats, and for all age groups. The funds will also sponsor a variety of programming, such as Summer Reading, Sunday Musicales, National Library Week, and Young Adult Programs.

FISCAL IMPACT:

The Budget Amendment appropriates \$200,000 in additional revenue from the Friends of the Newport Beach Library and \$200,000 in increased expenditure appropriations with no impact on fund balance. The revenue will be posted to the Friends of the Library account in the Library Services Department, 0106052-511080, and the purchases will be expensed to the following Friends of the Library accounts:

General Materials	0106052-841052	\$175,000
Programming	0106052-841004	\$ 25,000

ENVIRONMENTAL REVIEW:

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

NOTICING:

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

ATTACHMENTS:

Attachment A – Check
Attachment B – Budget Amendment

ATTACHMENT A

FRIENDS OF NEWPORT BEACH LIBRARY

1000 AVOCADO AVE
NEWPORT BEACH CA 92660-7915

2067

11-35/1210 CA
90996

Date 6-14-2022

Pay To The
Order Of

Newport Beach Public Library \$ 200,000.00
Two hundred thousand & 20/100 Dollars



BANK OF AMERICA

ACH R/T 121000358

For

Wick Hunt

Susan L. Cairi
Amy C. Hunt



City of Newport Beach

BUDGET AMENDMENT

2022-23

BA#: 23-013

Department: LibraryRequestor: Melissa HartsonONE TIME: ☒ Yes ☐ No☐ CITY MANAGER'S APPROVAL ONLY☒ COUNCIL APPROVAL REQUIRED

Approvals

Finance Director: [Signature]Date 8/23/22

City Clerk: _____

Date _____

EXPLANATION FOR REQUEST:

Accept funds from Friends of the Newport Beach Library to the Newport Beach Public Library.

- ☐ from existing budget appropriations
☒ from additional estimated revenues
☐ from unappropriated fund balance

REVENUES

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
010	0106052	511080		FRIENDS OF THE LIBRARY - FRIENDS OF THE LIBRARY	200,000.00
				-	
				-	
				-	
				-	
				-	
Subtotal					\$ 200,000.00

EXPENDITURES

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
010	0106052	841052		FRIENDS OF THE LIBRARY - LIBRARY MATERIALS	175,000.00
010	0106052	841004		FRIENDS OF THE LIBRARY - PROGRAMMING	25,000.00
				-	
				-	
				-	
				-	
Subtotal					\$ 200,000.00

FUND BALANCE

Fund #	Object	Description	Increase or (Decrease) \$
010	300000	GENERAL FUND - FUND BALANCE CONTROL	-
		-	-
		-	-
		-	-
		-	-
		-	-
Subtotal			\$ -

No Change In Fund Balance



CITY OF

NEWPORT BEACH

City Council Staff Report

September 27, 2022
Agenda Item No. 13

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 Appointments to the Ad Hoc Municipal Code and
Council Policy Review Committee

ABSTRACT:

The Ad Hoc Municipal Code and Council Policy Review Committee, established by Resolution No. 2022-58, consists of three Council Members appointed by the Mayor and confirmed by the entire City Council.

RECOMMENDATION:

- 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 Kevin Muldoon's appointments of himself, Mayor Pro Tem Noah Blom, and Council Member Will O'Neill (Chair) to the Ad Hoc Municipal Code and Council Policy Review Committee.

DISCUSSION:

At the September 13, 2022 City Council meeting, the City Council adopted Resolution No. 2022-58 (Attachment A), which created the Ad Hoc Municipal Code and Council Policy Review Committee (Committee). The Committee will consist of three Council Members appointed by the Mayor and confirmed by the entire City Council. The sole purpose and responsibility of the Committee is to review the Newport Beach Municipal Code (NBMC) and City Council Policies and submit back to the City Council by June 30, 2023, recommendations concerning: (1) deleting or reducing language, and (2) the advisability of applying sunset provisions for new and existing code provisions.

As noted in Resolution No. 2022-58, the Committee shall be advisory and not subject to the Brown Act; however, the Committee's recommendation to the City Council shall be considered at a City Council meeting.

FISCAL IMPACT:

There is no fiscal impact related to this item.

ENVIRONMENTAL REVIEW:

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

NOTICING:

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

ATTACHMENT:

Attachment A – Resolution No. 2022-58

ATTACHMENT A

RESOLUTION NO. 2022-58

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, CREATING AN AD HOC COMMITTEE TO REVIEW THE MUNICIPAL CODE AND CITY COUNCIL POLICIES AND MAKE RECOMMENDATIONS TO THE CITY COUNCIL REGARDING POSSIBLE MODIFICATIONS THERETO AND THE ADVISABILITY OF USING SUNSET PROVISIONS

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 by the Charter, the City Council has enacted ordinances with respect to municipal affairs which are set forth in the Newport Beach Municipal Code ("NBMC");

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

WHEREAS, the City Council recognizes the importance of periodically reviewing and updating the NBMC and Council Policies to ensure that the NBMC maintains 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 NBMC and Council Policies and submitting back to the City Council by June 30, 2023, recommendations concerning: (1) deleting or reducing language, and (2) the advisability of applying sunset provisions for new and existing code provisions.

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

Section 1: The City Council hereby creates the Ad Hoc Municipal Code and 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 NBMC and Council Policies and submitting back to the City Council by June 30, 2023, recommendations concerning: (1) deleting or reducing language, and (2) the advisability of applying sunset provisions for new and existing code provisions.

Section 2: The Committee shall be advisory and shall expire on June 30, 2023, unless terminated sooner by action of the City Council.

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.

Section 6: 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 7: 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 13th day of September, 2022.




Kevin Muldoon
Mayor

ATTEST:


Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE


Aaron C. Harp
City Attorney

STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF NEWPORT BEACH

SS.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; the foregoing resolution, being Resolution No. 2022-58 was duly introduced before and adopted by the City Council of said City at a regular meeting of said Council held on the 13th day of September, 2022; and the same was so passed and adopted by the following vote, to wit:

AYES: Mayor Kevin Muldoon, Mayor Pro Tem Noah Blom, Council Member Brad Avery, Council Member Joy Brenner, Council Member Diane Dixon, Council Member Duffy Duffield, Council Member Will O'Neill

NAYS: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 14th day of September, 2022.



Leilani I. Brown
City Clerk
Newport Beach, California





CITY OF

NEWPORT BEACH

City Council Staff Report

September 27, 2022
Agenda Item No. 14

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Jon Lewis, Chief of Police - 949-644-3701, jlewis@nbpd.org

PREPARED BY: Eric Little, Lieutenant, elittle@nbpd.org

PHONE: 949-644-3740

TITLE: Acceptance of the State of California Office of Traffic Safety Selective Traffic Enforcement Program Grant PT23055

ABSTRACT:

The Newport Beach Police Department (NBPd) seeks acceptance of a grant totaling \$350,000 from the State of California, Office of Traffic Safety (OTS) to fund a Driving Under the Influence (DUI) Enforcement and Awareness Program, Traffic Safety Enforcement Operations, and DUI Sobriety Checkpoints.

RECOMMENDATION:

- 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) Authorize the City Council to accept a \$350,000 Selective Traffic Enforcement Program (STEP) award granted to the NBPd by the OTS per City Council Policies F-3 and F-25. To comply with City Council Policy F-3, the City Council must formally accept the award of \$350,000 and create a new appropriation to expend the funds; and
- c) Approve Budget Amendment No. 23-015 increasing NBPd revenue estimates and expenditure appropriations by \$350,000.

DISCUSSION:

Newport Beach is an attractive locale for Orange County nightlife and routinely competes with other cities for the most Department of Alcoholic Beverage Control licensed establishments in the State of California (per capita). The population of Newport Beach is approximately 87,000 residents; however, during the summer months the City of Newport Beach (City) experiences an increase in daily visitors that routinely exceeds 100,000. While tourism generates positive tax revenue for the City, it also stresses the infrastructure, the NBPd, and other City departments.

In 2007, the first grant was requested and awarded through the OTS. Since then, the NBPd has been dedicated to community education, traffic enforcement, and the reduction of DUI-related collisions. The NBPd continues to recognize the need for ongoing DUI enforcement and education, as the Traffic Data Summary Table below shows. The most recent data (2017) supplied by the OTS indicates the NBPd's ongoing efforts have been impactful, as the City ranked in the top two of 106 similar-sized California cities in the category of DUI arrests. 2018 stats are not yet available for this category.

Traffic Data Summary: (local data)

Primary Data Summary: (2021 data)												
Collision Type	2019 Totals				2020 Totals				2021 Totals			
	Collisions		Victims		Collisions		Victims		Collisions		Victims	
Fatal	5		5		8		9		8		8	
Injury	421		590		349		478		381		508	
	2019 – Alcohol / Hit & Run / Nighttime Related Collisions				2020 – Alcohol / Hit & Run / Nighttime Related Collisions				2021 – Alcohol / Hit & Run / Nighttime Related Collisions			
	Fatal	Injury	Killed	Injured	Fatal	Injury	Killed	Injured	Fatal	Injury	Killed	Injured
Alcohol-Involved	0	60	0	85	1	58	2	80	5	70	5	90
Hit & Run	0	26	0	29	1	23	2	32	0	24	0	34
Nighttime (2100-0259 hours)	3	53	3	79	3	37	3	50	1	60	1	72
Top 3 Primary Collision Factors 2021									Total Collisions	Fatal	Injury	
#1 -	Speed								233	2	139	
#2 -	DUI								179	3	36	
#3 -	Unsafe Turn								138	1	55	

The NBPd applied for, and has been awarded, a grant from OTS to increase DUI enforcement and awareness and to fund additional traffic safety enforcement in the City. Grant number PT23055 will become effective October 1, 2022 and expire September 30, 2023.

The grant funds will pay overtime and benefits costs for officers specifically assigned to DUI enforcement and awareness programs, including DUI Checkpoint Operations, DUI Saturation Patrol Operations, and Traffic Enforcement Operations related to distracted driving, motorcycle safety, and bicycle/pedestrian enforcement. In-state travel and training expenses are also included in the grant for officers attending the Standardized Field Sobriety Testing (SFST), Advanced Roadside Impaired Driving Enforcement (ARIDE), and Drug Recognition Expert (DRE) training courses.

The "Know Your Limits" program is also a part of the grant this year. The "Know Your Limits" program is a collaborative effort between the NBPd and Alcoholic Beverage Control (ABC) licensed establishments to educate patrons about the dangers of drinking and driving. Our NBPd personnel visit local alcohol-licensed establishments and provide patrons with voluntary breath tests in order to educate them on their blood alcohol concentration, thereby allowing patrons to "Know Your Limit" before they consider driving after consuming alcohol.

Almost all DUI efforts involve overtime, as they are unique and short-term assignments that do not involve personnel scheduled to work a regular patrol assignment. In other words, the NBPd retains the same number of officers on regularly scheduled patrol while additional officers are added for the sole purpose of conducting OTS grant-funded DUI enforcement at no additional cost to the City.

FISCAL IMPACT:

The Budget Amendment records and appropriates \$350,000 in additional revenue from the OTS STEP Grant and \$350,000 in increased expenditure appropriations. The revenue will be posted to the OTS STEP FY 2022-23 Account #11035-431360-G2301 and the expenditure appropriations will be posted to the various expenditure accounts within the OTS Fund, according to the following breakdown:

Account	Category	Amount
11035-713002-G2301	Overtime, Safety	\$314,300
11035-727016-G2301	Medicare Fringes	\$4,557
11035-861001-G2301	Travel & Meetings	\$2,040
11035-911024-G2301	Equipment	\$20,000
11035-841015-G2301	Other Direct Costs	\$9,103
Total FY 2022-23 STEP Grant		\$350,000

ENVIRONMENTAL REVIEW:





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

NOTICING:

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

ATTACHMENTS:

Attachment A – Budget Amendment
Attachment B – OTS Grant Agreement

1. GRANT TITLE Selective Traffic Enforcement Program (STEP)	
2. NAME OF AGENCY Newport Beach	3. Grant Period From: 10/01/2022 To: 09/30/2023
4. AGENCY UNIT TO ADMINISTER GRANT Newport Beach Police Department	
5. GRANT DESCRIPTION Best practice strategies will be conducted to reduce the number of persons killed and injured in crashes involving alcohol and other primary crash factors. The funded strategies may include impaired driving enforcement, enforcement operations focusing on primary crash factors, distracted driving, night-time seat belt enforcement, special enforcement operations encouraging motorcycle safety, enforcement and public awareness in areas with a high number of bicycle and pedestrian crashes, and educational programs. These strategies are designed to earn media attention thus enhancing the overall deterrent effect.	
6. Federal Funds Allocated Under This Agreement Shall Not Exceed: \$350,000.00	
7. TERMS AND CONDITIONS: The parties agree to comply with the terms and conditions of the following which are by this reference made a part of the Agreement: <ul style="list-style-type: none"> Schedule A – Problem Statement, Goals and Objectives and Method of Procedure Schedule B – Detailed Budget Estimate and Sub-Budget Estimate (if applicable) Schedule B-1 – Budget Narrative and Sub-Budget Narrative (if applicable) Exhibit A – Certifications and Assurances Exhibit B* – OTS Grant Program Manual Exhibit C – Grant Electronic Management System (GEMS) Access <p>*Items shown with an asterisk (*), are hereby incorporated by reference and made a part of this agreement as if attached hereto.</p> <p>These documents can be viewed at the OTS home web page under Grants: www.ots.ca.gov.</p> <p>We, the officials named below, hereby swear under penalty of perjury under the laws of the State of California that we are duly authorized to legally bind the Grant recipient to the above described Grant terms and conditions.</p> <p>IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.</p>	
8. Approval Signatures	
A. GRANT DIRECTOR NAME: Eric Little TITLE: Lieutenant EMAIL: elittle@nbpd.org PHONE: (949) 644-3740 ADDRESS: 870 Santa Barbara Drive Newport Beach, CA 92660 <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;">  <small>Eric Little, Lt. (Aug 25, 2022 13:48 PDT)</small> </div> <div style="text-align: center;"> Aug 25, 2022 _____ (Date) </div> </div> <div style="text-align: center; margin-top: 10px;"> _____ (Signature) </div>	B. AUTHORIZING OFFICIAL ADDRESS: Kevin Muldoon Mayor kmuldoon@newportbeachca.gov (949) 644-3001 100 Civic Center Drive Newport Beach, CA 92660 <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;">  <small>Kevin Muldoon (Aug 25, 2022 14:30 PDT)</small> </div> <div style="text-align: center;"> Aug 25, 2022 _____ (Date) </div> </div> <div style="text-align: center; margin-top: 10px;"> _____ (Signature) </div>
C. FISCAL OFFICIAL ADDRESS: Scott Callett Finance Director scallett@newportbeachca.gov (949) 644-3123 100 Civic Center Drive, Bay 2C Newport Beach, CA 92660 <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;">  <small>Scott Callett</small> </div> <div style="text-align: center;"> Aug 25, 2022 _____ (Date) </div> </div> <div style="text-align: center; margin-top: 10px;"> _____ (Signature) </div>	D. AUTHORIZING OFFICIAL OF OFFICE OF TRAFFIC SAFETY ADDRESS: Barbara Rooney Director barbara.rooney@ots.ca.gov (916) 509-3030 2208 Kausen Drive, Suite 300 Elk Grove, CA 95758 <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;">  <small>Barbara L. Rooney</small> </div> <div style="text-align: center;"> Sep 6, 2022 _____ (Date) </div> </div> <div style="text-align: center; margin-top: 10px;"> _____ (Signature) </div>

E. ACCOUNTING OFFICER OF OFFICE OF TRAFFIC SAFETY NAME: Carolyn Vu ADDRESS: 2208 Kausen Drive, Suite 300 Elk Grove, CA 95758	9. SAM INFORMATION SAM#: FPFYQSEFJ8M3 REGISTERED: ADDRESS: 100 Civic Center Drive CITY: Newport Beach ZIP+4: 92660-3267
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10. PROJECTED EXPENDITURES						
FUND	CFDA	ITEM/APPROPRIATION	F.Y.	CHAPTER	STATUTE	PROJECTED EXPENDITURES
164AL-23	20.608	0521-0890-101	2022	43/22	BA/22	\$240,000.00
402PT-23	20.600	0521-0890-101	2022	43/22	BA/22	\$110,000.00
				AGREEMENT TOTAL		\$350,000.00
<i>I CERTIFY upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.</i>				AMOUNT ENCUMBERED BY THIS DOCUMENT		
				\$350,000.00		
				PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT		
OTS ACCOUNTING OFFICER'S SIGNATURE				DATE SIGNED		TOTAL AMOUNT ENCUMBERED TO DATE
<i>Carolyn Vu</i>				Aug 25, 2022		\$350,000.00

1. PROBLEM STATEMENT

The City of Newport Beach is a unique and dynamic community located along the scenic coastline of Southern California. The city and surrounding areas are deeply rooted in history. In the early 20th century, Newport Beach was home to celebrities such as John Wayne, James Cagney, Humphrey Bogart, and Shirley Temple. At approximately 51 square miles, including areas of water, Newport Beach consists of rugged coastline, inland waterways, and has a diverse mix of commerce, tourism, and distinct residential communities.

Newport Beach is a hot spot for Orange County nightlife and routinely competes against other cities for the most Department of Alcoholic Beverage Control licensed establishments in the State of California (per capita). The population of Newport Beach is approximately 86,000 residents; however, during the summer months the city experiences an increase in daily visitors that routinely exceeds 100,000 per day. While the tourism generates a positive tax revenue for the city, it also stresses the infrastructure and city departments, including the police department.

In 2007, our first grant was requested and awarded through the Office of Traffic Safety. Since then, the department has been dedicated to the reduction of DUI-related incidents, community education, and enforcement. Both the City and Police Department, now more than ever, recognize the importance and need for ongoing DUI education and enforcement.

The most recent data (2019) supplied by the California Office of Traffic Safety, reveal the City of Newport Beach to be ranked 76 out of 102 similar-sized California cities in crash-related categories per capita. In substance, the City of Newport Beach could noticeably improve their ranking by taking a robust approach with grant funding directed at reducing fatal/injury crashes related to motorcyclists, bicyclists, unsafe speed, and impaired drivers. Newport Beach markets itself as a destination location and attracts visitors from all over the region, state, and world. The daily increase in population – including people who do not live in Newport Beach, but come to work, shop, visit, or dine – is a component of our current rankings. To provide ongoing education and enforcement to our residents, businesses, and visitors -- and to pursue increased roadway safety for all users -- we will continue to utilize our OTS grant funding to provide Traffic and Safety Education, combat impaired driving to include; DUI alcohol, DUI drugs, and a combination of both alcohol and drugs, take pro-active enforcement actions focusing on: primary crash factors, distracted driving, motorcycle safety and related violations, bicyclist and pedestrian-related traffic violations, and work collaboratively with our law enforcement partners in an effort to have a greater impact on both DUI and Traffic related operations.

The City of Newport Beach has placed a great emphasis on the need for increased DUI Saturation Patrols due to the City's nightlife allure, numerous alcohol licensed establishments, and DUI arrests (2019 OTS ranking of 104/105). As indicated in our 2019 ranking, our DUI Saturation Patrols resulted in numerous stops, roadside SFSTs, and arrests. This remained consistent throughout 2020 and 2021 as we continued to be vigilant and dedicated in our efforts to reduce deaths and injuries resulting from impaired driving.

During the Calendar year 2021, we had 179 traffic crashes where DUI (Driving Under the Influence) was the primary crash factor. There were 5 alcohol involved crashes that ended with fatalities and another 70 (alcohol involved) crashes where injuries were incurred. Included in those numbers was 1 motorcycle fatality and another 28 alcohol involved motorcycle injury crashes. The crashes were dispersed all throughout our city.

The City of Newport Beach has been, and will continue to be, dedicated to the reduction of DUI-related incidents, community education, and enforcement. Both the City and Police Department, now more than ever, recognize the importance and need for ongoing DUI education and enforcement.

The Newport Beach Police Department regularly receives numerous complaints regarding loud vehicles with modified exhaust and racing vehicles traveling throughout the city. These racing vehicles along with those who choose to speed pose an immediate safety risk to both the residents and visitors of our community.

Unsafe speed is the #1, primary crash factor in the City of Newport Beach. During the Calendar year 2021, we had 233 traffic crashes where unsafe speed was the documented primary crash factor.

The City of Newport Beach takes racing and speeding very seriously. We consistently work to address this problem, utilizing both education and enforcement. Additionally, we work collaboratively with our allied agencies conducting directed enforcement operations focused on primary crash factors with speed as a top priority.

Bicycle safety in the City of Newport Beach is of the utmost importance. Being a beach community that has a daily population of approx. 86,000 that can easily increase to over 100,000 at any given moment, (based on the weather and time of year) we have a constant flow of bicycle and pedestrian traffic. This is a great area of concern for us when adding this into our already busy vehicular traffic.

During the Calendar year 2021, we had 126 traffic crashes where a bicycle was involved. There was one fatality and a total of 105 victims who incurred an injury as a result of these crashes. The crashes occurred all throughout our city.

We have also seen a dramatic increase in the number of e-bikes on the roads, trails, and sidewalks within our community. Unfortunately, we have also seen a noticeable increase in traffic law violations that have caused some safety concerns.

Several of the aforementioned crashes involve e-bikes. Whether it be a vehicle versus bicycle crash, solo bicyclist crash, or a bicyclist versus pedestrian crash, they are rapidly on the rise.

Both the Newport Beach Police Department and the City of Newport Beach regularly receive complaints regarding e-bikes. The complaints include such things as minors not wearing helmets, unsafe operations, California Vehicle Code (CVC) violations, and near crashes between e-bike riders and pedestrians.

We have begun strategic operations to encourage the safe and responsible operation of both e-bikes and traditional style bicycles. We accomplish this by using OTS (Office of Traffic Safety) funds to facilitate both the enforcement and education component.

The Newport Beach Police Department strongly believes that this traffic safety model will enhance the safety of both the residents and visitors to our community.

We will continue to concentrate our efforts focusing on Pedestrian and bicycle safety in an effort to try and keep our roadways safe for all users.

Newport Beach Motor Officers provide Power Point presentations on bicycle and pedestrian safety to students at various elementary schools located throughout our city. The officers provide a 2-fold pamphlet for the students so they can follow along with the presentation and then take it home to their parents to prompt further discussion. Topics they cover are: bike safety, helmet laws, E-bike laws, pedestrian safety, rules of the road, and equipment safety. At the conclusion of their presentations students are given a verbal pop quiz and there is an open discussion to answer any questions the students may have and to discuss scenarios where bike laws may or may not apply.

The City of Newport Beach will also focus its efforts directly on bicycle safety intended to reduce the number of bicyclists injured or killed in traffic crashes by doing the following:

- We will issue and properly fit helmets to help reduce the number of bicyclists riding in our community without properly fitted equipment.
- Future events are currently being planned, however, the possibilities include: bicycle safety workshops which are generally held at elementary schools (described above), middle schools, high schools, Community Centers, and Community Events.
- In cooperation with our School's Staff and Resource Officers, they will work to identify students and children in need of properly fitted equipment (helmets) and provide them with the gear.

2. PERFORMANCE MEASURES

A. Goals:

1. Reduce the number of persons killed in traffic crashes.
2. Reduce the number of persons injured in traffic crashes.
3. Reduce the number of pedestrians killed in traffic crashes.
4. Reduce the number of pedestrians injured in traffic crashes.
5. Reduce the number of bicyclists killed in traffic crashes.
6. Reduce the number of bicyclists injured in traffic crashes.
7. Reduce the number of persons killed in alcohol-involved crashes.
8. Reduce the number of persons injured in alcohol-involved crashes.
9. Reduce the number of persons killed in drug-involved crashes.
10. Reduce the number of persons injured in drug-involved crashes.
11. Reduce the number of persons killed in alcohol/drug combo-involved crashes.
12. Reduce the number of persons injured in alcohol/drug combo-involved crashes.
13. Reduce the number of motorcyclists killed in traffic crashes.
14. Reduce the number of motorcyclists injured in traffic crashes.
15. Reduce hit & run fatal crashes.
16. Reduce hit & run injury crashes.
17. Reduce nighttime (2100 - 0259 hours) fatal crashes.
18. Reduce nighttime (2100 - 0259 hours) injury crashes.

B. Objectives:

Target Number

1. Issue a press release announcing the kick-off of the grant by November 15. The kick-off press releases and media advisories, alerts, and materials must be emailed to the OTS Public Information Officer at pio@ots.ca.gov, and copied to your OTS Coordinator, for approval 14 days prior to the issuance date of the release.
2. Distribute and properly fit bicycle helmets at no cost to community members in need, at bicycle rodeos, schools, workshops, and community events.
3. Purchase bicycle helmets.
4. Participate and report data (as required) in the following campaigns; Quarter 1: National Walk to School Day, National Teen Driver Safety Week, NHTSA Winter Mobilization; Quarter 3: National Distracted Driving Awareness Month, National Motorcycle Safety Month, National Bicycle Safety Month, National Click it or Ticket Mobilization; Quarter 4: NHTSA Summer Mobilization, National Child Passenger Safety Week, and California's Pedestrian Safety Month.
5. Develop (by December 31) and/or maintain a "DUI BOLO" program to notify patrol and traffic officers to be on the lookout for identified repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. Updated DUI BOLOs should be distributed to patrol and traffic officers monthly.
6. Send law enforcement personnel to the NHTSA Standardized Field Sobriety Testing (SFST) (minimum 16 hours) POST-certified training.
7. Send law enforcement personnel to the NHTSA Advanced Roadside Impaired Driving Enforcement (ARIDE) 16 hour POST-certified training.
8. Send law enforcement personnel to the Drug Recognition Expert (DRE) training.
9. Send law enforcement personnel to the DRE Recertification training.
10. Send law enforcement personnel to SFST Instructor training.
11. Send law enforcement personnel to DRE Instructor training.
12. Conduct DUI/DL Checkpoints. A minimum of 1 checkpoint should be conducted during the NHTSA Winter Mobilization and 1 during the Summer Mobilization. To enhance the overall deterrent effect and promote high visibility, it is recommended the grantee issue an advance press release and conduct social media activity for each checkpoint. For combination DUI/DL checkpoints, departments should issue press releases that mention DL's will be checked at the DUI/DL checkpoint. Signs for DUI/DL checkpoints should read "DUI/Driver's License Checkpoint Ahead." OTS does not fund or support independent DL checkpoints. Only on an exception basis and with OTS pre-approval will OTS fund checkpoints that begin prior to 1800 hours. When possible, DUI/DL Checkpoint screeners should be DRE- or ARIDE-trained.
13. Conduct DUI Saturation Patrol operation(s).

1

100

100

10

12

5

2

1

2

1

1

3

80

14. Conduct Traffic Enforcement operation(s), including but not limited to, primary crash factor violations.	18
15. Conduct highly publicized Distracted Driving enforcement operation(s) targeting drivers using hand held cell phones and texting.	4
16. Conduct highly publicized Motorcycle Safety enforcement operation(s) in areas or during events with a high number of motorcycle incidents or crashes resulting from unsafe speed, DUI, following too closely, unsafe lane changes, improper turning, and other primary crash factor violations by motorcyclists and other drivers.	4
17. Conduct highly publicized pedestrian and/or bicycle enforcement operation(s) in areas or during events with a high number of pedestrian and/or bicycle crashes resulting from violations made by pedestrians, bicyclists, and drivers.	6
18. Conduct Traffic Safety educational presentation(s) with an effort to reach community members. Note: Presentation(s) may include topics such as distracted driving, DUI, speed, bicycle and pedestrian safety, seat belts and child passenger safety.	5
19. Conduct Know Your Limit campaigns with an effort to reach members of the community.	10
20. Conduct Drug Recognition Expert (DRE) training for law enforcement officers. Training consists of 72 hours of classroom instruction.	1
21. Conduct Advanced Roadside Impaired Driving Enforcement (ARIDE) POST-certified trainings for law enforcement officers. Training consists of 16 hours of classroom training.	2
22. Conduct Standardized Field Sobriety Testing (SFST) POST-certified trainings 16 hour minimum for law enforcement officers.	2
23. Participate in highly visible collaborative DUI Enforcement operations.	8
24. Participate in highly visible collaborative Traffic Enforcement operations.	4
25. Send law enforcement personnel to DUI Checkpoint Planning and Management training.	2
26. Conduct specialized enforcement operations focusing specifically on street racing and sideshow activities.	3
27. Provide law enforcement personnel with POST-certified training for Standardized Field Sobriety Testing (SFST) Instructor (minimum 16 hours).	1
28. Provide law enforcement personnel with POST-certified Drug Recognition Expert (DRE) Instructor training (40 hours).	1

3. METHOD OF PROCEDURE

A. Phase 1 – Program Preparation (1st Quarter of Grant Year)

- The department will develop operational plans to implement the “best practice” strategies outlined in the objectives section.
- All training needed to implement the program should be conducted this quarter.
- All grant related purchases needed to implement the program should be made this quarter.
- In order to develop/maintain the “DUI BOLOs,” research will be conducted to identify the “worst of the worst” repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. The Hot Sheets may include the driver’s name, last known address, DOB, description, current license status, and the number of times suspended or revoked for DUI. DUI BOLOs should be updated and distributed to traffic and patrol officers at least monthly.
- Implementation of the STEP grant activities will be accomplished by deploying personnel at high crash locations.
- Media Requirements Issue a press release approved by the OTS PIO announcing the kick-off of the grant by November 15, but no sooner than October 1. The kick-off release must be approved by the OTS PIO and only distributed after the grant is fully signed and executed. If you are unable to meet the November 15 deadline to issue a kick-off press release, communicate reasons to your OTS coordinator and OTS PIO.

B. Phase 2 – Program Operations (Throughout Grant Year)

- The department will work to create media opportunities throughout the grant period to call attention to the innovative program strategies and outcomes.

Media Requirements

The following requirements are for all grant-related activities:

- Send all media advisories, alerts, videos, graphics, artwork, posters, radio/PSA/video scripts, storyboards, digital and/or print educational materials for grant-related activities to the OTS PIO at pio@ots.ca.gov for approval and copy your OTS coordinator. Optimum lead time would be 7 days before the scheduled release but at least 3 business days prior to the scheduled release date for review and approval is appreciated.
- The OTS PIO is responsible for the approval of the design and content of materials. The agency understands OTS PIO approval is not authorizing approval of budget expenditure or cost. Any cost approvals must come from the Coordinator.
- Pre-approval is not required when using any OTS-supplied template for media advisories, press releases, social media graphics, videos or posts, or any other OTS-supplied educational material. However, copy the OTS PIO at pio@ots.ca.gov and your OTS coordinator when any material is distributed to the media and public, such as a press release, educational material, or link to social media post. The OTS-supplied kick-off press release templates and any kickoff press releases are an exception to this policy and require prior approval before distribution to the media and public.
- If an OTS-supplied template, educational material, social media graphic, post or video is substantially changed, the changes shall be sent to the OTS PIO at pio@ots.ca.gov for approval and copy to your OTS Coordinator. Optimum lead time would be 7 days prior to the scheduled release date, but at least 3 business days prior to the scheduled release date for review and approval is appreciated.
- Press releases, social media posts and alerts on platforms such as NextDoor and Nixle reporting immediate and time-sensitive grant activities (e.g. enforcement operations, day of event highlights or announcements, event invites) are exempt from the OTS PIO approval process. The OTS PIO and your Coordinator should still be notified when the grant-related activity is happening (e.g. car seat checks, bicycle rodeos, community presentations, DUI checkpoints, etc.).
- Enforcement activities such as warrant and probation sweeps, court stings, etc. that are embargoed or could impact operations by publicizing in advance are exempt from the PIO approval process. However, announcements and results of activities should still be copied to the OTS PIO at pio@ots.ca.gov and your Coordinator with embargoed date and time or with "INTERNAL ONLY: DO NOT RELEASE" message in subject line of email.
- Any earned or paid media campaigns for TV, radio, digital or social media that are part of a specific grant objective, using OTS grant funds, or designed and developed using contractual services by a subgrantee, requires prior approval. Please send to the OTS PIO at pio@ots.ca.gov for approval and copy your grant coordinator at least 3 business days prior to the scheduled release date.
- Social media posts highlighting state or national traffic safety campaigns (Distracted Driving Month, Motorcycle Safety Awareness Month, etc.), enforcement operations (DUI checkpoints, etc.), or any other grant-related activity such as Bicycle rodeos, presentations, or events, are highly encouraged but do not require prior approval.
- Submit a draft or rough-cut of all digital, printed, recorded or video material (brochures, posters, scripts, artwork, trailer graphics, digital graphics, social posts connected to an earned or paid media campaign grant objective) to the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator for approval prior to the production or duplication.
- Use the following standard language in all press, media, and printed materials, space permitting: Funding for this program was provided by a grant from the California Office of Traffic Safety, through the National Highway Traffic Safety Administration.
- Space permitting, include the OTS logo on all grant-funded print materials, graphics and paid or earned social media campaign grant objective; consult your OTS Coordinator for specifics, format-appropriate logos, or if space does not permit the use of the OTS logo.
- Email the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator at least 21 days in advance, or when first confirmed, a short description of any significant grant-related traffic safety event or program, particularly events that are highly publicized beforehand with anticipated media coverage so OTS has sufficient notice to arrange for attendance and/or participation in the event.

If unable to attend, email the OTS PIO and coordinator brief highlights and/or results, including any media coverage (broadcast, digital, print) of event within 7 days following significant grant-related event or program. Media and program highlights are to be reflected in QPRs.

- Any press releases, work plans, scripts, storyboards, artwork, graphics, videos or any educational or informational materials that received PIO approval in a prior grant year needs to be resubmitted for approval in the current grant year.
- Contact the OTS PIO or your OTS Coordinator for consultation when changes from any of the above requirements might be warranted.

C. Phase 3 – Data Collection & Reporting (Throughout Grant Year)

1. Prepare and submit invoice claims (due January 30, April 30, July 30, and October 30)
2. Prepare and submit Quarterly Performance Reports (QPR) (due January 30, April 30, July 30, and October 30)
 - Collect and report quarterly, appropriate data that supports the progress of goals and objectives.
 - Provide a brief list of activity conducted, procurement of grant-funded items, and significant media activities. Include status of grant-funded personnel, status of contracts, challenges, or special accomplishments.
 - Provide a brief summary of quarterly accomplishments and explanations for objectives not completed or plans for upcoming activities.
 - Collect, analyze and report statistical data relating to the grant goals and objectives.

4. METHOD OF EVALUATION

Using the data compiled during the grant, the Grant Director will complete the “Final Evaluation” section in the fourth/final Quarterly Performance Report (QPR). The Final Evaluation should provide a brief summary of the grant’s accomplishments, challenges and significant activities. This narrative should also include whether goals and objectives were met, exceeded, or an explanation of why objectives were not completed.

5. ADMINISTRATIVE SUPPORT

This program has full administrative support, and every effort will be made to continue the grant activities after grant conclusion.

FUND NUMBER	CATALOG NUMBER (CFDA)	FUND DESCRIPTION	TOTAL AMOUNT		
164AL-23	20.608	Minimum Penalties for Repeat Offenders for Driving While Intoxicated	\$240,000.00		
402PT-23	20.600	State and Community Highway Safety	\$110,000.00		
COST CATEGORY		FUND NUMBER	UNIT COST OR RATE	UNITS	TOTAL COST TO GRANT
A. PERSONNEL COSTS					
<u>Straight Time</u>					\$0.00
<u>Overtime</u>					
DUI/DL Checkpoints	164AL-23	\$15,000.00	3	\$45,000.00	
DUI Saturation Patrols	164AL-23	\$1,500.00	80	\$120,000.00	
Collaborative DUI Enforcement	164AL-23	\$1,600.00	8	\$12,800.00	
Know Your Limit	164AL-23	\$1,650.00	10	\$16,500.00	
SFST/ARIDE/DRE Instruction	164AL-23	\$40,000.00	1	\$40,000.00	
Benefits for 164AL - OT @ 1.45%	164AL-23	\$234,300.00	1	\$3,397.00	
Traffic Enforcement	402PT-23	\$2,000.00	18	\$36,000.00	
Distracted Driving	402PT-23	\$1,600.00	4	\$6,400.00	
Motorcycle Safety	402PT-23	\$2,000.00	4	\$8,000.00	
Pedestrian and Bicycle Enforcement	402PT-23	\$2,000.00	6	\$12,000.00	
Collaborative Traffic Enforcement	402PT-23	\$1,400.00	4	\$5,600.00	
Street Racing and Sideshow Enforcement Operations	402PT-23	\$2,000.00	3	\$6,000.00	
Traffic Safety Education	402PT-23	\$1,200.00	5	\$6,000.00	
Benefits for 402PT - OT @ 1.45%	402PT-23	\$80,000.00	1	\$1,160.00	
Category Sub-Total				\$318,857.00	
B. TRAVEL EXPENSES					
In State Travel	402PT-23	\$2,040.00	1	\$2,040.00	
				\$0.00	
Category Sub-Total				\$2,040.00	
C. CONTRACTUAL SERVICES					
				\$0.00	
Category Sub-Total				\$0.00	
D. EQUIPMENT					
Changeable Message Sign Trailer with Radar	402PT-23	\$20,000.00	1	\$20,000.00	
Category Sub-Total				\$20,000.00	
E. OTHER DIRECT COSTS					
DUI Checkpoint Supplies	164AL-23	\$2,303.00	1	\$2,303.00	
Portable Light Tower	402PT-23	\$2,700.00	1	\$2,700.00	
Traffic Control Devices	402PT-23	\$650.00	4	\$2,600.00	
Bicycle Helmets	402PT-23	\$15.00	100	\$1,500.00	
Category Sub-Total				\$9,103.00	
F. INDIRECT COSTS					

				\$0.00
Category Sub-Total				\$0.00
GRANT TOTAL				\$350,000.00

BUDGET NARRATIVE	
PERSONNEL COSTS	
DUI/DL Checkpoints - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	
DUI Saturation Patrols - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	
Collaborative DUI Enforcement - Overtime for grant funded Collaborative DUI Enforcement operations conducted by appropriate department personnel	
Know Your Limit - Overtime for grant funded traffic safety presentations or campaigns conducted by appropriate department personnel.	
SFST/ARIDE/DRE Instruction - Overtime for grant funded instructor training conducted by appropriate department personnel.	
Benefits for 164AL - OT @ 1.45% - Benefits breakdown: Medicare - 1.45%	
Traffic Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	
Distracted Driving - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	
Motorcycle Safety - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	
Pedestrian and Bicycle Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	
Collaborative Traffic Enforcement - Overtime for grant funded Collaborative Traffic Enforcement operations conducted by appropriate department personnel	
Street Racing and Sideshow Enforcement Operations - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	
Traffic Safety Education - Overtime for grant funded traffic safety presentations or campaigns conducted by appropriate department personnel.	
Benefits for 402PT - OT @ 1.45% - Benefits breakdown: Medicare - 1.45%	
TRAVEL EXPENSES	
In State Travel - Costs are included for appropriate staff to attend conferences and training events supporting the grant goals and objectives and/or traffic safety. Local mileage for grant activities and meetings is included. All conferences, seminars or training not specifically identified in the Budget Narrative must be approved by OTS. All travel claimed must be at the agency approved rate. Per Diem may not be claimed for meals provided at conferences when registration fees are paid with OTS grant funds.	
CONTRACTUAL SERVICES	
-	
EQUIPMENT	
Changeable Message Sign Trailer with Radar-Fully equipped changeable message sign trailer(s) with a radar device and digital display that is portable and fully programmable and will determine and display the speed of vehicles or post traffic safety information and messages during OTS funded operations.	
OTHER DIRECT COSTS	
DUI Checkpoint Supplies - On-scene supplies needed to conduct sobriety checkpoints. Costs may include 28" traffic cones, MUTCD compliant traffic signs, MUTCD compliant high visibility vests (maximum of 10), traffic counters (maximum of 2), generator, gas for generators, lighting, reflective banners, electronic flares, PAS Device/Calibration Supplies, heater, propane for heaters, fan, anti-fatigue mats, and canopies. Additional items may be purchased if approved by OTS. The cost of food and beverages will not be reimbursed. Each item must have a unit cost of less than \$5,000 (including tax and shipping).	

Portable Light Tower - High intensity light on a telescoping shaft and stabilized platform to illuminate a wide area for greater visibility during night time operations. Costs may include a generator and accessories.
Traffic Control Devices - Traffic control devices to be used in temporary traffic control situations. Costs may include traffic cones, MUTCD compliant traffic signs, sign stands, barricades, lighting devices, traffic control wands, electronic flares. Additional items may be purchased if approved by OTS. Each item must have a unit cost of less than \$5,000 (including tax and shipping).
Bicycle Helmets - Helmets to be distributed at no cost during bicycle rodeos and other bicycle safety related events. Cost per helmet not to exceed an average price of \$15, including shipping, handling and tax. More expensive helmets may be purchased if approved by OTS.
INDIRECT COSTS -
STATEMENTS/DISCLAIMERS There will be no program income generated from this grant. Nothing in this "agreement" shall be interpreted as a requirement, formal or informal, that a particular law enforcement officer issue a specified or predetermined number of citations in pursuance of the goals and objectives here under. Benefits for personnel costs can only be applied to straight time or overtime hours charged to the grant.

CERTIFICATIONS AND ASSURANCES FOR HIGHWAY SAFETY GRANTS
(23 U.S.C. Chapter 4; Sec. 1906, Pub. L. 109-59, As Amended By Sec. 4011, Pub. L. 114-94)

The officials named on the grant agreement, certify by way of signature on the grant agreement signature page, that the Grantee Agency complies with all applicable Federal statutes, regulations, and directives and State rules, guidelines, policies, and laws in effect with respect to the periods for which it receives grant funding. Applicable provisions include, but are not limited to, the following:

GENERAL REQUIREMENTS

- 23 U.S.C. Chapter 4 – Highway Safety Act of 1966, as amended
- Sec. 1906, Pub. L. 109-59, as amended by Sec. 4011, Pub. L. 114-94
- 23 CFR part 1300 – Uniform Procedures for State Highway Safety Grant Programs
- 2 CFR part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 2 CFR part 1201 – Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

NONDISCRIMINATION

(applies to all subrecipients as well as States)

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities"). These include but are not limited to:

- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- **Federal-Aid Highway Act of 1973**, (23 U.S.C. 324 *et seq.*), **and Title IX of the Education Amendments of 1972**, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- **Section 504 of the Rehabilitation Act of 1973**, (29 U.S.C. 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- **The Age Discrimination Act of 1975**, as amended, (42 U.S.C. 6101 *et seq.*), (prohibits discrimination on the basis of age);
- **The Civil Rights Restoration Act of 1987**, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- **Titles II and III of the Americans with Disabilities Act** (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;
- **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency** (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR 74087-74100)).

The Subgrantee-

- Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted;
- Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non- Discrimination Authorities identified in this Assurance;
- Agrees to comply (and require its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;
- Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;
- Agrees to insert in all contracts and funding agreements with other State or private entities the following clause:
 - "During the performance of this contract/funding agreement, the contractor/funding recipient agrees—
 - a. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;
 - b. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 21 and herein;
 - c. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;
 - d. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
 - e. To insert this clause, including paragraphs (a) through (e), in every subcontract and subagreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

The Subgrantee will provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- b. Establishing a drug-free awareness program to inform employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. The grantee's policy of maintaining a drug-free workplace;
 - 3. Any available drug counseling, rehabilitation, and employee assistance programs;
 - 4. The penalties that may be imposed upon employees for drug violations occurring in the workplace;
 - 5. Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- c. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –
 - 1. Abide by the terms of the statement;
 - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- d. Notifying the agency within ten days after receiving notice under subparagraph (c)(2) from an

- employee or otherwise receiving actual notice of such conviction;
- e. Taking one of the following actions, within 30 days of receiving notice under subparagraph (c)(2), with respect to any employee who is so convicted –
 1. Taking appropriate personnel action against such an employee, up to and including termination;
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
 - f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

POLITICAL ACTIVITY (HATCH ACT)

(applies to all subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

(applies to all subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The signed certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

RESTRICTION ON STATE LOBBYING

(applies to all subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

(applies to all subrecipients as well as States)

Instructions for Primary Tier Participant Certification (States)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.
4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Tier Covered Transactions

(1) The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment

rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Participant Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA ACT

(applies to all subrecipients as well as States)

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE

(applies to all subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

POLICY ON SEAT BELT USE

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information and resources on traffic safety programs and policies for employers, please contact the Network of Employers for Traffic Safety (NETS), a public-private partnership dedicated to improving the traffic safety practices of employers and employees. You can download information on seat belt programs, costs of motor vehicle crashes to employers, and other traffic safety initiatives at www.trafficsafety.org. The NHTSA website (www.nhtsa.gov) also provides information on statistics, campaigns, and program evaluations and references.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

INSTRUCTIONS FOR ADDING OR UPDATING GEMS USERS

1. Each agency is allowed a total of **FIVE (5) GEMS Users**.
2. GEMS Users listed on this form will be authorized to login to GEMS to complete and submit Quarterly Performance Reports (QPRs) and reimbursement claims.
3. Complete the form if adding, removing or editing a GEMS user(s).
4. The Grant Director must sign this form and return it with the Grant Agreement.

GRANT DETAILS

Grant Number:	PT23055
Agency Name:	Newport Beach Police Department
Grant Title:	Selective Traffic Enforcement Program (STEP)
Agreement Total:	\$350,000.00
Authorizing Official:	Kevin Muldoon
Fiscal Official:	Scott Catlett
Grant Director:	Eric Little

CURRENT GEMS USER(S)

1. Eric Little

Title: Lieutenant
Phone: (949) 644-3740
Email: elittle@nbpd.org

Media Contact: No

2. Corey Wolik

Title: Sergeant
Phone: (949) 644-3743
Email: cwolik@nbpd.org

Media Contact: No

Complete the below information if adding, removing or editing a GEMS user(s)

GEMS User 1 Add/Change <input type="checkbox"/> Remove Access <input type="checkbox"/> Add as a media contact? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Name	Job Title
Email address	Phone number
GEMS User 2 Add/Change <input type="checkbox"/> Remove Access <input type="checkbox"/> Add as a media contact? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Name	Job Title
Email address	Phone number
GEMS User 3 Add/Change <input type="checkbox"/> Remove Access <input type="checkbox"/> Add as a media contact? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Name	Job Title
Email address	Phone number
GEMS User 4 Add/Change <input type="checkbox"/> Remove Access <input type="checkbox"/> Add as a media contact? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Name	Job Title
Email address	Phone number
GEMS User 5 Add/Change <input type="checkbox"/> Remove Access <input type="checkbox"/> Add as a media contact? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Name	Job Title
Email address	Phone number
Form completed by: <u>Eric Little</u> <small>Eric Little (Aug 25, 2022 13:48 PDT)</small> Date: Aug 25, 2022	
As a signatory I hereby authorize the listed individual(s) to represent and have GEMS user access. <u>Eric Little, Lt.</u> <small>Eric Little, Lt. (Aug 25, 2022 13:48 PDT)</small> Eric Little, Lt.	
Signature	Name
Aug 25, 2022	Grant Director
Date	Title












Grant Agreement - PT23055

Final Audit Report

2022-09-06

Created:	2022-08-25
By:	Kristen Mickey (kristen.mickey@ots.ca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA8ne0MBfeSWTTMsdlwwlCaCoZ8wQHrHf

"Grant Agreement - PT23055" History

-  Document created by Kristen Mickey (kristen.mickey@ots.ca.gov)
2022-08-25 - 8:47:31 PM GMT
-  Document emailed to elittle@nbpd.org for signature
2022-08-25 - 8:47:39 PM GMT
-  Email viewed by elittle@nbpd.org
2022-08-25 - 8:47:46 PM GMT
-  Signer elittle@nbpd.org entered name at signing as Eric Little
2022-08-25 - 8:48:15 PM GMT
-  Document e-signed by Eric Little (elittle@nbpd.org)
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-  Document emailed to elittle@nbpd.org for signature
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-  Email viewed by elittle@nbpd.org
2022-08-25 - 8:48:29 PM GMT
-  Signer elittle@nbpd.org entered name at signing as Eric Little, Lt.
2022-08-25 - 8:48:48 PM GMT
-  Document e-signed by Eric Little, Lt. (elittle@nbpd.org)
Signature Date: 2022-08-25 - 8:48:50 PM GMT - Time Source: server
-  Document emailed to Scott Catlett (scatlett@newportbeachca.gov) for signature
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-  Email viewed by Scott Catlett (scatlett@newportbeachca.gov)
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Document e-signed by Scott Catlett (scatlett@newportbeachca.gov)

Signature Date: 2022-08-25 - 8:50:27 PM GMT - Time Source: server



Document emailed to kmuldoon@newportbeachca.gov for signature

2022-08-25 - 8:50:29 PM GMT



Email viewed by kmuldoon@newportbeachca.gov

2022-08-25 - 9:30:04 PM GMT



Signer kmuldoon@newportbeachca.gov entered name at signing as Kevin Muldoon

2022-08-25 - 9:30:29 PM GMT



Document e-signed by Kevin Muldoon (kmuldoon@newportbeachca.gov)

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Document e-signed by Carolyn Vu (carolyn.vu@ots.ca.gov)

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2022-08-25 - 9:47:01 PM GMT



Email viewed by Barbara Rooney (barbara.rooney@ots.ca.gov)

2022-09-06 - 9:47:54 PM GMT



Document e-signed by Barbara Rooney (barbara.rooney@ots.ca.gov)

Signature Date: 2022-09-06 - 10:48:45 PM GMT - Time Source: server



Agreement completed.

2022-09-06 - 10:48:45 PM GMT



CITY OF

NEWPORT BEACH

City Council Staff Report

September 27, 2022
Agenda Item No. 15

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Seimone Jurjis, Community Development Director - 949-644-3232,
sjurjis@newportbeachca.gov

PREPARED BY: David Lee, Associate Planner, dlee@newportbeachca.gov
PHONE: 949-644-3225

TITLE: Ordinance Nos. 2022-19 and 2022-20: Tennis Club at Newport
Beach Project Amendment (PA2021-260)

ABSTRACT:

The applicant requests an amendment to the approved Tennis Club at Newport Beach project to 1) increase the number of future tennis courts from seven to eight courts; 2) increase the number of future hotel rooms from 27 to 41 rooms; 3) increase the gross floor area of the ancillary hotel uses by 4,686 square feet; and 4) provide three attached condominium units and two detached single-family residences in-lieu of five detached single-family residences. The request also includes a 10-year term extension to the approved project's development agreement to ensure the orderly development of the property and certain public benefits to the City of Newport Beach (City).

For the City Council's consideration is the adoption of three resolutions for environmental clearance and planning applications for the project, and the introduction of two ordinances to amend the Newport Beach Country Club Planned Community Development Plan and approval of a second amendment to the approved project's development agreement. If approved, the item will return to the City Council on October 11, 2022, for the second reading and adoption of the two ordinances. The requested local coastal program amendment (Title 21 Amendment) will not become effective until approval by the California Coastal Commission (CCC) and adoption.

RECOMMENDATION:

- a) Conduct a public hearing;
- b) Adopt Resolution No. 2022-65, *A Resolution of the City Council of the City of Newport Beach, California, Adopting an Addendum to Mitigated Negative Declaration No. ND2010-008 for the Tennis Club at Newport Beach Located at 1602 East Coast Highway*;

- c) Adopt Resolution No. 2022-66, *A Resolution of the City Council of the City of Newport Beach, California, Approving a General Plan Amendment, Amendment to Major Site Development Review No. SD2011-002, Amendment to Coastal Development Permit No. CD2017-039, Amendment to Vesting Tentative Tract Map No. NT2005-003, and Amendment to Limited Term Permit No. XP2011-004 for the Tennis Club at Newport Beach Located at 1602 East Coast Highway (PA2021-260)*;
- d) Adopt Resolution No. 2022-67, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of Local Coastal Program Amendment to the California Coastal Commission to Amend the Newport Beach Country Club Planned Community Development Plan (PC-47) for the Tennis Club Located at 1602 East Coast Highway (PA2021-260)*;
- e) Waive full reading, direct the City Clerk to read by title only, and introduce Ordinance No. 2022-19, *An Ordinance of the City Council of the City of Newport Beach, California, Approving an Amendment to the Newport Beach Country Club Planned Community Development Plan (PC-47) for the Tennis Club at Newport Beach Located at 1602 East Coast Highway*, and pass on to second reading on October 11, 2022; and
- f) Waive full reading, direct the City Clerk to read by title only, and introduce Ordinance No. 2022-20, *An Ordinance of the City Council of the City of Newport Beach, California, Approving the Second Amendment to the Development Agreement (DA2008-001) for the Tennis Club at Newport Beach Located at 1602 East Coast Highway (PA2021-260)*, and pass on to second reading on October 11, 2022.

DISCUSSION:

The subject property is approximately seven acres in size and presently improved with a private tennis club consisting of a 3,725-square-foot tennis clubhouse, 14 tennis courts, 32 pickle ball courts, and a 125-space surface parking lot. The subject property is located adjacent to the Newport Beach Country Club golf course and is west of the Corporate Plaza West Planned Community, which consists of several office buildings. The site is also located directly south of the Granville residential community.

On March 27, 2012, the City Council approved land use entitlements and executed a 10-year term development agreement (DA) to allow the redevelopment of the tennis club site into three distinct components:

- 1) Tennis Club – Reconstruct the existing 3,725-square-foot tennis clubhouse, and reduce the total number of tennis courts from 24 to seven courts, including one lighted stadium court;
- 2) Hotel (Bungalows) - Construct a 27-room boutique hotel with ancillary uses consisting of a spa and fitness center and a concierge guest center; and
- 3) Residential (Villas) - Construct five detached single-family residences.

The project described above (Approved Project) has not been implemented to date and continues to operate as a private tennis club, with pickleball courts being introduced in 2019.

On June 28, 2022, the City Council approved the first amendment to the DA previously approved in 2012, which authorized the extension of the DA by one year. This provided City staff additional time to review an amendment to the Approved Project that was submitted by the applicant on November 2, 2021.

Since the proposed project involves a Local Coastal Program Amendment requiring subsequent approval by the California Coastal Commission (CCC), if the CCC does not approve the amendment, the entire application would not become effective.

Project Description

The applicant is requesting an amendment to the Approved Project to add one tennis court for a total of eight tennis courts, to add 14 hotel units for a total of 41 hotel units with additional ancillary uses, and to allow three of five single-family residential units to be converted to condominiums (Proposed Project).

The applicant's project description and project plans are available online at <https://ecms.newportbeachca.gov/Web/0/fol/2834530/Row1.aspx>

Table 1 below provides a summary of the Approved Project comparing it to the Proposed Project.

Table 1 – Project Comparison

Use	Approved Project	Proposed Project
Tennis	Clubhouse (3,725 sq. ft.) 7 Tennis Courts	No Change 8 Tennis Courts (+1)
Hotel	27 Hotel Rooms Concierge Center (2,200 sq. ft.) Spa/Fitness Center (7,500 sq. ft.)	41 Hotel Rooms (+14) No Change No Change +4,686 sq. ft. of Ancillary Uses Performance Therapy (+852 sq. ft.), Yoga Pavilion (+633 sq. ft.), Administrative Office (+2,620 sq. ft.), Common Area (+581 sq. ft.)
Residential	5 Detached Single-Family Residences	2 Detached Single-Family Residences 3 Attached Condominiums

General Plan

The subject property has a General Plan Land Use designation of Mixed-Use Horizontal 3/Parks and Recreation (MU-H3/PR). The Mixed Use Horizontal 3 designation on the subject site provides for the horizontal intermixing of regional commercial office, hotel, single-family and multi-family residential, and ancillary commercial uses. The PR designation applies to land used or proposed for active public or private recreational use. Permitted uses include parks (both active and passive), golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities. The project site is designated as Anomaly No. 46 by the existing Land Use Element, which limits development intensity to 3,725 square feet for a tennis club building and 24 tennis courts at the subject property. Residential use is also permitted in Anomaly No. 46 in accordance with MU-H3/PR designation. As part of the Approved Project, the City Council authorized the conversion of 17 tennis courts to 27 hotel rooms on a traffic neutral basis. Since the Approved Project did not include a General Plan Amendment, the conversion did not change Anomaly No. 46.

The applicant seeks no changes to the General Plan designations, but rather requests to increase the number of hotel rooms from 27 to 41 rooms and the number of tennis courts from seven to eight courts. The subject property would remain Mixed-Use Horizontal 3/Parks and Recreation (MU-H3/PR). The Proposed Project is consistent with the MU-H3/PR designation as it includes a mix of land uses including single-family residential, attached residential condominiums, recreational tennis club facilities, and visitor-serving commercial uses. These uses are permitted as stated above. A complete consistency analysis of each of the applicable General Plan policies is provided in the attached Draft Resolution (Attachment B) and included in Table 5-12 of the Land Use and Planning Section of the Mitigated Negative Declaration Addendum.

Charter Section 423 (Measure S)

Pursuant to City Charter Section 423 and Council Policy A-18, an analysis must be prepared to establish whether a proposed General Plan Amendment (if approved) requires a vote by the electorate. Charter Section 423 requires voter approval of any major amendment to the General Plan. A major General Plan amendment is one that significantly increases allowed density or intensity by 40,000 square feet of non-residential floor area or increases traffic by more than 100 peak hour vehicle trips (AM/PM) or increases residential dwelling units by 100 units. These thresholds apply to the total of increases resulting from the amendment itself, plus 80 percent of the increases resulting from other amendments affecting the same neighborhood (defined as a Statistical Area as shown in the General Plan Land Use Element) and adopted within the preceding 10 years.

The subject property is within Statistical Area L1. Only 14 hotel rooms are required to be analyzed for Charter Section 423 since the 27 hotel rooms have been previously converted from the 17 tennis courts. The proposed GPA results in an increase of 14,000 square feet (1,000 square feet per hotel room), 9.51 AM trips, and 12.42 PM trips based on the most recent ITE trip rates pursuant to City Council Policy A-18. Prior amendments within the past 10 years are the Vivante Senior Housing and Residences at Newport Center projects. Charter Section 423 requires consideration of 80 percent of prior increases, which results in a cumulative increase of 94 dwelling units, 23 AM trips, and 43 PM trips between both projects. There were no nonresidential gross square footage increases with these two prior amendments. When combined with 80 percent of the prior amendment increases, this results in cumulative increases of 14,000 square feet, 32.51 AM trips, and 55.42 PM trips. As a result, no vote of the electorate is required should the City Council choose to approve the General Plan Amendment.

Local Coastal Program

The proposed amendment to the Local Coastal Program Implementation Plan (Title 21) is consistent with the Coastal Land Use Plan (CLUP), which designates the property as MU-H/PR (Mixed Use Horizontal/Parks and Recreation). This designation allows a horizontally distributed mix of uses, which may include general or neighborhood commercial, commercial offices, multi-family residential, visitor-servicing and marine-related uses, buildings that vertically integrate residential with commercial uses, and active public or private recreational uses, including parks, golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities. The Proposed Project is a request to increase existing uses which have been previously permitted. The project includes a mixture of uses which include a tennis club and eight tennis courts, a 41-unit hotel development and ancillary uses, and five residential units. All of these uses are intended to provide an updated recreational facility to serve the residents and visitors of the city. Additionally, the amendment is consistent with the applicable land use policies of the CLUP, as provided in the attached draft resolution. Therefore, an amendment to the CLUP is not necessary.

Title 21 includes specific development standards for the Approved Project. As a result, an amendment to Title 21 is necessary to revise the development standards listed in Section 21.26.055.S, which specifically refers to the Newport Beach Country Club Planned Community (PC-47) development standards of the "Tennis Club", "The Villas", and "The Bungalows." The following amendments are proposed:

1. The amendment increases the density and intensity limit for the number of tennis courts from seven to eight courts. The addition of the tennis court increases the minimum required parking from 28 spaces to 32 spaces (four spaces per court).
2. The amendment converts three of the five single-family residences to attached residential condominium units. Therefore, the amendment revises the density and intensity limit for the Villas from five to two single-family residences and removes previous development standards for three single-family residences referred to as Villas C, D and E.

3. The amendment includes new development standards for attached residential condominiums, which have a density limit of three units and maximum gross floor area of 15,035 square feet. The maximum height allowed for the condominium buildings is 50 feet. The buildings are required to be set back five feet from any property line. The remaining single-family residences require a minimum of two enclosed parking spaces and one guest parking space per unit, while the proposed attached condominiums require a minimum of three enclosed parking spaces and one guest parking space per unit.
4. The amendment revises the density and intensity limits for the bungalows from 27 to 41 short-term guest rental rooms. Additionally, the maximum allowable gross floor area increases from 28,300 to 47,484 square feet, and square footage for ancillary hotel uses are included. A minimum of one space per hotel unit is required.

Planned Community Development Plan Amendment

In 2012, the City Council adopted NBCC Planned Community Development Plan (PC-47) for the subject site as part of the Approved Project that also includes the adjacent Newport Beach Country Club golf course site. All proposed changes as part of the Proposed Project are limited to the tennis club property and do not apply to the golf club.

The Proposed Project is consistent with the intent and purpose of PC-47 in that the tennis club, hotel, and residential uses and their development standards have already been allowed and are in place on the tennis club site. The proposed changes are minor adjustments to the building height, setbacks, and parking standards in order to accommodate the Proposed Project. Additionally, PC-47 provides guidelines for architectural design to include coordinated and cohesive architecture which exhibits quality that is in keeping with the surrounding area in Newport Center. The Proposed Project includes additional hotel rooms and two attached residential condominium loft buildings. The proposed additions are designed to be compatible with the approved architectural design of the Approved Project. PC-47 permits structures to be a maximum of 50 feet in height. The Proposed Project includes two attached residential condominium loft buildings and additional hotel rooms to be at a maximum of 46 feet high and comply with the height limit.

Site Development Review

On January 24, 2012, the City Council approved Site Development Review No. SD2011-002, which authorized construction of the Approved Project. The proposed changes to the Approved Project necessitate an amendment to the approved Site Development Review.

The proposed development complies with all Site Development Review criteria specified in PC-47 to provide a coordinated, cohesive and comprehensive large-scale planning project. The Approved Project features a distinct and cohesive architectural style (Figure 2), and includes landscaping components, signage and circulation design, which are compatible with the character of the neighboring uses and surrounding sites.

The additional 14 hotel rooms and attached residential condominium buildings are designed to be of similar architectural style, which includes smooth plaster exterior siding, clay tile roofs, and stone veneer exterior accent finishes. As a result, the Proposed Project is compatible with the Approved Project, and is not detrimental to the orderly and harmonious development of the surroundings and of the city.

The Proposed Project promotes additional functionality between residential and hotel components, as residential condominiums are attached to hotel units in two separate loft buildings. Underground parking is provided in the loft buildings, with additional street parking and parking lots to serve hotel and tennis club guests. Each of the two single-family residences provide a two-car garage to serve its residents. The project has been designed to include a surplus of 40 spaces beyond what is required.

The development is designed to maximize aesthetic quality as viewed from surrounding properties. The property is separated from East Coast Highway by a commercial office plaza which is comprised of three two-story office buildings at 1200 Newport Center Drive. The office plaza includes landscaping along East Coast Highway with trees and various plantings. The Newport Beach Country Club golf clubhouse is located approximately 150 feet west of the property. The development's multiple components (tennis club, residential, and hotel) have been designed and sited to function cohesively, not only with each other, but also with the adjacent golf course uses and surrounding development.

Coastal Development Permit

The subject property is located within the Coastal Zone. Therefore, the Proposed Project requires a coastal development permit.

The Proposed Project is consistent with the Coastal Land Use Plan, which designates the site as Mixed-Use Horizontal/Parks and Recreation (MU-H/PR). The MU-H land use designation of the Coastal Land Use Plan allows the horizontal intermixing of hotel units, single-family residences, attached residential condominiums, and tennis club facilities on the project site. Additionally, the MU-H designation identifies a maximum density/intensity limit of 1.5 floor area ratio (FAR), with a minimum FAR of 0.25 and a maximum FAR of 0.5 for retail uses and a maximum of 1.0 for residential. The project proposes 65,595 square feet of nonresidential floor area (approximately 0.21 FAR) for the hotel rooms, concierge & guest center, and ancillary hotel uses which include a performance therapy center, yoga pavilion, office, common area, and a spa and fitness center. The five residential dwelling units total 20,653 square feet (approximately 0.06 FAR). The proposed density/intensity of the hotel and residential units comply with the FAR limitations identified in the Coastal Land Use Plan.

The PR coastal land use designation applies to land used or proposed for active public or private recreational use. Permitted uses include parks (both active and passive), golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities. The PR designation on this site is applicable to the existing and proposed private tennis club and tennis courts.

The density/intensity limitations include incidental buildings, such as maintenance equipment sheds, supply storage, and restrooms, not included in determining intensity limits. The proposed tennis club and ancillary uses are consistent with this land use designation.

The property is not located between the nearest public road and the sea or shoreline and will not affect the public's ability to gain access to, use or view the coast and nearby recreational facilities. Coastal Land Use Plan, Policy 4.4.1-6 and Figure 4-3 (Coastal Views) identify the closest public view road as Newport Center Drive, located approximately 170 feet east of the project site and the closest public viewpoint as Irvine Terrace Park, located 525 feet south of the project site. Coastal views from these view corridors and viewpoints are directed toward Newport Bay and the Pacific Ocean. Since the project site is located to the north of Irvine Terrace Park, the Proposed Project will not affect coastal views due to its orientation. From Newport Center Drive, there is a zero to 40-foot grade difference to the project area below.

An analysis of the fiscal and economic Impacts was prepared on August 29, 2022, by Kosmont Companies to analyze the construction of new visitor accommodations in the coastal zone in accordance with the requirements of Section 21.48.025 (Local Coastal Program Implementation Plan, Standards for Specific Land Uses, Visitor Accommodations) of the NBMC. The report provides a feasibility analysis stating that the anticipated average daily room (ADR) rate for all 41 rooms is approximately \$920 and the statewide average daily room rate is \$205.69. Because the anticipated ADR will well exceed the statewide average, the proposed accommodations are not considered lower cost accommodations. The report considers the specific location of the property as an inappropriate location for low-cost accommodations. Additionally, low-cost accommodations are not feasible due to prohibitive land and construction costs. The property does not currently provide accommodations of any kind and implementation of the Project would not directly impact low-cost accommodations. While the Project would not include any lower cost accommodations, the Local Coastal Program Implementation Plan would identify the Project as generating an impact simply by not providing lower-cost accommodations. There is no impact on the provision of lower-cost visitor accommodations in the Coastal Zone as creating lower cost accommodations at the site is infeasible and there is no nexus to an actual impact; therefore, no mitigation is required. The Project features larger guest facilities with bedrooms, separate living rooms with sofa beds, and many rooms with kitchens. These features will accommodate more occupants per room, which lowers the costs per occupant.

Tentative Vesting Tract Map

On January 24, 2012, the City Council approved a Vesting Tentative Tract Map, which authorized the creation of separate lots for five single-family residences, 27 hotel rooms, and lettered lots for common areas and a private street. The applicant proposes an amendment to the vesting tentative tract map to accommodate the Proposed Project.

The amended map reflects the combination of two previously divided lots, which results in the elimination of one lot. These two lots were intended for two detached-single family residences. The map has also been modified to include residential condominium portion of the Proposed Project.

All construction for the project has been conditioned to comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. The Public Works Department has reviewed the proposed revisions to the approved vesting tentative tract map and determined it is consistent with the Newport Beach Subdivision Code (Title 19) and applicable requirements of the Subdivision Map Act.

Limited Term Permit

The applicant is requesting a limited term permit (LTP) to allow two temporary modular trailers and portable toilets during construction. Both modular trailers are approximately 33 feet long and 13 feet wide. One modular trailer is proposed to be used as a construction office located at the southwest portion of the property and will be staged at this location through the entire duration of the Proposed Project, which is estimated to be approximately 20 months. The second modular office is proposed to be used as a temporary office for tennis club operations and will be located on the easterly portion of the property through the construction of the tennis clubhouse, which is estimated to be approximately 16 months. The portable toilets are proposed to serve the temporary tennis club office and located nearby.

Development Agreement

On March 27, 2012, the City Council approved a Development Agreement between the City and the Applicant for the Approved Project. The DA was executed and recorded, on January 29, 2014, with a 10-year term. The DA provides vested rights to develop the Approved project and the City negotiated public benefit fees of ninety-three thousand \$93,000 per each residential dwelling unit and \$10 per square foot of construction for the tennis clubhouse, for a grand total of \$502,250. These fees are subject to annual adjustments, based on the CPI Index.

On July 12, 2022, the City Council approved the First Amendment to the DA to extend the term of the agreement by one year. The DA will expire on September 23, 2023. In accordance with Section 15.45.020.A.2.c (Development Agreement Required) of the NBMC, a reconsideration of the agreement is required as the Proposed Project, which includes an amendment to PC-47 and a General Plan Amendment to increase the number of hotel rooms from 27 to 41 rooms, which is new non-residential development in Statistical Area L1 (Newport Center/Fashion Island).

The applicant requests an additional 10-year term of agreement (Second Amendment), pursuant to Section 15.45.070 (Amendment/Cancellation). The Second Amendment provides assurance that the applicant may proceed with the Proposed Project in accordance with existing policies, rules and regulations, and conditions of approval.

Additionally, the Second Amendment to the DA helps the applicant avoid a waste of resources and escalated costs of the Proposed Project while encouraging a commitment to private participation in comprehensive planning.

The Second Amendment (Attachment E) also specifies the updated permitted uses, density and intensity, and maximum height and size of proposed buildings, consistent with the Proposed Project. Additionally, the Second Amendment to the Agreement includes all mandatory elements, including public benefits that are appropriate to support conveying the vested development rights consistent with the City's General Plan, NBMC, and Government Code Sections 65864 *et seq.* No changes to the public benefit fees are proposed.

A more complete summary and analysis of the Proposed Project and related entitlement findings can be found in the attached September 8, 2022 Planning Commission staff report (Attachment F).

Planning Commission Review and Recommendation

The Planning Commission held a public hearing on September 8, 2022. The main topics discussed by the Planning Commission were confirmation of the applicant's request to maintain the existing private tennis club with tennis courts, the City's process for conversion of tennis courts to pickleball courts, tennis club and pickleball club operations as they relate to occupancy, parking, traffic, and noise impacts to the surrounding uses, and level of details on the submitted plans for project approval. Nine members of the public addressed the Planning Commission regarding the Proposed Project. At the conclusion of the public hearing, the Planning Commission voted 5-0 (5 ayes, 1 absent, and 1 recused) to adopt Resolution No. PC2022-022, recommending the City Council approve the Proposed Project. The Planning Commission staff report, meeting minutes, and resolution are attached for reference as Attachments F, G and H.

FISCAL IMPACT:

The applicant is required to reimburse the City for all costs associated with the review of the application. The applicant has agreed to the terms of the draft Second Amendment stated above that requires the payment of \$502,250 in addition to all required permit fees and development impact fees.

ENVIRONMENTAL REVIEW:

On March 27, 2012, the Newport Beach City Council approved Mitigated Negative Declaration No. ND2010-008 (SCH 2010091052) and an Errata to Mitigated Negative Declaration No. ND2010-008 (together referred as "MND") that addressed the potential environmental effects associated with the Approved Project.

Although the Project necessitates an amendment to the General Plan due to the increased number of hotel rooms and tennis courts, there are no proposed changes to the land uses permitted per the General Plan land use designation. Additionally, based on the changes associated with the Project, there are no conditions that would require the preparation of a subsequent or supplemental MND. As a result, an Addendum to the MND was prepared pursuant to Section 15162 (Subsequent EIRs and Negative Declarations) and 15164 (Addendum to an EIR or Negative Declaration) of the CEQA Guidelines.

On the basis of the MND and entire environmental review record, the additional tennis court, hotel rooms, ancillary hotel uses, and conversion of three (3) single-family residences to condominium units will not result in any new significant impacts that were not previously analyzed in the MND. The Addendum confirms and provides substantial evidence that the potential impacts associated with this Proposed Project would either be the same or less than those described in the MND, or as mitigated by applicable mitigation measures in the MND. In addition, there are no substantial changes to the circumstances under which the Proposed Project would be undertaken that would result in new or more severe environmental impacts than previously addressed in either the MND, nor has any new information regarding the potential for new or more severe significant environmental impacts been identified. Therefore, in accordance with Section 15164 of the CEQA Guidelines, an addendum to the previously adopted MND is the appropriate environmental document for the Proposed Project. In taking action to approve any of the requested applications for the Proposed Project, the data presented in the MND, as augmented by the Addendum for this Proposed Project, are considered as part of the record.

NOTICING:

Notice of this hearing was published in the *Daily Pilot*, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

ATTACHMENTS:

Attachment A – Resolution No. 2022-65

Attachment B – Resolution No. 2022-66

Attachment C – Resolution No. 2022-67

Attachment D – Ordinance No. 2022-19

Attachment E – Ordinance No. 2022-20

Attachment F – Planning Commission Staff Report, Dated September 8, 2022

Attachment G – Planning Commission Minute Excerpts, Dated September 8, 2022

Attachment H – Planning Commission Resolution No. PC2022-022

Attachment A

Resolution No. 2022-65 to Adopt Addendum to MND

RESOLUTION NO. 2022-65

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADOPTING AN ADDENDUM TO MITIGATED NEGATIVE DECLARATION NO. ND2010-008 FOR THE TENNIS CLUB AT NEWPORT BEACH LOCATED AT 1602 EAST COAST HIGHWAY (PA2021-260)

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

WHEREAS, in 2012, the City Council approved an application by Golf Realty Fund, Managing Owner (“Applicant”) for the reconstruction of the 3,725-square-foot tennis clubhouse, a reduction of tennis courts from 24 to seven courts, construction of a 27-room boutique hotel with 9,700 square feet of ancillary uses, five single-family residential units, and a development agreement for the property (“2012 Entitlements”) located at 1602 East Coast Highway, and legally described as Parcels A, B, C, and D of Parcel Map No. 2016-151 (commonly referred as the “Tennis Club Site” or “Property”);

WHEREAS, on November 20, 2018, the Zoning Administrator approved Coastal Development Permit No. CD2017-039, authorizing the redevelopment of the Property consistent with the 2012 Entitlements (2012 Entitlements and Coastal Development Permit No. CD2017-039 are collectively referred to as the “Approved Project”);

WHEREAS, the Applicant is requesting an amendment to the Approved Project to allow an increase in the number of future tennis courts from seven to eight, an increase in the number of future hotel rooms from 27 to 41, an increase to the gross floor area of ancillary hotel uses by 4,686 square feet, three attached condominium units and two single-family residences in-lieu of five single-family residences, and an amendment to the 2012 Development Agreement to account for the aforementioned changes to the Approved Project along with extending the term for an additional 10 years (“Project”);

WHEREAS, the following approvals are requested or required in order to implement the Project:

- General Plan Amendment (“GPA”) – An amendment to Anomaly No. 46 of Table LU2 of the 2006 Newport Beach General Plan Land Use Element to document

the conversion of 17 tennis courts to 27 hotel rooms authorized by City Council Resolution No. 2012-10, and the addition of 14 hotel rooms for a total of 41 rooms and one tennis courts for a total of eight tennis courts;

- Local Coastal Program Implementation Plan Amendment ("LCPA") – An amendment to Section 21.26.055(S)(2) (Planned Community Coastal Zoning District Development Standards, Newport Beach Country Club (PC-47, Tennis Club) of the Newport Beach Municipal Code ("NBMC") to modify the permitted uses and development standards allowed on the Property;
- Planned Community Development Plan Amendment ("PCDP Amendment") – An amendment to Planned Community Development Plan No. 47 (Newport Beach Country Club Planned Community) to amend land use regulations and development standards on the Property;
- Major Site Development Permit Amendment ("SDA") – An amendment to the existing site development review in accordance with PC-47 and Section 20.52.080 (Permit Review Procedures, Site Development Reviews) of the NBMC for the construction of the Project;
- Coastal Development Permit Amendment ("CDPA") – A coastal development permit for the demolition of existing structures, further subdivision on the Property, and implementation of the Project;
- Vesting Tentative Tract Map Amendment ("VTMA") – An amendment to Vesting Tentative Tract Map No. 15347 pursuant to Title 19 (Subdivisions) of the Newport Beach Municipal Code ("NBMC") for a lot reduction created for the Approved Project and inclusion of the condominium ownership;
- Limited Term Permit Amendment ("XP") – A limited term permit to allow temporary use of structures during construction on the Property, pursuant to NBMC Section 20.52.040;
- Development Agreement Amendment ("DA") – A second amendment to the Development Agreement (DA2008-001), between the Applicant and the City, pursuant to Sections 15.45.020(A)(2)(c) (Buildings and Construction, Development Agreements Required, Development Agreement Required) and 15.45.070 (Buildings and Constructions, Development Agreements, Amendment/Cancellation) of the NBMC, which would provide vested rights to

develop the Project for an additional 10 years and provide negotiated public benefits to the City; and

- Addendum to previously adopted Mitigated Negative Declaration No. ND2010-008 (SCH2010091052) ("Addendum") – Pursuant to the California Environmental Quality Act ("CEQA"), the Addendum addresses reasonably foreseeable environmental impacts resulting from the Project;

WHEREAS, the Property is designated Mixed-Use Horizontal 3/Parks and Recreation (MU-H3/PR) by the City of Newport Beach General Plan and is located within the Newport Beach Country Club Planned Community (PC-47) Zoning District;

WHEREAS, the Property is designated Mixed-Use Horizontal/Parks and Recreation (MU-H/PR) by the Coastal Land Use Plan and is located within the Newport Beach Country Club Planned Community (PC-47) Coastal Zone District;

WHEREAS, the Planning Commission held a public hearing on September 8, 2022, in the City Council Chambers, located at 100 Civic Center Drive, Newport Beach, California, at which time the Planning Commission considered the Project. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act"), and Chapters 15.45 (Development Agreements), 19.12 (Tentative Map Review), 20.56 (Planning Community District Procedures), 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing;

WHEREAS, at the hearing, the Planning Commission adopted Resolution No. PC2022-022 (5 ayes, 1 absent, 1 recusal) recommending approval of the Project to the City Council; and

WHEREAS, a public hearing was held by the City Council on September 27, 2022, in the City Council Chambers, located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act, and Chapters 15.45 (Development Agreements), 19.12 (Tentative Map Review), 20.56 (Planning Community District Procedures), 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

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

Section 1: On March 27, 2012, the Newport Beach City Council approved Mitigated Negative Declaration No. ND2010-008 (SCH 2010091052) and an Errata to Mitigated Negative Declaration No. ND2010-008 (together referred to as "MND") that addressed the potential environmental effects associated with the Approved Project. The MND was prepared in compliance with the California Environmental Quality Act as set forth in Section 21000 *et seq.* of the California Public Resources Code, the State CEQA Guidelines set forth in Title 14, Division 6, Chapter 3 of the California Code of Regulations, ("CEQA Guidelines"), and City Council Policy K-3. The MND is attached hereto as Exhibit "A" and incorporated herein by reference.

Section 2: Pursuant to Section 21166 of the California Public Resources Code and Section 15162 of the CEQA Guidelines, when a negative declaration adopted for a project, no subsequent negative declaration 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 negative declaration 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 negative declaration 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 negative declaration was adopted as complete, shows any of the following:
 - i. The project will have one or more significant effects not discussed in the previous negative declaration;
 - ii. Significant effects previously examined will be substantially more severe than shown in the adopted negative declaration;

- 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 negative declaration would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Section 3: Although the Project necessitates an amendment to the General Plan due to the increased number of hotel rooms and tennis courts, there are no proposed changes to the land uses permitted per the General Plan land use designation. Additionally, based on the changes associated with the Project, there are no conditions that would require the preparation of a subsequent or supplemental MND. As a result, an Addendum to the MND was prepared pursuant to Section 15162 (Subsequent EIRs and Negative Declarations) and 15164 (Addendum to an EIR or Negative Declaration) of the CEQA Guidelines.

Section 4: The following environmental topics were analyzed for the Project: Aesthetics, Air Quality, Biological Resources, Cultural Resources, Energy, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Noise, Population and Housing, Public Services, Recreation, Transportation, Utilities and Service Systems, and Wildfire. The Addendum includes analysis of new topics that were not included in the previous MND; specifically, it includes a new energy section and a new wildfire section. These additional analyses are appropriate for inclusion in the Addendum, but do not result in new or increased significant impacts that would require preparation of a subsequent MND pursuant to Section 15162 of the CEQA Guidelines.

Section 5: On the basis of the MND and entire environmental review record, the additional tennis court, hotel rooms, ancillary hotel uses, and conversion of three single-family residences to condominium units will not result in any new significant impacts that were not previously analyzed in the MND. The Addendum confirms and provides substantial evidence that the potential impacts associated with this Project would either be the same or less than those described in the MND, or as mitigated by applicable mitigation measures in the MND. In addition, there are no substantial changes to the circumstances under which the Project would be undertaken that would result in new or more severe environmental impacts than previously addressed in either the MND, nor has any new information regarding the potential for new or more severe significant environmental impacts been identified. Therefore, in accordance with Section 15164 of the CEQA Guidelines, an addendum to the previously adopted MND is the appropriate environmental document for the Project. In taking action to approve any of the requested applications for the Project, the data presented in the MND, as augmented by the Addendum for this Project, are considered as part of the record.

Section 6: The Addendum to the MND, is hereby adopted by the City Council given its analysis and conclusions. The Addendum to the MND and related referenced documentation, constitute the administrative record upon which this decision was based, are on file with the Planning Division, City Hall, 100 Civic Center Drive, Newport Beach, California.

Section 7: The City Council finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

Section 8: The recitals provided in this resolution are true and correct and are incorporated into the operative part 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: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

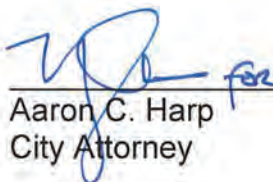
ADOPTED this 27th day of September, 2022.

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

_____
Aaron C. Harp
City Attorney

Attachment(s): Exhibit A: Mitigated Negative Declaration No. ND2010-008 and an
Errata to Mitigated Negative Declaration No. ND2010-008
(MND)

Exhibit "A"

Mitigated Negative Declaration No. ND2010-008 and an Errata to Mitigated Negative Declaration No. ND2010-008 (MND)

Available separately due to bulk at:

<https://www.newportbeachca.gov/government/departments/community-development/planning-division/projects-environmental-document-download-page/environmental-document-download-page-arch>

Attachment B

Resolution No. 2022-66 to Approve GPA, SD, CD, NT & XP

RESOLUTION NO. 2022- 66

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A GENERAL PLAN AMENDMENT, AMENDMENT TO MAJOR SITE DEVELOPMENT REVIEW NO. SD2011-002, AMENDMENT TO COASTAL DEVELOPMENT PERMIT NO. CD2017-039, AMENDMENT TO VESTING TENTATIVE TRACT MAP NO. NT2005-003, AND AMENDMENT TO LIMITED TERM PERMIT NO. XP2011-004 FOR THE TENNIS CLUB AT NEWPORT BEACH LOCATED AT 1602 EAST COAST HIGHWAY (PA2021-260)

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

WHEREAS, in 2012, the City Council approved an application by Golf Realty Fund, Managing Owner ("Applicant") for the reconstruction of the 3,725-square-foot tennis clubhouse, reduction of tennis courts from 24 to seven courts, construction of a 27-room boutique hotel with 9,700 square feet of ancillary uses, five single-family residential units, and a development agreement for the property ("2012 Entitlements") located at 1602 East Coast Highway, and legally described as Parcels A, B, C, and D of Parcel Map No. 2016-151 (commonly referred as the "Tennis Club Site" or "Property");

WHEREAS, on November 20, 2018, the Zoning Administrator approved Coastal Development Permit No. CD2017-039, authorizing the redevelopment of the Property consistent with the 2012 Entitlements (2012 Entitlements and Coastal Development Permit No. CD2017-039 are collectively referred to as the "Approved Project");

WHEREAS, the Applicant is requesting an amendment to the Approved Project to allow an increase in the number of future tennis courts from seven to eight, an increase in the number of future hotel rooms from 27 to 41, an increase to the gross floor area of ancillary hotel uses by 4,686 square feet, three attached condominium units and two single family residences in-lieu of five single-family residences, and an amendment to the 2012 Development Agreement to account for the aforementioned changes to the Approved Project along with extending the term for an additional 10 years ("Project");

WHEREAS, the following approvals are requested or required in order to implement the Project:

- General Plan Amendment (“GPA”) – An amendment to Anomaly No. 46 of Table LU2 of the 2006 Newport Beach General Plan Land Use Element to document the conversion of 17 tennis courts to 27 hotel rooms authorized by City Council Resolution No. 2012-10, and the addition of 14 hotel rooms for a total of 41 rooms and one tennis courts for a total of eight tennis courts;
- Local Coastal Program Implementation Plan Amendment (“LCPA”) – An amendment to Section 21.26.055(S)(2) (Planned Community Coastal Zoning District Development Standards, Newport Beach Country Club (PC-47, Tennis Club) of the Newport Beach Municipal Code (“NBMC”) to modify the permitted uses and development standards allowed on the Property;
- Planned Community Development Plan Amendment (“PCDP Amendment”) – An amendment to Planned Community Development Plan No. 47 (Newport Beach Country Club Planned Community) to amend land use regulations and development standards on the Property;
- Major Site Development Permit Amendment (“SDA”) – An amendment to the existing site development review in accordance with PC-47 and Section 20.52.080 (Permit Review Procedures, Site Development Reviews) of the NBMC for the construction of the Project;
- Coastal Development Permit Amendment (“CDPA”) – A coastal development permit for the demolition of existing structures, further subdivision on the Property, and implementation of the Project;
- Vesting Tentative Tract Map Amendment (“VTMA”) – An amendment to Vesting Tentative Tract Map No. 15347 pursuant to Title 19 (Subdivisions) of the NBMC for a lot reduction created for the Approved Project and inclusion of the condominium ownership;
- Limited Term Permit Amendment (“XP”) – A limited term permit to allow temporary use of structures during construction on the Property, pursuant to Section 20.52.040 of the NBMC;
- Development Agreement Amendment (“DA”) – A second amendment to the Development Agreement (DA2008-001), between the Applicant and the City,

pursuant to Sections 15.45.020(A)(2)(c) (Buildings and Construction, Development Agreements Required, Development Agreement Required) and 15.45.070 (Buildings and Constructions, Development Agreements, Amendment/Cancellation) of the NBMC, which would provide vested rights to develop the Project for an additional 10 years and provide negotiated public benefits to the City; and

- Addendum to previously adopted Mitigated Negative Declaration No. ND-2010-008 (SCH2010091052) ("Addendum") – Pursuant to the California Environmental Quality Act ("CEQA"), the Addendum addresses reasonably foreseeable environmental impacts resulting from the Project;

WHEREAS, the Property is designated Mixed-Use Horizontal 3/Parks and Recreation (MU-H3/PR) by the City of Newport Beach General Plan and is located within the Newport Beach Country Club Planned Community (PC-47) Zoning District;

WHEREAS, the Property is designated Mixed-Use Horizontal/Parks and Recreation (MU-H/PR) by the Coastal Land Use Plan and is located within the Newport Beach Country Club Planned Community (PC-47) Coastal Zone District;

WHEREAS, the Planning Commission held a public hearing on September 8, 2022, in the City Council Chambers, located at 100 Civic Center Drive, Newport Beach, California, at which time the Planning Commission considered the Project. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act"), and Chapters 15.45 (Development Agreements), 19.12 (Tentative Map Review), 20.56 (Planning Community District Procedures), 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing;

WHEREAS, at the hearing, the Planning Commission adopted Resolution No. PC2022-022 (5 ayes, 1 absent, 1 recusal) recommending approval of the Project to the City Council; and

WHEREAS, a public hearing was held by the City Council on September 27, 2022, in the City Council Chambers, located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act, and Chapters 15.45 (Development Agreements), 19.12 (Tentative Map Review), 20.56 (Planning Community District Procedures), 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

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

Section 1: The City Council has considered the recommendation of the Planning Commission and determined that modifications to the Project made by the City Council, if any, are not major changes that require referral back to the Planning Commission for consideration and recommendation.

Section 2: The City Council hereby approves a General Plan Amendment, Amendment to Major Site Development Review No. SD2011-002, Amendment to Coastal Development Permit No. CD2017-039, Amendment to Tentative Vesting Tract Map No. NT2005-003, and Amendment to Limited Term Permit No. XP2011-004.

Section 3: An amendment to the 2006 Newport Beach General Plan Land Use Element is a legislative act. Neither Title 20 (Planning and Zoning) nor California Government Code Section 65000 *et seq.*, set forth any required findings for either approval or denial of such amendments. Nonetheless, the GPA is consistent with the following City of Newport Beach General Plan Land Use based upon the following:

Findings and Facts in Support of General Plan Consistency:

As part of the Approved Project, the City Council adopted Resolution No. 2012-10, which authorized the conversion of 17 tennis courts to 27 hotel rooms along with the redevelopment of the Property including seven remaining tennis courts. The City Council found that the conversion of tennis courts to hotel rooms was consistent with the General Plan based upon the revitalization to Newport/Fashion Island area where the General Plan encourages additional hotel development and housing units, and the fact that the conversion did not create traffic impacts. At the time of the conversion, the 17 tennis courts generated 658 average daily trips based upon ITE Trip Generation Rates (7th edition), while the 27 hotel rooms generated 221 average daily trips, resulting in a net decrease of 389 daily trips.

With the amendment to the Approved Project, Anomaly No. 46 will be modified to include 14 additional hotel rooms and one tennis court. Together, a total of 41 hotel rooms (27+14=41 rooms) and eight tennis courts will be included in Anomaly No. 46. No change to the 3,725-square-foot tennis clubhouse is proposed. The GPA does not include a change in land use designation and would remain as Mixed-Use Horizontal 3/Parks and Recreation (MU-H3/PR).

The amendment to the Approved Project is consistent with the following General Plan policies:

- a. ***Land Use Element Policy LU1.1 (Unique Environment).*** *Maintain and enhance the beneficial and unique character of the different neighborhoods, business districts, and harbor that together identify Newport Beach. Locate and design development to reflect Newport Beach's topography, architectural diversity, and view sheds.*

The Project includes an amendment to the PC-47 District regulations on the Tennis Club site and reflects the proposed development on the Property. PC-47 will continue to guide development occurring within the Property. The development standards address building height, setbacks, landscaping, and architectural character. The standards are intended to ensure that the City's unique character is maintained through land use and architectural diversity.

- b. ***Land Use Element Policy LU1.2 (Citywide Identity).*** *While recognizing the qualities that uniquely define its neighborhoods and districts, promote the identity of the entire City that differentiates it as a special place within the Southern California region.*

The area in which in the Property is located is characterized by a variety of residential, commercial, and recreational land uses that reflect a range of architectural styles, which contribute to the unique character of the City. The intensity and architectural character of the Project are compatible with the variety of densities and styles within the area, which are consistent with the identity of the City. The architectural character of the Project, including the bungalow-style hotel rooms, detached residential units, and attached residential loft buildings, is consistent with the City's desire to differentiate Newport Beach from other coastal cities.

- c. ***Land Use Element Policy LU2.1 (Resident-Serving Land Uses).*** *Accommodate uses that support the needs of Newport Beach's residents including housing, retail, services, employment, recreation, education, culture, entertainment, civic engagement, and social and spiritual activity that are in balance with community natural resources and open spaces.*

The Project will continue to provide residents with recreational opportunities, culture, entertainment, and civic engagement. The proposed

amendment remains supportive of recreational uses by providing one additional tennis court to the previously approved seven courts. The amendment also includes an additional 14 hotel rooms to the previously approved 27-unit hotel development with additional hotel amenities for club members such as a Performance Therapy Center and Yoga Pavilion.

- d. ***Land Use Element Policy LU.2.6 (Visitor Serving Uses).*** *Provide uses that serve visitors to Newport Beach's ocean, harbor, open spaces, and other recreational assets, while integrating them to protect neighborhoods and residents*

The Project provides visitors with an updated recreational facility as it includes a new tennis clubhouse and eight tennis courts, which includes a stadium size court. The tennis club is adjacent to a golf course with amenities and is within 2,000 feet from the Newport Bay. The proposed 41 hotel rooms provide additional opportunities for visitors to enjoy the tennis club and nearby recreational activities.

- e. ***Land Use Element Policy LU3.2 (Growth and Change).*** *Enhance existing neighborhoods, districts, and corridors, allowing for reuse and infill with uses that are complementary in type, form, scale, and character. Changes in use and/or density/intensity should be considered only in those areas that are economically underperforming, are necessary to accommodate Newport Beach's share of projected regional population growth, improve the relationship and reduce commuting distance between home and jobs, or enhance the values that distinguish Newport Beach as a special place to live for its residents. The scale of growth and new development shall be coordinated with the provision of adequate infrastructure and public services, including standards for acceptable traffic level of service.*

The character of the tennis club, hotel development, and residential units are compatible with the existing land uses and development intensities of the surrounding area. Although the additional 14 hotel rooms and one tennis court requires amendments to adopted plans and regulations, the existing tennis club and hotel development that are the substance of the Approved Project are allowed under the General Plan. The Project has been designed to be compatible with the existing residential, commercial, and recreational uses located within the vicinity of the Project site. In addition, the surrounding area is adequately served by existing infrastructure, including circulation, water, sewer, and storm drainage systems. As a result, the

implementation of the Project will not adversely affect those systems or the provision of adequate service to nearby development.

- f. ***Land Use Element Policy LU3.3 (Opportunities for Change).*** Provide opportunities for improved development and enhanced environments for residents in the following districts and corridors, as specified in Policies 6.3.1 through 6.22.7: Fashion Island/Newport Center: expanded retail uses and hotel rooms and development of residential in proximity to jobs and services, while limiting increases in office development.

The Project provides enhancement to the Property, which is currently being used exclusively as a tennis club, to include 41 hotel rooms and ancillary uses, and five residential units. The Project retains a total of eight tennis courts and the reconstruction of the Tennis Clubhouse. The Project will be utilized as a recreational facility for residents, guests, and club members.

- g. ***Land Use Element Policy LU4.1 (Land Use Diagram).*** Accommodate land use development consistent with the Land Use Plan.

The Project is consistent with the designation of the General Plan Land Use Element, which designates the Property as MU-H3/PR. The Property is located within Anomaly No. 46, which allocates 24 tennis courts with residential permitted in accordance with the MU-H3 designation. The GPA includes an amendment to the Development Limit (Other) of Anomaly No. 46, to reduce the number of tennis courts to eight and to include 41 hotel rooms.

- h. ***Land Use Element Policy LU5.1.2 (Compatible Interfaces).*** Require that the height of development in nonresidential and higher-density residential areas transition as it nears lower-density residential areas to minimize conflicts at the interface between the different types of development.

Although the Property is not located adjacent to lower density residential development, the Project has been designed to respect the proximity of the existing residential development adjacent to the Property. The amended PC-47 prescribes maximum building heights and setback requirements for each of the development components to ensure land use compatibility. Building heights for the proposed structures will range from 46 feet for the attached residential loft buildings, 39 feet for the detached residential units,

31 feet for the hotel rooms, and 30 feet for the Tennis Clubhouse, which are within the maximum 50-foot building height allowed by PC-47.

- i. ***Land Use Element Policy LU (5.3.3).*** *Require that properties developed with a mix of residential and non-residential uses be designed to achieve high levels of architectural quality in accordance with Policies 5.1.9 and 5.2.1 and planned to assure compatibility among the uses and provide adequate circulation and parking. Residential uses should be seamlessly integrated with non-residential uses through architecture, pedestrian walkways, and landscape. They should not be completely isolated by walls or other design elements.*

The Project includes one additional tennis court to the tennis club, 41 hotel rooms, two single-family residences, and two residential condominium units. The Project provides adequate parking for each of the proposed uses. Vehicular and pedestrian circulation has been designed to accommodate the residents, as well as guests and members of the tennis club and hotel development. The architectural character of the uses is defined in PC-47 to ensure that compatibility between proposed uses and the surrounding area is maintained.

- j. ***Land Use Element Policy LU5.3.4 (Districts Integrating Residential and Nonresidential Uses).*** *Require that sufficient acreage be developed for an individual use located in a district containing a mix of residential and non-residential uses to prevent fragmentation and assure each use's viability, quality, and compatibility with adjoining uses.*

Each of the uses has been designed to complement the overall Project. The uses are connected by the vehicular and pedestrian circulation system, including sidewalks and pedestrian pathways. Land use compatibility is achieved through a common landscape theme and design guidelines in PC-47 to ensure that the architectural integrity of the Project is not compromised.

- k. ***Land Use Element Policy LU6.14.2 (Newport Center).*** *Provide the opportunity for limited residential, hotel, and office development in accordance with the limits specified by Tables LU1 and LU2.*

The Project has a mix of land uses including single-family residential, attached residential condominiums, recreational tennis club facilities, and

visitor-serving commercial uses. These uses are permitted in Table LU1 under the MU-H3/PR land use designation. The GPA proposes to amend the development limits of Table LU2 to include eight tennis courts and 41 hotel rooms.

- I. ***Land Use Element Policy LU6.14.6 (Pedestrian Connectivity and Amenity).*** *Encourage that pedestrian access and connections among uses within the district be improved with additional walkways and streetscape amenities concurrent with the development of expanded and new uses.*

The Project provides for both pedestrian and vehicular access within the Property. Sidewalks and pedestrian pathways are incorporated into the circulation system that are intended to accommodate pedestrians utilizing the tennis club, hotel facilities, and future residents. A landscape plan has been provided which includes plant materials that are intended to reflect and complement the existing character within the project area.

Tribal Consultation Finding:

Pursuant to California Government Code Section 65352.3 (SB18), a local government is required to contact the appropriate tribes identified by the Native American Heritage Commission ("NAHC") each time it considers a proposal to adopt or amend the General Plan. If requested by any tribe, the local government must consult for the purpose of preserving or mitigating impacts to cultural resources.

Fact in Support of Finding of Consistency:

The City received comments from the NAHC indicating that 12 tribal contacts should be provided notice regarding the proposed amendment. The tribal contacts were provided notice on June 9, 2022. California Government Code Section 65352.3 requires notification 90 days prior to Council action to allow tribal contacts to respond to the request to consult. The Project will not be heard by the City Council until the 90-day period expires on September 7, 2022.

Section 4: Charter Section 423 requires voter approval of any major General Plan amendment to the General Plan. A major General Plan amendment is one that significantly increases allowed density or intensity by 40,000 square feet of non-residential floor area, increases traffic by more than 100 peak hour vehicle trips (AM/PM), or increases residential dwelling units by 100 units. These thresholds apply to the total of increases resulting from the amendment itself, plus 80 percent of the increases resulting from other amendments affecting the same neighborhood (defined as a Statistical Area as shown in the General Plan Land Use Element) and adopted within the preceding 10 years.

Council Policy A-18 (Guidelines for Implementing Charter Section 423) requires that proposed amendments to the General Plan be reviewed to determine if a vote of the Newport Beach electorate would be required. This policy includes a provision that all General Plan amendments be tracked as "Prior Amendments" for 10 years to determine if minor amendments in a single Statistical Area cumulatively exceed the thresholds indicated above.

Facts in Support Finding of Consistency with Charter Section 423:

1. The Property is within Statistical Area L1. Prior amendments within the past ten years are Vivante Senior Housing and Residences at Newport Center. Charter Section 423 counts 80 percent of prior increases, which results in a cumulative increase of 94 dwelling units, 23 AM trips, and 43 PM trips between both projects. There were no square footage increases.
2. The GPA results in an increase of 14,000 square feet (at the rate of 1,000 square feet per hotel unit) of non-residential floor area, 9.51 AM trips, and 12.42 PM trips. When combined with 80 percent of the prior increases, this results in cumulative increases of 14,000 square feet of non-residential floor area, 32.51 AM trips, and 55.42 PM trips. As none of the thresholds specified by Charter Section 423 are exceeded, no vote of the electorate is required if the City Council chooses to approve the GPA.

Section 5: On January 24, 2012, the City Council approved Site Development Review No. SD2011-002, which authorized the construction of Approved Project. The proposed changes to the Approved Project, necessitate an amendment to the SDA.

In accordance with Section 4.0 of the Newport Beach Country Club Planned Community (PC-47) (Site Development Review), the following findings and facts in support of Amendment to Site Development Review No. SD2011-002 are set forth as follows:

Finding of Consistency with Section 4.3(1):

The Site Development Plan shall be in compliance with all other provisions of the Newport Beach Country Club Planned Community Development Plan.

Facts in Support of Finding of Consistency with Section 4.3(1):

1. PC-47 requires that a site development review process to be completed for construction of any new major building structure located on the subject site and would require consideration and approval by the Planning Commission prior to the issuance of grading or building permits. An amendment to the previously approved site development review has been submitted for the Property and meets provisions stated in the draft PCDP and thereby meets the intent specified in Section 20.52.080 (Planning and Zoning, Permit Review Procedures, Site Development Reviews) of the NBMC.
2. The Project includes an amendment to the PC-47 to incorporate revisions to the Approved Project. These revisions include the addition of one tennis court, the addition of 14 hotel rooms, and the conversion of three single-family residences to residential condominium units. Should the PC-47 amendment be approved, the SDA complies with all provisions of the PC-47, as the proposed development complies with all development criteria specified in the PC-47 in order to provide a coordinated, cohesive, and comprehensive large-scale planning project.

Finding of Consistency with Section 4.3(2):

The Site Development Plan shall be compatible with the character of the neighboring uses and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City.

Fact in Support of Finding of Consistency with Section 4.3(2):

The architecture, landscaping components, circulation design, and all other project components reflected in the SDR are compatible with the character of the neighboring uses and surrounding sites. The additional 14 hotel rooms and attached residential condominium buildings are of similar architectural style to the Approved Project's bungalow-styled rooms. As a result, the Project is not detrimental to the orderly and harmonious development of the surroundings and the City.

Finding of Consistency with Section 4.3(3):

The Site Development Plan shall be sited and designed to maximize of aesthetic quality of the Newport Beach Country Club Planned Community Development Plan as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on East Coast Highway.

Facts in Support of Finding of Consistency with Section 4.3(3):

1. The Property is separated from East Coast Highway by a commercial office plaza which comprises of three two-story office buildings (1200 Newport Center Drive). The office plaza includes landscaping along East Coast Highway with trees and various plantings. The Newport Beach Country Club golf clubhouse is located approximately 150 feet west of the Property. Additionally, the Property is approximately 250 feet from East Coast Highway and is not visible to motorists travelling on the street.
2. The Project is designed consistent with the Approved Project's architectural style with landscaping, circulation, signage and other components which visually connect the tennis clubhouse and attached residential structures to the smaller structures such as the hotel rooms and single-family residences. Therefore, the aesthetic quality of PC-47 is continued to be maximized as viewed from the surrounding roadways and properties.
3. The Project seeks to add additional hotel rooms, ancillary hotel uses, and attached residential buildings to the Property. However, the overall footprint of the Project is not expanding and will not affect the mass of the Project as viewed from surrounding roadways and properties.

Finding of Consistency with Section 4.3(4):

Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.

Facts in Support of Finding of Consistency with Section 4.3(4):

1. The site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping, and other site features maximizes the functionality of the proposed uses, while avoiding conflicts between uses and activities. The Project's multiple components (tennis club, residential, and hotel) have been

designed and sited to function cohesively not only with each other, but also with the adjacent existing golf course uses.

2. The Project promotes additional functionality between residential and hotel components, as residential condominiums are attached to hotel rooms in two separate loft buildings. Underground parking is provided in the loft buildings, with additional street parking and parking lots to serve hotel and tennis club guests. Each of the two single-family residences provide a two-car garage to serve its residents.

Section 6: On April 10, 2013, the California Coastal Commission, which had permitting jurisdiction for coastal development permits at the time, issued a notice of intent to issue CDP No. 5-12-160 for the Approved Project. A one (1)-year extension was granted on June 2, 2015. However, the CDP subsequently expired. The City obtained CDP permitting authority in January of 2017. On November 20, 2018, the City's Zoning Administrator approved the CDP, which authorized the redevelopment of the Approved Project. The Project requires an amendment to Coastal Development Permit No. CD2017-039.

In accordance with Section 21.52.015(F) (Local Coastal Program Implementation Plan, Coastal Development Permits, Findings and Decisions) the following findings and facts in support of Amendment to Coastal Development Permit No. CD2017-039 are set forth as follows:

Finding of Consistency with Section 21.52.015(F)(1):

Conforms to all applicable sections of the certified Local Coastal Program.

Facts in Support of Finding of Consistency with Section 21.52.015(F)(1):

1. The Coastal Land Use Plan designates the Tennis Club site as Mixed-Use Horizontal/Parks and Recreation (MU-H/PR). Policy 2.1.8-1 of the Coastal Land Use Plan allows the horizontal intermixing of hotel rooms, single-family residences, attached residential condominiums, and tennis club facilities on the project site (formerly known/referenced as the Balboa Bay Tennis Club). Permitted uses include those permitted by the MU-H and PR land use designations. A complete consistency analysis of each of the applicable Coastal Land Use Plan policies is included in Table 11 of the Land Use and Planning Section of the previously adopted MND, pages 82 through 87, as well as in Table 5-5 of the Land Use and Planning Section of Addendum to the MND. Furthermore, facts have been

provided in this resolution which support the proposed amendment to the Local Coastal Program Implementation Plan. In summary, the Project is consistent with the Coastal Land Use Plan.

2. The MU-H coastal land use designation identifies a maximum density/intensity limit of 1.5 floor area ratio ("FAR"), with a minimum FAR of 0.25 and a maximum FAR of 0.5 for retail uses and a maximum of 1.0 for residential. The Project proposes 65,595 square feet of nonresidential floor area (approximately 0.21 FAR) for the hotel rooms, concierge & guest center, and ancillary hotel uses which include a performance therapy center, yoga pavilion, office, common area, and a spa and fitness center. Additionally, five residential dwelling units totaling 20,653 square feet (approximately 0.06 FAR). The proposed density/intensity of the hotel and single-family units comply with the FAR limitations identified in the Coastal Land Use Plan.
3. The PR category applies to land used or proposed for active public or private recreational use. Permitted uses include parks (both active and passive), golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities. The PR designation on the Property is applicable to the existing and proposed private tennis club and tennis courts. The density/intensity limitations include incidental buildings, such as maintenance equipment sheds, supply storage, and restrooms, not included in determining intensity limits. The proposed tennis club and ancillary uses are consistent with this land use designation.
4. The Property is part of the 145-acre planned community (PC-47), which has been adopted to regulate developments within the Property and the adjacent Golf Club Site, and is in conformance with the Coastal Land Use Plan designation pursuant to Section 21.26.055(S)(2) of the NBMC.
5. The Project conforms to all applicable development standards in the proposed amendment to PC-47, including density/intensity, setbacks, building heights, and parking.
6. The Property is not located in an area known for the potential of seismic activity or liquefaction. All projects are required to comply with the California Building Code ("CBC") and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of a building permit. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans

are reviewed for compliance with approved investigations and CBC prior to building permit issuance.

7. Elevations on the Property range from 104 feet up to 120 feet North American Vertical Datum of 1988 (NAVD88) above mean sea level. These site elevations are well above projected sea level rise in Newport Bay for the next 75 years and the site is not subjected to other coastal hazards.
8. The Project is required to develop and implement a Stormwater Pollution Prevention Plan ("SWPPP") since the Project involves clearing, grading, and ground disturbance of more than one acre. Pursuant to Section 21.35.030 (Local Coastal Program Implementation Plan, Water Quality Control, Construction Pollution Prevention Plan) of the NBMC, when a SWPPP is required, a Construction Pollution Prevention Plan ("CPPP") is required to implement temporary Best Management Practices ("BMP") during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived from construction chemicals and materials. A CPPP has been prepared and will be reviewed by the City's Engineer Geologist prior to issuance of grading/building permits for site grading. Construction plans and activities will be required to adhere to the approved CPPP/SWPPP.
9. A Water Quality and Hydrology Plan ("WQHP") is required Pursuant to Section 21.35.050 (Local Coastal Program Implementation Plan, Water Quality Control, Water Quality and Hydrology Plan) of the NBMC since the Project is considered a development of water quality concern and includes the development of five dwelling units, more than 10,000 square feet of impervious surface area, and a parking area in excess of 5,000 square feet. The WQHP/WQMP will be reviewed and approved by the City's Engineer Geologist prior to the issuance of building permits for site grading. The WQHP/WQMP includes a polluted runoff and hydrologic site characterization, a description of site design BMP, and documentation of the expected effectiveness of the proposed BMP. Construction plans will be reviewed for compliance with the approved WQHP/WQMP prior to building permit issuance.
10. An Analysis of the Fiscal and Economic Impacts was prepared on August 29, 2022, by Kosmont Companies to analyze the construction of new visitor accommodations in the coastal zone in accordance with Section 21.48.025 (Local Coastal Program Implementation Plan, Standards for Specific Land Uses, Visitor Accommodations) of the NBMC. The report provides a feasibility analysis stating that the anticipated average daily room rate for all 41 rooms is approximately \$920

and the statewide average daily room rate is \$205.69. Therefore, the proposed accommodations are not considered lower cost accommodations. The report considers the specific location of the Property as an inappropriate location for low cost accommodations. Additionally, low cost accommodations are not feasible due to prohibitive land and construction costs. The Property does not currently provide accommodations of any kind and implementation of the Project would not impact low-cost accommodations. While the Project does not include any lower cost rooms, and the Local Coastal Program Implementation Plan defines it as an impact, there is no impact on the provision of lower-cost visitor accommodations in the Coastal Zone. The Project features larger guest facilities to accommodate a higher occupancy per room, kitchens in a majority of the hotel rooms, and separate living rooms with sofa beds, all which offset higher costs of accommodations.

Finding of Consistency with Section 21.52.015(F)(2):

Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.

Facts in Support of Finding of Consistency with Section 21.52.015(F)(2):

1. The Property is not located between the nearest public road and the sea or shoreline. The Property will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities. Vertical access to Newport Bay is available via existing public access at 1601 Bayside Drive, which is located approximately 1,600 feet southwest of the subject property.
2. Coastal Land Use Plan, Policy 4.4.1-6 and Figure 4-3 (Coastal Views) identify the closest public view road as Newport Center Drive, located approximately 170 feet east of the Property and the closest public viewpoint as Irvine Terrace Park, located 525 feet south of the Property. Coastal views from these view corridors and viewpoints are directed toward the Newport Bay and the Pacific Ocean. Since the Property is located to the north of Irvine Terrace Park, the Project will not affect coastal views due to its orientation. From Newport Center Drive, there is a zero to 40-foot grade difference to the project area below. The maximum height allowed in PC-47 is 50 feet for the attached condominium lofts, 39 feet for the two single-family villas, 30 feet for the tennis clubhouse, and 31 feet for the hotel rooms. Therefore, the majority of the Project would sit below the existing grade elevations along Newport Center Drive, minimizing the visibility of the project site and would not obstruct public coastal views. During construction, construction equipment

would be obscured by vegetation and the grade differential so it would not obstruct coastal views from motorists traveling along Newport Center Drive. The Project will not impact coastal views.

Section 7: On January 24, 2012, the City Council approved Tentative Vesting Tract Map No. 15347, which authorized the creation of seven separate lots for the tennis club, five single-family residences, and 27 hotel rooms, and lettered lots for common areas and a private street. The Applicant proposes an amendment to the vesting tentative tract map to accommodate the Project, which consists of two single-unit residential dwellings, three residential condominiums, 41 hotel rooms, a tennis clubhouse, their common open space areas and a private street to support the proposed uses. The TVMA reflects the combination of two previously divided lots which were intended for two detached single-family residences. This results in the elimination of one lot for a total of six separate lots. No changes to the lots created for common areas and a private street are proposed. The map of the VTMA has also been modified to include residential condominium portion of the Project.

In accordance with Section 19.12.070 (Subdivisions, Tentative Map Review, Required Findings for Action on Tentative Maps) the following findings and facts in support of Tentative Vesting Tract Map Amendment No. NT2005-003 are set forth as follows:

Finding of Consistency with Section 19.12.070(A)(1):

That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.

Facts in Support of Finding of Consistency with Section 19.12.070(A)(1):

1. The Project is consistent with the MU-H3/PR General Plan designation of the Property.
2. The Public Works Department has reviewed the proposed revisions to the approved vesting tentative tract map and determined it is consistent with the Title 19 (Subdivisions) of the NBMC and applicable requirements of the Subdivision Map Act set forth in California Government Code Section 664410 *et seq.*
3. Conditions of approval have been included to ensure compliance with Title 19 (Subdivisions) of the NBMC.

Finding of Consistency with Section 19.12.070(A)(2):

That the site is physically suitable for the type and density of development.

Facts in Support of Finding of Consistency with Section 19.12.070(A)(2):

1. The Property is entirely developed and does not support any environmental resources.
2. The Property is located in the Newport Center and Fashion Island area. The Property is currently improved with a private tennis club. Given its location, this site is ideal for the development of a recreation and mixed-use project as allowed by the General Plan Land Use Element.

Finding of Consistency with Section 19.12.070(A)(3):

That the design of the subdivision or the proposed improvements will not cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. Notwithstanding the foregoing, the decision-making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

Fact in Support of Finding of Consistency with Section 19.12.070(A)(3):

An Addendum to the MND has been prepared and concludes that no significant environmental impacts will result from the Project in accordance with the proposed subdivision map revision.

Finding of Consistency with Section 19.12.070(A)(4):

That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.

Facts in Support of Finding of Consistency with Section 19.12.070(A)(4):

1. The VTMA is required for the subdivision of parcels in order to accommodate the development of the tennis club and courts, two single-unit residential dwellings, and 41 hotel rooms on the Property. All construction for the project will comply with

all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 of the NBMC and Section 66411 of the Subdivision Map Act. Compliance with all ordinances of the City and all conditions of approval for the Project will ensure that the Project will not cause any serious health problems.

2. All mitigation measures will be implemented as outlined in the Addendum to the MND to ensure the protection of the public health.
3. No evidence is known to exist that would indicate that the planned subdivision pattern will generate any serious public health problems.

Finding of Consistency with Section 19.12.070(A)(5):

That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the decision-making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to easements previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.

Facts in Support of Finding of Consistency with Section 19.12.070(A)(5):

1. The design of the Project will not conflict with any easements acquired by the public at large for access through or use of property within the Property.
2. An easement through the Property will be retained by the City to sewer and utilities purposes.
3. No other public easements for access through or use of the Property have been retained for use by the public at large.

Finding of Consistency with Section 19.12.070(A)(6):

That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land

would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.

Fact in Support of Finding of Consistency with Section 19.12.070(A)(6):

The Property is not subject to the Williamson Act since the Property is not considered an agricultural preserve and is less than 100 acres.

Finding of Consistency with Section 19.12.070(A)(7):

That, in the case of a “land project” as defined in Section 11000.5 of the California Business and Professions Code: (a) there is an adopted specific plan for the area to be included within the land project; and (b) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.

Facts in Support of Finding of Consistency with Section 19.12.070(A)(7):

1. The Property is not a “land project” as defined in Section 11000.5 of the California Business and Professions Code.
2. The Property is not located within a specific plan area.

Finding of Consistency with Section 19.12.070(A)(8):

That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.

Facts in Support of Finding of Consistency with Section 19.12.070(A)(8):

The VTMA and improvements are subject to Title 24 of the California Code of Regulations (“California Building Standards Code”) that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces the California Building Standards Code and will ensure compliance through the plan check and inspection process.

Finding of Consistency with Section 19.12.070(A)(9):

That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the

public service needs of the City's residents and available fiscal and environmental resources.

Facts in Support of Finding of Consistency with Section 19.12.070(A)(9):

1. The proposed amendment to Vesting Tentative Tract Map is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need. The Project does not involve the elimination of residential rooms and therefore will not affect the City's ability to meet its share of housing needs.
2. Public services are available to serve the Project and the Addendum to the MND prepared for the Project indicates that the Project's potential environmental impacts are properly mitigated.

Finding of Consistency with Section 19.12.070(A)(10):

That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.

Facts in Support of Finding of Consistency with Section 19.12.070(A)(10):

1. Waste discharge into the existing sewer system will be not violate Regional Water Quality Control Board ("RWQCB") requirements.
2. Sewer connections have been conditioned to be installed per City Standards, the applicable provisions of Chapter 14.24 (Sewer Connection, Permits), and the latest revision of the Uniform Plumbing Code.

Finding of Consistency with Section 19.12.070(A)(11):

For subdivisions lying partly or wholly within the coastal zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.

Facts in Support of Finding of Consistency with Section 19.12.070(A)(11):

1. The Property is located in the coastal zone and subject to a coastal development permit.

2. The Property does not have access to any beaches, shoreline, coastal waters, tidelands, coastal parks or trails.
3. Facts in Support of Finding of Consistency with Sections 19.12.070(A)(5) and (A)(6) are hereby incorporated by reference.

Section 8: In accordance with Section 20.52.040 (Planning and Zoning, Permit Review Procedures, Limited Term Permits) the following findings and facts in support of Amendment to Limited Term Permit XP2011-004 are set forth as follows:

Finding of Consistency with Section 20.52.040(G)(1):

The operation of the limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use.

Facts in Support of Finding of Consistency with Section 20.52.040(G)(1):

1. The limited term permit will allow two temporary modular trailers and portable toilets. Both modular trailers are approximately 33 feet long and 13 feet wide. One modular trailer is proposed to be used as a construction office located at the southwest portion of the Property and will be staged at this location through the entire duration of the Project. The second modular office is proposed to be used as a temporary office for tennis club operations and will be located on the easterly portion of the Property through the construction phase of the project (approximately 16 months after construction begins). The portable toilets are proposed to serve the temporary tennis club office and located nearby.
2. The operation of the temporary modular trailers is proposed to exceed 90 days from the date of the permit. The construction office is proposed to be staged for the duration of all construction activities, which is estimated to be approximately 20 months. The tennis club office is proposed to be staged for approximately 16 months, and will be removed upon completion of the Project.

Finding of Consistency with Section 20.52.040(G)(2):

The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot.

Fact in Support of Finding of Consistency with Section 20.52.040(G)(2):

The Property is approximately seven acres in size. Based on the construction phasing plan, there is adequate area to accommodate the proposed modular trailers and portable toilets throughout the various phases of construction. The construction trailer will be located within an area which is fenced off from public view and access.

Finding of Consistency with Section 20.52.040(G)(3):

The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate.

Facts in Support of Finding of Consistency with Section 20.52.040(G)(3):

1. The Property has an existing parking lot with two entrances currently taken from Clubhouse Drive, which has a westerly outlet to East Coast Highway and an easterly outlet to Granville Drive and Newport Center Drive.
2. During the various phases of construction, the easterly entrance to the parking lot will remain available to the public for parking and will provide direct access for the modular office trailer and portable toilets, while the westerly entrance will be for construction access only. The construction trailer is intended for construction use only and not for the public. There are no traffic issues anticipated.

Finding of Consistency with Section 20.52.040(G)(4):

Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator.

Facts in Support of Finding of Consistency with Section 20.52.040(G)(4):

1. The proposed trailers will not create additional parking demand since it will be utilized as offices for construction activities and employees displaced during the renovation of the tennis clubhouse.
2. A portion of the existing parking lot will remain, with access available on the easterly side of the lot from Granville Drive and Newport Center Drive. The remaining parking lot provides adequate parking for employees and members of the tennis club.

Finding of Consistency with Section 20.52.040(G)(5):

The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.

Facts in Support of Finding of Consistency with Section 20.52.040(G)(5):

1. The temporary trailers are conditioned to comply with all applicable provisions of the General Plan, Municipal Code, and other City regulations.
2. The Property is not located within a specific plan area.

Section 9: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 10: 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 11: An Addendum to Mitigated Negative Declaration No. ND2010-008 (MND) was prepared for the Project in compliance with the California Environmental Quality Act ("CEQA") set forth in California Public Resources Code Section 2100 *et seq.*; CEQA's implementing regulations set forth in CCR Title 14, Division 6 Chapter 3 ("CEQA Guidelines") and City Council Policy K-3 (Implementation Procedures for the California Environmental Quality Act) to ensure that the Project will not result in new or increased environmental impacts. On the basis of the MND and entire environmental review record, the additional tennis court, hotel rooms, ancillary hotel uses, and conversion of three single-family residences to condominium units will not result in any new significant impacts that were not previously analyzed in the MND. The Addendum confirms and provides substantial evidence that the potential impacts associated with this Project would either be the same or less than those described in the MND, or as mitigated by applicable mitigation measures in the MND. In addition, there are no substantial changes to the circumstances under which the Project would be undertaken that would result in new or more severe environmental impacts than previously addressed in either the MND, nor has any new information regarding the potential for new or more severe significant environmental impacts been identified. Therefore, in accordance with Section 15164 of the CEQA Guidelines, the City Council adopted Resolution No. 2022-____, thereby adopting an addendum to the previously adopted MND. Resolution 2022-____, including all findings contained therein, is hereby incorporated by reference.

Section 12: 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 27th day of September, 2022.

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Aaron C. Harp
City Attorney

Attachment(s): Exhibit "A" - General Plan Amendment for the Tennis Club at Newport Beach
 Exhibit "B" - Conditions of Approval for the Tennis Club at Newport Beach

EXHIBIT "A"

GENERAL PLAN AMENDMENT FOR THE TENNIS CLUB AT NEWPORT BEACH

Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
46	L1	MU-H3/PR	3,725	8 Tennis Courts 41 Hotel Rooms*	Residential permitted in accordance with MU-H3 *27 rooms converted from 17 tennis courts per Council Resolution 2012-10 and 14 rooms per General Plan Amendment PA2022-260

EXHIBIT "B"

CONDITIONS OF APPROVAL FOR THE TENNIS CLUB AT NEWPORT BEACH

(Project-specific conditions are in italics)

Planning Division

1. The project shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to compliance with all applicable submittals approved by the City of Newport Beach ("City") and all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. *Notwithstanding the legislative actions (ie. General Plan Amendment, Planned Community Development Plan, and Local Coastal Program Amendment) activities reviewed under Planning Activity No. PA2021-260 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted by the City for a period of time provided for in the Development Agreement pursuant to the provisions of California Government Code Section 66452.6(a).*
4. *The Vesting Tentative Tract Map Amendment, as reviewed under Planning Activity No. PA2021-260, shall expire in accordance with the Subdivision Code, unless an extension is otherwise granted consistent with the Subdivision Code and Subdivision Map Act. The expiration date shall be extended for the unexpired term of the Second Amendment to Development Agreement between City of Newport Beach and Golf Realty Fund.*
5. *The project shall consist of the followings:*
 - a. *Tennis Club: A 3,725 square-foot tennis clubhouse and eight (8) tennis courts;*
 - b. *Hotel: Forty-one (41) hotel rooms of 47,484 square feet, a 2,200 square-foot concierge and guest meeting facility, a 7,500 square-foot spa/fitness center, and 4,686 square feet of ancillary uses; and*
 - c. *Residential: two (2) single-family units and three (3) condominium units*
6. *Pickleball courts shall not be permitted after the issuance of a Certificate of Occupancy for the Tennis Clubhouse and Spa and Fitness Center unless the property owner and/or pickleball facility operator follows any and all City of Newport Beach General Plan, Municipal Code, or other applicable requirements in order to continue the use of pickleball courts.*

7. *The project shall be subject to all applicable development standards prescribed in Planned Community Development Plan Amendment, as reviewed under Planning Activity No. PA2021-260, for the Tennis Club site, such as but not limited to, building height, building setbacks, parking, lighting, sign standards, etc.*
8. *Upon the effective date of Local Coastal Program Implementation Plan Amendment, as reviewed under Planning Activity No. PA2021-260, Site Development Permit No. SD2011-002, Limited Term Permit No. XP2011-004, and Vesting Tentative Map No. NT2005-003, approved for the Approved Project, shall be deemed of no further force.*
9. *The temporary modular building to accommodate on-going tennis club operation during the construction of new tennis clubhouse shall be located on the existing tennis courts, shall not interfere with the construction activities or parking, and shall be removed from the project site upon completion/occupancy of the new clubhouse.*
10. *Prior to the issuance of a building permit, the applicant shall pay all applicable development fees (i.e. school, park in-lieu, transportation corridor agency), unless otherwise addressed separately in the Development Agreement.*
11. *Prior to recordation of the Final Tract Map and the issuance of building permits, the Final Tract Map shall be signed by all of the current record owners of the property, which presently include: (1) Elliot Feuerstein as Managing Member of Mesa Shopping Center-West LLC; (2) Elliot Feuerstein as Managing Member of Mesa Shopping Center-East LLC; (3) Irving Chase as General Partner of Fainbarg III L.P.; and (4) Robert O Hill as Executive Director of Golf Realty Fund LP.*
12. Any substantial change to the approved plans, shall require an amendment to all non-legislative activities reviewed under Planning Activity No. PA2021-260, or the processing of new permits.
13. This Site Development Review, Coastal Development Permit, and Limited Term Permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed development, uses, and/or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
14. A copy of the Resolution, including conditions of approval Exhibit "F" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
15. *Prior to the issuance of a building permit, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Site Development Review file. The plans shall be identical to those approved by*

all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Site Development Review and shall highlight the approved elements such that they are readily discernible from other elements of the plans.

16. Prior to the issuance of a building permit, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division.
17. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
18. *Prior to the final of issuance of a certificate of occupancy, the applicant shall schedule an inspection by the Planning Division to confirm that all landscaping was installed in accordance with the approved plan.*
19. Prior to the issuance of a building permit, the applicant shall prepare photometric study in conjunction with a final lighting plan for approval by the Planning Division. The survey shall show that lighting values are "1" or less at all property lines.
20. *Lighting shall be in compliance with applicable standards of Planned Community Development Plan Amendment, as reviewed under Planning Activity No. PA2021-260 and Section 20.30.070 of the Newport Beach Municipal Code. Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. "Walpak" and up-lighting type fixtures are not permitted. Parking area lighting shall have zero cut-off fixtures.*
21. The entire project shall not be excessively illuminated based on the outdoor lighting standards contained within Section 20.30.070 of the Newport Beach Municipal Code, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
22. *Prior to the final of issuance of a certificate of occupancy or final of building permits for each component of the project (i.e. residential, hotel, or tennis club), the applicant shall schedule an evening inspection by the Code Enforcement Division to confirm control of all lighting sources.*

23. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
24. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

25. *The construction and equipment staging area for each phase of the project shall be located in the least visually prominent area on the site and shall be properly maintained and/or screened to minimize potential unsightly conditions.*
26. *A screen and security fence that is a minimum of six feet high shall be placed around the construction site during construction for each phase of the project.*
27. *Construction equipment and materials shall be properly stored on the site when not in use for each phase of the project.*
28. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
29. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
30. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development.
31. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any

form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

32. *All proposed signs shall be in conformance with the provision of the Planned Community Development Plan Amendment, as reviewed under Planning Activity No. PA2021-260, and Chapter 20.42 of the Newport Beach Municipal Code and shall be reviewed and approved by the City Traffic Engineer if located adjacent to the vehicular ingress and egress.*
33. *The final location of the signs shall be reviewed by the City Traffic Engineer and shall conform to City Standard 110-L to ensure that adequate vehicular sight distance is provided.*
34. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of ***The Tennis at Newport Beach Project Amendment*** including, but not limited to, ***General Plan Amendment, Local Coastal Land Use Plan Amendment, Planned Community Development Plan Amendment, Amendment to Major Site Development Review No. SD2011-002, Amendment to Coastal Development Permit No. CD2017-039, Amendment to Vesting Tentative Tract Map No. NT2005-003, Amendment to Limited Term Permit No. XP2011-004, & Second Amendment to Development Agreement No. DA2008-001 (PA2021-260)***. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Fire Department

35. An automatic fire sprinkler system shall be required for the residential and hotel components of the project.
36. A fire alarm system shall be required for the hotel component of the project.
37. A Fire Master Plan shall be submitted to the Fire Prevention Division for approval. The plan shall include information on the following (but not limited to) subjects: fire department vehicle access to the project site, secondary emergency vehicle

access, firefighter access (hose pull) around structures, fire lane identification, location of fire hydrants and other fire department appliances, and the location and type of gates or barriers that restrict ingress/egress.

38. All portions of the perimeter of all structures shall be located within 150' of a fire lane as measured along an approved route. A portion of the proposed structure exceeding this distance is considered "out of access" and shall be corrected during plan check review by one of the following methods:
 - a. Provide additional fire lanes to bring the entire structure "in access", or
 - b. Propose an alternate form of mitigation via the Alternate Methods and Materials provisions of the fire code for the Fire Marshal's review. There is no guarantee that the Alternate Methods and Materials proposal will be approved as proposed.
39. Fire department access roads shall comply with Newport Beach Fire Guidelines C.01 and C.02.
40. Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet (45 720 mm) of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility.
41. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to the premises. Fire-flow requirements for buildings or portions of buildings and facilities shall be determined by Appendix B of the 2019 California Fire Code.
42. Fire hydrants shall be spaced along fire department access roads in compliance with the 2019 California Fire Code Appendix C.
43. Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided.
44. Additional facilities or changes to the current facilities shall require submitted plans to the Newport Beach Fire Prevention Division for all changes, additions and modifications to existing or new fire protection systems.
45. The use or storage of portable propane heaters shall be prohibited. Heaters for future outdoor areas shall be fixed and plumbed with natural gas.

46. All fire hydrants and fire access road shall be installed and approved by the Fire Department prior to the delivery of combustible material on site.

Building Division

47. Pursuant to CBC Chapter 1, Division 1.9, all temporary construction trailers, modular office buildings, and safe pedestrian passageways around the construction sites shall be disabled accessible.
48. All temporary modular office buildings shall be approved by the State of California for the proposed use.
49. Foundations for temporary construction trailers and modular office buildings shall be designed to provide anchorage for these structures against seismic and wind loads; and provided with temporary utility connections.
50. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
51. The applicant shall employ the following best available control measures ("BACMs") to reduce construction-related air quality impacts:

Dust Control

- Water all active construction areas at least twice daily.
- Cover all haul trucks or maintain at least two feet of freeboard.
- Pave or apply water four times daily to all unpaved parking or staging areas.
- Sweep or wash any site access points within two hours of any visible dirt deposits on any public roadway.
- Cover or water twice daily any on-site stockpiles of debris, dirt or other dusty material.
- Suspend all operations on any unpaved surface if winds exceed 25 mph.

Emissions

- Require 90-day low-NOx tune-ups for off road equipment.
- Limit allowable idling to 30 minutes for trucks and heavy equipment.

Off-Site Impacts

- Encourage car-pooling for construction workers.
- Limit lane closures to off-peak travel periods.
- Park construction vehicles off traveled roadways.
- Wet down or cover dirt hauled off-site.
- Sweep access points daily.
- Encourage receipt of materials during non-peak traffic hours.
- Sandbag construction sites for erosion control.

Fill Placement

- The number and type of equipment for dirt pushing will be limited on any day to ensure that SCAQMD significance thresholds are not exceeded.
 - Maintain and utilize a continuous water application system during earth placement and compaction to achieve a 10 percent (10%) soil moisture content in the top six-inch surface layer, subject to review/discretion of the geotechnical engineer.
52. Prior to the issuance of a grading permit, a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to comply with the General Permit for Construction Activities shall be prepared, submitted to the State Water Quality Control Board for approval and made part of the construction program. The project applicant will provide the City with a copy of the NOI and their application check as proof of filing with the State Water Quality Control Board. This plan will detail measures and practices that will be in effect during construction to minimize the project's impact on water quality.
53. Prior to the issuance of a grading permit, the applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division and Code and Water Quality Enforcement Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur, and must show amount of stormwater retained prior to going into the proprietary filtration system.
54. A list of "good housekeeping" practices will be incorporated into the long-term post-construction operation of the site to minimize the likelihood that pollutants will be used, stored or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water

away from potential sources of pollution (e.g., trash receptacles and parking structures). The Stage 2 WQMP shall list and describe all structural and non-structural BMPs. In addition, the WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.

Public Works Department

55. The Final Tract Map shall be legible, scaled, dimensioned, and complete with all necessary pertinent information and details such as easement limits and descriptions; annotated lot lines, centerlines, and boundary lines; signature certificates; curve and line tables; etc.
56. The Final Tract Map shall be prepared on the California coordinate system (NAD88). Prior to Map recordation, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said Map in a manner described in the Orange County Subdivision Code and Orange County Subdivision Manual. **The Final Tract Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
57. Prior to recordation, the Final Map boundary shall be tied onto the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one-inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the City Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
58. A hydrology and hydraulic study and a master plan of water, sewer and storm drain facilities for the on-site improvements shall be prepared by the applicant and approved by the Public Works Department prior to Final Tract Map recordation.
59. Easements for public emergency and security ingress/egress, weekly refuse service, and public utility purposes on all private streets shall be dedicated to the City.
60. No structures shall be constructed within the limits of any utility easements.
61. All easements shall be recorded as a part of the Final Tract Map.
62. All applicable fees shall be paid prior to the City approval of the Final Tract Map.
63. Construction surety in a form acceptable to the City, guaranteeing the completion of the various required public improvements, shall be submitted to the Public Works Department prior to the City approval of the Final Tract Map.

64. Street, drainage and utility improvements shall be submitted on City standard improvement plan formats. All plan sheets shall be sealed and signed by the California licensed professionals responsible for the designs shown on the Plans.
65. All improvements shall be designed and constructed in accordance with the current edition of the City Design Criteria, Standard Special Provisions, and Standard Drawings.
66. All storm drains and sanitary sewer mains shall be installed with MacWrap.
67. All runoff discharges shall comply with the City's water quality and on-site non-storm runoff retention requirements.
68. New concrete sidewalks, curbs, gutters, curb disabled access ramps, roadway pavement, traffic detector loops, traffic signal devices, and street trees shall be installed along the development's Coast Highway frontage.
69. Public improvements may be required along the development's Granville Drive frontage upon building permit plan check submittal.
70. All on-site drainage, sanitary sewer, water and electrical systems shall be privately owned, operated, and maintained. The water system shall be owned operate and maintained by the City.
71. All curb return radii shall be 5-feet (5') minimum.
72. Each detached residential dwelling unit or bungalow building shall be served with an individual water service and sewer lateral connection.
73. All overhead utilities serving the entire proposed development shall be made underground.
74. ADA compliant curb ramps shall be installed within the interior parking area.
75. The intersection of the public streets, internal roadways, and drive aisle shall be designed to provide adequate sight distance per City of Newport Beach Standard Drawing Standard105. Slopes, landscaping, walls, signs, and other obstructions shall be considered in the sight distance requirements. Landscaping within the sight lines (sight cone) shall not exceed 24-inches in height and the monument identification sign must be located outside the line of sight cone. The sight distance may be modified at non-critical locations, subject to approval by the Traffic Engineer.

76. Any damage to public improvements within the public right-of-way attributable to on-site development may require additional reconstruction within the public right-of-way at the discretion of the Public Works Inspector.
77. The parking lot and vehicular circulation system shall be subject to further review and approval by the City Traffic Engineer. Parking layout shall be per City Standard 805. Parking layout shall be full dimensioned. On-street parking spaces shall be 8 feet wide by 22 feet long. Drive aisles to parking areas shall be 26 feet wide minimum. The one-way drive aisle adjacent to the hotel's concierge office and guest meeting building shall be 14 feet wide minimum with no parking, otherwise the drive aisle shall be widened to accommodate parking.
78. Cul-de-sacs shall comply with City Standards 102 and 103 and shall have a minimum diameter of 80 feet curb to curb.
79. County Sanitation District fees shall be paid prior to the issuance of any building permits.
80. Prior to the issuance of a building permit, a sewer and water demand study shall be submitted for review by the Public Works and Utilities Department.
81. Prior to the commencement of demolition and grading of the project, the applicant shall submit a construction management plan (CMP) to be reviewed and approved by the Community Development Director, City Fire Marshal, and City Traffic Engineer. The plan shall include discussion of project phasing, parking arrangements during construction, anticipated haul routes and construction mitigation. Upon approval of the CMP, the applicant shall be responsible for implementing and complying with the stipulations set forth in the approved CMP.
82. Prior to the issuance of a building permit, a sewer system management plan shall be submitted for review and approval by the Public Works and Utilities Department.
83. Prior to the issuance of a building permit, various water and sewer easement for City mains located on the adjacent properties shall be obtained and conveyed to the City.
84. A storm drain easement on behalf of the project shall be obtained from the adjacent property owner prior to issuance of a building permit. Provide documentation of said easement.
85. The City sewer manhole located within 1600 East Coast Highway shall be relocated to an area outside of the landscape and parking stalls. The manhole location shall be accessible at all time. A new sewer easement shall be provided for the sewer manhole and sewer main within the 1600 East Coast Highway property.

86. The public sewer connection to the OCSD main shall utilize the existing OCSD manhole located within East Coast Highway unless otherwise approved by OCSD and the City. Final design shall be approved by OCSD and the City.
87. The existing private sewer main from the proposed point of connection to the City's manhole located near East Coast Highway shall be video inspected and any damage repaired prior.
88. Utility easements shall be provided for all City water meters, fire hydrants, valves and back flow devices.

Attachment C

Resolution No. 2022-67 to Approve LCPA

RESOLUTION NO. 2022- 67

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AUTHORIZING SUBMITTAL OF A LOCAL COASTAL PROGRAM AMENDMENT TO THE CALIFORNIA COASTAL COMMISSION TO AMEND THE NEWPORT BEACH COUNTRY CLUB PLANNED COMMUNITY DEVELOPMENT PLAN (PC-47) FOR THE TENNIS CLUB LOCATED AT 1602 EAST COAST HIGHWAY (PA2021-260)

WHEREAS, as set forth in Section 30500 of the California Public Resources Code, the California Coastal Act requires each county and city to prepare a local coastal program ("LCP") for that portion of the coastal zone within its jurisdiction;

WHEREAS, the California Coastal Commission effectively certified the City's Local Coastal Program Implementation Plan on January 13, 2017, and the City of Newport Beach ("City") added Title 21 (Local Coastal Program Implementation Plan) ("Title 21") to the Newport Beach Municipal Code ("NBMC") whereby the City assumed coastal development permit-issuing authority as of January 30, 2017;

WHEREAS, in 2012, the City Council approved an application by Golf Realty Fund, Managing Owner ("Applicant") for the reconstruction of the 3,725-square-foot tennis clubhouse, a reduction of tennis courts from 24 to seven courts, construction of a 27-room boutique hotel with 9,700 square feet of ancillary uses, five single-family residential units, and a development agreement for the property ("2012 Entitlements") located at 1602 East Coast Highway, and legally described as Parcels A, B, C, and D of Parcel Map No. 2016-151 (commonly referred as the "Tennis Club Site" or "Property");

WHEREAS, on November 20, 2018, the Zoning Administrator approved Coastal Development Permit No. CD2017-039, authorizing the redevelopment of the Property consistent with the 2012 Entitlements (2012 Entitlements and Coastal Development Permit No. CD2017-039 are collectively referred to as the "Approved Project");

WHEREAS, the Applicant is requesting an amendment to the Approved Project to allow an increase in the number of future tennis courts from seven to eight, an increase in the number of future hotel rooms from 27 to 41, an increase to the gross floor area of ancillary hotel uses by 4,686 square feet, three attached condominium units and two single-family residences in-lieu of five single-family residences, and an amendment to the 2012 Development Agreement to account for the aforementioned changes to the Project along with extending the term of the 2012 Development Agreement for an additional 10 years ("Project");

WHEREAS, the Property is designated Mixed-Use Horizontal 3/Parks and Recreation (MU-H3/PR) by the City of Newport Beach General Plan and is located within the Newport Beach Country Club Planned Community (PC-47) Zoning District;

WHEREAS, the Property is designated Mixed-Use Horizontal/Parks and Recreation (MU-H/PR) by the Coastal Land Use Plan and is located within the Newport Beach Country Club Planned Community (PC-47) Coastal Zone District;

WHEREAS, the Project includes an amendment to Title 21 (Local Coastal Program Implementation Plan) ("Title 21") related to development standards for the Tennis Club site located within the Newport Beach Country Club Planned Community (PC-47);

WHEREAS, Title 21 includes specific development standards for the Approved Project and, as a result, an amendment to Title 21 is necessary to revise the development standards listed in Section 21.26.055(S) which specifically refers to the PC-47 development standards of the "Tennis Club," "The Villas," and "The Bungalows";

WHEREAS, pursuant to Section 13515 of the California Code of Regulations Title 14, Division 5.5, Chapter 8 ("Section 13515"), drafts of Local Coastal Program Amendment No. PA2021-260 were made available and a Notice of Availability was distributed on July 29, 2022, at least six weeks prior to the anticipated final action date;

WHEREAS, the Planning Commission held a public hearing on September 8, 2022, in the City Council Chambers, located at 100 Civic Center Drive, Newport Beach, California, at which time the Planning Commission considered the Project. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act"), Section 13515, and Chapters 15.45 (Development Agreements), 19.12 (Tentative Map Review), 20.56 (Planning Community District Procedures), 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing;

WHEREAS, at the hearing, the Planning Commission adopted Resolution No. PC2022-022 by a unanimous vote (5 ayes, 1 absent, 1 recusal) recommending approval of the Project to the City Council; and

WHEREAS, a public hearing was held by the City Council on September 27, 2022, in the City Council Chambers, located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act, Section 13515, and Chapters 15.45 (Development Agreements), 19.12 (Tentative Map Review), 20.56 (Planning Community District Procedures), 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

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

Section 1: The City Council does hereby authorize City staff to submit Local Coastal Program Amendment No. PA2021-260, amending Chapter 21.26.055(S) (Newport Beach Country Club) of Title 21 (Local Coastal Program Implementation Plan) of the NBMC, attached hereto as Exhibit "A," and incorporated herein by reference, to the California Coastal Commission for review and approval.

Section 2: Local Coastal Program Amendment No. PA2021-260 shall not become effective until approval by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution(s) and/or ordinance(s) of the City Council of the City of Newport Beach.

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: An Addendum to Mitigated Negative Declaration No. ND2010-008 (MND) was prepared for the Proposed Project in compliance with the California Environmental Quality Act ("CEQA") set forth in California Public Resources Code Section 2100 *et seq.*; CEQA's implementing regulations set forth in CCR Title 14, Division 6 Chapter 3 ("CEQA Guidelines") and City Council Policy K-3 (Implementation Procedures for the California Environmental Quality Act). On the basis of the MND and entire environmental review record, the additional tennis court, hotel rooms, ancillary hotel uses, and conversion of three single-family residences to condominium units will not result in any new significant impacts that were not previously analyzed in the MND. The Addendum confirms and provides substantial evidence that the potential impacts associated with this Project would either be the same or less than those described in the MND, or as mitigated by applicable mitigation measures in the MND. In addition, there are no substantial changes to the circumstances under which the Project would be undertaken that would result in new or more severe environmental impacts than previously addressed in either the MND, nor has any new information regarding the potential for new or more severe significant environmental impacts been identified. Therefore, in accordance with Section 15164 of the CEQA Guidelines, the City Council adopted Resolution No. 2022-____, thereby adopting an addendum to the previously adopted MND. Resolution 2022-____, including all findings contained therein, is hereby incorporated by reference.

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.

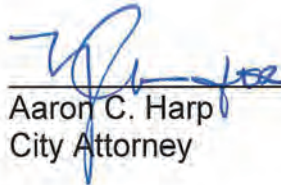
ADOPTED this 27th day of September, 2022.

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachment(s): Exhibit A – Local Coastal Program Amendment No. PA2021-260
Related to Standards of the Tennis Club Property
located within the Newport Beach Country Club
Planned Community (PC-47)

Exhibit "A"

Local Coastal Program Amendment No. PA2021-260 Related to Standards of the
Tennis Club Property located within the Newport Beach Country Club Planned
Community (PC-47)

Exhibit "A"

**Local Coastal Program Amendment No. PA2021-260 Related to Standards of the
Tennis Club Property located within the Newport Beach Country Club Planned
Community (PC-47)**

Amend Section 21.26.055.S (Newport Beach Country Club) of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code to read as follows:

- S. Newport Beach Country Club (PC-47).
2. Tennis Club.
- a. Density/intensity limit: ~~seven~~ **eight (8)** tennis courts; and three thousand seven hundred twenty-five (3,725) square foot clubhouse.
- b. Height: thirty (30) feet for clubhouse.
- c. Parking: ~~twenty-eight (28) spaces~~ **thirty-two (32) spaces**
3. Residential.
- a. Detached Residential (Villas)
- i. Density/intensity limit: two single-family dwelling units.
- ii. Development Standards:

Villa Designation	Villa A (TTM Lot #1)	Villa B (TTM Lot #2)
Lot Size	5,000 square feet minimum	
Lot Coverage (Maximum)	70%	65%
Building Height	39 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations	
Building Side Yard Setbacks	3 feet minimum	
Building Front and Rear Yard Setbacks	5 feet minimum	
Enclosed Parking Space for Each Unit	2	2
Open Guest Parking Space for Each Unit	One space - could be located on the private driveway – No overhang to the private street/cul-de-sac is allowed	

b. Attached Residential (Condominiums)

- i. **Density/intensity limit: three (3) attached residential units.**
- ii. **Setbacks: five (5) feet from any property line.**
- iii. **Height: forty-six (46) feet (to be located atop of the 2-story hotel buildings).**
- iv. **Parking: three (3) enclosed spaces and one guest space per dwelling unit.**

4. (The Bungalows) Hotel

- a. **Density/Intensity Limit: forty-one (41) short-term guest rental units rooms.** The maximum **total** allowable gross floor area for the **hotel rooms** shall be ~~twenty-eight thousand three hundred (28,300)~~ **forty-seven thousand four hundred eighty-four (47,484)** square feet with a two thousand two hundred (2,200) square-foot concierge and guest center, **four thousand six hundred eighty-six (4,686) square feet of ancillary hotel uses**, and a seven thousand five hundred (7,500) square-foot spa facility.
- b. **Setbacks: five feet from any property line.**
- c. **Height: thirty-one (31) feet.**
- d. **Parking: ~~thirty-four (34) parking spaces.~~ forty-one (41) parking spaces.**

Attachment D

Ordinance No. 2022-19 to Approve PCA

ORDINANCE NO. 2022-19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING AN AMENDMENT TO THE NEWPORT BEACH COUNTRY CLUB PLANNED COMMUNITY DEVELOPMENT PLAN (PC-47) FOR THE TENNIS CLUB AT NEWPORT BEACH LOCATED AT 1602 EAST COAST HIGHWAY (PA2021-260)

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

WHEREAS, in 2012, the City Council approved an application by Golf Realty Fund, Managing Owner ("Applicant") for the reconstruction of the 3,725-square-foot tennis clubhouse, reduction of tennis courts from 24 to seven courts, construction of a 27-room boutique hotel with 9,700 square feet of ancillary uses, five single-family residential units, and a development agreement for the property ("2012 Entitlements") located at 1602 East Coast Highway, and legally described as Parcels A, B, C, and D of Parcel Map No. 2016-151 (commonly referred as the "Tennis Club Site" or "Property");

WHEREAS, on November 20, 2018, the Zoning Administrator approved Coastal Development Permit No. CD2017-039, authorizing the redevelopment of the Property consistent with the 2012 Entitlements (2012 Entitlements and Coastal Development Permit No. CD2017-039 are collectively referred to as the "Approved Project");

WHEREAS, the Applicant is requesting an amendment to the Approved Project to allow an increase in the number of future tennis courts from seven to eight, an increase in the number of future hotel rooms from 27 to 41, an increase to the gross floor area of ancillary hotel uses by 4,686 square feet, three attached condominium units and two single family residences in-lieu of five single-family residences, and an amendment to the 2012 Development Agreement to account for the aforementioned changes to the Approved Project along with extending the term for an additional 10 years ("Project");

WHEREAS, the following approvals are requested or required in order to implement the Project:

- General Plan Amendment (“GPA”) – An amendment to Anomaly No. 46 of Table LU2 of the 2006 Newport Beach General Plan Land Use Element to document the conversion of 17 tennis courts to 27 hotel rooms authorized by City Council Resolution No. 2012-10, and the addition of 14 hotel rooms for a total of 41 rooms and one tennis courts for a total of eight tennis courts;
- Local Coastal Program Implementation Plan Amendment (“LCPA”) – An amendment to Section 21.26.055(S)(2) (Planned Community Coastal Zoning District Development Standards, Newport Beach Country Club (PC-47, Tennis Club) of the Newport Beach Municipal Code (“NBMC”) to modify the permitted uses and development standards allowed on the Property;
- Planned Community Development Plan Amendment (“PCDP Amendment”) – An amendment to Planned Community Development Plan No. 47 (Newport Beach Country Club Planned Community) to amend land use regulations and development standards on the Property;
- Major Site Development Permit Amendment (“SDA”) – An amendment to the existing site development review in accordance with PC-47 and Section 20.52.080 (Permit Review Procedures, Site Development Reviews) of the NBMC for the construction of the Project;
- Coastal Development Permit Amendment (“CDPA”) – A coastal development permit for the demolition of existing structures, further subdivision on the Property, and implementation of the Project;
- Vesting Tentative Tract Map Amendment (“VTMA”) – An amendment to Vesting Tentative Tract Map No. 15347 pursuant to Title 19 (Subdivisions) of the NBMC for a lot reduction created for the Approved Project and inclusion of the condominium ownership;
- Limited Term Permit Amendment (“XP”) – A limited term permit to allow temporary use of structures during construction on the Property, pursuant to Section 20.52.040 of the NBMC;
- Development Agreement Amendment (“DA”) – A second amendment to the Development Agreement (DA2008-001), between the Applicant and the City, pursuant to Sections 15.45.020(A)(2)(c) (Buildings and Construction, Development Agreements Required, Development Agreement Required) and

15.45.070 (Buildings and Constructions, Development Agreements, Amendment/Cancellation) of the NBMC, which would provide vested rights to develop the Project for an additional 10 years and provide negotiated public benefits to the City; and

- Addendum to previously adopted Mitigated Negative Declaration No. ND2010-008 (SCH2010091052) ("Addendum") – Pursuant to the California Environmental Quality Act ("CEQA"), the Addendum addresses reasonably foreseeable environmental impacts resulting from the Project;

WHEREAS, the Property is designated Mixed-Use Horizontal 3/Parks and Recreation (MU-H3/PR) by the City of Newport Beach General Plan and is located within the Newport Beach Country Club Planned Community (PC-47) Zoning District;

WHEREAS, the Property is designated Mixed-Use Horizontal/Parks and Recreation (MU-H/PR) by the Coastal Land Use Plan and is located within the Newport Beach Country Club Planned Community (PC-47) Coastal Zone District;

WHEREAS, the Planning Commission held a public hearing on September 8, 2022, in the City Council Chambers, located at 100 Civic Center Drive, Newport Beach, California, at which time the Planning Commission considered the Project. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act"), and Chapters 15.45 (Development Agreements), 19.12 (Tentative Map Review), 20.56 (Planning Community District Procedures), 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing;

WHEREAS, at the hearing, the Planning Commission adopted Resolution No. PC2022-022 (5 ayes, 1 absent, 1 recusal) recommending approval of the Project to the City Council; and

WHEREAS, a public hearing was held by the City Council on September 27, 2022, in the City Council Chambers, located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act, and Chapters 15.45 (Development Agreements), 19.12 (Tentative Map Review), 20.56 (Planning Community District Procedures), 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

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

Section 1: The City Council has considered the recommendation of the Planning Commission and determined that modifications to the Project made by the City Council, if any, are not major changes that require referral back to commission for consideration and recommendation.

Section 2: An amendment to PC-47, which is the zoning document for the Property, is a legislative act. Neither PC-47, Chapter 20.66 (Planning and Zoning, Amendments) and Chapter 20.56 (Planning and Zoning, Planned Community District Procedures) of Title 20 (Planning and Zoning) of NBMC, or Article 2 (Adoption of Regulations) of Chapter 4 (Zoning Regulations) of Division 1 (Planning and Zoning) of Title 7 (Planning and Land Use) of the California Government Code set forth any required findings for either approval or denial of such amendments. Nevertheless, amending PC-47 to change the development standards as it relates to the Tennis Club is consistent with the purpose of the Planned Community Districts as specified in Section 20.56.010 (Planned Community District Procedures – Purpose) of the NBMC for the reasons set forth below:

1. The Project is consistent with the intent and purpose of PC-47 in that the tennis club, hotel, and residential uses and their development standards have already been allowed and in place on the Property. The proposed changes to the building height, setbacks, and parking standards in order to accommodate the Project are within the development standards in place for the Approved Project.
2. PC-47 provides guidelines for architectural design to include coordinated and cohesive architecture which exhibits quality that is keeping with the surrounding area in Newport Center. The Project includes additional hotel rooms and two attached residential condominium loft buildings. The proposed additions have consistent architecture with the Approved Project, which has cohesive architectural features that include smooth plaster exterior siding, clay-tile roofs, and stone veneer exterior accent finishes.
3. PC-47 permits structures to be a maximum of 50 feet in height. The Project includes two attached residential condominium loft buildings which features condominiums on the third level atop of a two-level hotel building. The loft buildings are proposed at a maximum of 46 feet high and comply with the height

limit. All other structures are consistent with the maximum heights prescribed in PC-47.

Section 3: The City Council hereby approves the Newport Beach Country Club Planned Community Development Plan Amendment, as set forth in Exhibit "1," which is attached hereto and incorporated herein by reference and finds that the amendment to PC-47 complies with the purpose set forth in Section 20.56.010 (Purpose) of the NBMC, with all other provisions of the existing Planned Community District Regulations and exhibits remaining unchanged and in full force and effect.

Section 4: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

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

Section 6: An Addendum to Mitigated Negative Declaration No. ND2010-008 (MND) was prepared for the Proposed Project in compliance with the California Environmental Quality Act ("CEQA") set forth in California Public Resources Code Section 2100 *et seq.*; CEQA's implementing regulations set forth in CCR Title 14, Division 6 Chapter 3 ("CEQA Guidelines") and City Council Policy K-3 (Implementation Procedures for the California Environmental Quality Act) to ensure that the Proposed Project will not result in new or increased environmental impacts. On the basis of the MND and entire environmental review record, the additional tennis court, hotel rooms, ancillary hotel uses, and conversion of 3 single-family residences to condominium units will not result in any new significant impacts that were not previously analyzed in the MND. The Addendum confirms and provides substantial evidence that the potential impacts associated with this Project would either be the same or less than those described in the MND, or as mitigated by applicable mitigation measures in the MND. In addition, there are no substantial changes to the circumstances under which the Project would be undertaken that would result in new or more severe environmental impacts than previously addressed in either the MND, nor has any new information regarding the potential for new or more severe significant environmental impacts been identified. Therefore, in accordance with Section 15164 of the CEQA Guidelines, the City Council adopted Resolution No. 2022-____, thereby adopting an addendum to the previously adopted MND. Resolution 2022-____, including all findings contained therein, is hereby incorporated by reference.

Section 7: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the NBMC or other planned community shall remain unchanged and shall be in full force and effect.

Section 8: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 27th day of September, 2022, and adopted on the 11th day of October, 2022, by the following vote, to-wit:

AYES, COUNCILMEMBERS _____

NOES, COUNCILMEMBERS _____

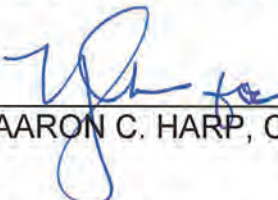
ABSENT COUNCILMEMBERS _____

KEVIN MULDOON, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

Attachment(s): Exhibit 1 - Newport Beach Country Club Planned Community
Development Plan Amendment

Exhibit 1

Newport Beach Country Club
Planned Community Development Plan

Adoption: March 27, 2012, Ordinance No. 2012-2

Amendment: October 11, 2022, Ordinance No. __

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1.0 INTRODUCTION AND PURPOSE

The Newport Beach Country Club Planned Community District (the PCD) is composed of the Golf Club, Tennis Club, Bungalows and Villas facilities, totaling approximately 433 140 acres. The PCD has been developed in accordance with the Newport Beach General Plan and is consistent with the Local Coastal Land Use Plan.

The purpose of this PCD is to provide for the classification and development of coordinated, cohesive, comprehensive planning project with limited mixed uses, including the private ~~G~~golf ~~C~~club, ~~T~~tennis ~~C~~club, ~~27 short-term rental units~~ **41-room boutique hotel** called the Bungalows with a spa/fitness area **center and ancillary uses**, and 5 semi-custom single-unit residential dwellings **units** called the Villas.

Whenever the regulations contained in the PCD Regulations conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the PCD Regulations shall take precedence. The Newport Beach Municipal Code shall regulate all development within the PCD when such regulations are not provided within the PCD Regulations.

2.0 GENERAL CONDITIONS AND REGULATIONS

1. Alcoholic Beverage Consumption

The consumption of alcoholic beverages within the PCD shall be in compliance with the State of California Department of Alcoholic Beverage Control and the Newport Beach Municipal Code. A use permit shall be required if the establishment operates past 11:00 p.m. any day of the week and a minor use permit shall be required if the establishment operates until 11:00 p.m. any day of the week.

2. Amplified Music

All amplified music played after 10:00 p.m. within the PCD shall be confined within the interior of a building unless a Special Events Permit is obtained.

3. Archaeological/Paleontological Resources

Development of the site is subject to the provisions of City Council Policies K-5 and K-6 regarding archaeological and paleontological resources.

4. Architectural Design

All development shall be designed with high quality architectural standards and shall be compatible with the surrounding uses. The development should be well-designed with coordinated, cohesive architecture and exhibiting the highest level of architectural and landscape quality in keeping with the PCD's prominent location in the Newport Center Planning Area. Massing offsets, variation of roof lines, varied textures, openings, recesses, and design accents on all building elevations shall be provided to enhance the architectural style. Architectural treatments for all ancillary facilities (i.e. storage, truck loading and unloading, and trash enclosures) shall be provided.

5. Building Codes

Construction shall comply with applicable provisions of the California Building Code and the various other mechanical, electrical and plumbing codes related thereto as adopted by the Newport Beach Municipal Code.

6. Exterior Storage Areas

There shall be no exterior storage areas permitted with the exception of the greenskeeper/maintenance area which shall be enclosed by a minimum six-foot plastered block wall.

7. Flood Protection

Development of the subject property will be undertaken in accordance with the flood protection policies of the City.

8. Grading and Erosion Control

Grading and erosion control measures shall be carried out in accordance with the provisions of the Newport Beach Excavation and Grading Code and shall be subject to permits issued by the Community Development Department.

9. Gross Floor Area

Gross floor area shall be defined as the total area of a building including the surrounding exterior walls.

10. Height and Grade

The height of any structure within the PCD shall not exceed fifty (50) feet, unless otherwise specified. The height of a structure shall be the vertical distance between the highest point of the structure and the grade directly below. In determining the height of a sloped roof, the measurement shall be the vertical distance between the grade and the midpoint of the roof plane, provided that no part of the roof shall be extend more than five (5) feet above the permitted height in the height limitation zone, and any amendments shall be subject to the review and approval of the Community Development Director

11. Landscaping/Irrigation

Landscaping and irrigation shall be provided in all areas not devoted to structures, parking lots, driveways, walkways, and tennis courts to enhance the appearance of the development, reduce heat and glare, control soil erosion, conserve water, screen adjacent land uses, and preserve the integrity of PCD. Landscaping and irrigation shall consist of a combination of trees, shrubs, groundcover and hardscape improvements. Landscaping shall be prepared in accordance with the Landscaping Standards and Water-Efficient Landscaping Sections of the Newport Beach Municipal Code and installed in accordance with the approved landscape plans prepared by a licensed landscape architect.

12. Lighting – Outdoor

All new outdoor lighting shall be designed, shielded, aimed, located and maintained to shield adjacent uses/properties and to not produce glare onto adjacent uses/properties. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the

Newport Beach Municipal Code and shall be prepared by a licensed electrical engineer. All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans.

13. Lighting – Parking & Walkways

All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans. Light standards within parking lots shall be the minimum height required to effectively illuminate the parking area and eliminate spillover of light and glare onto adjoining uses/properties and roadways.

Parking lots and walkways accessing buildings shall be illuminated with a minimum of 0.5 foot-candle average on the driving or walking surface during the hours of operation and one hour thereafter. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the Newport Beach Municipal Code and shall be prepared by a licensed electrical engineer.

If the applicant wishes to deviate from this lighting standard, a lighting plan may be prepared by the applicant and submitted to the Community Development Director for review and approval.

14. Loading Areas for Non-Residential Uses

All loading and unloading of goods delivery shall be performed onsite. Loading platforms and areas shall be screened from public view.

15. Parking Areas

Parking spaces, driveways, maneuvering aisles, turnaround areas, and landscaping areas of the parking lots shall be kept free of dust, graffiti, and litter. All components of the parking areas including striping, paving, wheel stops, walls, and light standards of the parking lots shall be permanently maintained in good working condition. Access, location, parking space and lot dimensions, and parking lot improvements shall be in compliance with the Development Standards for Parking Areas Section of the Newport Beach Municipal Code.

16. Property Owner Approval

Written property owner approval shall be required for the submittal of any site development review application and/or prior to grading and/or building permit issuance.

17. Outdoor Paging

Outdoor paging shall be permitted at the Golf Club to call individuals to the tees and at the Tennis Club to call points during tennis tournaments.

18. Sewage Disposal

Sewage disposal service facilities for the PCD will be provided by Orange County Sanitation District No. 5 and shall be subject to applicable regulations, permits and fees as prescribed by the Sanitation District.

19. Screening of Mechanical Equipments

All new mechanical appurtenances (e.g., air conditioning, heating, ventilation ducts and exhaust vents, swimming pool and spa pumps and filters, transformers, utility vaults and emergency power generators) shall be screened from public view and adjacent land uses. The enclosure design shall be approved by the Community Development Department. All rooftop equipment (other than vents, wind turbines, etc.) shall be architecturally treated or screened from off-site views in a manner compatible with the building materials prior to final building permit clearance for each new or remodeled building. The mechanical appurtenances shall be subject to sound rating in accordance with the Exterior Noise Standards Section of the Newport Beach Municipal Code. Rooftop screening and enclosures shall be subject to the applicable height limit.

20. Screening of the Villas residential units from tennis courts

Adequate buffering between the Villas **residential units** and tennis courts shall be provided and subject to the Site Development Review process. The exterior perimeter of the tennis courts facing Granville Condominiums, Granville Drive, and the Tennis Clubhouse parking lot shall be screened by a minimum ten-foot-high chain link fence covered by a wind screen. Wind screen shall be maintained in good condition at all time.

21. Screening of the Villas' Pool/Spa Equipment

All pool and/or spa equipment shall be enclosed by a minimum five-foot high block wall plastered or otherwise textured to match the building.

22. Special Events

Temporary special community events, such as such as PGA Senior Classic golf tournaments, Team Tennis, Davis Cup Matches, and other similar events, are permitted in the PCD, and are subject to the Special Events Chapter of the Newport Beach Municipal Code. Temporary exterior storage associated with approved special events may be permitted provided it is appropriately screened and regulated with an approved Special Event Permit.

23. Temporary Structures and Uses

Temporary structures and uses, including modular buildings for construction-related activities are permitted.

24. Trash Container Storage for Residential Dwellings

Trash container storage shall be out of view from public places, and may not be located in the required parking areas. If trash container storage areas cannot be located out of public view, they shall be screened from public view. Screening shall consist of fences, walls, and landscaping to a height at least 6 inches above the tops of the containers.

25. Trash Enclosures for Non-Residential Uses

All trash enclosures for non-residential uses shall be provided and in accordance with the Solid Waste and Recyclable Materials Storage of the Newport Beach Municipal Code.

26. Tennis Club Site Phasing Plan-

The phasing plan for the tennis club site which consists of the tennis club, ~~villas~~ **residential units** and ~~bungalows~~ **hotel rooms** shall be subject to a site development review process.

27. Water Service

Water service to the PCD will be provided by the City of Newport Beach and will be subject to applicable regulations, permits and fees as prescribed by the City.

3.0 LAND USE AND DEVELOPMENT REGULATIONS

3.1 Golf Club

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the golf course and clubhouse.

A. Golf Course

An 18-hole championship golf course and related facilities (i.e. putting green, driving range, snack bar, starter shack, restroom facilities, etc.).

B. Golf Clubhouse and Ancillary Uses

1. Building Area

The maximum allowable gross floor area for a golf clubhouse building shall be 56,000 square feet, exclusive of any enclosed golf cart storage areas ramp and washing area. The greens keeper/maintenance buildings, snack bar, separate golf course restroom facilities, starter shack, and similar ancillary buildings are exempt from this development limit.

2. Building Height

The maximum allowable building height for the Golf Clubhouse shall be 50 feet and shall be measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulation of the PCD.

3. Permitted Ancillary Uses

The following ancillary uses are allowed:

- Golf shop
- Administrative Offices
- Dining, and event areas
- Kitchen & Bar areas
- Banquet Rooms
- Men and Women's Card Rooms
- Health and fitness facility
- Restroom and Locker facilities
- Golf Club storage areas
- Employee lounge/lunch areas
- Meeting rooms
- Golf Cart Parking Storage and Washing Area

- Separate Snack Bar
- Separate Starter Shack
- Separate Golf Course Restrooms
- Hand Carwash Area
- Greenskeeper Maintenance Facility
- Temporary Construction Facilities
- Guard House
- Others (subject to an approval of the Community Development Director)

4. Parking

Parking for the Golf Course and Golf Clubhouse shall be in accordance with following parking ratios (source: from Table 2 of the Circulation and Parking Evaluation by Kimley-Horn and Associates, Inc., September 2009 for Newport Beach Country Club – Clubhouse Improvement Project):

Golf Course: 8 spaces per hole

Golf Clubhouse:

Dining, assembly & meeting rooms: 1 per 3 seats or 1 per 35 square feet

Administrative Office: 4 per 1,000 square feet

Pro Shop: 4 per 1,000 square feet

Maintenance Facility: 2 per 1,000 square feet

Health and Fitness Facility: 4 per 1,000 square feet

The design of the parking lot and orientation of vehicular aisles and parking spaces shall be subject to the review and approval of the City Traffic Engineer and Community Development Director.

5. Fencing

Golf Course perimeter fencing shall be wrought-iron with a maximum permitted height of six (6) feet.

3.2 Tennis Club

Refer to Exhibit B – Conceptual Master Site Plan for the general location and placement of the tennis courts and clubhouse.

A. **The Tennis Courts**

1. Number of courts

The maximum allowable tennis courts shall be ~~seven~~ **eight** lighted tennis courts (~~six~~ **seven** lighted championship courts and one lighted stadium-center court).

B. Tennis Clubhouse and Ancillary Uses

1. Building Area

The maximum allowable gross floor area for the Tennis Clubhouse shall be 3,725 square feet.

2. Building Height

The maximum allowable building height for the Tennis Clubhouse shall be 30 feet and shall be measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCD.

3. Permitted Ancillary Uses

The following ancillary uses are allowed:

- Tennis Shop
- Administrative Offices
- Concessions
- Restroom and Locker facilities
- Storage areas
- Spectator seating
- Others (subject to an approval of the Community Development Director)

4. Parking

Parking for the Tennis Clubhouse and Courts shall be a minimum of ~~28~~ **32** parking spaces.

3.3. The Villas Residential

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the ~~villas~~ **units**.

A. Detached Residential (The Villas)

1. Number of Units

The maximum allowable number of single-family residential units shall be ~~five (5)~~ **two (2)**.

2. Development Standards

The following development standards shall apply to the Villas:

The Villas Development Standards Table

Villa Designation	Villa A TTM Lot #1	Villa B TTM Lot #2
Lot Size	5,000 square feet minimum	
Lot Coverage (Maximum)	70%	65%
Building Height	39 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations	
Building Side Yard Setbacks	3 feet minimum	
Building Front and Rear Yard Setbacks	5 feet minimum	
Enclosed Parking Space for Each Unit	2	2
Open Guest Parking Space for Each Unit	One space - could be located on the private driveway – No overhang to the private street/cul-de-sac is allowed	

B. Attached Residential

1. Number of Units

The maximum allowable number of attached residential units shall be three (3).

2. Building Setbacks

The building setback shall be a minimum of five (5) feet from any property line.

3. Building Height

The maximum allowable building height for attached residential units to be located atop of the 2-story hotel buildings shall be 46 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations.

4. Parking

Parking for the attached residential units shall be a minimum of 3 enclosed parking spaces and one guest parking space per unit.

3.4. The Bungalows Hotel

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the bungalows, concierge and guest center, and spa facility.

1. Number of Units Rooms

The maximum allowable number of the Bungalows **rooms** shall be ~~27~~ **41**, to be built in a clustered setting of single and two-story buildings.

2. Permitted Ancillary Uses

The following ancillary uses are allowed:

- **Administrative Offices**
- Concierge office and guest meeting facility
- **Performance Therapy Center**
- **Spa and Fitness Center**
- Swimming pool and Jacuzzi
- ~~Spa facility that includes treatment rooms, fitness areas, and snack bar serving drinks, snacks and light breakfast and lunch items~~

- **Yoga Pavilion**

3. Building Area

The maximum allowable gross floor area for the ~~bungalows~~ **hotel rooms** shall be ~~28,300~~ **47,484** square feet with a 2,200 square foot concierge & guest center, **4,686 square feet of ancillary hotel uses**, and a 7,500 square-foot spa facility.

4. Building Height

The maximum allowable building height for the ~~bungalows~~ **hotel rooms** shall be 31 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCD.

5. Building Setbacks

The **building** setback ~~requirement~~ shall be a minimum of 5 feet from any property line.

6. Parking

Parking for the ~~bungalows~~ **hotel rooms** shall be a minimum of ~~34~~ **41** parking spaces located in proximity to the use.

3.5 Signs

A. **Sign Allowance**

1. One (1) single or double-faced, ground-mounted entrance identification sign shall be allowed at Newport Beach Tennis Club's main entrance (Country Club Drive and Irvine Terrace). Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height.
2. One (1) single or double-faced, ground-mounted entrance identification sign shall be allowed at or near the vicinity of the Newport Beach Country Club's secondary entrance (Granville). Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height.
3. Building identification signs shall be allowed; one for each street frontage. If freestanding, this sign type shall not exceed a maximum height of five (5) feet in height. The maximum signage area shall not exceed seventy (70) square feet.
4. Vehicular and pedestrian directional signs shall be allowed. This sign type may occur as a single-faced or double-faced sign. The

sign shall be sized to allow for proper readability given the number of lines of copy, speed of traffic, setback off the road and viewing distance. This sign type shall not exceed a maximum of six (6) feet in height.

5. One (1) single or double faced, ground-mounted identification sign shall be allowed at the entrance road to the Bungalows. Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height and fifteen (15) feet in length.

B. Sign Standards

1. The design and materials of all permanent signs in the Newport Beach Country Club Planned Community District shall be in accordance with Sign Section 3.5, unless otherwise approved by the Community Development Director.
2. All permanent signs shall be subject to a sign permit issued by the Community Development Department.
3. All signs shall be subject to the review of the City Traffic Engineer to ensure adequate sight distance in accordance with the provisions of the Newport Beach Municipal Code.
4. Sign illumination is permitted for all sign types. No sign shall be constructed or installed to rotate, gyrate, blink or move, or create the illusion of motion, in any fashion.
5. All permanent signs together with the entirety of their supports, braces, guys, anchors, attachments and décor shall be properly maintained, legible, functional and safe with regards to appearance, structural integrity and electrical service.
6. Temporary signs that are visible from any public right-of-way shall be allowed up to a maximum of sixty (60) days and subject to a temporary sign permit issued by the Community Development Department.
7. If the applicant wishes to deviate from the sign standards identified herein, a comprehensive sign program may be prepared or a modification permit application may be submitted for review and consideration by the Zoning Administrator in accordance with the applicable provisions of the Newport Beach Municipal Code.

4.0 SITE DEVELOPMENT REVIEW

4.1 Purpose

The purpose of the Site Development Review process is to ensure new development proposals within the Newport Beach Country Club Planned Community Development are consistent with the goals and policies of the General Plan, provisions of this Planned Community Development Plan, the Development Agreement and the findings set forth below in sub-section 4.3.

4.2 Application

An approval of Site Development Review application by the Planning Commission shall be required for the construction of any new structure prior to the issuance of a grading or building permit or issuance of an approval in concept for Coastal Commission. Signs, tenant improvements to any existing buildings, kiosks, and temporary structures are exempt from the site development review process and subject to the applicable City's permits. The decision of Planning Commission is the final, unless appealed in accordance with the Newport Beach Municipal Code.

4.3. Findings

In addition to the general purposes set forth in sub-section 4.1 and in order to carry out the purposes of this chapter as established by said section, the Site Development Review procedures established by this Section shall be applied according to and in compliance with the following findings:

1. The development shall be in compliance with all other provisions of the Planned Community District Plan;
2. The development shall be compatible with the character of the neighboring uses and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;
3. The development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on Coast Highway; and

4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.

4.4. Contents

The Site Development Review application shall include all of the information and materials specified by the Community Development Director and any additional information review by the Planning Commission in order to conduct a thorough review of the project in question. The following plans/exhibits may include, but not limited to the following:

1. An aerial map showing the subject property, adjacent properties and identifying their uses.
2. Comprehensive elevations and floor plans for new structures with coordinated and complimentary architecture, design, materials and colors.
3. A parking and circulation plan showing golf cart and pedestrian paths in addition to streets and fire lanes.
4. A comprehensive, cohesive and coordinated preliminary landscape plan.
5. A comprehensive, cohesive and coordinated lighting plan showing type, location and color of all exterior lighting fixtures.
6. Comprehensive text and graphics describing the design philosophy for the architecture, landscape architecture, material and textures, color palette, lighting, and signage.
7. Text describing drainage and water quality mitigation measures.
8. A statement that the proposed new structure is consistent with the goals, policies, and actions of the General Plan and Planned Community Development Plan.

4.5 Public Hearing –Required Notice

A public hearing shall be held on all site development review applications. Notice of such hearing shall be mailed not less than ten (10) days before the hearing date, postage prepaid, using addresses from the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses, to owners of property within a radius of three hundred (300) feet of the exterior boundaries of the subject property. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this Section. In addition to the mailed notice, such hearing shall be posted in

not less than two (2) conspicuous places on or close to the property at least ten (10) days prior to the hearing.

4.6 Expiration and Revocation Site Development Review Approvals

1. Expiration. Any site development review approved in accordance with the terms of this planned community development plan shall expire within twenty-four (24) months from the effective date of final approval as specified in the Time Limits and Extensions Section of the Newport Beach Municipal Code, unless at the time of approval the Planning Commission has specified a different period of time or an extension is otherwise granted.
2. Violation of Terms. Any site development review approved in accordance with the terms of this planned community development plan may be revoked if any of the conditions or terms of such site development review are violated or if any law or ordinance is violated in connection therewith.
3. Public Hearing. The Planning Commission shall hold a public hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within sixty (60) days after receipt of the recommendation of the Planning Commission.

4.7. Fees

The applicant shall pay a fee as established by Resolution of the Newport Beach City Council to the City with each application for Site Development Review under this planned community development plan.

4.8 Minor Changes by the Director

1. The following minor changes to an approved site plan may be approved by the Director in compliance with Section 20.54.070 (Changes to an approved project) of the Newport Beach Municipal Code:
 - a) Minor relocation of any proposed structure.
 - b) Reduction in the square footage of any structure and a commensurate reduction in required parking, if applicable.
 - c) Reconfiguration of the golf clubhouse parking lot, including drive aisles and/or parking spaces, subject to review and approval of the City Traffic Engineer.
 - d) Reconfiguration of parking lot landscaping.
 - e) Modification of the approved architectural style.
 - f) Any other minor change to the site plan provided it does not

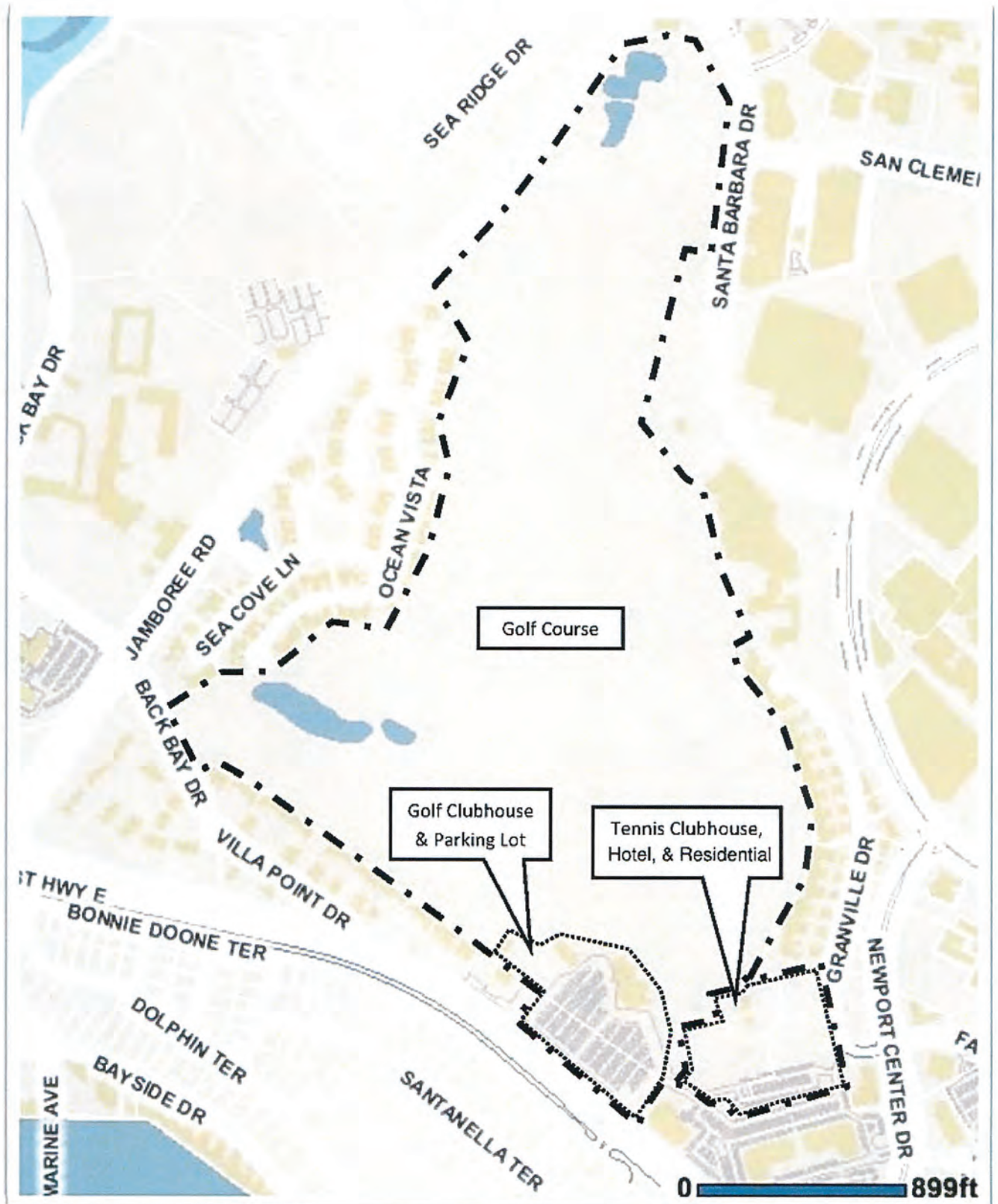
increase any structure area, height, number of units, number of hotel rooms, and/or change of use.

2. Any proposed changes that are not deemed minor shall be subject to review and approval by the Planning Commission.

Exhibit A



Exhibit B



Attachment E

Ordinance No. 2022-20 to Approve DA

ORDINANCE NO. 2022-20

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT (DA2008-001) FOR THE TENNIS CLUB AT NEWPORT BEACH LOCATED AT 1602 EAST COAST HIGHWAY (PA2021-260)

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

WHEREAS, in 2012, the City Council approved an application by Golf Realty Fund, Managing Owner ("Applicant") for the reconstruction of the 3,725-square-foot tennis clubhouse, reduction of tennis courts from 24 to seven courts, construction of a 27-room boutique hotel with 9,700 square feet of ancillary uses, five single-family residential units, and a development agreement for the property ("2012 Entitlements") located at 1602 East Coast Highway, and legally described as Parcels A, B, C, and D of Parcel Map No. 2016-151 (commonly referred as the "Tennis Club Site" or "Property");

WHEREAS, Development Agreement No. DA2008-001 ("Agreement") adopted pursuant to Ordinance No. 2012-3 was executed and recorded, as document number 2014000036369;

WHEREAS, on November 20, 2018, the Zoning Administrator approved Coastal Development Permit No. CD2017-039, authorizing the redevelopment of the Property consistent with the 2012 Entitlements (2012 Entitlements and Coastal Development Permit No. CD2017-039 are collectively referred to as the "Approved Project");

WHEREAS, on July 12, 2022, the City Council adopted Ordinance No. 2022-16, approving an amendment to Development Agreement No. DA2008-001 to extend the term of the agreement for one additional year ("First Amendment");

WHEREAS, the Applicant is requesting an amendment to the Approved Project to allow an increase in the number of future tennis courts from seven to eight, an increase in the number of future hotel rooms from 27 to 41, an increase to the gross floor area of ancillary hotel uses by 4,686 square feet, three attached condominium units and two single family residences in-lieu of five single-family residences, and an amendment to the 2012 Development Agreement to account for the aforementioned changes to the Approved Project along with extending the term for an additional 10 years ("Project");

WHEREAS, the following approvals are requested or required in order to implement the Project:

- General Plan Amendment ("GPA") – An amendment to Anomaly No. 46 of Table LU2 of the 2006 Newport Beach General Plan Land Use Element to document the conversion of 17 tennis courts to 27 hotel rooms authorized by City Council Resolution No. 2012-10, and the addition of 14 hotel rooms for a total of 41 rooms and one tennis courts for a total of eight tennis courts;
- Local Coastal Program Implementation Plan Amendment ("LCPA") – An amendment to Section 21.26.055(S)(2) (Planned Community Coastal Zoning District Development Standards, Newport Beach Country Club (PC-47, Tennis Club) of the Newport Beach Municipal Code ("NBMC") to modify the permitted uses and development standards allowed on the Property;
- Planned Community Development Plan Amendment ("PCDP Amendment") – An amendment to Planned Community Development Plan No. 47 (Newport Beach Country Club Planned Community) to amend land use regulations and development standards on the Property;
- Major Site Development Permit Amendment ("SDA") – An amendment to the existing site development review in accordance with PC-47 and Section 20.52.080 (Permit Review Procedures, Site Development Reviews) of the NBMC for the construction of the Project;
- Coastal Development Permit Amendment ("CDPA") – A coastal development permit for the demolition of existing structures, further subdivision on the Property, and implementation of the Project;
- Vesting Tentative Tract Map Amendment ("VTMA") – An amendment to Vesting Tentative Tract Map No. 15347 pursuant to Title 19 (Subdivisions) of the NBMC

for a lot reduction created for the Approved Project and inclusion of the condominium ownership;

- Limited Term Permit Amendment ("XP") – A limited term permit to allow temporary use of structures during construction on the Property, pursuant to Section 20.52.040 of the NBMC;
- Development Agreement Amendment ("DA") – A second amendment to the Development Agreement (DA2008-001), between the Applicant and the City, pursuant to Sections 15.45.020(A)(2)(c) (Buildings and Construction, Development Agreements Required, Development Agreement Required) and 15.45.070 (Buildings and Constructions, Development Agreements, Amendment/Cancellation) of the NBMC, which would provide vested rights to develop the Project for an additional 10 years and provide negotiated public benefits to the City; and
- Addendum to previously adopted Mitigated Negative Declaration No. ND-2010-008 (SCH2010091052) ("Addendum") – Pursuant to the California Environmental Quality Act ("CEQA"), the Addendum addresses reasonably foreseeable environmental impacts resulting from the Project;

WHEREAS, the Property is designated Mixed-Use Horizontal 3/Parks and Recreation (MU-H3/PR) by the City of Newport Beach General Plan and is located within the Newport Beach Country Club Planned Community (PC-47) Zoning District;

WHEREAS, the Property is designated Mixed-Use Horizontal/Parks and Recreation (MU-H/PR) by the Coastal Land Use Plan and is located within the Newport Beach Country Club Planned Community (PC-47) Coastal Zone District;

WHEREAS, the Planning Commission held a public hearing on September 8, 2022, in the City Council Chambers, located at 100 Civic Center Drive, Newport Beach, California, at which time the Planning Commission considered the Project. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act"), and Chapters 15.45 (Development Agreements), 19.12 (Tentative Map Review), 20.56 (Planning Community District Procedures), 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing;

WHEREAS, at the hearing, the Planning Commission adopted Resolution No. PC2022-022 (5 ayes, 1 absent, 1 recusal) recommending approval of the Project to the City Council; and

WHEREAS, a public hearing was held by the City Council on September 27, 2022, in the City Council Chambers, located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act, and Chapters 15.45 (Development Agreements), 19.12 (Tentative Map Review), 20.56 (Planning Community District Procedures), 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

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

Section 1: The City Council has considered the recommendation of the Planning Commission and determined that modifications to the Project made by the City Council, if any, are not major changes that require referral back to commission for consideration and recommendation.

Section 2: The City Council finds the Second Amendment is consistent with provisions of California Government Code Sections 65864 to 65869.5 and Chapter 15.45 (Development Agreements) of the NBMC that authorize binding agreements that: (i) encourage investment in, and commitment to, comprehensive planning and public facilities financing; (ii) strengthen the public planning process and encourage private implementation of the local general plan; (iii) provide certainty in the approval of projects in order to avoid waste of time and resources; and (iv) reduce the economic costs of development by providing assurance to the property owners that they may proceed with projects consistent with existing policies, rules, and regulations. The City Council finds the Second Amendment is consistent with Land Use Element of the General Plan which designates the Tennis Club site as Mixed Use Horizontal 3/Park and Recreation (MU-H3/PR). The MU-H3/PR designation on the Tennis Club site provides for the horizontal intermixing of regional commercial office, hotel, single-family and multi-family residential and ancillary commercial uses. The PR designation allows active public or private recreational uses including parks (both active and passive), golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities. The Project necessitates an amendment to the General Plan due to the increased number of hotel rooms and tennis courts. However, there are no proposed changes to the land uses permitted per the General Plan land use designation and the Project is consistent with all applicable General Plan Land Use policies.

Additionally, the City Council finds the Second Amendment is entered into pursuant to, and constitutes a present exercise of, the City's police power and is in the best interest of the health, safety, and general welfare of the City, residents, and the public.

The City Council finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

Section 3: The Second Amendment to Development Agreement No. DA2008-001 which is attached hereto as Exhibit "A," and incorporated herein by reference between the City of Newport Beach and GRF to accommodate the development of Project and to extend the term of the agreement to September 23, 2032, is hereby approved.

Section 4: An Addendum to Mitigated Negative Declaration No. ND2010-008 ("MND") was prepared for the Project in compliance with the California Environmental Quality Act ("CEQA") set forth in California Public Resources Code Section 2100 *et seq.*; CEQA's implementing regulations set forth in CCR Title 14, Division 6 Chapter 3 ("CEQA Guidelines") and City Council Policy K-3 (Implementation Procedures for the California Environmental Quality Act) to ensure that the Project will not result in new or increased environmental impacts. On the basis of the MND and entire environmental review record, the additional tennis court, hotel rooms, ancillary hotel uses, and conversion of 3 single-family residences to condominium units will not result in any new significant impacts that were not previously analyzed in the MND. The Addendum confirms and provides substantial evidence that the potential impacts associated with this Project would either be the same or less than those described in the MND, or as mitigated by applicable mitigation measures in the MND. In addition, there are no substantial changes to the circumstances under which the Project would be undertaken that would result in new or more severe environmental impacts than previously addressed in either the MND, nor has any new information regarding the potential for new or more severe significant environmental impacts been identified. Therefore, in accordance with Section 15164 of the CEQA Guidelines, the City Council adopted Resolution No. 2022-____, thereby adopting an addendum to the previously adopted MND. Resolution 2022-____, including all findings contained therein, is hereby incorporated by reference.

Section 5: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 6: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 7: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 27th day of September, 2022, and adopted on the 11th day of October, 2022, by the following vote, to-wit:

AYES, COUNCILMEMBERS _____

NOES, COUNCILMEMBERS

ABSENT COUNCILMEMBERS _____

KEVIN MULDOON, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE


AARON C. HARP, CITY ATTORNEY

Attachment(s): Exhibit "A" – Second Amendment to Development Agreement
No. DA2008-001

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This First Amendment is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

between

CITY OF NEWPORT BEACH

and

GOLF REALTY FUND

**CONCERNING PROPERTIES LOCATED AT TENNIS CLUB AT NEWPORT BEACH
WITHIN THE
NEWPORT BEACH COUNTRY CLUB PLANNED COMMUNITY DISTRICT**

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

(Pursuant to California Government Code Sections 65864-65869.5)

This SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (the “**Second Amendment**”) is entered into and effective on the date it is recorded with the Orange County Recorder (“**Effective Date**”) by and between the CITY OF NEWPORT BEACH (“**City**”), and GOLF REALTY FUND, a California limited partnership (“**Property Owner**”). **City** and **Property Owner** are sometimes collectively referred to in this **Second Amendment** as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. **Property Owner** is the managing owner of and owns a fee interest in title to that certain real property located in the City of Newport Beach, County of Orange, State of California which is more particularly described in the legal description attached as Exhibit “A” and depicted on the site map attached hereto as Exhibit “B” (“**Property**”). The Property consists of approximately seven (7) acres within the area shown on the City’s Zoning Map as the Newport Beach Country Club Planned Community District. The Property comprises the Tennis Club at Newport Beach site shown on Exhibit “B” which consists of The Villas Sub-Area, The Tennis Club Sub-Area, and The Bungalows Sub-Area.

B. **City** and **Property Owner** entered into that certain Development Agreement between the City of Newport Beach and Golf Realty Fund dated March 27, 2012, and recorded in the Official Records of Orange County on January 29, 2014, as document number 2014000036369 (“**Agreement**”) attached hereto as Exhibit “C” and incorporated herein by reference for a term of ten (10) years.

C. On November 20, 2018, the City approved Coastal Development Permit No. CD2017-039 to allow the demolition of the eighteen (18) existing tennis courts and construction of the Tennis Club, Villas and Bungalows at the Tennis Property, however, the **Agreement** was not amended or modified.

D. **City** and **Property Owner** entered into the First Amendment to Development Agreement between the City of Newport Beach and Golf Realty Fund pursuant to Ordinance No. 2022-16 and recorded in the Official Records of Orange County on XX, XXXX, as document (“**First Amendment**”), attached hereto as Exhibit “D” and incorporated herein by reference.

E. The Parties now wish to enter into this Second Amendment to increase the number of tennis courts from seven (7) to eight (8), increase the number of hotel rooms from twenty-seven (27) to forty-one (41), increase the gross floor area of ancillary hotel uses by four thousand six hundred eight-six (4,686) square feet, and construct three (3) attached condominium units and two (2) single-family residences in lieu of five (5) single-family residences.

F. On September 8, 2022, the Planning Commission held the public hearing on the **Second Amendment** and considered the testimony and information submitted by City staff, **Property Owner**, and members of the public. Consistent with applicable provisions of the Development Agreement Statute and Ordinance, the Planning Commission adopted Resolution No. PC2022-022, recommending the City Council approve the **Second Amendment**.

G. On September 27, 2022, the City Council held a noticed public hearing on the **Second Amendment** and considered the testimony and information submitted by City staff, **Property Owner**, and members of the public. On October 11, 2022, consistent with applicable provisions of the Development Agreement Statute and Ordinance, the City Council held the second reading and adopted Ordinance No. 2022-___ approving the **Second Amendment**.

H. This **Second Amendment** is consistent with the City of Newport Beach General Plan ("General Plan"), including without limitation the General Plan's designation of the Property as "MU-H3/PR" (Mixed Use Horizontal / (Parks and Recreation) (Anomaly 46); Coastal Land Use Plan designation as "MU-H/PR (Mixed Use Horizontal / Parks & Recreation"; the Newport Beach Country Club Planned Community District that was adopted in 1997 by Ordinance No. 97-10, and amended in 2022 by Ordinance No. 2022-___ in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan; and Newport Beach Country Club Planned Community Development Plan No. PC2005-002 approved for the Property on March 27, 2012 by Ordinance No. 2012-2 and amended on October 11, 2022 by Ordinance No. 2022-___.

I. In recognition of the significant public benefits that this **Second Amendment** provides, the City Council finds that this **Second Amendment**: (i) is consistent with the City of Newport Beach General Plan as of the date of its adoption; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) is consistent and has been approved consistent with the Addendum No. ND2022-001 to the previously adopted Mitigated Negative Declaration No. ND2010-008 (SCH 2010091052) and Errata to Mitigated Negative Declaration No. ND2010-008 (together referred as "**MND**") for the Newport Beach Country Club Planned Community District (PA2021-260 amending PA2005-002) approved by the City Council, both of which analyze the environmental effects of the proposed development of the Project on the Property; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 *et seq.* and Chapter 15.45 City of Newport Beach Municipal Code ("**NBMC**").

AGREEMENT

NOW, THEREFORE, City and Property Owner agree as follows:

1. Definitions. Section 1 of the Agreement is hereby amended to add or revise the following definitions. Unless added or revised, all other definitions set forth in Section 1 of the Agreement shall remain unchanged:

"Adopting Ordinance" shall mean City Council Ordinance No. 2022-___ approving and adopting this Second Amendment.

"Agreement" shall mean this Development Agreement, as the same may be amended from time to time including, the First Amendment and Second Amendment.

"Agreement Date" shall mean October 11, 2022 which date is the date the City Council adopted the Adopting Ordinance.

“Development Plan” shall mean the amendment to Newport Beach Planned Community Development Plan No. PC2005-002 adopted pursuant to Ordinance No. 2022-___; amendment to Vesting Tentative Tract Map No. NT2005-003 adopted pursuant to Resolution No. 2022-___; amendment to Site Development Review No. SD2011-002 adopted pursuant to Resolution No. 2022-___; amendment to Limited Term Permit No. XP2011-004 adopted pursuant to Resolution No. 2022-___; General Plan Amendment adopted pursuant to Resolution No. 2022-___; amendment to Coastal Development Permit No. CD2017-039 adopted pursuant to Resolution No. 2022; and Local Coastal Program Amendment No. PA2021-260.

“Development Regulations” shall mean the following regulations as they are in effect as of the Agreement Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted, approved, or imposed after the Agreement Date that impairs or restricts Property Owner’s rights set forth in this agreement, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by Property Owner in writing: the General Plan, the Coastal Land Use Plan, the Development Plan, the Local Coastal Program Implementation Plan; and, to the extent not expressly superseded by the Development Plan or this Agreement, all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, improvement, and construction standards and specifications, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to development of the Project on the Property during the Term of this Agreement that are set forth in Title 15 of the Municipal Code (buildings and construction), Title 19 of the Municipal Code (subdivisions), Title 20 of the Municipal Code (planning and zoning) and Title 21 of the Municipal Code (local coastal program implementation plan), but specifically excluding all other sections of the Municipal Code, including without limitation Title 5 of the Municipal Code (business licenses and regulations). Notwithstanding the foregoing, the term “Development Regulations,” as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments; (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or entry upon public property; or (v) the exercise of the power of eminent domain.

“Effective Date” shall mean the latest of the following dates, as applicable: (i) the date that is thirty (30) days after the Agreement Date; (ii) if a referendum concerning the Adopting Ordinance, the Development Plan, or any of the Development Regulations approved on or before the Agreement Date is timely qualified for the ballot and a referendum election is held concerning the Adopting Ordinance or any of such Development Regulations, the date on which the referendum is certified resulting in upholding and approving the Adopting Ordinance and the Development Regulations; or (iii) if a lawsuit is timely filed challenging the validity of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations approved on or before the Agreement Date, the date on which said challenge is finally resolved in favor of the validity or legality of the Adopting Ordinance, this Agreement, the Development Plan and/or the applicable Development Regulations, which such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement. Promptly after the Effective Date occurs, the Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property memorializing the Effective Date.

“Project” shall mean all on-site and off-site improvements that Property Owner is authorized and/or may be required to construct with respect to each parcel of the Property, as provided in this Second Amendment and the Development Regulations, as amended by this Second Amendment, and/or as the same may be modified or amended from time to time consistent with this Second Amendment and applicable law.

2. Term of Agreement. Section 2.4 of the Agreement is hereby amended in its entirety to read as follows:

The term of this Agreement (“Term”) shall commence on the Effective Date of Second Amendment and shall terminate on the “Termination Date.”

Notwithstanding any other provision set forth in this Agreement to the contrary, if any Party reasonably determines that the Effective Date will not occur because (i) the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date for the Project has/have been disapproved by City’s voters at a referendum election or (ii) a final non-appealable judgment is entered in a judicial action challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations for the Project approved on or before the Agreement Date such that this Agreement and/or any of such Development Regulations is/are invalid and unenforceable in whole or in such a substantial part that the judgment substantially impairs such Party’s rights or substantially increases its obligations or risks hereunder or thereunder, then such Party, in its sole and absolute discretion, shall have the right to terminate this Agreement upon delivery of a written notice of termination to the other Party, in which event neither Party shall have any further rights or obligations hereunder except that Property Owner’s indemnity obligations set forth in Article 10 shall remain in full force and effect and shall be enforceable, and the Development Regulations applicable to the Project and the Property only (but not those general Development Regulations applicable to other properties in the City) shall be repealed by the City after delivery of said notice of termination except for the Development Regulations that have been disapproved by City’s voters at a referendum election and, therefore, never took effect.

The Termination Date shall be the earliest of the following dates: (i) September 23, 2032; (ii) such earlier date that this Agreement may be terminated in accordance with Articles 5, 7, and/or Section 8.3 of this Agreement and/or Sections 65865.1 and/or 65868 of the Development Agreement Statute; or (iii) completion of the Project in accordance with the terms of this Agreement, including Property Owner’s complete satisfaction, performance, and payment, as applicable, of all Development Exactions, the issuance of all required final occupancy permits, and acceptance by City or applicable public agency(ies) or private entity(ies) of all required offers of dedication.

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 13.10 (as well as any other Property Owner obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

3. Public Benefit Fee. Section 3.1 of the Agreement is hereby amended in its entirety to read as follows:

As consideration for City's approval and performance of its obligations set forth in this Agreement, Property Owner shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject to (herein, the "Public Benefit Fee") in the total sum of five hundred two thousand two hundred fifty dollars (\$502,250.00) broken down as follows: (i) ninety-three thousand dollars and 00/100 (\$93,000.00 per residential dwelling unit) for a sum of four hundred sixty-five thousand dollars and 00/100 (\$465,000.00) for the residential units; and (ii) ten dollars and 00/100 (\$10.00) per square foot of the three thousand seven hundred twenty-five (3,725) square foot Tennis Clubhouse for a sum of thirty-seven thousand two hundred fifty dollars and 00/100 (\$37,250.00), with the unpaid balance of said Public Benefit Fee increased on the first January 1 following the Effective Date of this Agreement by the percentage increase in the CPI Index between the Effective Date and said January 1st date (the first "Adjustment Date") and thereafter with the unpaid balance of said Public Benefit Fee increased on each subsequent January 1 during the Term of this Agreement (each, an "Adjustment Date") by the percentage increase in the CPI Index in the year prior to the applicable Adjustment Date. The amount of the percentage increase in the CPI Index on the applicable Adjustment Dates shall in each instance be calculated based on the then most recently available CPI Index figures such that, for example, if the Effective Date of this Agreement falls on July 1 and the most recently available CPI Index figure on the first Adjustment Date (January 1 of the following year) is the CPI Index for November of the preceding year, the percentage increase in the CPI Index for that partial year (a 6-month period) shall be calculated by comparing the CPI Index for November of the preceding year with the CPI Index for May of the preceding year (a 6-month period). In no event, however, shall application of the CPI Index reduce the amount of the Public Benefit Fee (or unpaid portion thereof) below the amount in effect prior to any applicable Adjustment Date. Property Owner shall pay the Public Benefit Fee at the following time(s): (i) As to the residential dwelling units, prior to the issuance of the first building permit for any residential unit; and (ii) as to the tennis clubhouse, prior to the issuance of the first building permit. Notwithstanding any other provision set forth in this Agreement to the contrary, during the Term of this Agreement, City shall not increase the Public Benefit Fee except pursuant to the CPI Index as stated in this Section 3.1. The Public Fee Benefit Fee shall be calculated based on the total square feet of construction for the tennis clubhouse. Property Owner shall not be entitled to any credit or offset to the Public Benefit Fee for any existing buildings or structures. Property Owner acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee, that its obligation to pay the Public Benefit Fee is an essential term of this Agreement and is not severable from City's obligations and Property Owner's vesting rights to be acquired hereunder, and that Property Owner expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for Property Owner's default, if Property Owner shall fail to timely pay any portion of the Public Benefit Fee when due City shall have the right to withhold issuance of any further building permits, occupancy permits, or other development or building permits for the Development Plan.

4. Amendment or Cancellation of Agreement. Section 5 of the Agreement is hereby amended in its entirety to read as follows

This Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code Section 65868 and Newport Beach Municipal Code Section 15.45.070 or by unilateral termination by City in the event of an uncured default of Property Owner.

5. Procedure. Section 7.3 of the Agreement is hereby amended in its entirety to read as follows:

The Zoning Administrator shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not Property Owner has, for the period under review, complied with the terms of this Agreement. If the Zoning Administrator finds that Property Owner has so complied, the annual review shall be concluded. If the Zoning Administrator finds, on the basis of substantial evidence, that Property Owner has not so complied, written notice shall be sent to Property Owner by first class mail of the Zoning Administrator's finding of non-compliance, and Property Owner shall be given at least ten (10) calendar days to cure any noncompliance that relates to the payment of money and thirty (30) calendar days to cure any other type of noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) calendar days for reasons which are beyond the control of Property Owner, Property Owner must commence the cure within such thirty (30) calendar days and diligently pursue such cure to completion. If Property Owner fails to cure such noncompliance within the time(s) set forth above, such failure shall be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 8 below.

6. General Provisions. Section 8.1 of the Agreement is hereby amended in its entirety to read as follows:

In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time (twenty (20) calendar days if the Default relates to the failure to timely make a monetary payment due hereunder and not less than thirty (30) calendar days in the event of non-monetary Defaults) in which the Default must be cured ("Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than thirty (30) calendar days after it receives the Notice of Default, and thereafter diligently pursue said cure to completion. Notwithstanding the foregoing, the City is not required to give Property Owner notice of default and may immediately pursue remedies for a Property Owner Default that result in an immediate threat to public health, safety or welfare.

7. Full Force and Effect. Except as modified by this **Second Amendment**, the entire **Agreement**, First Amendment its exhibits, and the exhibits attached hereto, are incorporated herein to this **Second Amendment** and shall remain in full force and effect.

8. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

9. Recordation. The City Clerk shall record this **Second Amendment** in the Office of the County Recorder of the County of Orange within the period required by California Government Code Section 65858.5 and Section 15.45.100 of the NBMC.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE TO
SECOND AMENDMENT TO DEVELOPMENT AGREEMENT**

“PROPERTY OWNER”

GOLF REALTY FUND, a California
limited partnership

By: _____

Its: _____

By: _____

Its: _____

“CITY”

CITY OF NEWPORT BEACH, a California
municipal corporation

By: _____
Kevin Muldoon, Mayor

ATTEST:

Leilani I. Brown, City Clerk

APPROVED AS TO FORM:

Aaron C. Harp, City Attorney

Attachments: Exhibit A – Legal Description of Property
 Exhibit B – Depiction of Property
 Exhibit C – Development Agreement Recorded January 29, 2014
 Exhibit D – First Amendment to Development Agreement

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 A

LEGAL DESCRIPTION OF PROPERTY

PARCELS A, B, C AND D OF PARCEL MAP 2016-151, LOCATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 402 PAGES 24 THROUGH 32 INCLUSIVE OF PARCEL MAPS, RECORDS OF SAID COUNTY.

DEPICTION OF PROPERTY

15-120

EXHIBIT C

**DEVELOPMENT AGREEMENT BETWEEN CITY OF NEWPORT BEACH AND
GOLF REALTY FUND RECORDED JANUARY 29, 2014**

Available separately due to bulk at:

<https://www.newportbeachca.gov/government/departments/community-development/planning-division/development-agreements>

EXHIBIT D

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN CITY OF
NEWPORT BEACH AND GOLF REALTY FUND**

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This First Amendment is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

between

CITY OF NEWPORT BEACH

and

GOLF REALTY FUND

**CONCERNING PROPERTIES LOCATED AT TENNIS CLUB AT NEWPORT BEACH
WITHIN THE
NEWPORT BEACH COUNTRY CLUB PLANNED COMMUNITY DISTRICT**

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

(Pursuant to California Government Code Sections 65864-65869.5)

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the “**First Amendment**”) is entered into and effective on the date it is recorded with the Orange County Recorder (“**Effective Date**”) by and between the CITY OF NEWPORT BEACH (“**City**”), and GOLF REALTY FUND, a California limited partnership “**Property Owner**”). **City** and **Property Owner** are sometimes collectively referred to in this **First Amendment** as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. **Property Owner** is the managing owner of and owns a fee interest in title to that certain real property located in the City of Newport Beach, County of Orange, State of California which is more particularly described in the legal description attached as Exhibit “A” and depicted on the site map attached hereto as Exhibit “B” (“**Property**”). The Property consists of approximately seven (7) acres within the area shown on the City’s Zoning Map as the Newport Beach Country Club Planned Community District. The Property comprises the Tennis Club at Newport Beach site shown on Exhibit “B” which consists of The Villas Sub-Area, The Tennis Club Sub-Area, and The Bungalows Sub-Area.

B. **City** and **Property Owner** entered into that certain Development Agreement between the City of Newport Beach and Golf Realty Fund dated March 27, 2012, and recorded in the Official Records of Orange County on January 29, 2014, as document number 2014000036369 (“**Agreement**”) attached hereto as Exhibit “C” with a ten (10) year term.

C. On November 20, 2018, the City approved Coastal Development Permit No. CD2017-039 to allow the demolition of the 18 existing tennis courts and construction of the Tennis Club, Villas and Bungalows at the Tennis Property, however, the **Agreement** was not amended or modified.

D. The Parties now wish to enter into that **First Amendment** extending the term for an additional year and updating certain provisions.

E. On May 12, 2022, the Planning Commission opened the noticed public hearing on this **First Amendment** and continued the item to May 26, 2022.

F. On May 26, 2022, the Planning Commission held the public hearing on this **First Amendment** and considered the testimony and information submitted by City staff, **Property Owner**, and members of the public. Consistent with applicable provisions of the Development Agreement Statute and Ordinance, the Planning Commission adopted Resolution No. PC2022-008, recommending the City Council approve this **First Amendment**.

G. On June 28, 2022, the City Council held a noticed public hearing on this **First Amendment** and considered the testimony and information submitted by City staff, **Property Owner**, and members of the public. On July 12, 2022, consistent with applicable provisions of the Development Agreement Statute and Ordinance, the City Council held the second reading and adopted Ordinance No. _____ approving this **First Amendment**.

H. This **First Amendment** is consistent with the City of Newport Beach General Plan ("General Plan"), including without limitation the General Plan's designation of the Property as "MU-H3/PR" (Mixed Use Horizontal / (Parks and Recreation) (Anomaly 46); Coastal Land Use Plan designation as "MU-H/PR (Mixed Use Horizontal / Parks & Recreation"; the Newport Beach Country Club Planned Community District that was adopted in 1997 by Ordinance No. 97-10 in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan; and Newport Beach Country Club Planned Community Development Plan No PC2005-002 approved for the Property on March 27, 2012 by Ordinance No. 2012-2.

I. The City Council finds that this **First Amendment**: (i) is consistent with the City of Newport Beach General Plan as of the date of this **First Amendment**; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) is consistent and has been approved consistent with the Mitigated Negative Declaration No. ND2010-008 (SCH 2010091052) and an Errata to Mitigated Negative Declaration No. ND2010-008 (together referred as "**MND**") for the Newport Beach Country Club Planned Community District (PA2005-002) approved by the City Council, both of which analyze the environmental effects of the proposed development of the Project on the Property; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 *et seq.* and Chapter 15.45 City of Newport Beach Municipal Code ("**NBMC**").

AGREEMENT

NOW, THEREFORE, City and Property Owner agree as follows:

1. Term of Agreement. Section 2.4 of the Agreement is hereby amended in its entirety to read as follows:

"The term of this Agreement (the "Term") shall commence on the Effective Date and continue until _____ 2023, unless otherwise terminated or modified pursuant to its terms.

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 13.10 (as well as any other Property Owner obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement."

2. Attorneys' Fees. Section 8.10 of the Agreement is hereby amended in its entirety to read as follows:

“In any judicial proceeding, arbitration, or mediation (collectively, an “Action”) between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall not recover any of its costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure section 1033.5 or California Civil Code section 1717 in the absence of this Agreement. These costs and expenses include, but are not limited to, court costs, expert witness fees, attorneys’ fees, City staff costs (including overhead), and costs of investigation and preparation before initiation of the Action.”

3. Notices. Section 13.1 of the Agreement is hereby amended in its entirety to read as follows:

“Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY: City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Manager

With a copy to: City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Attorney

TO PROPERTY OWNER: Golf Realty Fund
One Upper Newport Plaza
Newport Beach, CA 92660
Attn: Robert O’Hill

Either Party may change the address stated in this Section 13.1 by delivering notice to the other Party in the manner provided in this Section 13.1, and thereafter, notices to such Party shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received or (iii) three business days after deposit in the mail as provided above.”

4. Full Force and Effect. Except as modified by this **First Amendment**, the entire **Agreement**, its exhibits, and the exhibits attached hereto, are incorporated herein to this **First Amendment** and shall remain in full force and effect.

5. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

6. Recordation. The City Clerk shall record this **First Amendment** in the Office of the County Recorder of the County of Orange within the period required by California Government Code Section 65858.5 and Section 15.45.100 of the NBMC.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE TO
FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

“PROPERTY OWNER”

GOLF REALTY FUND, a California
limited partnership

By: _____

Its: _____

By: _____

Its: _____

“CITY”

CITY OF NEWPORT BEACH, a California
municipal corporation

By: _____
Kevin Muldoon, Mayor

ATTEST:

Leilani I. Brown, City Clerk

APPROVED AS TO FORM:

Aaron C. Harp, City Attorney

Attachments: Exhibit A – Legal Description of Property
 Exhibit B – Depiction of Property
 Exhibit C – Development Agreement Recorded January 29, 2014

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 A

LEGAL DESCRIPTION OF PROPERTY

Parcel 1 and Parcel 2 of Parcel Map 94-102, in the City of Newport Beach, County of Orange, State of California, as per Map filed in Book 316, Pages 3 to 6, inclusive, of Parcel Maps, in the office of the County Recorder of Orange County.

EXHIBIT B
DEPICTION OF PROPERTY

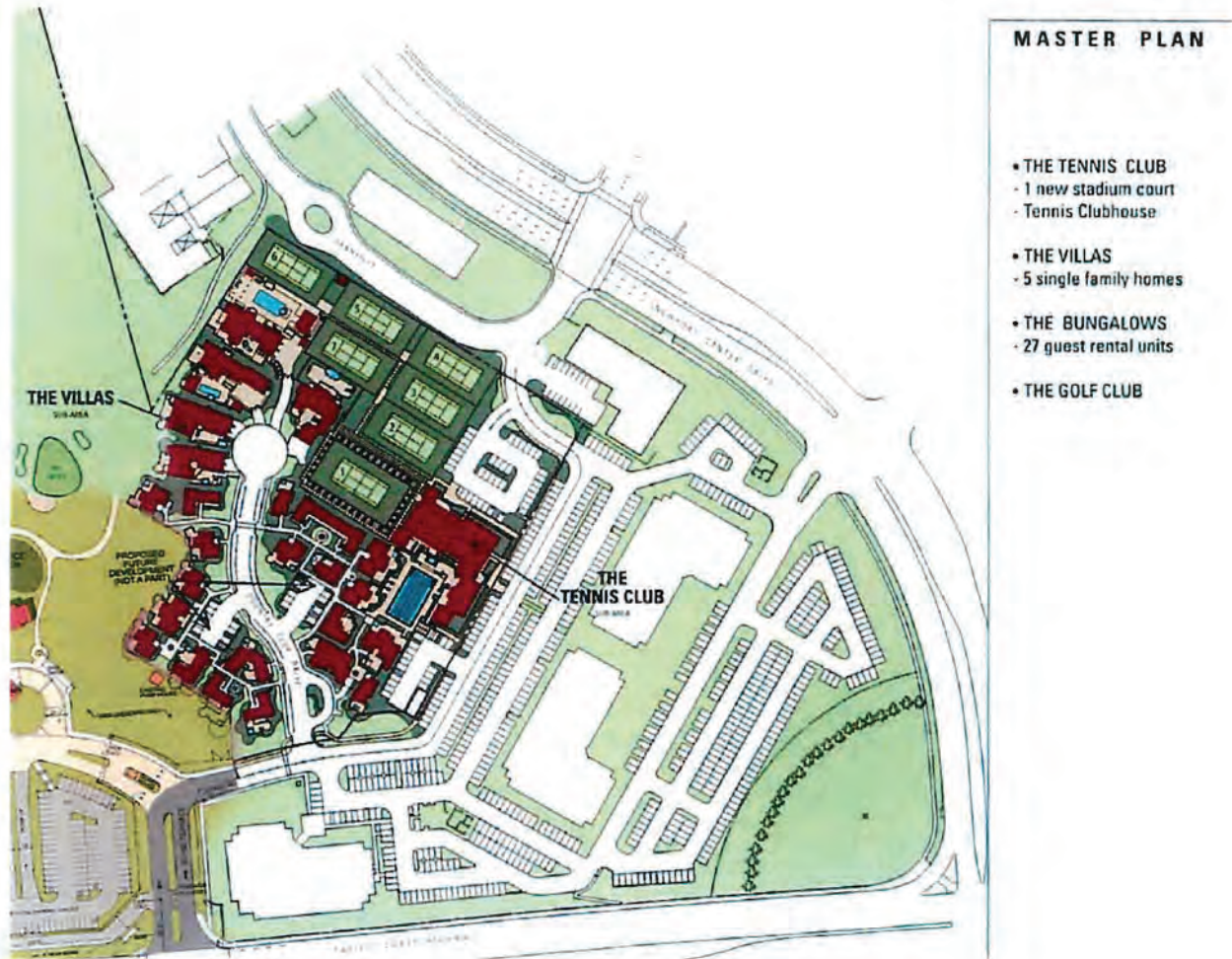


EXHIBIT C

DEVELOPMENT AGREEMENT RECORDED JANUARY 29, 2014

14

RECORDED

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

NO FEE
2014000036369 8:05 am 01/29/14

City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663-3884
Attn: City Clerk

47422 A12 32
0.00 0.00 0.00 0.00 93.00 0.00 0.00 0.00

(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for
the benefit of the City of Newport Beach and is
exempt from the payment of a recording fee
pursuant to Government Code §§ 6103 and 27383.

NF
17
324

DEVELOPMENT AGREEMENT

between

CITY OF NEWPORT BEACH

and

GOLF REALTY FUND

CONCERNING PROPERTIES LOCATED IN NEWPORT CENTER
WITHIN THE
NEWPORT BEACH COUNTRY CLUB PLANNED COMMUNITY DISTRICT

DEVELOPMENT AGREEMENT

(Pursuant to California Government Code Sections 65864-65869.5)

This DEVELOPMENT AGREEMENT (the "Agreement") is dated for reference purposes as of the 27 day of March, 2012 (the "Agreement Date"), and is being entered into by and between the City of Newport Beach ("City"), and Golf Realty Fund, a California limited partnership "Property Owner". City and Property Owner are sometimes collectively referred to in this Agreement as the "Parties" and individually as a "Party."

RECITALS

A. Property Owner is the managing owner of and owns a fee interest in title to that certain real property located in the City of Newport Beach, County of Orange, State of California which is more particularly described in the legal description attached as Exhibit "A" and depicted on the site map attached hereto as Exhibit B (the, "Property"). The Property consists of approximately 7 acres within the area shown on the City's Zoning Map as the Newport Beach Country Club Planned Community District. The Property comprises the area shown on Exhibit B as The Villas Sub- Area, The Tennis Club Sub-Area, and The Bungalows Sub-Area.

B. In order to encourage investment in, and commitment to, comprehensive planning and public facilities financing, strengthen the public planning process and encourage private implementation of the local general plan, provide certainty in the approval of projects in order to avoid waste of time and resources, and reduce the economic costs of development by providing assurance to property owners that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code sections 65864-65869.5 (the "Development Agreement Statute") authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

C. On March 13, 2007, the City Council adopted Ordinance No. 2007-6, entitled "Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code Regarding Development Agreements" (the "Development Agreement Ordinance"). This Agreement is consistent with the Development Agreement Ordinance.

D. As detailed in Section 3 of this Agreement, Property Owner has agreed to provide the following significant public benefits as consideration for this Agreement: Visitor-Serving Uses within the Coastal Zone, and other economic contributions including the payment of a Public Benefit Fee.

E. This Agreement is consistent with the City of Newport Beach General Plan ("General Plan"), including without limitation the General Plan's designation of the Property as "MU-H3/PR" (Mixed Use Horizontal /(Parks and Recreation) (Anomaly 46), the Coastal Land Use Plan's designation as "MU-H/PR (Mixed Use Horizontal / Parks & Recreation", the Newport Beach Country Club Planned Community District that was adopted in 1997 by Ordinance No. 97-10 in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan, and the Newport Beach Country Club Planned Community Development Plan No PC2005-002 approved for the Property on March 27, 2012 by Ordinance No. 2012-2.

F. In recognition of the significant public benefits that this Agreement provides, the City Council has found that this Agreement: (i) is consistent with the City of Newport Beach General Plan as of the date of this Agreement; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) is consistent and has been approved consistent with the Final Environmental Impact Report for the City of Newport Beach General Plan 2006 Update (State Clearinghouse No. 2006011119) and the Mitigated Negative Declaration No. ND2010-008 for the Newport Beach Country Club Planned Community District (PA 2005-140) approved by the City Council on or before the Agreement Date, both of which analyze the environmental effects of the proposed development of the Project on the Property; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 and City of Newport Beach Municipal Code chapter 15.45.

G. On October 20, 2011 and November 17, 2011, City's Planning Commission held public hearings on this Agreement, and on November 17, 2011, made findings and determinations with respect to this Agreement, and recommended to the City Council that the City Council approve this Agreement.

H. On January 24, 2012 and March 13, 2012, the City Council also held public hearings on this Agreement and considered the Planning Commission's recommendations and the testimony and information submitted by City staff, Property Owner, and members of the public. On March 27, 2012, consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the City Council adopted its Ordinance No. 2012-3 (the "Adopting Ordinance"), finding this Agreement to be consistent with the City of Newport Beach General Plan and approving this Agreement.

AGREEMENT

NOW, THEREFORE, City and Property Owner agree as follows:

1. Definitions.

In addition to any terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings set forth below:

"Action" shall have the meaning ascribed in Section 8.10 of this Agreement.

"Adopting Ordinance" shall mean City Council Ordinance No. 2012-3 approving and adopting this Agreement.

"Agreement" shall mean this Development Agreement, as the same may be amended from time to time.

"Agreement Date" shall mean March 27, 2012, which date is the date the City Council adopted the Adopting Ordinance.

"CEQA" shall mean the California Environmental Quality Act (California Public Resources Code Sections 21000-21177) and the implementing regulations promulgated

thereunder by the Secretary for Resources (California Code of Regulations, Title 14, section 15000 *et seq.*) ("CEQA Guidelines"), as the same may be amended from time to time.

"City" shall mean the City of Newport Beach, a California charter city.

"City Council" shall mean the governing body of City.

"City's Affiliated Parties" shall have the meaning ascribed in Section 10.1 of this Agreement.

"Claim" shall have the meaning ascribed in Section 10.1 of this Agreement.

"CPI Index" shall mean the Consumer Price Index published from time to time by the United States Department of Labor for all urban consumers (all items) for the smallest geographic area that includes the City or, if such index is discontinued, such other similar index as may be publicly available that is selected by City in its reasonable discretion.

"Cure Period" shall have the meaning ascribed in Section 8.1 of this Agreement.

"Default" shall have the meaning ascribed to that term in Section 8.1 of this Agreement.

"Develop" or "Development" shall mean to improve or the improvement of the Property for the purpose of completing the structures, improvements, and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; and the installation of landscaping. The terms "Develop" and "Development," as used herein, do not include the maintenance, repair, reconstruction, replacement, or redevelopment of any structure, improvement, or facility after the initial construction and completion thereof.

"Development Agreement Ordinance" shall mean Chapter 15.45 of the City of Newport Beach Municipal Code.

"Development Agreement Statute" shall mean California Government Code Sections 65864-65869.5, inclusive.

"Development Exactions" shall mean any requirement of City in connection with or pursuant to any ordinance, resolution, rule, or official policy for the dedication of land, the construction or installation of any public improvement or facility, or the payment of any fee or charge in order to lessen, offset, mitigate, or compensate for the impacts of Development of the Project on the environment or other public interests.

"Development Plan" shall mean the Newport Beach Planned Community Development Plan No. PC2005-002 for the Property adopted by Ordinance No. 2012-2, Vesting Tentative Tract Map No. NT2005-003, Site Development Review No. SD2011-002 as approved by Resolution No. 2012-10 for the Property, Limited Term Permit No. XP2011-004, and

Conversion of Development Rights as approved by City Council on or before the Agreement Date, as the same may be amended from time to time consistent with this Agreement.

"Development Regulations" shall mean the following regulations as they are in effect as of the Agreement Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted, approved, or imposed after the Agreement Date that impairs or restricts Property Owner's rights set forth in this Agreement, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by Property Owner in writing: the General Plan; the Development Plan; and, to the extent not expressly superseded by the Development Plan or this Agreement, all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, improvement, and construction standards and specifications, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to development of the Project on the Property during the Term of this Agreement that are set forth in Title 15 of the Municipal Code (buildings and construction), Title 19 of the Municipal Code (subdivisions), and Title 20 of the Municipal Code (planning and zoning), but specifically excluding all other sections of the Municipal Code, including without limitation Title 5 of the Municipal Code (business licenses and regulations). Notwithstanding the foregoing, the term "Development Regulations," as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments; (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; or (v) the exercise of the power of eminent domain.

"Effective Date" shall mean the latest of the following dates, as applicable: (i) the date that is thirty (30) days after the Agreement Date; (ii) if a referendum concerning the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date is timely qualified for the ballot and a referendum election is held concerning the Adopting Ordinance or any of such Development Regulations, the date on which the referendum is certified resulting in upholding and approving the Adopting Ordinance and such Development Regulations and becomes effective, if applicable; (iii) if a lawsuit is timely filed challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations approved on or before the Agreement Date, the date on which said challenge is finally resolved in favor of the validity or legality of the Adopting Ordinance, this Agreement, and/or the applicable Development Regulations, whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement; or (iv) the date of approval of a coastal development permit for the Project; (v) the date of or if a lawsuit is timely filed challenging the validity or legality of the approval of a coastal development permit for the Project, the date on which said challenge is finally resolved in favor of the validity or legality of the coastal development permit for the Project, whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement. Notwithstanding the foregoing, the Effective Date shall be no later than one hundred eighty (180) days from the Agreement Date. Promptly after the Effective Date occurs, the Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property memorializing the Effective Date.

"Environmental Laws" means all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which are in effect as of the Agreement Date, and all federal, state, regional, county, municipal, and local laws, statutes, rules, ordinances, rules, and regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment, or removal of any Hazardous Substances, including without limitation the following: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended ("CERCLA"); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended ("RCRA"); the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Sections 11001 et seq., as amended; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., as amended; the Clean Air Act, 42 U.S.C. Sections 7401 et seq., as amended; the Clean Water Act, 33 U.S.C. Section 1251, et seq., as amended; the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., as amended; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq., as amended; the Federal Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., as amended; the Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. Sections 7401 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. Sections 651 et seq., as amended; and California Health and Safety Code Section 25100, et seq.

"General Plan" shall mean City's 2006 General Plan adopted by the City Council on July 25, 2006, by Resolution No. 2006-76, as amended through the Agreement Date but excluding any amendment after the Agreement Date that impairs or restricts Property Owner's rights set forth in this Agreement, unless such amendment is expressly authorized by this Agreement, is authorized by Sections 8 or 9, or is specifically agreed to by Property Owner. The Land Use Plan of the Land Use Element of the General Plan was approved by City voters in a general election on November 7, 2006.

"Hazardous Substances" means any toxic substance or waste, pollutant, hazardous substance or waste, contaminant, special waste, industrial substance or waste, petroleum or petroleum-derived substance or waste, or any toxic or hazardous constituent or additive to or breakdown component from any such substance or waste, including without limitation any substance, waste, or material regulated under or defined as "hazardous" or "toxic" under any Environmental Law.

"Mortgage" shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a part or interest in the Property, is pledged as security and contracted for in good faith and for fair value.

"Mortgagee" shall mean the holder of a beneficial interest under a Mortgage or any successor or assignee of the Mortgagee.

"Notice of Default" shall have the meaning ascribed in Section 8.1 of this Agreement.

"Party" or "Parties" shall mean either City or Property Owner or both, as determined by the context.

"Project" shall mean all on-site and off-site improvements that Property Owner is authorized and/or may be required to construct with respect to each parcel of the Property, as provided in this Agreement and the Development Regulations, as the same may be modified or amended from time to time consistent with this Agreement and applicable law.

"Property" is described in Exhibit A and generally depicted on Exhibit B as The Tennis Club, The Villas, and The Bungalows Sub-Areas shown on Exhibit B.

"Property Owner" shall mean Golf Realty Fund, a California limited partnership and any successor or assignee, including lessees, to all or any portion of the right, title, and interest of Golf Realty Fund in and to ownership of all or a portion of the Property.

"Public Benefit Fee" shall have the meaning ascribed in Section 3.1 of this Agreement.

"Subsequent Development Approvals" shall mean all discretionary development and building approvals that Property Owner is permitted to obtain to Develop the Project on and with respect to the Property after the Agreement Date consistent with the Development Regulations.

"Term" shall have the meaning ascribed in Section 2.4 of this Agreement.

"Termination Date" and "Lot Termination Date" shall have the meaning ascribed in Section 2.4 of this Agreement.

"Transfer" shall have the meaning ascribed in Section 11 of this Agreement.

2. General Provisions.

2.1 Plan Consistency, Zoning Implementation.

This Agreement and the Development Regulations applicable to the Property are consistent with the General Plan.

2.2 Binding Effect of Agreement.

The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement.

2.3 Property Owner Representations and Warranties Regarding Ownership of the Property and Related Matters Pertaining to this Agreement.

Property Owner and each person executing this Agreement on behalf of Property Owner hereby represents and warrants to City as follows: (i) Property Owner or any co-owner comprising Property Owner is a legal entity and that such entity is duly formed and existing and is authorized to do business in the State of California; (ii) if Property Owner or any co-owner comprising Property Owner is a natural person that such natural person has the legal right and capacity to execute this Agreement; (iii) that all actions required to be taken by all persons and entities comprising Property Owner to enter into this Agreement have been taken and that

Property Owner has the legal authority to enter into this Agreement; (iv) that to the best of Property Owner's knowledge, Property Owner's entering into and performing its obligations set forth in this Agreement will not result in a violation of any obligation, contractual or otherwise, that Property Owner or any person or entity comprising Property Owner has to any third party; (v) that neither Property Owner nor any co-owner comprising Property Owner is the subject of any voluntary or involuntary petition in bankruptcy; and (vi) that to the best of Property Owner's knowledge, Property Owner has the authority and ability to enter into or perform any of its obligations set forth in this Agreement.

2.4 Term.

The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate on the "Termination Date."

Notwithstanding any other provision set forth in this Agreement to the contrary, if either Party reasonably determines that the Effective Date of this Agreement will not occur because (i) the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date for the Project has/have been disapproved by City's voters at a referendum election or (ii) a final non-appealable judgment is entered in a judicial action challenging the validity or legality of the Adopting Ordinance, this Agreement, a coastal development permit for the Project and/or any of the Development Regulations for the Project approved on or before the Agreement Date such that this Agreement and/or any of such Development Regulations is/are invalid and unenforceable in whole or in such a substantial part that the judgment substantially impairs such Party's rights or substantially increases its obligations or risks hereunder or thereunder, then such Party shall have the right to terminate this Agreement upon delivery of a written notice of termination to the other Party, in which event neither Party shall have any further rights or obligations hereunder except that Property Owner's indemnity obligations set forth in Article 10 shall remain in full force and effect and shall be enforceable, and the Development Regulations applicable to the Project and the Property only (but not those general Development Regulations applicable to other properties in the City) shall similarly be null and void at such time.

The Termination Date shall be the earliest of the following dates: (i) the tenth (10th) anniversary of the Effective Date, as said date may be extended in accordance with Section 5 of this Agreement; (ii) such earlier date that this Agreement may be terminated in accordance with Articles 5, 7, and/or Section 8.3 of this Agreement and/or Sections 65865.1 and/or 65868 of the Development Agreement Statute; (iii) as to any separate legal lot within the Property (but not as to the balance of the Property or the portion thereof that remains subject to this Agreement at such time), upon the "Lot Termination Date" (defined below); or (iv) completion of the Project in accordance with the terms of this Agreement, including Property Owner's complete satisfaction, performance, and payment, as applicable, of all Development Exactions, the issuance of all required final occupancy permits, and acceptance by City or applicable public agency(ies) or private entity(ies) of all required offers of dedication.

As used herein, the term "Lot Termination Date" for any separate legal lot within the Property means the date on which all of the following conditions have been satisfied with respect to said lot: (i) the lot has been finally subdivided and sold or leased (for a period longer than one year), individually or in a "bulk" of four or fewer lots, to a member of the public or other

ultimate user; (ii) a final Certificate of Occupancy or "Release of Utilities" has been issued for the building or buildings approved for construction on said lot.

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 13.10 (as well as any other Property Owner obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

3. Public Benefits.

3.1 Public Benefit Fee.

As consideration for City's approval and performance of its obligations set forth in this Agreement, Property Owner shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject (herein, the "Public Benefit Fee") in the sum of (i) Ninety-three thousand Dollars (\$ 93,000 per each residential dwelling units; and (ii) Ten dollars (\$10) per square foot of construction for the proposed golf clubhouse¹; and (iii) Ten dollars (\$10) per square foot of construction to the proposed tennis clubhouse, with the unpaid balance of said Public Benefit Fee increased on the first January 1 following the Effective Date of this Agreement by the percentage increase in the CPI Index between the Effective Date and said January 1st date (the first "Adjustment Date") and thereafter with the unpaid balance of said Public Benefit Fee increased on each subsequent January 1 during the Term of this Agreement (each, an "Adjustment Date") by the percentage increase in the CPI Index in the year prior to the applicable Adjustment Date. The amount of the percentage increase in the CPI Index on the applicable Adjustment Dates shall in each instance be calculated based on the then most recently available CPI Index figures such that, for example, if the Effective Date of this Agreement falls on July 1 and the most recently available CPI Index figure on the first Adjustment Date (January 1 of the following year) is the CPI Index for November of the preceding year, the percentage increase in the CPI Index for that partial year (a 6-month period) shall be calculated by comparing the CPI Index for November of the preceding year with the CPI Index for May of the preceding year (a 6-month period). In no event, however, shall application of the CPI Index reduce the amount of the Public Benefit Fee (or unpaid portion thereof) below the amount in effect prior to any applicable Adjustment Date. Property Owner shall pay the Public Benefit Fee at the following time(s): (i) As to the residential dwelling units, at the issuance of the building permit for each individual residential unit; and (ii) as to the golf clubhouse and tennis clubhouse construction, at the time each building permit is issued to Property Owner or on Property Owner's behalf. Notwithstanding any other provision set forth in this Agreement to the contrary, during the Term of this Agreement City shall not increase the Public Benefit Fee except pursuant to the CPI Index as stated in this Section 3.1. The Public Fee Benefit Fee shall be calculated based on the total square feet of construction for the proposed golf clubhouse and proposed tennis clubhouse Property Owner shall not be entitled to any credit or offset to the Public Benefit Fee for any existing buildings or structures. Property Owner

¹ The City has entered into a separate Development Agreement with The Newport Beach Country Club, Inc., Development Agreement No. ~~2008-001~~ (the "NBCC DA"), pertaining to the development of a golf clubhouse on the adjacent property. This requirement to pay a Public Benefit Fee for the construction of the golf clubhouse shall not apply to Property Owner, unless Property Owner itself, or its successors or assignees, is seeking issuance of permits for the construction of a golf clubhouse on the adjacent property.

acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee, that its obligation to pay the Public Benefit Fee is an essential term of this Agreement and is not severable from City's obligations and Property Owner's vesting rights to be acquired hereunder, and that Property Owner expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for Property Owner's default, if Property Owner shall fail to timely pay any portion of the Public Benefit Fee when due City shall have the right to withhold issuance of any further building permits, occupancy permits, or other development or building permits for the Project.

3.2 Other Public Benefits.

The development of the Project will include the addition of Visitor-Serving Uses consistent with the City's Coastal Land Use Plan and will provide a unique amenity for those visitors whose interests include tennis. It is anticipated that the Property will continue to host numerous events of significant social and economic benefit to the City, its citizens, businesses and charitable institutions.

4. Development of Project.

4.1 Applicable Regulations: Property Owner's Vested Rights and City's Reservation of Discretion With Respect to Subsequent Development Approvals.

Other than as expressly set forth in this Agreement, during the Term of this Agreement, (i) Property Owner shall have the vested right to Develop the Project on and with respect to the Property in accordance with the terms of the Development Regulations and this Agreement and (ii) City shall not prohibit or prevent development of the Property on grounds inconsistent with the Development Regulations or this Agreement. Notwithstanding the foregoing, nothing herein is intended to limit or restrict City's discretion with respect to (i) review and approval requirements contained in the Development Regulations, (ii) exercise of any discretionary authority City retains under the Development Regulations, (iii) the approval, conditional approval, or denial of any Subsequent Development Approvals applied for by Property Owner, or that are required, for Development of the Project as of the Agreement Date provided that all such actions are consistent with the Development Regulations, or (iv) any environmental approvals that may be required under CEQA or any other federal or state law or regulation in conjunction with any Subsequent Development Approvals that may be required for the Project, and in this regard, as to future actions referred to in clauses (i)-(iv) of this sentence, City reserves its full discretion to the same extent City would have such discretion in the absence of this Agreement. In addition, it is understood and agreed that nothing in this Agreement is intended to vest Property Owner's rights with respect to any laws, regulations, rules, or official policies of any other governmental agency or public utility company with jurisdiction over the Property or the Project; or any applicable federal or state laws, regulations, rules, or official policies that may be inconsistent with this Agreement and that override or supersede the provisions set forth in this Agreement, and regardless of whether such overriding or superseding laws, regulations, rules, or

official policies are adopted or applied to the Property or the Project prior or subsequent to the Agreement Date.

Property Owner has expended and will continue to expend substantial amounts of time and money in the planning and entitlement process to permit Development of the Project in the future. Property Owner represents and City acknowledges that Property Owner would not make these expenditures without this Agreement, and that Property Owner is and will be making these expenditures in reasonable reliance upon obtaining vested rights to Develop the Project as set forth in this Agreement.

Property Owner may apply to City for permits or approvals necessary to modify or amend the Development specified in the Development Regulations, provided that unless this Agreement also is amended, the request does not propose an increase in the maximum density, intensity, height, or size of proposed structures, or a change in use that generates more peak hour traffic or more daily traffic. In addition, Property Owner may apply to City for approval of minor amendments to existing tentative tract maps, tentative parcel maps, or associated conditions of approval, consistent with City of Newport Beach Municipal Code section 19.12.090. This Agreement does not constitute a promise or commitment by City to approve any such permit or approval, or to approve the same with or without any particular requirements or conditions, and City's discretion with respect to such matters shall be the same as it would be in the absence of this Agreement.

4.2 No Conflicting Enactments.

Except to the extent City reserves its discretion as expressly set forth in this Agreement, during the Term of this Agreement City shall not apply to the Project or the Property any ordinance, policy, rule, regulation, or other measure relating to Development of the Project that is enacted or becomes effective after the Agreement Date to the extent it conflicts with this Agreement. This Section 4.2 shall not restrict City's ability to enact an ordinance, policy, rule, regulation, or other measure applicable to the Project pursuant to California Government Code Section 65866 consistent with the procedures specified in Section 4.3 of this Agreement. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance even though the city and construction company had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property consistent with the zoning. The California Supreme Court reached this result because the consent judgment failed to address the timing of development. The Parties intend to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that Property Owner shall have the vested right to Develop the Project on and with respect to the Property at the rate, timing, and sequencing that Property Owner deems appropriate within the exercise of Property Owner's sole subjective business judgment, provided that such Development occurs in accordance with this Agreement and the Development Regulations, notwithstanding adoption by City's electorate of an initiative to the contrary after the Agreement Date. No City moratorium or other similar limitation relating to the rate, timing, or sequencing of the Development of all or any part of the Project and whether enacted by initiative or another method, affecting subdivision maps, building permits, occupancy certificates, or other entitlement to use, shall apply to the Project to the extent such moratorium or other similar limitation restricts Property Owner's

vested rights in this Agreement or otherwise conflicts with the express provisions of this Agreement.

4.3 Reservations of Authority.

Notwithstanding any other provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 4.3 shall apply to and govern the Development of the Project on and with respect to the Property.

4.3.1 Procedural Regulations. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure shall apply to the Property, provided that such procedural regulations are adopted and applied City-wide or to all other properties similarly situated in City.

4.3.2 Processing and Permit Fees. City shall have the right to charge and Property Owner shall be required to pay all applicable processing and permit fees to cover the reasonable cost to City of processing and reviewing applications and plans for any required Subsequent Development Approvals, building permits, excavation and grading permits, encroachment permits, and the like, for performing necessary studies and reports in connection therewith, inspecting the work constructed or installed by or on behalf of Property Owner, and monitoring compliance with any requirements applicable to Development of the Project, all at the rates in effect at the time fees are due.

4.3.3 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies governing Development which do not conflict with the Development Regulations, or with respect to such regulations that do conflict, where Property Owner has consented in writing to the regulations, shall apply to the Property.

4.3.4 Development Exactions Applicable to Property. During the Term of this Agreement, Property Owner shall be required to satisfy and pay all Development Exactions at the time performance or payment is due to the same extent and in the same amount(s) that would apply to Property Owner and the Project in the absence of this Agreement; provided, however, that to the extent the scope and extent of a particular Development Exaction (excluding any development impact fee) for the Project has been established and fixed by City in the conditions of approval for any of the Development Regulations approved on or before the Agreement Date, City shall not alter, increase, or modify said Development Exaction in a manner that is inconsistent with such Development Regulations without Property Owner's prior written consent or as may be otherwise required pursuant to overriding federal or state laws or regulations (Section 4.3.5 hereinbelow). In addition, nothing in this Agreement is intended or shall be deemed to vest Property Owner against the obligation to pay any of the following (which are not included within the definition of "Development Exactions") in the full amount that would apply in the absence of this Agreement: (i) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; or (iii) community facility district special taxes or special district assessments or similar

assessments, business license fees, bonds or other security required for public improvements, transient occupancy taxes, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, new water meter fees, and the Property Development Tax payable under Chapter 3.12 of City's Municipal Code.

4.3.5 Overriding Federal and State Laws and Regulations. Federal and state laws and regulations that override Property Owner's vested rights set forth in this Agreement shall apply to the Property, together with any City ordinances, resolutions, regulations, and official policies that are necessary to enable City to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) Property Owner does not waive its right to challenge or contest the validity of any such purportedly overriding federal, state, or City law or regulation; and (ii) upon the discovery of any such overriding federal, state, or City law or regulation that prevents or precludes compliance with any provision of this Agreement, City or Property Owner shall provide to the other Party a written notice identifying the federal, state, or City law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter City and Property Owner shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or City law or regulation. In such negotiations, City and Property Owner agree to preserve the terms of this Agreement and the rights of Property Owner as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with Property Owner at no cost to City in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Property Owner. City also agrees to process in a prompt manner Property Owner's proposed changes to this Agreement, the Project and any of the Development Regulations as may be necessary to comply with such overriding federal, state, or City law or regulation; provided, however, that the approval of such changes by City shall be subject to the discretion of City, consistent with this Agreement.

4.3.6 Public Health and Safety. Any City ordinance, resolution, rule, regulation, program, or official policy that is necessary to protect persons on the Property or in the immediate vicinity from conditions dangerous to their health or safety, as reasonably determined by City, shall apply to the Property, even though the application of the ordinance, resolution, rule regulation, program, or official policy would result in the impairment of Property Owner's vested rights under this Agreement.

4.3.7 Uniform Building Standards. Existing and future building and building-related standards set forth in the uniform codes adopted and amended by City from time to time, including building, plumbing, mechanical, electrical, housing, swimming pool, and fire codes, and any modifications and amendments thereof shall all apply to the Project and the Property to the same extent that the same would apply in the absence of this Agreement.

4.3.8 Public Works Improvements. To the extent Property Owner constructs or installs any public improvements, works, or facilities, the City standards in effect for such public improvements, works, or facilities at the time of City's issuance of a permit, license, or other authorization for construction or installation of same shall apply.

4.3.9 No Guarantee or Reservation of Utility Capacity. Notwithstanding any other provision set forth in this Agreement to the contrary, nothing in this Agreement is intended or shall be interpreted to require City to guarantee or reserve to or for the benefit of Property Owner or the Property any utility capacity, service, or facilities that may be needed to serve the Project, whether domestic or reclaimed water service, sanitary sewer transmission or wastewater treatment capacity, downstream drainage capacity, or otherwise, and City shall have the right to limit or restrict Development of the Project if and to the extent that City reasonably determines that inadequate utility capacity exists to adequately serve the Project at the time Development is scheduled to commence.

4.4 Tentative Subdivision Maps.

City agrees that Property Owner may file and process new and existing vesting tentative maps for the Property consistent with California Government Code sections 66498.1-66498.9 and City of Newport Beach Municipal Code chapter 19.20. Pursuant to the applicable provision of the California Subdivision Map Act (California Government Code section 66452.6(a)), the life of any tentative subdivision map approved for the Property, whether designated a "vesting tentative map" or otherwise, shall be extended for the Term of this Agreement.

5. Amendment or Cancellation of Agreement.

Other than modifications of this Agreement under Section 8.3 of this Agreement, this Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code section 65868 and City of Newport Beach Municipal Code section 15.45.060 or by unilateral termination by City in the event of an uncured default of Property Owner.

6. Enforcement.

Unless this Agreement is amended, canceled, modified, or suspended as authorized herein or pursuant to California Government Code section 65869.5, this Agreement shall be enforceable by either Party despite any change in any applicable general or specific plan, zoning, subdivision, or building regulation or other applicable ordinance or regulation adopted by City (including by City's electorate) that purports to apply to any or all of the Property.

7. Annual Review of Property Owner's Compliance With Agreement.

7.1 General.

City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government Code Section 65865.1. Property Owner (including any successor to the Property Owner executing this Agreement on or before the Agreement Date) shall pay City a reasonable fee in an amount City may reasonably establish from time to time to cover the actual and necessary costs for the annual review. City's failure to timely provide or conduct an annual review shall not constitute a Default hereunder by City.

7.2 Property Owner Obligation to Demonstrate Good Faith Compliance.

During each annual review by City, Property Owner is required to demonstrate good faith compliance with the terms of the Agreement. Property Owner agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, thirty (30) days prior to each anniversary of the Effective Date during the Term.

7.3 Procedure.

The City Council of City shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not Property Owner has, for the period under review, complied with the terms of this Agreement. If the City Council finds that Property Owner has so complied, the annual review shall be concluded. If the City Council finds, on the basis of substantial evidence, that Property Owner has not so complied, written notice shall be sent to Property Owner by first class mail of the City Council's finding of non-compliance, and Property Owner shall be given at least ten (10) days to cure any noncompliance that relates to the payment of money and thirty (30) days to cure any other type of noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) days for reasons which are beyond the control of Property Owner, Property Owner must commence the cure within such thirty (30) days and diligently pursue such cure to completion. If Property Owner fails to cure such noncompliance within the time(s) set forth above, such failure shall be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 8 below.

7.4 Annual Review a Non-Exclusive Means for Determining and Requiring Cure of Property Owner's Default.

The annual review procedures set forth in this Article 7 shall not be the exclusive means for City to identify a Default by Property Owner or limit City's rights or remedies for any such Default.

8. Events of Default.

8.1 General Provisions.

In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall have the right to deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time (ten (10) days if the Default relates to the failure to timely make a monetary payment due hereunder and not less than thirty (30) days in the event of non-monetary Defaults) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than thirty (30) days after it receives the Notice of Default, and thereafter diligently pursue said cure to completion.

8.2 Default by Property Owner.

If Property Owner is alleged to have committed a non-monetary Default and it disputes the claimed Default, it may make a written request for an appeal hearing before the City Council within ten (10) days of receiving the Notice of Default, and a public hearing shall be scheduled at the next available City Council meeting to consider Property Owner's appeal of the Notice of Default. Failure to appeal a Notice of Default to the City Council within the ten (10) day period shall waive any right to a hearing on the claimed Default. If Property Owner's appeal of the Notice of Default is timely and in good faith but after a public hearing of Property Owner's appeal the City Council concludes that Property Owner is in Default as alleged in the Notice of Default, the accrual date for commencement of the thirty (30) day Cure Period provided in Section 8.1 shall be extended until the City Council's denial of Property Owner's appeal is communicated to Property Owner.

8.3 City's Option to Terminate Agreement.

In the event of an alleged Property Owner Default, City may not terminate this Agreement without first delivering a written Notice of Default and providing Property Owner with the opportunity to cure the Default within the Cure Period, as provided in Section 8.1, and complying with Section 8.2 if Property Owner timely appeals any Notice of Default with respect to a non-monetary Default. A termination of this Agreement by City shall be valid only if good cause exists and is supported by evidence presented to the City Council at or in connection with a duly noticed public hearing to establish the existence of a Default. The validity of any termination may be judicially challenged by Property Owner. Any such judicial challenge must be brought within thirty (30) days of service on Property Owner, by first class mail, postage prepaid, of written notice of termination by City or a written notice of City's determination of an appeal of the Notice of Default as provided in Section 8.2. It is the intention of the Parties that, while the City Council may declare a default and initiate termination of this Agreement on the basis of substantial evidence in the administrative record, if the declaration of default is contested in court, the court will review the default claim *de novo* and base its decision on whether the preponderance of evidence supports the City Council's finding of breach.

8.4 Default by City.

If Property Owner alleges a City Default and alleges that the City has not cured the Default within the Cure Period, Property Owner may pursue any equitable remedy available to it under this Agreement, including, without limitation, an action for a writ of mandamus, injunctive relief, or specific performance of City's obligations set forth in this Agreement. Upon a City Default, any resulting delays in Property Owner's performance hereunder shall neither be a Property Owner Default nor constitute grounds for termination or cancellation of this Agreement by City and shall, at Property Owner's option (and provided Property Owner delivers written notice to City within thirty (30) days of the commencement of the alleged City Default), extend the Term for a period equal to the length of the delay.

8.5 Waiver.

Failure or delay by either Party in delivering a Notice of Default shall not waive that Party's right to deliver a future Notice of Default of the same or any other Default.

8.6 Specific Performance Remedy.

Due to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, both Property Owner and City may be foreclosed from other choices they may have had to plan for the development of the Property, to utilize the Property or provide for other benefits and alternatives. Property Owner and City have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate Property Owner or City for such efforts. For the above reasons, City and Property Owner agree that damages would not be an adequate remedy if either City or Property Owner fails to carry out its obligations under this Agreement. Therefore, specific performance of this Agreement is necessary to compensate Property Owner if City fails to carry out its obligations under this Agreement or to compensate City if Property Owner fails to carry out its obligations under this Agreement.

8.7 Monetary Damages.

The Parties agree that monetary damages shall not be an available remedy for either Party for a Default hereunder by the other Party; provided, however, that (i) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict City's right to recover the Public Benefit Fees due from Property Owner as set forth herein; and (ii) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict Property Owner's indemnity obligations set forth in Article 10 or the right of the prevailing Party in any Action to recover its litigation expenses, as set forth in Section 8.10.

8.8 Additional City Remedy for Property Owner's Default.

In the event of any Default by Property Owner, in addition to any other remedies which may be available to City, whether legal or equitable, City shall be entitled to receive and retain any Development Exactions applicable to the Project or the Property, including any fees, grants, dedications, or improvements to public property which it may have received prior to Property Owner's Default without recourse from Property Owner or its successors or assigns.

8.9 No Personal Liability of City Officials, Employees, or Agents.

No City official, employee, or agent shall have any personal liability hereunder for a Default by City of any of its obligations set forth in this Agreement.

8.10 Recovery of Legal Expenses by Prevailing Party in Any Action.

In any judicial proceeding, arbitration, or mediation (collectively, an "Action") between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall recover all of its actual and reasonable costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure section 1033.5 or California Civil Code section 1717 in the absence of this Agreement. These costs and expenses include expert witness fees, attorneys' fees, and costs of investigation and preparation before initiation of the Action. The right to recover these costs and expenses shall accrue upon initiation of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

9. Force Majeure.

Neither Party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused, through no fault of the Party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, state or federal regulations, or court actions. Except as specified above, nonperformance shall not be excused because of the act or omission of a third person. In no event shall the occurrence of an event of force majeure operate to extend the Term of this Agreement. In addition, in no event shall the time for performance of a monetary obligation, including without limitation Property Owner's obligation to pay Public Benefit Fees, be extended pursuant to this Section.

10. Indemnity Obligations of Property Owner.

10.1 Indemnity Arising From Acts or Omissions of Property Owner.

Property Owner shall indemnify, defend, and hold harmless City and City's officials, employees, agents, attorneys, and contractors (collectively, the "City's Affiliated Parties") from and against all suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) (collectively, a "Claim") that may arise, directly or indirectly, from the acts, omissions, or operations of Property Owner or Property Owner's agents, contractors, subcontractors, agents, or employees in the course of Development of the Project or any other activities of Property Owner relating to the Property or pursuant to this Agreement. City shall have the right to select and retain counsel to defend any Claim filed against City and/or any of City's Affiliated Parties, and Property Owner shall pay the reasonable cost for defense of any Claim. The indemnity provisions in this Section 10.1 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.2 Third Party Litigation.

In addition to its indemnity obligations set forth in Section 10.1, Property Owner shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any Claim against City or City's Affiliated Parties seeking to attack, set aside, void, or annul the approval of this Agreement, the Adopting Ordinance, any of the Development Regulations for the Project (including without limitation any actions taken pursuant to CEQA with respect thereto), any Subsequent Development Approval, or the approval of any permit granted pursuant to this Agreement. Said indemnity obligation shall include payment of attorney's fees, expert witness fees, and court costs. City shall promptly notify Property Owner of any such Claim and City shall cooperate with Property Owner in the defense of such Claim. If City fails to promptly notify Property Owner of such Claim, Property Owner shall not be responsible to indemnify, defend, and hold City harmless from such Claim until Property Owner is so notified and if City fails to cooperate in the defense of a Claim Property Owner shall not be responsible to defend, indemnify, and hold harmless City during the period that City so fails to cooperate or for any losses attributable thereto. City shall be entitled to retain separate counsel to represent City against the Claim and the City's defense costs for its separate counsel shall be included in Property Owner's indemnity obligation, provided that such counsel shall reasonably cooperate with Property Owner in an effort to minimize the total litigation expenses incurred by Property

Owner. In the event either City or Property Owner recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, Property Owner shall be entitled to retain the same (provided it has fully performed its indemnity obligations hereunder). The indemnity provisions in this Section 10.2 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.3 Environmental Indemnity.

In addition to its indemnity obligations set forth in Section 10.1, from and after the Agreement Date Property Owner shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any and all Claims for personal injury or death, property damage, economic loss, statutory penalties or fines, and damages of any kind or nature whatsoever, including without limitation attorney's fees, expert witness fees, and costs, based upon or arising from any of the following: (i) the actual or alleged presence of any Hazardous Substance on or under any of the Property in violation of any applicable Environmental Law; (ii) the actual or alleged migration of any Hazardous Substance from the Property through the soils or groundwater to a location or locations off of the Property; and (iii) the storage, handling, transport, or disposal of any Hazardous Substance on, to, or from the Property and any other area disturbed, graded, or developed by Property Owner in connection with Property Owner's Development of the Project. The foregoing indemnity obligations shall not apply to any Hazardous Substance placed or stored on a separate legal lot within the Property after the Lot Termination Date for said lot, as provided in Section 2.4 of this Agreement. The indemnity provisions in this Section 10.3 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

11. Assignment.

Property Owner shall have the right to sell, transfer, or assign (hereinafter, collectively, a "Transfer") Property Owner's fee interest in to the Property, in whole or in part, to any person, partnership, joint venture, firm, or corporation (which successor, as of the effective date of the Transfer, shall become the "Property Owner" under this Agreement) at any time from the Agreement Date until the Termination Date; provided, however, that no such Transfer shall violate the provisions of the Subdivision Map Act (Government Code Section 66410 et seq.) or City's local subdivision ordinance and any such Transfer shall include the assignment and assumption of Property Owner's rights, duties, and obligations set forth in or arising under this Agreement as to the Property or the portion thereof so Transferred and shall be made in strict compliance with the following conditions precedent: (i) no transfer or assignment of any of Property Owner's rights or interest under this Agreement shall be made unless made together with the Transfer of all or a part of the Property; and (ii) prior to the effective date of any proposed Transfer, Property Owner (as transferor) shall notify City, in writing, of such proposed Transfer and deliver to City a written assignment and assumption, executed in recordable form by the transferring and successor Property Owner and in a form subject to the reasonable approval of the City Attorney of City (or designee), pursuant to which the transferring Property Owner assigns to the successor Property Owner and the successor Property Owner assumes from the transferring Property Owner all of the rights and obligations of the transferring Property Owner with respect to the Property or portion thereof to be so Transferred, including in the case of a partial Transfer the obligation to perform such obligations that must be performed off of the

portion of the Property so Transferred that are a condition precedent to the successor Property Owner's right to develop the portion of the Property so Transferred.

Notwithstanding any Transfer, the transferring Property Owner shall continue to be jointly and severally liable to City, together with the successor Property Owner, to perform all of the transferred obligations set forth in or arising under this Agreement unless the transferring Property Owner is given a release in writing by City, which release shall be only with respect to the portion of the Property so Transferred in the event of a partial Transfer. City shall provide such a release upon the transferring Property Owner's full satisfaction of all of the following conditions: (i) the transferring Property Owner no longer has a legal or equitable interest in the portion of the Property so Transferred other than as a beneficiary under a deed of trust; (ii) the transferring Property Owner is not then in Default under this Agreement and no condition exists that with the passage of time or the giving of notice, or both, would constitute a Default hereunder; (iii) the transferring Property Owner has provided City with the notice and the fully executed written and recordable assignment and assumption agreement required as set forth in the first paragraph of this Section 11; and (iv) the successor Property Owner either (A) provides City with substitute security equivalent to any security previously provided by the transferring Property Owner to City to secure performance of the successor Property Owner's obligations hereunder with respect to the Property or the portion of the Property so Transferred or (B) if the transferred obligation in question is not a secured obligation, the successor Property Owner either provides security reasonably satisfactory to City or otherwise demonstrates to City's reasonable satisfaction that the successor Property Owner has the financial resources or commitments available to perform the transferred obligation at the time and in the manner required under this Agreement and the Development Regulations for the Project.

12. Mortgagee Rights.

12.1 Encumbrances on Property.

The Parties agree that this Agreement shall not prevent or limit Property Owner in any manner from encumbering the Property, any part of the Property, or any improvements on the Property with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

12.2 Mortgagee Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Nevertheless, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in the Property or part of the Property by a Mortgagee (whether due to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement. Any Mortgagee who takes title to the Property or any part of the Property shall be entitled to the benefits arising under this Agreement.

12.3 Mortgagee Not Obligated.

Notwithstanding the provisions of this Section 12.3, a Mortgagee will not have any obligation or duty under the terms of this Agreement to perform the obligations of Property Owner or other affirmative covenants of Property Owner, or to guarantee this performance

except that: (i) the Mortgagee shall have no right to develop the Project under the Development Regulations without fully complying with the terms of this Agreement; and (ii) to the extent that any covenant to be performed by Property Owner is a condition to the performance of a covenant by City, that performance shall continue to be a condition precedent to City's performance.

12.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure.

Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of: (i) the results of the periodic review of compliance specified in Article 7 of this Agreement, and (ii) any default by Property Owner of its obligations set forth in this Agreement.

Each Mortgagee shall have a further right, but not an obligation, to cure the Default within ten (10) days after receiving a Notice of Default with respect to a monetary Default and within thirty (30) days after receiving a Notice of Default with respect to a non-monetary Default. If the Mortgagee can only remedy or cure a non-monetary Default by obtaining possession of the Property, then the Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure the non-monetary Default within thirty (30) days after obtaining possession and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement to terminate or substantially alter the rights of the Mortgagee until expiration of the thirty (30)-day period. In the case of a non-monetary Default that cannot with diligence be remedied or cured within thirty (30) days, the Mortgagee shall have additional time as is reasonably necessary to remedy or cure the Default, provided the Mortgagee promptly commences to cure the non-monetary Default within thirty (30) days and diligently prosecutes the cure to completion.

13. Miscellaneous Terms.

13.1 Notices.

Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited in the United States mail, certified, return receipt requested, and postage prepaid; or delivered by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY:

City of Newport Beach
3300 Newport Boulevard
Post Office Box 1768
Newport Beach, California 92663-3884
Attn: City Manager

With a copy to:

City Attorney
City of Newport Beach
3300 Newport Boulevard
Post Office Box 1768
Newport Beach, California 92663-3884

TO PROPERTY OWNER:

Golf Realty Fund
One Upper Newport Plaza
Newport Beach, California 92660
Attn: Robert O Hill

With a copy to:

Tim Paone
Cox Castle & Nicholson, LLP
19800 MacArthur Blvd., Suite 500
Irvine, CA. 92612

Either Party may change the address stated in this Section 13.1 by delivering notice to the other Party in the manner provided in this Section 13.1, and thereafter notices to such Party shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received or (iii) three business days after deposit in the mail as provided above.

13.2 Private Undertaking.

Any future Development of the Project is a private undertaking. Neither Party will be acting as the agent of the other in any respect, and each Party will be an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement. This Agreement forms no partnership, joint venture, or other association of any kind. The only relationship between the Parties is that of a government entity regulating the Development of private property by the owner or user of the Property.

13.3 Cooperation.

Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent consistent with and necessary to implement this Agreement. Upon the request of a Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record the required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

13.4 Estoppel Certificates.

At any time, either Party may deliver written notice to the other Party requesting that that Party certify in writing that, to the best of its knowledge: (i) this Agreement is in full force and effect and is binding on the Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if this Agreement has been amended, the Party providing the certification shall identify the amendments or modifications; and (iii) the requesting Party is not in Default in the performance of its obligations under this Agreement and no event or situation has occurred that with the passage of time or the giving of Notice or both would constitute a Default or, if such is not the case, then the other Party shall describe the nature and amount of the actual or prospective Default.

The Party requested to furnish an estoppel certificate shall execute and return the certificate within thirty (30) days following receipt. Requests for the City to furnish an estoppel certificate shall include reimbursement for all administrative costs incurred by the City including reasonable attorneys fees incurred by the City in furnishing an estoppels certificate.

13.5 Rules of Construction.

The singular includes the plural; the masculine and neuter include the feminine; "shall" is mandatory; and "may" is permissive.

13.6 Time Is of the Essence.

Time is of the essence regarding each provision of this Agreement as to which time is an element.

13.7 Waiver.

The failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of that Party's right to demand strict compliance by the other Party in the future.

13.8 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one and the same agreement.

13.9 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter addressed in this Agreement.

13.10 Severability.

The Parties intend that each and every obligation of the Parties is interdependent and interrelated with the other, and if any provision of this Agreement or the application of the provision to any Party or circumstances shall be held invalid or unenforceable to any extent, it is the intention of the Parties that the remainder of this Agreement or the application of the provision to persons or circumstances shall be rendered invalid or unenforceable. The Parties intend that neither Party shall receive any of the benefits of the Agreement without the full performance by such Party of all of its obligations provided for under this Agreement. Without limiting the generality of the foregoing, the Parties intend that Property Owner shall not receive any of the benefits of this Agreement if any of Property Owner's obligations are rendered void or unenforceable as the result of any third party litigation, and City shall be free to exercise its legislative discretion to amend or repeal the Development Regulations applicable to the Property and Property Owner shall cooperate as required, despite this Agreement, should third party litigation result in the nonperformance of Property Owner's obligations under this Agreement. The provisions of this Section 13.10 shall apply regardless of whether the Effective Date occurs and after the Termination Date.

13.11 Construction.

This Agreement has been drafted after negotiation and revision. Both City and Property Owner are sophisticated parties who were represented by independent counsel throughout the negotiations or City and Property Owner had the opportunity to be so represented and voluntarily chose to not be so represented. City and Property Owner each agree and acknowledge that the terms of this Agreement are fair and reasonable, taking into account their respective purposes, terms, and conditions. This Agreement shall therefore be construed as a whole consistent with its fair meaning and applicable principle or presumptions of contract construction or interpretation, if any, shall be used to construe the whole or any part of this Agreement in favor of or against either Party.

13.12 Successors and Assigns; Constructive Notice and Acceptance.

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (i) is for the benefit of and is a burden upon every portion of the Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each Party and each successor in interest during its ownership of the Property or any portion thereof. Every person or entity who now or later owns or acquires any right, title, or interest in any part of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision of this Agreement. This Section 13.12 applies regardless of whether the instrument by

which such person or entity acquires the interest refers to or acknowledges this Agreement and regardless of whether such person or entity has expressly entered into an assignment and assumption agreement as provided for in Section 11.

13.13 No Third Party Beneficiaries.

The only Parties to this Agreement are City and Property Owner. This Agreement does not involve any third party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.

13.14 Applicable Law and Venue.

This Agreement shall be construed and enforced consistent with the internal laws of the State of California, without regard to conflicts of law principles. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or the United States District Court for the Central District of California. The Parties waive all provisions of law providing for the removal or change of venue to any other court.

13.15 Section Headings.

All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

13.16 Incorporation of Recitals and Exhibits.

All of the Recitals are incorporated into this Agreement by this reference. Exhibits A and B are attached to this Agreement and incorporated by this reference as follows:

EXHIBIT DESIGNATION	DESCRIPTION
A	Legal Description of Property
B	Depiction of the Property

13.17 Recordation.

The City Clerk of City shall record this Agreement and any amendment, modification, or cancellation of this Agreement in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.090. The date of recordation of this Agreement shall not modify or amend the Effective Date or the Termination Date.

**SIGNATURE PAGE TO
DEVELOPMENT AGREEMENT**

"PROPERTY OWNER"

_____, a _____

By: _____

Its: _____

By: _____

Its: _____

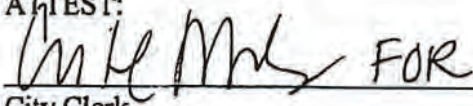
"CITY"

CITY OF NEWPORT BEACH


By:  _____

Its: Mayor

ATTEST:

 FOR
City Clerk

APPROVED AS TO FORM:

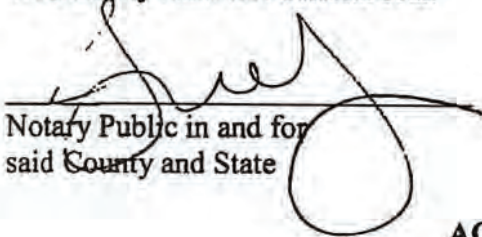
 3/7/12
Aaron Harp, City Attorney

STATE OF CALIFORNIA
COUNTY OF ORANGE

On NOV 14, 2013, before me, JENNIFER ANN MULVEY, a Notary Public in and for said State, personally appeared NANCY LYNN GARDNER, 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.


Notary Public in and for
said County and State



ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, _____, a Notary Public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their 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.

Notary Public in and for
said County and State

**SIGNATURE PAGE TO
DEVELOPMENT AGREEMENT**

"PROPERTY OWNER"

Golf Realty Fund Limited Partnership

By: *Robert O Hill*

Its: *General Partner*

By: *[Signature]*

Its: _____

"CITY"

CITY OF NEWPORT BEACH

By: *[Signature]*

Its: Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

[Signature]
Aaron Harp, City Attorney *2/7/12*

STATE OF CALIFORNIA
COUNTY OF ORANGE

On 1/14/2014, before me, SHANE THOMAS JOHNSON, a Notary Public in and for said State, personally appeared ROBERT D HILL, 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.

Shane Thomas Johnson

Notary Public in and for
said County and State



ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, _____, a Notary Public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their 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.

Notary Public in and for
said County and State

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The Property :

Parcel 1 and Parcel 2 of Parcel Map 94-102, in the City of Newport Beach, County of Orange, State of California, as per Map filed in Book 316, Pages 3 to 6, inclusive, of Parcel Maps, in the office of the County Recorder of Orange County.

EXHIBIT B

DEPICTION OF PROPERTY

TO BE INSERTED

EXHIBIT B

DEPICTION OF PROPERTY

MASTER PLAN

- THE TENNIS CLUB - Sub-Area
 - 1 new stadium court
 - Tennis Clubhouse
- THE VILLAS - Sub Area
 - 5 single family homes
- THE BUNGALOWS - Sub Area
 - 27 guest rental units
- THE GOLF CLUB - Sub Area
 - NOT A PART

THE VILLAS

THE
BUNGALOWS

THE
TENNIS CLUB

NBCC
Planned Community

stearns
ARCHITECTURE

EXHIBIT

1

1 OF 1

Attachment F

Planning Commission Staff Report, Dated September 8, 2022 (without attachments)



CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

September 8, 2022
Agenda Item No. 3

SUBJECT: Tennis Club at Newport Beach Project Amendment (PA2021-260)

- General Plan Amendment
- Local Coastal Land Use Plan Amendment
- Planned Community Development Plan Amendment
- Major Site Development Review Amendment (SD2011-002)
- Coastal Development Permit Amendment (CD2017-039)
- Vesting Tentative Tract Map Amendment (NT2005-003)
- Limited Term Permit Amendment (XP2011-004)
- Development Agreement Amendment (DA2008-001)
- Addendum to Mitigated Negative Declaration (ND2010-008)

**SITE
LOCATION:** 1602 East Coast Highway

APPLICANT: Robert O' Hill (Golf Realty Fund, Managing Owner)

OWNER: Dba NBCC L & I

PLANNER: David Lee, Associate Planner
949-644-3225 or dlee@newportbeachca.gov

PROJECT SUMMARY

The applicant requests an amendment to the approved Tennis Club at Newport Beach project to 1) increase the number of future tennis courts from seven (7) to eight (8) courts, 2) increase the number of future hotel rooms from 27 to 41 rooms, 3) increase the gross floor area of the ancillary hotel uses by 4,686 square feet, and 4) provide three (3) attached condominium units and two (2) detached single-family residences in-lieu of five (5) detached single-family residences. The request also includes a 10-year term extension to the approve project's Development Agreement to ensure the orderly development of the property and certain public benefits to the City.

RECOMMENDATION

- 1) Conduct a public hearing;
- 2) Find that the Proposed Project will not result in any new significant impacts that were not previously analyzed in the adopted Mitigated Negative Declaration No. ND2010-008 (SCH 2010091052) for the Approved Project, and the addendum has been prepared to address reasonably foreseeable environmental impacts resulting from the Proposed Project; and

- 3) Adopt Resolution No. PC2022-022, recommending the City Council approval of PA2021-260, which includes adoption of a Mitigated Negative Declaration Addendum, and approval of a General Plan Amendment, Local Coastal Land Use Plan Amendment, Planned Community Development Plan Amendment, Major Site Development Review Amendment, Coastal Development Permit Amendment, Vesting Tentative Tract Map Amendment, Limited Term Permit Amendment, and Development Agreement Amendment for The Tennis Club at Newport Beach Project located at 1602 East Coast Highway.



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	MU-H3/PR (Mixed-Use Horizontal 3/Parks and Recreation)	PC-47 (Newport Beach Country Club)	Tennis Club
NORTH	RM (Multiple Residential)	RM (Multiple Residential)	Multi-family residences
SOUTH	CO-G (General Commercial Office)	PC-40 (Corporate Plaza West)	Offices
EAST	CO-G	OG (Office-General)	Offices
WEST	PR	PC-47	Golf Club

INTRODUCTION

Project Setting and Background

The subject property is approximately seven (7) acres in size and presently improved with a private tennis club consisting of a 3,725-square-foot tennis clubhouse, 14 tennis courts, 32 pickle ball courts, and a 125-space surface parking lot. The subject property is located adjacent to the Newport Beach Country Club Golf Course and west of the Corporate Plaza West Planned Community, which consists of several office buildings. The site is also located directly south of the Granville residential community.

On March 27, 2012, the City Council approved land use entitlements and executed a 10-year term development agreement (DA) to allow the redevelopment of the tennis club site into three distinct components:

- 1) Tennis Club – Reconstruct the existing 3,725-square-foot tennis clubhouse, and reduce the total number of tennis courts from 24 to seven (7) courts, including one lighted stadium court;
- 2) Hotel (Bungalows) - Construct a 27-room boutique hotel with ancillary uses consisting of a performance therapy center, yoga pavilion, hotel office, common area, and a spa and fitness center; and
- 3) Residential (Villas) - Construct five (5) detached single-family residences.

Since the project site is located in the Coastal Zone, a coastal development permit (CDP) is required to implement the project. On April 10, 2013, the California Coastal Commission (CCC), which had permitting jurisdiction for Coastal Development Permits (CDP) at the time, issued a notice of intent to issue CDP No. 5-12-160 for the project. However, the CDP eventually expired without action. The City obtained CDP permitting authority in January of 2017, and on November 20, 2018, the City's Zoning Administrator approved a CDP authorizing the redevelopment of the tennis club consistent with the 2012 entitlements. The CDP is scheduled to expire on November 20, 2022, after receiving two, one-year time extensions. The project includes both the 2012 City Council and 2018 Zoning Administrator approvals (commonly referred to as "Approved Project").

The exhibit below illustrates the proposed site plan for the Approved Project:



The Approved Project has not been implemented to date and continues to operate as a private tennis club, with pickleball courts being introduced in 2019.

On June 28, 2022, the City Council approved the first amendment to the DA previously approved in 2012, which authorized the extension of the DA by one year. This provided City Staff additional time to process an amendment to the Approved Project, which was submitted by the applicant on November 2, 2021.

Project Description

The applicant is requesting an amendment to the Approved Project to add one tennis court for a total of eight (8) tennis courts, 14 hotel rooms for a total of 41 hotel units with additional

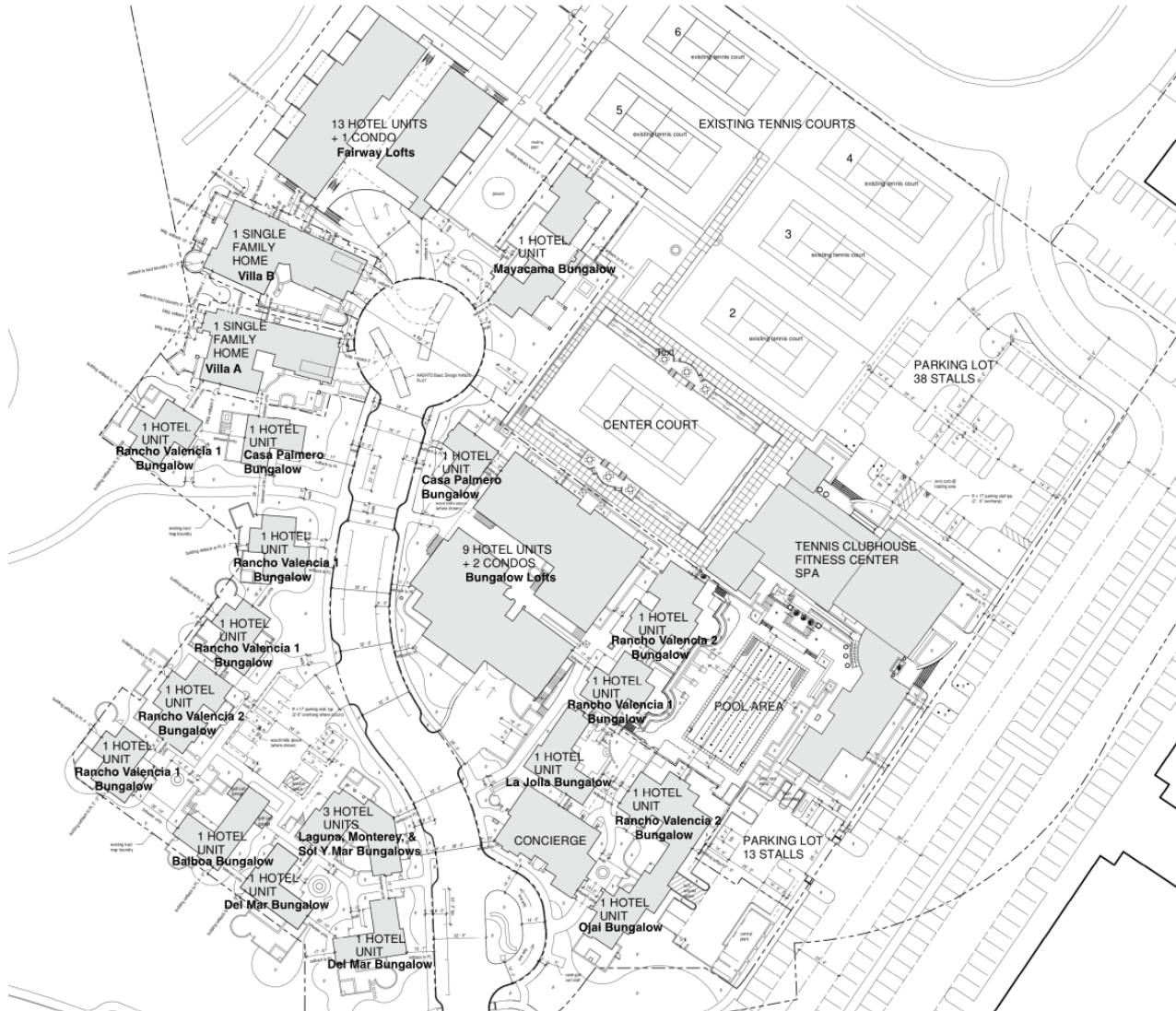
ancillary uses, and to allow three (3) of five (5) single-family residential units to be converted to condominiums ("Proposed Project").

The following approvals are requested or required in order to implement the Proposed Project:

- General Plan Amendment: An amendment to Anomaly No. 46 of Table LU2 of the 2006 Newport Beach General Plan Land Use Element to amend the allowable development limits for the tennis club site;
- Local Coastal Program Implementation Plan Amendment: An amendment to Local Coastal Implementation Plan Section 21.26.055.S.2 (Tennis Club of Newport Beach Country Club Planned Community Coastal Zoning District Development Standards) to amend land use regulations for the tennis club site;
- Planned Community Development Plan Amendment: An amendment to Planned Community Development Plan No. 47 (Newport Beach Country Club Planned Community) to amend land use regulations and development standards on the tennis club site;
- Major Site Development Review: A site development review in accordance with Section 4.0 (Site Development Review) of Planned Community Development Plan No. 47 and NBMC Section 20.52.80 (Site Development Reviews) for the construction of the Proposed Project;
- Coastal Development Permit: An amendment to Coastal Development Permit No. CD2017-039 for the demolition of existing structures, further subdivision on the tennis club site, and implementation of the Proposed Project;
- Tentative Vesting Tract Map: An amendment to Tentative Vesting Tract Map pursuant to Title 19 of the Municipal Code to create separate lots for the tennis club site;
- Limited Term Permit: A limited term permit to allow temporary use of structures during construction pursuant to Section 20.60.015 of the Municipal Code;
- Development Agreement: A second amendment to the Development Agreement (DA2008-001), between the applicant and the City pursuant to Section 15.45 of the Municipal Code, which would provide vested right to develop the Proposed Project while also providing negotiated public benefits and extend the term of Agreement for an additional 10 (ten) years; and

- Addendum to the 2010 Mitigated Negative Declaration: Pursuant to the California Environmental Quality Act (“CEQA”), the addendum addresses reasonably foreseeable environmental impacts resulting from the proposed development.

The Proposed Project does not increase the overall footprint of the Approved Project. The Proposed Project introduces two (2) new loft buildings, which includes a mixture of attached residential condominiums atop of two levels of hotel rooms and are a maximum height of 46 feet. The additional hotel amenities, which includes a hotel office, common area, performance therapy center, and yoga pavilion, are located within the first floor of one of the loft buildings (Bungalow Lofts). The remainder of the hotel rooms remain as bungalow-style buildings as previously envisioned and approved, have a maximum height of 31 feet, and are located throughout the project site. Parking is available for each component of the project, as there are multiple parking lots, street parking, and underground parking available for residents, the tennis club, and hotel guests. A total of 131 parking spaces are provided, where 91 spaces are required (Table 4, below). The Proposed Project features a distinct architectural style, which includes smooth plaster exterior siding, clay-tile roofs, and stone veneer exterior accent finishes that is compatible with the surrounding uses and area. The exhibit below illustrates the site plan for the Proposed Project:



The anticipated duration of construction of the Proposed Project is approximately 20 months, which will begin with the demolition of the existing tennis and pickleball courts and portion of the parking lot. Six (6) tennis courts are to be maintained for use during construction. The construction of the hotel rooms, tennis club house and stadium court will follow immediately and will be completed with the construction of the residential units. A Phasing Plan is included as part of the Project Plans and is attached to the Staff Report (Attachment No. PC 6).

The property has an existing parking lot with two (2) entrances currently taken from Clubhouse Drive, which has a westerly outlet to East Coast Highway and an easterly outlet to Granville Drive and Newport Center Drive. During the various phases of construction, the easterly entrance to the parking lot will remain available to the public for parking and will provide direct access for the modular office trailer and portable toilets, while the westerly entrance will be for construction access only. A Construction

Management Plan is included as an attachment to the Staff Report (Attachment No. PC 4). Table 1 provides a summary of the Approved Project comparing it to the and the Proposed Project:

Table 1 – Project Comparison

Use	Approved Project	Proposed Project
Tennis	Clubhouse (3,725 sq. ft.) 7 Tennis Courts	No Change 8 Tennis Courts (+1)
Hotel	27 Hotel Rooms Concierge Center (2,200 sq. ft.) Spa/Fitness Center (7,500 sq. ft.)	41 Hotel Rooms (+14) No Change No Change +4,686 sq. ft. of Ancillary Uses Performance Therapy (+852 sq. ft.), Yoga Pavilion (+633 sq. ft.), Administrative Office (+2,620 sq. ft.), Common Area (+581 sq. ft.)
Residential	5 Detached Single-Family Residences	2 Detached Single-Family Residences 3 Attached Condominiums

DISCUSSION

Analysis

General Plan

The subject property has a General Plan Land Use designation of Mixed-Use Horizontal 3/Parks and Recreation (MU-H3/PR). The Mixed Use Horizontal 3 designation on the subject site provides for the horizontal intermixing of regional commercial office, hotel, single-family and multi-family residential, and ancillary commercial uses. The PR designation applies to land used or proposed for active public or private recreational use. Permitted uses include parks (both active and passive), golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities.

The project site is designated as Anomaly No. 46 by the existing Land Use Element, which limits development intensity to 3,725 square feet for a tennis club building and 24 tennis courts at the subject property. Residential use is also permitted in Anomaly No. 46 in accordance with MU-H3/PR designation. As part of the Approved Project, the City Council authorized the conversion of 17 tennis courts to 27 hotel rooms on a traffic neutral basis. Since the Approved Project did not include a General Plan Amendment, the conversion did not change Anomaly No. 46.

The applicant seeks no changes to the General Plan designations, but rather requests to increase the number of hotel rooms from 27 to 41 rooms (+14) and number of tennis courts from 7 to 8 courts (+1). The subject property would remain Mixed-Use Horizontal 3/Parks and Recreation (MU-H3/PR). The Proposed Project is consistent with the MU-H3/PR designation as it includes a mix of land uses including single-family residential, attached residential condominiums, recreational tennis club facilities, and visitor-serving commercial uses. These uses are permitted as stated above. A complete consistency analysis of each of the applicable General Plan policies is provided in the attached Draft Resolution (Attachment No. PC 1) and included in Table 5-12 of the Land Use and Planning Section of the Mitigated Negative Declaration Addendum.

Charter Section 423 (Measure S)

Pursuant to City Charter Section 423 and Council Policy A-18, an analysis must be prepared to establish whether a proposed General Plan Amendment (if approved) requires a vote by the electorate. Charter Section 423 requires voter approval of any major General Plan amendment to the General Plan. A major General Plan amendment is one that significantly increases allowed density or intensity by 40,000 square feet of non-residential floor area, or increases traffic by more than 100 peak hour vehicle trips (AM/PM) or increases residential dwelling units by 100 units. These thresholds apply to the total of increases resulting from the amendment itself, plus 80 percent of the increases resulting from other amendments affecting the same neighborhood (defined as a Statistical Area as shown in the General Plan Land Use Element) and adopted within the preceding ten years.

The subject property is within Statistical Area L1. Only 14 hotel rooms are required to be analyzed for Charter Section 423 since the 27 hotel rooms have been previously converted from the 17 tennis courts. The proposed GPA results in an increase of 14,000 square feet (1,000 square feet per hotel room), 9.51 AM trips, and 12.42 PM trips based on the most recent ITE trip rates pursuant to City Council Policy A-18. Prior amendments within the past ten years are Vivante Senior Housing and Residences at Newport Center projects. Charter Section 423 requires consideration of 80 percent of prior increases, which results in a cumulative increase of 94 dwelling units, 23 AM trips, and 43 PM trips between both projects. There were no nonresidential gross square footage increases with these two prior amendments. When combined with 80 percent of the prior amendment increases, this results in cumulative increases of 14,000 square feet, 32.51 AM trips, and 55.42 PM trips. Table 2 below illustrates the calculations and none of the thresholds specified by Charter Section 423 are exceeded, therefore no vote of the electorate is required should the City Council choose to approve the General Plan Amendment.

Table 2 - Charter Section 423 Calculations

	Unit	Floor area	Trip rates	AM trips	PM Trips
Tennis Clubhouse			N/A	N/A	N/A
Tennis Courts	1 court	N/A	1.67/Court AM 3.88/Court PM	1.67	3.88
Hotel	14 rooms	14,000 ¹	0.56 AM/room 0.61 PM/room	7.84	8.54
Total - Project	N/A	14,000	N/A	9.51	12.42
Vote Required Project	N/A	No	N/A	No	No
80% of Prior Amendments	N/A	0	N/A	23	43
Total- Project + Prior Amendments	N/A	14,000	N/A	32.51	55.42
Vote Required Project + Prior Amendments	N/A	No	N/A	No	No

¹ Pursuant to Council Policy A-18, each hotel room equals 1,000 square feet, so there is a 14,000 square foot increase.

Upon approval of the project, the Proposed Project will be added to L1 Tracking Table as such:

Project Name	Date Approved	Amendment Description	Square Footage Change	Dwelling Unit Change	AM Peak Hour Trip Change	PM Peak Hour Trip Change
Vivante Senior Housing	8/13/2019	Private Institutions (PI) to Mixed Use Horizontal (MU-H3)	(Reduction: 45,028 to 16,000)	90	26	52
Residences at Newport Center	9/28/2021	Regional Commercial Office (CO-R) to Planned Community (PC-61)	0	28	3	2
Tennis Club at Newport Beach	TBD	14 Hotel Rooms and 8 Tennis Courts	14,000	0	9.51	12.42
100% Totals			14,000	118	38.51	66.42
80% Totals			11,200	94	30.80	53.14
Remaining Capacity Without Vote			28,800	6	69.20	46.86

Local Coastal Program

The proposed amendment to the Local Coastal Program Implementation Plan (Title 21) is consistent with the Coastal Land Use Plan (CLUP), which designates the property as MU-H/PR (Mixed Use Horizontal/Parks and Recreation). This designation allows horizontally-distributed mix of uses, which may include general or neighborhood commercial, commercial offices, multi-family residential, visitor-servicing and marine-related uses, buildings that vertically integrate residential with commercial uses, and

active public or private recreational uses, including parks, golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities.

The Proposed Project is a request to increase existing uses which have been previously permitted. The project includes a mixture of uses which include a tennis club and eight (8) tennis courts, a 41-unit hotel development and ancillary uses, and five (5) residential units. All of these uses are intended to provide an updated recreational facility to serve the residents and visitors of the City. Additionally, the amendment is consistent with applicable land use policies of the CLUP, as provided in the attached Draft Resolution. Therefore, an amendment to the CLUP is not necessary.

Title 21 includes specific development standards for the Approved Project. As a result, an amendment to Title 21 is necessary to revise the development standards listed in Section 21.26.055.S, which specifically refers to the Newport Beach Country Club Planned Community (PC-47) development standards of the “Tennis Club”, “The Villas”, and “The Bungalows.” The following amendments are proposed:

1. The amendment increases the density and intensity limit for the number of tennis courts from seven (7) to eight (8) courts. The addition of the tennis court increases the minimum required parking from 28 spaces to 32 spaces (4 spaces per court). There is no change to the 3,725-square-foot limit for the tennis clubhouse.
2. The number of residential units remains unchanged. However, the amendment converts three (3) of the five (5) single-family residences to attached residential condominium units. Therefore, the amendment revises the density and intensity limit for the Villas from five (5) to two (2) single family residences and removes previous development standards for three single family residences referred to as Villas C, D, and E.
3. The amendment includes new development standards for attached residential condominiums, which have a density limit of three (3) units and maximum gross floor area of 15,035 square feet. The maximum height allowed for the condominium buildings is 50 feet. The buildings are required to be set back five (5) feet from any property line. The remaining single-family residences require a minimum of two (2) enclosed parking spaces and one guest parking space per unit, while the proposed attached condominiums require a minimum of three (3) enclosed parking spaces and one guest parking space per unit.
4. The amendment revises the density and intensity limits for the bungalows from 27 to 41 short-term guest rental rooms. Additionally, the maximum allowable gross floor area increases from 28,300 to 47,484 square feet, and square footage for ancillary hotel uses are included. A minimum of one (1) space per hotel unit is required.

Planned Community Development Plan Amendment

In 2012, the City Council adopted NBCC Planned Community Development Plan (PC-47) for the subject site as part of the Approved Project that also includes the adjacent Newport Beach Country Club Golf Course site. All proposed changes as part of the Proposed Project are limited to the Tennis Club property and do not apply to the Golf Club.

The Proposed Project is consistent with the intent and purpose of PC-47 in that the tennis club, hotel, and residential uses and their development standards have already been allowed and is in place on the tennis club site. The proposed changes are minor adjustments to the building height, setbacks, and parking standards in order to accommodate the Proposed Project. Additionally, PC-47 provides guidelines for architectural design to include coordinated and cohesive architecture which exhibits quality that is keeping with the surrounding area in Newport Center. The Proposed Project includes additional hotel rooms and two (2) attached residential condominium loft buildings. The proposed additions are designed to be compatible with the approved architectural design of the Approved Project. PC-47 permits structures to be a maximum of 50 feet in height. The Proposed Project includes two (2) attached residential condominium loft buildings and additional hotel rooms to be at a maximum of 46 feet high and comply with the height limit.

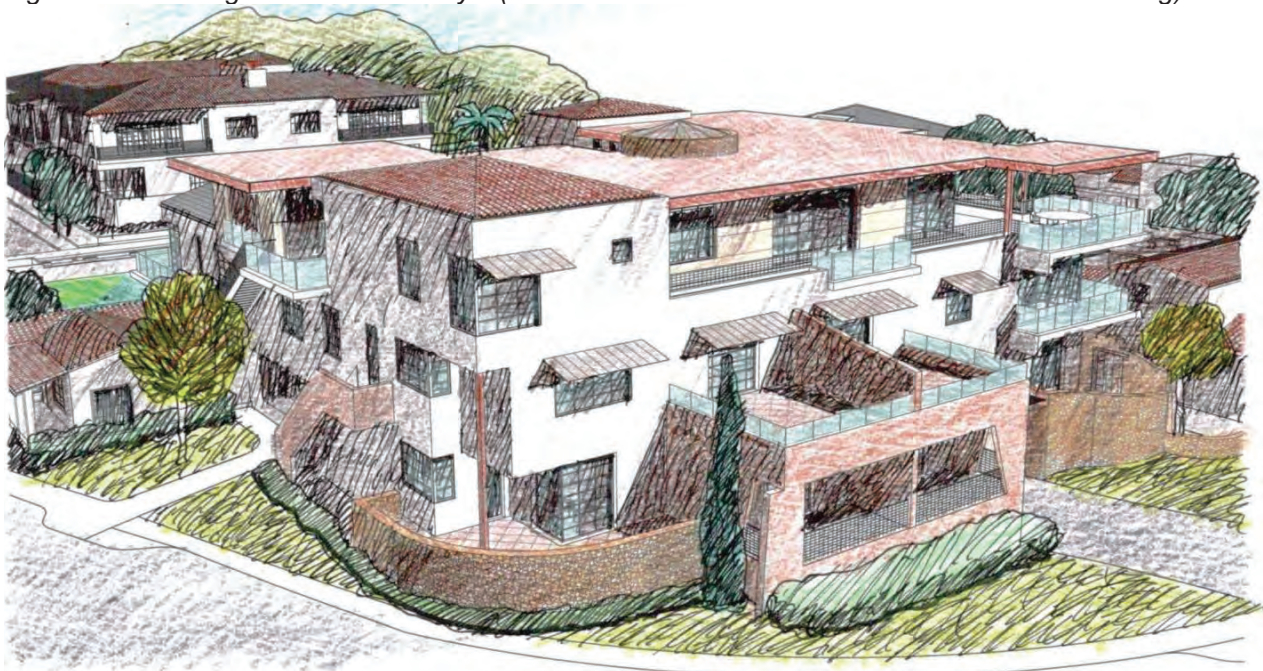
Site Development Review

On January 24, 2012, the City Council approved Site Development Review No. SD2011-002, which authorized construction of the Approved Project. The proposed changes to the Approved Project, necessitate an amendment to the approved Site Development Review. In accordance with Section 4.0 of PC-47 (Site Development Review), the following findings and facts in support of such findings are set forth:

1. *The development shall be in compliance with all other provisions of the Planned Community District Plan;*
2. *The development shall be compatible with the character of the neighboring uses and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;*
3. *The development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on Coast Highway; and*
4. *Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.*

The proposed development complies with all Site Development Review criteria specified in PC-47 in order to provide a coordinated, cohesive, and comprehensive large-scale planning project. The Approved Project features a distinct and cohesive architectural style (Figure 2), and includes landscaping components, signage, and circulation design, which are compatible with the character of the neighboring uses and surrounding sites. The additional 14 hotel rooms and attached residential condominium buildings designed to be of similar architectural style, which includes smooth plaster exterior siding, clay-tile roofs, and stone veneer exterior accent finishes. As a result, the Proposed Project is compatible with the Approved Project, and not detrimental to the orderly and harmonious development of the surroundings and of the City.

Figure 1: Rendering of Architectural Style (Pictured: Attached Condominium and Hotel Loft Building)



The Proposed Project promotes additional functionality between residential and hotel components, as residential condominiums are attached to hotel units in two (2) separate loft buildings. Underground parking is provided in the loft buildings, with additional street parking and parking lots to serve hotel and tennis club guests. Each of the two (2) single-family residences provide a two (2)-car garage to serve its residents. The project has been designed to include a surplus of 40 spaces beyond what is required. Table 4 below shows the required and provided parking for the proposed project.

Table 4: Required and Provided Parking

Use	Parking Rate	Required	Provided
Tennis Club	4 per court	32 spaces	51 spaces
Single-Family Residences	2 per unit enclosed 1 per unit guest	4 enclosed spaces 2 guest spaces	4 enclosed spaces 4 guest spaces
Attached Condominiums	3 per unit enclosed 1 per unit guest	9 enclosed spaces 3 guest spaces	9 enclosed spaces 3 guest spaces
Hotel	1 per unit	41 spaces	60 spaces
Total	N/A	91 spaces	131 spaces
Surplus			40 spaces

The development is designed to maximize aesthetic quality as viewed from surrounding properties. The property is separated from East Coast Highway by a commercial office plaza which comprises of three (3) two (2)-story office buildings at 1200 Newport Center Drive. The office plaza includes landscaping along East Coast Highway with trees and various plantings. The Newport Beach Country Club golf clubhouse is located approximately 150 feet west of the Property. The development's multiple components (tennis club, residential, and hotel) have been designed and sited to function cohesively not only with each other, but also with the adjacent golf course uses and surrounding development.

Coastal Development Permit

The subject property is located within the Coastal Zone. Therefore, the Proposed Project requires a coastal development permit. Per Section 21.52.015.F of NBMC, the required findings to approve a coastal development permit are as follows:

1. *Conforms to all applicable sections of the certified Local Coastal Program;*
2. *Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

The Proposed Project is consistent with the Coastal Land Use Plan, which designates site as Mixed-Use Horizontal/Parks and Recreation (MU-H/PR). The MU-H land use designation of the Coastal Land Use Plan allows the horizontal intermixing of hotel units, single-family residences, attached residential condominiums, and tennis club facilities on the project site. Additionally, the MU-H designation identifies a maximum density/intensity limit of 1.5 floor area ratio (FAR), with a minimum FAR of 0.25 and a maximum FAR of 0.5 for retail uses and a maximum of 1.0 for residential. The project proposes 65,595 square feet of nonresidential floor area (approximately 0.21 FAR) for the hotel rooms, concierge & guest center, and ancillary hotel uses which include a performance therapy center, yoga pavilion, office, common area, and a spa and fitness center. The five (5) residential dwelling units totals 20,653 square feet (approximately 0.06 FAR). The

proposed density/intensity of the hotel and residential units comply with the FAR limitations identified in the Coastal Land Use Plan.

The PR coastal land use designation applies to land used or proposed for active public or private recreational use. Permitted uses include parks (both active and passive), golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities. The PR designation on this site is applicable to the existing and proposed private tennis club and tennis courts. The density/intensity limitations include incidental buildings, such as maintenance equipment sheds, supply storage, and restrooms, not included in determining intensity limits. The proposed tennis club and ancillary uses are consistent with this land use designation.

The property is not located between the nearest public road and the sea or shoreline and will not affect the public's ability to gain access to, use, or view the coast and nearby recreational facilities. Vertical access to Newport Bay is available via existing public access at 1601 Bayside Drive, which is located approximately 1,600 feet southwest of the subject property. Elevations on the subject property range from 104 feet up to 120 feet North American Vertical Datum of 1988 (NAVD88) above mean sea level. These site elevations are well above projected sea level rise in Newport Bay for the next 75 years and the site is not subjected to other coastal hazards. Potential liquefaction risk (if any) must be mitigated with foundation designs consistent with the Building Code.

Coastal Land Use Plan, Policy 4.4.1-6 and Figure 4-3 (Coastal Views) identify the closest public view road as Newport Center Drive, located approximately 170 feet east of the project site and the closest public viewpoint as Irvine Terrace Park, located 525 feet south of the project site. Coastal views from these view corridors and viewpoints are directed toward the Newport Bay and the Pacific Ocean. Since the project site is located to the north of Irvine Terrace Park, the Proposed Project will not affect coastal views due to its orientation. From Newport Center Drive, there is a zero to 40-foot grade difference to the project area below.

The Planned Community Text amendment includes maximum building heights for all structure types (Table 3, above). The majority of the project would sit below the existing grade elevations along Newport Center Drive, minimizing the visibility of the project site and would not obstruct public coastal views. During construction, equipment would be obscured by vegetation and the grade differential so it would not obstruct coastal views from motorists traveling along Newport Center Drive. The Proposed Project will not impact coastal views.

An Analysis of the Fiscal and Economic Impacts was prepared on August 29, 2022, by Kosmont Companies to analyze the construction of new visitor accommodations in the coastal zone in accordance with the requirements of [Section 21.48.025 \(Local Coastal Program Implementation Plan, Standards for Specific Land Uses, Visitor Accommodations\)](#) of the NBMC. The report provides a feasibility analysis stating that the anticipated average daily room (ADR) rate for all 41 rooms is approximately \$920 and the

statewide average daily room rate is \$205.69. Because the anticipated ADR will well exceed the Statewide average, the proposed accommodations are not considered lower cost accommodations. The report considers the specific location of the Property as an inappropriate location for low-cost accommodations. Additionally, low-cost accommodations are not feasible due to prohibitive land and construction costs. The Property does not currently provide accommodations of any kind and implementation of the Project would not directly impact low-cost accommodations. While the Project would not include any lower cost accommodations, the Local Coastal Program Implementation Plan would identify the Project as generating an impact simply by not providing lower-cost accommodations. There is no impact on the provision of lower-cost visitor accommodations in the Coastal Zone as creating lower cost accommodations at the site is infeasible and there is no nexus to an actual impact; therefore, no mitigation is required. The Project features larger guest facilities with bedrooms, separate living rooms with sofa beds and many rooms with kitchens. These features will accommodate more occupants per room, which lowers the costs per occupant.

Tentative Vesting Tract Map

On January 24, 2012, the City Council approved a Vesting Tentative Tract Map, which authorized the creation of separate lots for five (5) single-family residences, 27 hotel rooms, and lettered lots for common areas and a private street. The applicant proposes an amendment to the vesting tentative tract map to accommodate the Proposed Project, which consists of two (2) single-unit residential dwellings, three (3) residential condominiums, 41 hotel rooms, a tennis clubhouse, their common open space areas and a private street to support the proposed uses.

In accordance with Section 19.12.070 of the Newport Beach Municipal Code, and the following finding and facts in support of such findings are set forth:

1. *That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code;*
2. *That the site is physically suitable for the type and density of development;*
3. *That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report;*
4. *That the design of the subdivision or the type of improvements is not likely to cause serious public health problems;*
5. *That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property*

within the proposed subdivision. In this connection, the decision making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision;

- 6. That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land;*
- 7. That, in the case of a "land project" as defined in Section [11000.5](#) of the California Business and Professions Code: (1) There is an adopted specific plan for the area to be included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area;*
- 8. That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act;*
- 9. That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section [65584](#) of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources;*
- 10. That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board; and*
- 11. For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

The amended map reflects the combination of two (2) previously divided lots, which results in the elimination of one (1) lot. These two (2) lots were intended for two (2) detached-single family residences. The map has also been modified to include residential condominium portion of the Proposed Project.

The project site is located in the Newport Center and Fashion Island area. The site is currently improved with a private tennis club. Given its location, this site is ideal for the development of a recreation and mixed-use project as allowed by the General Plan Land Use Element. Additionally, the Addendum to the MND concludes that no significant environmental impacts will result with the Proposed Project in accordance with the proposed subdivision map revision.

All construction for the project has been conditioned to comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. The Public Works Department has reviewed the proposed revisions to the approved vesting tentative tract map and determined it is consistent with the Newport Beach Subdivision Code (Title 19) and applicable requirements of the Subdivision Map Act.

Limited Term Permit

The applicant is requesting a limited term permit (LTP) to allow two (2) temporary modular trailers and portable toilets during construction. In accordance with Section 20.52.040 (Limited Term Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

1. *The operation of the requested limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use;*
2. *The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;*
3. *The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate;*
4. *Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator; and*
5. *The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.*

Both modular trailers are approximately 33 feet long and 13 feet wide. One modular trailer is proposed to be used as a construction office located at the southwest portion of the property and will be staged at this location through the entire duration of the Proposed Project, which is estimated to be approximately 20 months. The second modular office is proposed to be used as a temporary office for tennis club operations and will be located on the easterly portion of the property through the construction of the tennis clubhouse, which is estimated to be approximately 16 months. The portable toilets are proposed to serve the temporary tennis club office and located nearby.

Development Agreement

On March 27, 2012, the City Council approved a Development Agreement between the City and the Applicant for the Approved Project. The DA was executed and recorded, on January 29, 2014, with a ten-year term. The DA provides vested rights to develop the

Approved project and the City negotiated the following public benefit fees of ninety-three thousand dollars (\$93,000) per each residential dwelling unit and ten dollars (\$10) per square foot of construction for the tennis clubhouse (Table 5). These fees are subject to annual adjustments, based on the CPI Index.

Table 5: Projected Public Benefit Fees (Subject to Adjustment)

Use	Multiplier	Fee Rate	Total
Residential	5 units	\$93,000 per unit	\$465,000
Tennis Clubhouse	3,725 square feet	\$10 per square foot	\$37,250
Grand Total			\$502,250

On July 12, 2022, the City Council approving the First Amendment to the DA to extend the term of the agreement by one year. The DA will expire on September 23, 2023.

In accordance with Section 15.45.020.A.2.c (Development Agreement Required) of the NBMC, a reconsideration of the agreement is required as the Proposed Project, which includes an amendment to PC-47 and a General Plan Amendment to increase the number of hotel rooms from 27 to 41 rooms, which is new non-residential development in Statistical Area L1 (Newport Center/Fashion Island).

The applicant requests an additional 10-year term of agreement (“Second Amendment”), pursuant to Section 15.45.070 (Amendment/Cancellation). The Second Amendment provides assurance that the applicant may proceed with the Proposed Project in accordance with existing policies, rules and regulations, and conditions of approval. Additionally, the Second Amendment to the DA helps the applicant avoid a waste of resources and escalated costs of the Proposed Project while encouraging a commitment to private participation in comprehensive planning.

In addition to the 10-year term extension, the Second Amendment (Exhibit “E” of the Draft Resolution) specifies the updated permitted uses, density and intensity, and maximum height and size of proposed buildings, consistent with the Proposed Project. Additionally, the Second Amendment to the Agreement includes all mandatory elements, including public benefits that are appropriate to support conveying the vested development rights consistent with the City’s General Plan, NBMC, and Government Code Sections 65864 *et seq.* No changes to the public benefit fees are proposed.

Environmental Review

On March 27, 2012, the Newport Beach City Council approved a Mitigated Negative Declaration and its Errata to Mitigated Negative Declaration (together referred to as “MND”) that addressed the potential environmental effects associated with the Approved Project. The MND was prepared in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3.

Pursuant to Section 21166 of the California Public Resources Code and Section 15162 of the CEQA Guidelines, when a negative declaration adopted for a project, no subsequent negative declaration 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:

1. Substantial changes are proposed in the project which will require major revisions of the previous negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. 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 negative declaration was adopted as complete, shows any of the following:
 - a. The project will have one or more significant effects not discussed in the previous negative declaration.
 - b. Significant effects previously examined will be substantially more severe than shown in the adopted negative declaration.
 - c. 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
 - d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous negative declaration would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

On the basis of the earlier MND and entire environmental review record including the Addendum, the Proposed Project will not result in any new significant impacts that were not previously analyzed in the MND. The Addendum confirms and provides substantial evidence that the potential impacts associated with the Proposed Project would either be the same or less than those described in the MND, or as mitigated by applicable mitigation measures and standard conditions of approval in the MND. In addition, there are no substantial changes to the circumstances under which the Proposed Project would be undertaken that would result in new or more severe environmental impacts than previously addressed in either the MND, nor has any new information regarding the

potential for new or more severe significant environmental impacts been identified. Therefore, in accordance with Section 15164 of the CEQA Guidelines, an addendum to the previously adopted MND is the appropriate environmental document for the Proposed Project. In taking action to approve any of the requested applications for the Proposed Project, the data presented in the MND, as augmented by the Addendum for this Proposed Project, are considered as part of the record.

The City contracted with an environmental consultant, Chambers Group, to prepare the Addendum. The entire Addendum and its technical appendixes are available online at the City's website at www.newportbeachca.gov/ceqa.

Summary

In summary, staff believes the findings for the project approval can be made with specific conditions of approval. The applicant proposed a general plan amendment to increase the number of hotel rooms and one (1) additional tennis court. According to the applicant, the request is necessary to provide a viable hotel development and adjust residential type in responding to the needs of the community. The Proposed Project is consistent with the General Plan's MU-H3/PR designation as it still includes and maintains a mix of land uses including single-family residential, attached residential condominiums, recreational tennis club facilities, and visitor-serving commercial uses. The proposed general plan amendment would not require a voter approval pursuant to Charter Section 423 analysis. Due to the lack of environmental impacts and apparent compatibility with the surrounding uses, staff does not object to the GPA request.

The Proposed Project is also consistent with the Local Coastal Program. The Coastal Land Use Plan designates the property as MU-H/PR (Mixed Use Horizontal/Parks and Recreation). This designation allows horizontally-distributed mix of uses, which includes multi-family residential, visitor-servicing uses, and tennis clubs and courts. The Proposed Project is within the maximum density/intensity limit allowed per MU-H designation.

The amendment to the Planned Community Development Plan is consistent with the intent and purpose of PC-47 in that the tennis club, hotel, and residential uses and their development standards have already been allowed and in place on the tennis club site. The proposed changes to the building height, setbacks, and parking standards in order to accommodate the Proposed Project are within the development standards in place for the Approved Project.

The Proposed Project meets all of the findings for the required Site Development Review as specified in PC-47. The proposed amendments maintain a coordinated, cohesive, and comprehensive large-scale planning project, which includes a distinct architectural style. The Proposed Project is compatible with the character of the neighboring uses and surrounding sites and is not detrimental to the orderly and harmonious development of the surroundings and of the City.

The Proposed Project meets all of the findings for the required Coastal Development Permit. As previously stated, the amendment is consistent with the City's Local Coastal Program. Additionally, the amendment will not affect the public's ability to gain access to, use, or view the coast and nearby recreational facilities.

The proposed revisions to the approved vesting tentative tract map is consistent with the Newport Beach Subdivision Code (Title 19) and applicable requirements of the Subdivision Map Act. The amended map reflects the combination of two previously divided lots, which results in the elimination of one lot. These two lots were intended for two (2) detached-single family residences. The map has also been modified to include attached residential condominiums.

The Proposed Project requires an amendment to the City's Local Coastal Program Implementation Plan (Title 21). This amendment requires the consideration of California Coastal Commission. As a result, the Proposed Project only becomes effective upon the approval by Coastal Commission. Upon such approval, the following discretionary permits approved for the Approved Project are to become null and void:

1. Site Development Review Permit No. SD2011-002
2. Tentative Tract Map No. ND2010-008
3. Limited Term Permit No. XP2011-004

Alternatives

1. The Planning Commission may require or suggest specific design changes that are necessary to alleviate any areas of concern. If the requested changes are substantial, staff will return with a revised resolution incorporating new findings and/or conditions.
2. If the Planning Commission chooses to deny the Proposed Project, the applicant would retain the vested right to build the Approved Project until the termination date of the DA (September 23, 2023). After the expiration of DA, the Approved Project could still be implemented with the approval of new discretionary permits (i.e., site development review permit, tentative tract map, limited term permit). The City, however, would not receive the negotiated public benefit fee as prescribed in the DA.

Public Notice

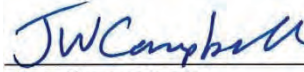
Notice of this hearing was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:



David S. Lee
Associate Planner

Submitted by:



Jim Campbell
Deputy Community Development Director

ATTACHMENTS

- ~~PC 1 Draft Resolution with Findings and Conditions~~
- ~~PC 2 Project Description~~
- ~~PC 3 LSA's Traffic and Parking Analysis Update~~
- ~~PC 4 MurowDC's Construction Management Plan~~
- ~~PC 5 Fiscal and Economic Impacts Analysis~~
- ~~PC 6 Project Plans~~

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Attachment G

Planning Commission Minute Excerpts, Dated September 8, 2022

Recommended Action:

1. Find the project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 Class 3 (New Construction or Conversion of Small Structures), because it has no significant effect on the environment;
2. Waive City Council Policy L-6, *Encroachments in Public Rights-of-Way*, for non-compliant private improvements consisting of stairs, handrails, retaining walls, and planters that encroach into the Cliff Drive public right-of-way, contingent upon all conditions of the Encroachment Permit process being met; and
3. Adopt Resolution No. PC2022-021 waiving City Council Policy L-6 and approving Encroachment Permit No. N2022-0147.

Commissioners disclosed no ex parte communications.

Motion made by Commissioner Lowrey and seconded by Secretary Rosene to approve the recommended action.

AYES: Ellmore, Harris, Kleiman, Lowrey, Rosene, and Weigand
NOES: None
ABSTAIN: None
ABSENT: Klaustermeier

VII. PUBLIC HEARING ITEMS

ITEM NO. 3 TENNIS CLUB AT NEWPORT BEACH PROJECT AMENDMENT (PA2021-260)
Site Location: 1602 East Coast Highway

Summary:

An amendment to the 2012 approved Tennis Club at Newport Beach project to: 1) increase the number of future tennis courts from 7 to 8 courts, 2) increase the number of future hotel rooms from 27 to 41 rooms, 3) increase the gross floor area of the ancillary hotel uses by 4,686 square feet, and 4) provide 3 attached condominium units and 2 detached single family residences in-lieu of 5 detached single-family residences. The proposed changes to the 2012 approved project require the consideration of the following land use:

- General Plan Amendment: An amendment to Anomaly No. 46 of Table LU2 of the 2006 Newport Beach General Plan Land Use Element to amend the allowable development limits for the tennis club site;
- Local Coastal Program Implementation Plan Amendment: An amendment to Local Coastal Implementation Plan Section 21.26.055.S.2 (Tennis Club of Newport Beach Country Club Planned Community Coastal Zoning District Development Standards) to amend land use regulations for the tennis club site;
- Planned Community Development Plan Amendment: An amendment to Planned Community Development Plan No. 47 (Newport Beach Country Club Planned Community) to amend land use regulations and development standards on the tennis club site;
- Major Site Development Review Amendment (SD2011-002): A site development review in accordance to Section 4.0 (Site Development Review) of Planned Community Development Plan No. 47 and Newport Beach Municipal Code (NBMC) Section 20.52.80 (Site Development Reviews) for the construction of the proposed project;
- Coastal Development Permit Amendment (CD2017-039): An amendment to Coastal Development Permit No. CD2017-039 for the demolition of existing structures, further subdivision on the tennis club site, and implementation of the project;

- Tentative Vesting Tract Map Amendment (NT2005-003): An amendment to Tentative Vesting Tract Map pursuant to Title 19 of the Municipal Code to create separate lots for the tennis club site;
- Limited Term Permit Amendment (XP2011-004): A limited term permit to allow temporary use of structures during construction pursuant to Section 20.60.015 of the Municipal Code;
- Development Agreement Amendment (DA2008-001): A second amendment to the Development Agreement between the Applicant and the City, pursuant to NBMC Sections 15.45 (Development Agreement), which would provide vested right to develop the proposed project while also providing negotiated public benefits and extend the term of Agreement for additional ten years; and
- Addendum to the 2010 Mitigated Negative Declaration (ND2010-008): Pursuant to the California Environmental Quality Act ("CEQA"), the addendum addresses reasonably foreseeable environmental impacts resulting from the proposed development

Recommended Action:

1. Conduct a public hearing;
2. Find that the Proposed Project will not result in any new significant impacts that were not previously analyzed in the adopted Mitigated Negative Declaration No. ND2010-008 (SCH 2010091052) for the Approved Project, and the addendum has been prepared to address reasonably foreseeable environmental impacts resulting from the Proposed Project; and
3. Adopt Resolution No. PC2022-022 recommending City Council approval of PA2021-260, which includes adoption of a Mitigated Negative Declaration Addendum, and approval of a General Plan Amendment, Local Coastal Land Use Plan Amendment, Planned Community Development Plan Amendment, Major Site Development Review Amendment, Coastal Development Permit Amendment, Vesting Tentative Tract Map Amendment, Limited Term Permit Amendment, and Development Agreement Amendment for The Tennis Club at Newport Beach Project located at 1602 East Coast Highway.

Commissioner Weigand recused himself due to the Levine Act for a campaign contribution.

Associate Planner Lee used a presentation to review the requested amendment to a previously approved project, project location, land use, previously approved project inclusions and site plan, 2012 approved entitlements, proposed amendment details and site plan, site plan comparisons, requested project entitlements, CEQA review, findings, an additional condition for future consideration for pickleball use, and recommended action.

In response to Vice Chair Ellmore's inquiry, Deputy Director Campbell noted that traffic, parking, and noise are focus areas for the City as pickleball courts develop and confirmed the tennis and pickleball parking ratio of four spaces to one court and 12 spaces to one court and the application is for tennis courts only.

In response to Secretary Rosene's question, Deputy Director Campbell stated that property development other than tennis courts would require future application and review.

Commissioners Lowrey, Harris, Secretary Rosene, and Chair Kleiman disclosed conversations with the property owner, applicant, and consultants. Vice Chair Ellmore disclosed no ex parte communication.

Chair Kleiman opened the public hearing.

Robert O'Hill, managing owner of Newport Beach Country Club, used a presentation to review the modifications included in the Bungalow and Lofts Plan B amendment, project renderings, Bungalow Loft first floor and top floor drawings, a floor plan for the Clubhouse and Bungalow Spa, and photos of the pool attendant area, fitness center desk area, men's and women's locker rooms, massage area, and koi pond area. Mr. O'Hill estimated City gains of \$1,300,000, accepted the new condition, thanked staff for their work, and agreed to abide by the conditions established by the City.

In response to Chair Kleiman's request, Mr. O'Hill agreed with the conditions as drafted and the new conditions in the staff report.

In response to Commissioner Harris' inquiry, Mr. O'Hill reported adequate parking accommodations and noted monetary investments to resurface tennis courts for conversion to pickleball courts.

Sean Abdali, The Tennis Club owner and operator, noted Newport Beach having the first private pickleball club in the world and today the largest, relayed having formed an event company to help run events, identified the different parking needs for pickleball and tennis users and electric bikes, and explained an agreement with the Irvine Company for parking space use Monday – Friday, at Corporate Plaza West on weekends and holidays, and Newport Beach County Club operators on Mondays. Furthermore, he noted a reduction in large events to accommodate parking availability, residential support of the plan to preserve the Club, and a reduction in noise with improved pickleball equipment in the future.

Paul Christ, Granville Community Association representative, shared enthusiasm for Mr. O'Hill's plans, concerns for pickleball noise causing reduced property value, suggested installing a sound blanket and a restriction on amplified sound, and questioned the surface area of the tennis and pickleball courts.

Tracey Miller represented Club members who are in opposition to the project and read their statements of concern.

Bret Feuerstein and Ryan Chase, 50 percent owners of The Tennis Club property, noted an arbitration in progress to determine if Golf Realty Fund has the authority to unilaterally process the application, opposed the proposed plan, thanked staff for their work, and expressed interest in finding a solution that enables The Tennis Club to grow and thrive, and noted a concern that there are no pickleball courts in the applicant's plan.

Jim Mosher expressed concern for clarity in the Land Use table of the General Plan Amendment relative to the specific allowable development at the "anomaly site," questioned the Greenlight analysis by the City, believed that the 2012 approval was not approved by the voters, and is of the opinion that a Greenlight vote is required for the amendment.

Denys Oberman commended staff for bringing up fluid items associated with the use, particularly, impacts of pickleball noise, events, and capacity within the City and requested the Planning Commission remand the plan to obtain a committal characterization of what is being proposed and assure compatibility with the surrounding area.

Mark Susson noted contradictions in the proposal and parking, noise, and traffic issues at The Tennis Club.

Deidre Machowski encouraged the Planning Commission to move forward with the plan.

Rogin Moore, The Tennis Club member and employee, challenged anyone claiming having received threatening emails from Mr. Abdali, noted meetings with members and Mr. Abdali to share the plans and gain input, and relayed no known opposition.

Mr. O'Hill clarified the participants that, in his opinion, supported the approval of the General Plan Amendment after two previous failed attempts.

Mr. Abdali addressed the noise issues.

At the request of Chair Kleiman, Deputy Director Campbell indicated that City Council policy is being followed and the amendment does not require a Greenlight vote, pickleball was not examined because it was not requested in the application and would be subject to review with the added condition if requested in the future, and special event permits are required for tournaments. Furthermore, he indicated that existing tennis court conversion requirements are dependent on how the tennis court was originally established, private court conversion requirements are left up to the Homeowner Associations, and an analysis to identify if the conversion is consistent with the entitlements would be required for this project along with environment, traffic, parking, and noise reviews.

Chair Kleiman clarified the multi-step process for approval of the project.

Chair Kleiman closed the public hearing.

In response to Secretary Rosene's question, Deputy Director Campbell agreed that the plans are conceptual and noted that a plan check took place in 2016, more detailed designs have been put forth through the building division, and the applicant acknowledges an update to the drawings is needed to meet the new building code, indicated being comfortable moving forward with the recommendation, and assured the Commission that any deviations from standards in the drawings will be cleaned up at the plan check stage.

Commissioner Lowrey expressed comfort with the findings by staff and explanations of what the General Plan calls for and noted the popularity of pickleball among all ages, honoring the General Plan, and providing recreational facilities.

Vice Chair Ellmore concurred with Commissioner Lowrey and clarified that the project is for tennis courts.

Commissioner Lowrey noted that staff will need to identify the parameter for approval relative to pickleball court development.

Motion made by Commissioner Lowrey and seconded by Vice Chair Ellmore to approve the recommended action and the additional condition.

AYES: Ellmore, Harris, Kleiman, Lowrey, and Rosene
NOES: None
ABSTAIN: Weigand
ABSENT: Klaustermeier

ITEM NO. 4 BAY ISLAND GENERAL PLAN, ZONING CODE, LCP AMENDMENTS (PA2022-087)
Site Location: Bay Island

Summary:

Amendments to the General Plan, Title 20 (Planning and Zoning), and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code increasing the development limit specified for Bay Island from 23 dwelling units to 25 dwelling units. The amendments were initiated by the applicant who seeks to return the maximum residential density of Bay Island to 25 units, consistent with prior entitlement under Use Permit No. UP3618.

Recommended Action:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, because it has no potential to have significant effect on the environment; and
3. Adopt Resolution No. PC2022-023 (Attachment No. PC 1) recommending the City Council approve General Plan Amendment No. GP2022-001, Code Amendment No. CA2022-005, and Local Coastal Program Amendment No. LC2022-003.

Senior Planner Crager used a presentation to review the Bay Island amendments, Bay Island map, introduction/background, updated General Plan, Zoning Code, and Local Coastal Program maps, CEQA review, recommended action, and next steps.

Commissioner Weigand disclosed an island tour with Coralee Newman, Commissioners Lowrey and Vice Chair Ellmore disclosed no ex parte communications, Commissioner Harris and Secretary Rosene disclosed having spoken with the applicant, and Chair Kleiman disclosed having received a message from the applicant's consultant.

Attachment H

Planning Commission Resolution No. PC2022-022

RESOLUTION NO. PC2022-022

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA RECOMMENDING CITY COUNCIL APPROVAL OF AN ADDENDUM TO MITIGATED NEGATIVE DECLARATION NO. ND2010-008, GENERAL PLAN AMENDMENT, LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN AMENDMENT, PLANNED COMMUNITY DEVELOPMENT PLAN AMENDMENT, AMENDMENT TO MAJOR SITE DEVELOPMENT REVIEW NO. SD2011-002, AMENDMENT TO COASTAL DEVELOPMENT PERMIT NO. CD2017-039, AMENDMENT TO VESTING TENTATIVE TRACT MAP NO. NT2005-003, AMENDMENT TO LIMITED TERM PERMIT NO. XP2011-004, AND SECOND AMENDMENT TO DEVELOPMENT AGREEMENT NO. DA2008-001 FOR THE TENNIS CLUB AT NEWPORT BEACH LOCATED AT 1602 EAST COAST HIGHWAY (PA2021-260)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Golf Realty Fund, Managing Owner ("Applicant"), with respect to property located at 1602 East Coast Highway, and legally described as Parcels A, B, C, and D of Parcel Map No. 2016-151 (commonly referred as the "Tennis Club Site" or "Property").
2. On January 24, 2012, the City Council authorized the redevelopment of the Property to include a reconstruction of the 3,725-square-foot tennis clubhouse, a reduction of tennis courts from 24 to seven (7) courts, and a construction of 27-room boutique hotel with 9,700 square feet of ancillary uses, and five (5) single-family residential units. On November 20, 2018, the Zoning Administrator approved Coastal Development Permit No. CD2017-039, authorizing the redevelopment if the subject property consistent with the 2012 approval (commonly referred to as "Approved Project").
3. The Applicant is requesting land use approvals to amend the Approved Project which consists of the following:
 - a. Increase the number of future tennis courts from seven (7) to eight (8);
 - b. Increase the number of future hotel rooms from 27 to 41 rooms;
 - c. Increase the gross floor area of ancillary hotel uses by 4,686 square feet;
 - d. Provide three attached condominium units and two (2) single family residences in-lieu of five (5) single-family residences; and

- e. Amending the 2012 Development Agreement to account for the aforementioned changes to the Project along with extending the term of the 2012 Development Agreement for an additional 10 years ("Project").

The following approvals are requested or required in order to implement the Project:

- a. **General Plan Amendment ("GPA")** – An amendment to Anomaly No. 46 of Table LU2 of the 2006 Newport Beach General Plan Land Use Element to document the conversion of 17 tennis courts to 27 hotel rooms authorized by City Council Resolution No. 2012-10, and the addition of 14 hotel rooms for a total of 41 rooms and one tennis courts for a total of eight tennis courts;
- b. **Local Coastal Program Implementation Plan Amendment ("LCPA")** – An amendment to NBMC Section 21.26.055.S.2 (Planned Community Coastal Zoning District Development Standards, Newport Beach Country Club (PC-47, Tennis Club) to modify the permitted uses and development standards allowed on the Property;
- c. **Planned Community Development Plan Amendment ("PCDP Amendment")** – An amendment to Planned Community Development Plan No. 47 (Newport Beach Country Club Planned Community) to amend land use regulations and development standards on the Property;
- d. **Major Site Development Permit Amendment ("SDA")** – An amendment to the existing site development review in accordance with PC-47 and NBMC Section 20.52.80 (Permit Review Procedures, Site Development Reviews) for the construction of the Project;
- e. **Coastal Development Permit Amendment ("CDPA")** – A coastal development permit for the demolition of existing structures, further subdivision on the Property, and implementation of the Project;
- f. **Tentative Vesting Tract Map Amendment ("VTMA")** – An amendment to Vesting Tentative Tract Map No. 15347 pursuant to Title 19 (Subdivisions) of the Newport Beach Municipal Code ("NBMC") for a lot reduction created for the Approved Project and inclusion of the condominium ownership;
- g. **Limited Term Permit Amendment ("XP")** – A limited term permit to allow temporary use of structures during construction on the Property, pursuant to NBMC Section 20.52.040;
- h. **Development Agreement Amendment ("DA")** – A second amendment to the Development Agreement (DA2008-001), between the Applicant and the City, pursuant to Sections 15.45.020(A)(2)(c) (Buildings and Construction, Development Agreements Required, Development Agreement Required) and 15.45.070 (Buildings and Constructions, Development Agreements, Amendment/Cancellation) of the NBMC, which would provide vested right to

develop the Project for a term of ten years and provide negotiated public benefits to the City; and

- i. **Addendum to previously adopted Mitigated Negative Declaration No. ND-2010-008 (SCH2010091052)** ("Addendum") – Pursuant to the California Environmental Quality Act ("CEQA"), the Addendum addresses reasonably foreseeable environmental impacts resulting from the Project.
4. The Property is designated Mixed-Use Horizontal 3/Parks and Recreation (MU-H3/PR) by the General Plan Land Use Element and is located within the Newport Beach Country Club Planned Community (PC-47) Zoning District.
5. The Property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Horizontal/Parks and Recreation (MU-H/PR) and it is located within the Newport Beach Country Club Planned Community (PC-47) Coastal Zone District.
6. A public hearing was held on September 8, 2022 in the City Council Chambers, located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act"), California Government Code Section 65867 and Section 15.45.050 (Public Hearing-Notice) of the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. On March 27, 2012, the Newport Beach City Council approved Mitigated Negative Declaration No. ND2010-008 (SCH 2010091052) and an Errata to Mitigated Negative Declaration No. ND2010-008 (together referred to as "MND") that addressed the potential environmental effects associated with the Approved Project. The MND was prepared in compliance with the California Environmental Quality Act as set forth in Section 21000 *et seq.* of the California Public Resources Code ("CEQA"), the State CEQA Guidelines set forth in Title 14, Division 6, Chapter 3 of the California Code of Regulations, ("CEQA Guidelines"), and City Council Policy K-3.
2. Pursuant to Section 21166 of the California Public Resources Code and Section 15162 of the CEQA Guidelines, when a negative declaration adopted for a project, no subsequent negative declaration 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 negative declaration 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 negative declaration 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 negative declaration was adopted as complete, shows any of the following:
 - i. The project will have one or more significant effects not discussed in the previous negative declaration.
 - ii. Significant effects previously examined will be substantially more severe than shown in the adopted negative declaration.
 - 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 negative declaration would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.
 3. Although the Project necessitates an amendment to the General Plan due to the increased number of hotel rooms and tennis courts, there are no proposed changes to the land uses permitted per the General Plan land use designation. Additionally, based on the changes associated with the Project, there are no conditions that would require the preparation of a subsequent or supplemental MND. As a result, an Addendum to the MND was prepared pursuant to Section 15162 (Subsequent EIRs and Negative Declarations) and 15164 (Addendum to an EIR or Negative Declaration) of the CEQA Guidelines.
 4. The following environmental topics were analyzed for the Project: Aesthetics, Air Quality, Biological Resources, Cultural Resources, Energy, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Noise, Population and Housing, Public Services, Recreation, Transportation, Utilities and Service Systems, and Wildfire. The Addendum includes analysis of new topics that were not included in the previous MND; specifically, it includes a new energy section and a new wildfire section. These additional analyses are appropriate for inclusion in the Addendum, but none result in new or increased significant impacts that would require preparation of a subsequent MND pursuant to Section 15162 of the CEQA Guidelines.

5. On the basis of the MND and entire environmental review record, the additional tennis court, hotel rooms, ancillary hotel uses, and conversion of three (3) single-family residences to condominium units will not result in any new significant impacts that were not previously analyzed in the MND. The Addendum confirms and provides substantial evidence that the potential impacts associated with this Project would either be the same or less than those described in the MND, or as mitigated by applicable mitigation measures in the MND. In addition, there are no substantial changes to the circumstances under which the Project would be undertaken that would result in new or more severe environmental impacts than previously addressed in either the MND, nor has any new information regarding the potential for new or more severe significant environmental impacts been identified. Therefore, in accordance with Section 15164 of the CEQA Guidelines, an addendum to the previously adopted MND is the appropriate environmental document for the Project. In taking action to approve any of the requested applications for the Project, the data presented in the MND, as augmented by the Addendum for this Project, are considered as part of the record.
6. The Addendum to the MND, is hereby recommended for adoption by the City Council given its analysis and conclusions. The Addendum to the MND and related referenced documentation, constitute the administrative record upon which this decision was based, are on file with the Planning Division, City Hall, 100 Civic Center Drive, Newport Beach, California.
7. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

SECTION 3. REQUIRED FINDINGS.

General Plan Amendment

An amendment to the 2006 Newport Beach General Plan Land Use Element is a legislative act. Neither Title 20 (Planning and Zoning) nor California Government Code Section 65000 *et seq.*, set forth any required findings for either approval or denial of such amendments.

Finding and Facts in Support of Findings:

1. As part of the Approved Project, the City Council adopted Resolution No. 2012-10, which authorized the conversion of 17 tennis courts to 27 hotel rooms along with the redevelopment of the Property. The Approved Project included a 3,725-square-foot tennis clubhouse and seven (7) tennis courts, five (5) single-family residential units, and a 27-room boutique hotel with a 2,200 square-foot concierge and guest meeting facility and a 7,500 square-foot spa and fitness center. The City Council found that the

conversion of tennis courts to hotel rooms is consistent with the General Plan based on the following:

- a. The Project provides revitalization to Newport/Fashion Island area where the General Plan encourages additional hotel development and housing units; and
 - b. The conversion does not create traffic impacts. At the time of the conversion, the 17 tennis courts generated 658 average daily trips based upon ITE Trip Generation Rates (7th edition), while the 27 hotel rooms generated 221 average daily trips, resulting in a net decrease of 389 daily trips.
2. The Project includes a GPA to amend the development limits for Anomaly 46. The development limits will be updated to reflect 27 hotel rooms which has been approved by the conversion of 17 un-used tennis courts and seven (7) remaining tennis courts, as part of the Approved Project. The GPA will also include the proposed 14 additional hotel rooms and one tennis court. Together, a total of 41 hotel rooms (27+14=41 rooms) and eight tennis courts will be included in Anomaly 46. No change to the 3,725-square-foot tennis clubhouse is proposed. The GPA does not include a change in land use designation and would remain as Mixed-Use Horizontal 3/Parks and Recreation (MU-H3/PR).
3. The Project GPA is consistent with the following City of Newport Beach General Plan Land Use policies, applicable to the Project (additional policy analysis is included in the MND Addendum attached hereto as Exhibit "A"):

- a. ***Land Use Element Policy LU1.1 (Unique Environment).*** *Maintain and enhance the beneficial and unique character of the different neighborhoods, business districts, and harbor that together identify Newport Beach. Locate and design development to reflect Newport Beach's topography, architectural diversity, and view sheds.*

The Project includes an amendment to the PC-47 District regulations on the Tennis Club site and reflects the proposed development on the Property. PC-47 will continue to guide development occurring within the Property. The development standards address building height, setbacks, landscaping, and architectural character. The standards are intended to ensure that the City's unique character is maintained through land use and architectural diversity.

- b. ***Land Use Element Policy LU1.2 (Citywide Identity).*** *While recognizing the qualities that uniquely define its neighborhoods and districts, promote the identity of the entire City that differentiates it as a special place within the Southern California region.*

The area in which the Property is located is characterized by a variety of residential, commercial, and recreational land uses that reflect a range of architectural styles, which contribute to the unique character of the City. The intensity and architectural character of the Project are compatible with the variety

of densities and styles within the area, which are consistent with the identity of the City. The architectural character of the Project, including the bungalow-style hotel rooms, detached residential units, and attached residential loft buildings, is consistent with the City's desire to differentiate Newport Beach from other coastal cities.

- c. **Land Use Element Policy LU2.1 (Resident-Serving Land Uses).** *Accommodate uses that support the needs of Newport Beach's residents including housing, retail, services, employment, recreation, education, culture, entertainment, civic engagement, and social and spiritual activity that are in balance with community natural resources and open spaces.*

The Project will continue to provide residents with recreational opportunities, culture, entertainment, and civic engagement. The proposed amendment remains supportive of recreational uses by providing one additional tennis court to the previously approved seven (7) courts. The amendment also includes an additional 14 hotel rooms to the previously approved 27-unit hotel development with additional hotel amenities for club members such as a Performance Therapy Center and Yoga Pavilion.

- d. **Land Use Element Policy LU.2.6 (Visitor Serving Uses).** *Provide uses that serve visitors to Newport Beach's ocean, harbor, open spaces, and other recreational assets, while integrating them to protect neighborhoods and residents*

The Project provides visitors with an updated recreational facility as it includes a new tennis clubhouse and eight (8) tennis courts, which includes a stadium size court. The tennis club is adjacent to a golf course with amenities and is within 2,000 feet from the Newport Bay. The proposed 41 hotel rooms provide additional opportunities for visitors to enjoy the tennis club and nearby recreational activities.

- e. **Land Use Element Policy LU3.2 (Growth and Change).** *Enhance existing neighborhoods, districts, and corridors, allowing for reuse and infill with uses that are complementary in type, form, scale, and character. Changes in use and/or density/intensity should be considered only in those areas that are economically underperforming, are necessary to accommodate Newport Beach's share of projected regional population growth, improve the relationship and reduce commuting distance between home and jobs, or enhance the values that distinguish Newport Beach as a special place to live for its residents. The scale of growth and new development shall be coordinated with the provision of adequate infrastructure and public services, including standards for acceptable traffic level of service.*

The character of the tennis club, hotel development, and residential units are compatible with the existing land uses and development intensities of the surrounding area. Although the additional 14 hotel rooms and one (1) tennis court

requires amendments to adopted plans and regulations, the existing tennis club and hotel development that are the substance of the Approved Project are allowed under the existing General Plan. The Project has been designed to be compatible with the existing residential, commercial, and recreational uses located within the vicinity of the project site. In addition, the surrounding area is adequately served by existing infrastructure, including circulation, water, sewer, and storm drainage systems. As a result, the implementation of the Project will not adversely affect those systems or the provision of adequate service to nearby development.

- f. **Land Use Element Policy LU3.3 (Opportunities for Change).** *Provide opportunities for improved development and enhanced environments for residents in the following districts and corridors, as specified in Policies 6.3.1 through 6.22.7: Fashion Island/Newport Center: expanded retail uses and hotel rooms and development of residential in proximity to jobs and services, while limiting increases in office development.*

The Project provides enhancement to the Property, which is currently being used exclusively as a tennis club, to include 41 hotel rooms and ancillary uses, and five residential units. The Project retains a total of eight tennis courts and the reconstruction of the Tennis Clubhouse. The Project will be utilized as a recreational facility for residents, guests, and club members.

- g. **Land Use Element Policy LU4.1 (Land Use Diagram).** *Accommodate land use development consistent with the Land Use Plan.*

The Project is consistent with the designation of the General Plan Land Use Element, which designates the Property as MU-H3/PR. The Property is located within Anomaly 46, which allocates 24 tennis courts with residential permitted in accordance with the MU-H3 designation. The GPA includes an amendment to the Development Limit (Other) of Anomaly 46, to reduce the number of tennis courts to eight (8) and to include 41 hotel rooms.

- h. **Land Use Element Policy LU5.1.2 (Compatible Interfaces).** *Require that the height of development in nonresidential and higher-density residential areas transition as it nears lower-density residential areas to minimize conflicts at the interface between the different types of development.*

Although the Property is not located adjacent to lower density residential development, the Project has been designed to respect the proximity of the existing residential development adjacent to the Property. The amended PC-47 prescribes maximum building heights and setback requirements for each of the development components to ensure land use compatibility. Building heights for the proposed structures will range from 46 feet for the attached residential loft buildings, 39 feet for the detached residential units, 31 feet for the hotel rooms, and 30 feet for the tennis clubhouse, which are within the maximum 50-foot building height allowed by PC-47.

- i. **Land Use Element Policy LU (5.3.3).** *Require that properties developed with a mix of residential and non-residential uses be designed to achieve high levels of architectural quality in accordance with Policies 5.1.9 and 5.2.1 and planned to assure compatibility among the uses and provide adequate circulation and parking. Residential uses should be seamlessly integrated with non-residential uses through architecture, pedestrian walkways, and landscape. They should not be completely isolated by walls or other design elements.*

The Project includes one additional tennis court to the tennis club, 41 hotel rooms, two (2) single family residences, and three (3) residential condominium units. The Project provides adequate parking for each of the proposed uses. Vehicular and pedestrian circulation has been designed to accommodate the residents, as well as guests and members of the tennis club and hotel development. The architectural character of the uses is defined in PC-47 to ensure that compatibility between proposed uses and the surrounding area is maintained.

- j. **Land Use Element Policy LU5.3.4 (Districts Integrating Residential and Nonresidential Uses).** *Require that sufficient acreage be developed for an individual use located in a district containing a mix of residential and non-residential uses to prevent fragmentation and assure each use's viability, quality, and compatibility with adjoining uses.*

Each of the uses has been designed to complement the overall Project. The uses are connected by the vehicular and pedestrian circulation system, including sidewalks and pedestrian pathways. Land use compatibility is achieved through a common landscape theme and design guidelines in PC-47 to ensure that the architectural integrity of the Project is not compromised.

- k. **Land Use Element Policy LU6.14.2 (Newport Center).** *Provide the opportunity for limited residential, hotel, and office development in accordance with the limits specified by Tables LU1 and LU2.*

The Project has a mix of land uses including single-family residential, attached residential condominiums, recreational tennis club facilities, and visitor-serving commercial uses. These uses are permitted in Table LU1 under the MU-H3/PR land use designation. The GPA proposes to amend the development limits of Table LU2 to include eight (8) tennis courts and 41 hotel rooms.

- l. **Land Use Element Policy LU6.14.6 (Pedestrian Connectivity and Amenity).** *Encourage that pedestrian access and connections among uses within the district be improved with additional walkways and streetscape amenities concurrent with the development of expanded and new uses.*

The Project provides for both pedestrian and vehicular access within the Property. Sidewalks and pedestrian pathways are incorporated into the circulation system that are intended to accommodate pedestrians utilizing the

tennis club, hotel facilities, and future residents. A landscape plan has been provided which includes plant materials that are intended to reflect and complement the existing character within the project area.

4. Pursuant to California Government Code Section 65352.3 (SB18), a local government is required to contact the appropriate tribes identified by the Native American Heritage Commission ("NAHC") each time it considers a proposal to adopt or amend the General Plan. If requested by any tribe, the local government must consult for the purpose of preserving or mitigating impacts to cultural resources. The City received comments from the NAHC indicating that twelve (12) tribal contacts should be provided notice regarding the proposed amendment. The tribal contacts were provided notice on June 9, 2022. California Government Code Section 65352.3 requires notification 90 days prior to Council action to allow tribal contacts to respond to the request to consult. The Project will not be heard by the City Council until the 90-day period expires on September 7, 2022.

423 Charter Analysis

Finding:

Charter Section 423 requires voter approval of any major General Plan amendment to the General Plan. A major General Plan amendment is one that significantly increases allowed density or intensity by 40,000 square feet of non-residential floor area, increases traffic by more than 100 peak hour vehicle trips (AM/PM), or increases residential dwelling units by 100 units. These thresholds apply to the total of increases resulting from the amendment itself, plus 80 percent of the increases resulting from other amendments affecting the same neighborhood (defined as a Statistical Area as shown in the General Plan Land Use Element) and adopted within the preceding ten years.

Council Policy A-18 (Guidelines for Implementing Charter Section 423) requires that proposed amendments to the General Plan be reviewed to determine if a vote of the Newport Beach electorate would be required. This policy includes a provision that all General Plan amendments be tracked as "Prior Amendments" for ten (10) years to determine if minor amendments in a single Statistical Area cumulatively exceed the thresholds indicated above.

Facts in Support of Findings:

1. The Property is within Statistical Area L1. Prior amendments within the past ten (10) years are Vivante Senior Housing and Residences at Newport Center. Charter Section 423 counts 80 percent of prior increases, which results in a cumulative increase of 94 dwelling units, 23 AM trips, and 43 PM trips between both projects. There were no square footage increases.
2. The GPA results in an increase of 14,000 square feet (at the rate of 1,000 square feet per hotel unit) of non-residential floor area, 9.51 AM trips, and 12.42 PM trips. When combined with 80 percent of the prior increases, this results in cumulative increases of 14,000 square feet of non-residential floor area, 32.51 AM trips, and 55.42 PM trips. As

none of the thresholds specified by Charter Section 423 are exceeded, no vote of the electorate is required if the City Council chooses to approve the GPA.

Local Coastal Program Amendment

Finding:

As set forth in Section 30500 of the California Public Resources Code, the California Coastal Act requires each county and city to prepare a local coastal program ("LCP") for that portion of the Coastal Zone within its jurisdiction. The California Coastal Commission effectively certified the City's LCP Implementation Plan on January 13, 2017, and the City of Newport Beach ("City") added Title 21 (Local Coastal Program Implementation Plan) ("Title 21") to the NBMC whereby the City assumed coastal development permit-issuing authority as of January 30, 2017.

Facts in Support of Findings:

An amendment to Title 21 is necessary to revise Section 21.26.055(S), specifically referring to the Newport Beach Country Club Planned Community (PC-47) development standards of the "Tennis Club", "The Villas", and "The Bungalows":

1. Tennis Club - The LCPA increases the density and intensity limit for the number of tennis courts from seven (7) to eight (8) courts. The additional tennis court increases the minimum required parking from 28 spaces to 32 spaces. There is no change to the 3,725-square-foot limit for the Tennis Clubhouse.
2. The Residential (Villas) - The number of residential units remains unchanged. However, the LCPA converts three (3) of the five (5) single-family residences to attached residential condominium units. Therefore, the amendment revises the density and intensity limit for The Villas from five (5) to two (2) single family residences and removes previous development standards for Villas C, D, and E. The LCPA also includes new development standards for attached residential condominiums, which have a density limit of three (3) units and maximum gross floor area of 15,035 square feet. The maximum height allowed for the attached residential buildings is 46 feet. The buildings are required to be set back five (5) feet from any property line. The remaining single-family residences require a minimum of two enclosed parking spaces and one guest parking space per unit, while the proposed attached condominiums require a minimum of three enclosed parking spaces and one guest parking space per unit.
3. The Hotel (Bungalows) - The LCPA revises the density and intensity limits for the bungalows from 27 to 41 short-term guest rental rooms. Additionally, the maximum allowable gross floor area increases from 28,300 to 47,484 square feet. Square footage for ancillary hotel uses are also included. A minimum of one (1) space per hotel unit is required.
4. The LCPA is consistent with other applicable land use policies of the Coastal Land Use Plan as provided below:

- a. ***Coastal Land Use Element Policy 2.1.2-1 (District/Corridor Policies).*** *Development in each district and corridor shall adhere to policies for land use type and density/intensity contained in Table 2.1.1-1, except as modified in Sections 2.1.3 to 2.1.8.*

The MU-H/PR designation allows horizontally-distributed mix of uses, which may include general or neighborhood commercial, commercial offices, multi-family residential, visitor-servicing and marine-related uses, buildings that vertically integrate residential with commercial uses, and active public or private recreational uses, including parks, golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities.

The Project is consistent with the land use designation on the adopted Coastal Land Use Plan, which designates the subject property MU-H/PR (Mixed Use Horizontal/Parks & Recreation). The Project includes a mixture of uses which include a tennis club and eight (8) tennis courts, a 41-unit hotel development and ancillary uses, and five (5) residential units. All of these uses are intended to provide an updated recreational facility to serve the residents and visitors of the City. Additionally, the residential units will supplement the City's housing supply.

- c. ***Coastal Land Use Element Policy 2.1.8-1 (Balboa Bay Tennis Club).*** *Allow the horizontal intermixing of short-term rental units and single-family homes with the expanded tennis club faculties. Permitted uses include those permitted by the MU-H and PR categories.*

The Project includes the mix of 41 hotel rooms with five (5) residential units, which consists of two (2) single-family residences and three attached condominium units. The hotel and residential uses are consistent with both the MU-H and PR categories.

5. Pursuant to Section 13515 of the California Code of Regulations Title 14, Division 5.5, Chapter 8, drafts of the LCPA were made available and a Notice of Availability was distributed on August 1, 2022 at least six (6) weeks prior to the anticipated final action date.

Planned Community Development Plan Amendment

The Property has a zoning designation of PC-47, which was adopted in 1997 by Ordinance 97-10 as a part of the City-wide amendment to the districting maps in order to be consistent with the 1988 General Plan Land Use Element and Zoning Code. Development regulations through a Planned Community District Development Plan was not adopted when the PC District zoning designation was assigned to the Property.

On March 27, 2012, the City Council adopted a Planned Community Development Plan (PCDP), which is the zoning document to PC-47 to provide use regulations, density and intensity of the proposed uses, and very specific development regulations (building height,

square footage, setbacks, and parking standards). The PCDP included architectural styling and a complete internal vehicular and pedestrian circulation system for both the Golf and Tennis Club sites. PC-47 also includes site development review regulations to ensure new development proposals within the Newport Beach Country Club are consistent with the goals and policies of the General Plan, provisions of PC-47, and the approved Development Agreement.

Findings:

An amendment to PC-47, which is the zoning document for the Property, is a legislative act. Neither PC-47, Chapter 20.66 (Planning and Zoning, Amendments) and Chapter 20.56 (Planning and Zoning, Planned Community District Procedures) of Title 20 (Planning and Zoning) of NBMC, or Article 2 (Adoption of Regulations) of Chapter 4 (Zoning Regulations) of Division 1 (Planning and Zoning) of Title 7 (Planning and Land Use) of the California Government Code set forth any required findings for either approval or denial of such amendments.

Facts in Support of Findings:

The proposed amendment to PC-47 to allow an additional 14 hotel rooms and ancillary uses, one tennis court, and the conversion of three of five single-family dwelling units to condominiums is consistent with the intent of PC-47 and the purpose of Planned Community Districts as specified in NBMC Section 20.56.010 (Planning and Zoning, Planning Community District Procedures, Purpose) for the following reasons:

1. The Project is consistent with the intent and purpose of PC-47 in that the tennis club, hotel, and residential uses and their development standards have already been allowed and in place on the Property. The proposed changes to the building height, setbacks, and parking standards in order to accommodate the Project are within the development standards in place for the Approved Project.
2. PC-47 provides guidelines for architectural design to include coordinated and cohesive architecture which exhibits quality that is keeping with the surrounding area in Newport Center. The Project includes additional hotel rooms and two (2) attached residential condominium loft buildings. The proposed additions have consistent architecture with the Approved Project, which has cohesive architectural features that include smooth plaster exterior siding, clay-tile roofs, and stone veneer exterior accent finishes.
3. PC-47 permits structures to be a maximum of 50 feet in height. The Project includes two (2) attached residential condominium loft buildings which features condominiums on the third level atop of a two (2)-level hotel building. The loft buildings are proposed at a maximum of 46 feet high and comply with the height limit. All other structures are consistent with the maximum heights prescribed in PC-47.

Site Development Review Amendment

On January 24, 2012, the City Council approved Site Development Review No. SD2011-002, which authorized the construction of Approved Project. The proposed changes to the Approved Project, necessitate the SDA.

In accordance with Section 4.0 of PC-47 (Site Development Review), the following findings and facts in support of such findings are set forth:

Finding:

- A. *The Site Development Plan shall be in compliance with all other provisions of the Newport Beach Country Club Planned Community Development Plan.*

Facts in Support of Finding:

1. PC-47 requires that a site development review process to be completed for construction of any new major building structure located on the subject site and would require consideration and approval by the Planning Commission prior to the issuance of grading or building permits. An amendment to the previously approved site development review has been submitted for the Property and meets provisions stated in the draft PCDP and thereby meets the intent specified in Section 20.52.080 (Planning and Zoning, Permit Review Procedures, Site Development Reviews) of the NBMC.
2. The Project includes an amendment to the PC-47 to incorporate revisions to the Approved Project. These revisions include the addition of one (1) tennis court, the addition of 14 hotel rooms, and the conversion of three (3) single-family residences to residential condominium units. Should the PC-47 amendment be approved, the SDA complies with all provisions of the PC-47, as the proposed development complies with all development criteria specified in the PC-47 in order to provide a coordinated, cohesive, and comprehensive large-scale planning project.

Finding:

- B. *The Site Development Plan shall be compatible with the character of the neighboring uses and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City.*

Fact in Support of Finding:

The architecture, landscaping components, circulation design, and all other project components reflected in the SDR are compatible with the character of the neighboring uses and surrounding sites. The additional 14 hotel rooms and attached residential condominium buildings are of similar architectural style to the Approved Project's bungalow-styled rooms. As a result, the Project is not detrimental to the orderly and harmonious development of the surroundings and the City.

Finding:

- C. *The Site Development Plan shall be sited and designed to maximize of aesthetic quality of the Newport Beach Country Club Planned Community Development Plan as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on East Coast Highway.*

Facts in Support of Finding:

1. The Property is separated from East Coast Highway by a commercial office plaza which comprises of three two-story office buildings (1200 Newport Center Drive). The office plaza includes landscaping along East Coast Highway with trees and various plantings. The Newport Beach Country Club golf clubhouse is located approximately 150 feet west of the Property. Additionally, the Property is approximately 250 feet from East Coast Highway and is not visible to motorists travelling on the street.
2. The Project is designed consistent with the Approved Project's architectural style with landscaping, circulation, signage and other components which visually connect the tennis clubhouse and attached residential structures to the smaller structures such as the hotel rooms and single-family residences. Therefore, the aesthetic quality of PC-47 is continued to be maximized as viewed from the surrounding roadways and properties.
3. The Project seeks to add additional hotel rooms, ancillary hotel uses, and attached residential buildings to the Property. However, the overall footprint of the Approved Project is not expanding and will not affect the mass of the Project as viewed from surrounding roadways and properties.

Finding:

- D. *Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.*

Facts in Support of Finding:

1. The site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping, and other site features maximizes the functionality of the proposed uses, while avoiding conflicts between uses and activities. The Project's multiple components (tennis club, residential, and hotel) have been designed and sited to function cohesively not only with each other, but also with the adjacent existing golf course uses.
2. The Project promotes additional functionality between residential and hotel components, as residential condominiums are attached to hotel rooms in two (2) separate loft buildings. Underground parking is provided in the loft buildings, with additional street parking and parking lots to serve hotel and tennis club guests. Each of the two (2) single-family residences provide a two (2)-car garage to serve its residents.

Coastal Development Permit Amendment

On April 10, 2013, the California Coastal Commission, which had permitting jurisdiction for coastal development permits at the time, issued a notice of intent to issue CDP No. 5-12-160 for the Approved Project. A one (1)-year extension was granted on June 2, 2015. However, the CDP subsequently expired. The City obtained CDP permitting authority in January of 2017. On November 20, 2018, the City's Zoning Administrator approved the CDP, which authorized the redevelopment of the Approved Project. The Project requires an amendment to the previously approved CDP.

In accordance with Section 21.52.015(F) (Local Coastal Program Implementation Plan, Coastal Development Review Procedures, Coastal Development Permits, Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

E. *Conforms to all applicable sections of the certified Local Coastal Program.*

Facts in Support of Finding:

1. The Coastal Land Use Plan designates the Tennis Club site as Mixed-Use Horizontal/Parks and Recreation (MU-H/PR). Policy 2.1.8-1 of the Coastal Land Use Plan allows the horizontal intermixing of hotel rooms, single-family residences, attached residential condominiums, and tennis club facilities on the project site (formerly known/referenced as the Balboa Bay Tennis Club). Permitted uses include those permitted by the MU-H and PR land use designations. A complete consistency analysis of each of the applicable Coastal Land Use Plan policies is included in Table 11 of the Land Use and Planning Section of the previously adopted Mitigated Negative Declaration (MND), pages 82 through 87, as well as in Table 5-5 of the Land Use and Planning Section of Addendum to the MND. Furthermore, facts have been provided in this Resolution which support the proposed amendment to the Local Coastal Program Implementation Plan. In summary, the proposed project is consistent with the Coastal Land Use Plan.
2. The MU-H coastal land use designation identifies a maximum density/intensity limit of 1.5 floor area ratio ("FAR"), with a minimum FAR of 0.25 and a maximum FAR of 0.5 for retail uses and a maximum of 1.0 for residential. The Project proposes 65,595 square feet of nonresidential floor area (approximately 0.21 FAR) for the hotel rooms, concierge & guest center, and ancillary hotel uses which include a performance therapy center, yoga pavilion, office, common area, and a spa and fitness center. Additionally, five (5) residential dwelling units totaling 20,653 square feet (approximately 0.06 FAR). The proposed density/intensity of the hotel and single-family units comply with the FAR limitations identified in the Coastal Land Use Plan.
3. The PR category applies to land used or proposed for active public or private recreational use. Permitted uses include parks (both active and passive), golf courses,

marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities. The PR designation on this site is applicable to the existing and proposed private tennis club and tennis courts. The density/intensity limitations include incidental buildings, such as maintenance equipment sheds, supply storage, and restrooms, not included in determining intensity limits. The proposed tennis club and ancillary uses are consistent with this land use designation.

4. The Property is part of the 145-acre planned community (PC-47), which has been adopted to regulate developments within the Property and the adjacent Golf Club Site, and is in conformance with the Coastal Land Use Plan designation pursuant to Section 21.26.055(S)(2) of the Local Coastal Program Implementation Plan.
5. The Project conforms to all applicable development standards in the proposed amendment to PC-47, including density/intensity, setbacks, building heights, and parking.
6. The Property is not located in an area known for the potential of seismic activity or liquefaction. All projects are required to comply with the California Building Code ("CBC") and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of a building permit. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
7. Elevations on the Property range from 104 feet up to 120 feet North American Vertical Datum of 1988 (NAVD88) above mean sea level. These site elevations are well above projected sea level rise in Newport Bay for the next 75 years and the site is not subjected to other coastal hazards.
8. The Project is required to develop and implement a Stormwater Pollution Prevention Plan ("SWPPP") since the Project involves clearing, grading, and ground disturbance of more than one acre. Pursuant to Section 21.35.030 (Local Coastal Program Implementation Plan, Water Quality Control, Construction Pollution Prevention Plan) of the NBMC, when a SWPPP is required, a Construction Pollution Prevention Plan ("CPPP") is required to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived from construction chemicals and materials. A CPPP has been prepared and will be reviewed by the City's Engineer Geologist prior to issuance of grading/building permits for site grading. Construction plans and activities will be required to adhere to the approved CPPP/SWPPP.
9. A Water Quality and Hydrology Plan (WQHP) is required Pursuant to Section 21.35.050 (Local Coastal Program Implementation Plan, Water Quality Control, Water Quality and Hydrology Plan) of the NBMC since the Project is considered a development of water quality concern and includes the development of five dwelling units, more than 10,000 square feet of impervious surface area, and a parking area in excess of 5,000 square feet. The WQHP/WQMP will be reviewed and approved by the City's Engineer Geologist

prior to the issuance of building permits for site grading. The WQHP/WQMP includes a polluted runoff and hydrologic site characterization, a description of site design BMP's, and documentation of the expected effectiveness of the proposed BMPs. Construction plans will be reviewed for compliance with the approved WQHP/WQMP prior to building permit issuance.

10. An Analysis of the Fiscal and Economic Impacts was prepared on August 29, 2022, by Kosmont Companies to analyze the construction of new visitor accommodations in the coastal zone in accordance with the requirements of Section 21.48.025 (Local Coastal Program Implementation Plan, Standards for Specific Land Uses, Visitor Accommodations) of the NBMC. The report provides a feasibility analysis stating that the anticipated average daily room rate for all 41 rooms is approximately \$920 and the statewide average daily room rate is \$205.69. Therefore, the proposed accommodations are not considered lower cost accommodations. The report considers the specific location of the Property as an inappropriate location for low cost accommodations. Additionally, low cost accommodations are not feasible due to prohibitive land and construction costs. The Property does not currently provide accommodations of any kind and implementation of the Project would not impact low-cost accommodations. While the Project does not include any lower cost rooms, and the Local Coastal Program Implementation Plan defines it as an impact, there is no impact on the provision of lower-cost visitor accommodations in the Coastal Zone. The Project features larger guest facilities to accommodate a higher occupancy per room, kitchens in a majority of the hotel rooms, and separate living rooms with sofa beds, all which offset higher costs of accommodations.

Finding:

- F. *Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

Fact in Support of Finding:

1. The Property is not located between the nearest public road and the sea or shoreline. The Property will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities. Vertical access to Newport Bay is available via existing public access at 1601 Bayside Drive, which is located approximately 1,600 feet southwest of the subject property.
2. Coastal Land Use Plan, Policy 4.4.1-6 and Figure 4-3 (Coastal Views) identify the closest public view road as Newport Center Drive, located approximately 170 feet east of the Property and the closest public viewpoint as Irvine Terrace Park, located 525 feet south of the Property. Coastal views from these view corridors and viewpoints are directed toward the Newport Bay and the Pacific Ocean. Since the Property is located to the north of Irvine Terrace Park, the Project will not affect coastal views due to its orientation. From Newport Center Drive, there is a zero to 40-foot grade difference to the project area below. The maximum height allowed in PC-47 is 46 feet for the attached

condominium lofts, 39 feet for the two (2) single-family residences, 30 feet for the tennis clubhouse, and 31 feet for the hotel rooms. Therefore, the majority of the Project would sit below the existing grade elevations along Newport Center Drive, minimizing the visibility of the project site and would not obstruct public coastal views. During construction, construction equipment would be obscured by vegetation and the grade differential so it would not obstruct coastal views from motorists traveling along Newport Center Drive. The Project will not impact coastal views.

Vesting Tentative Tract Map Amendment

On January 24, 2012, the City Council approved Vesting Tentative Tract Map No. 15347, which authorized the creation of seven separate lots for the tennis club, 5 single-family residences, and 27 hotel rooms, and lettered lots for common areas and a private street. The Applicant proposes an amendment to the vesting tentative tract map to accommodate the Project, which consists of two (2) single-unit residential dwellings, three (3) residential condominiums, 41 hotel rooms, a tennis clubhouse, their common open space areas and a private street to support the proposed uses. The VTMA reflects the combination of two (2) previously divided lots which were intended for two (2) detached single-family residences. This results in the elimination of one lot for a total of six (6) separate lots. No changes to the lots created for common areas and a private street are proposed. The map of the VTMA has also been modified to include residential condominium portion of the Project.

In accordance with Section 19.12.070 (Subdivisions, Tentative Map Review, Required Findings for Action on Tentative Maps) of the Newport Beach Municipal Code, and the following finding and facts in support of such findings are set forth:

Finding:

- A. *That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

Facts in Support of Finding:

1. The Project is consistent with the MU-H3/PR General Plan designation of the site.
2. The Public Works Department has reviewed the proposed revisions to the approved vesting tentative tract map and determined it is consistent with the Title 19 and applicable requirements of the Subdivision Map Act.
3. Conditions of approval have been included to ensure compliance with Title 19.

Finding:

- B. *That the site is physically suitable for the type and density of development.*

Facts in Support of Finding:

1. The Property is entirely developed and does not support any environmental resources.
2. The Property is located in the Newport Center and Fashion Island area. The Property is currently improved with a private tennis club. Given its location, this site is ideal for the development of a recreation and mixed-use project as allowed by the General Plan Land Use Element.

Finding

- C. *That the design of the subdivision or the proposed improvements will not cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Fact in Support of Finding:

An Addendum to the MND has been prepared and concludes that no significant environmental impacts will result with the Project development of the Property in accordance with the proposed subdivision map revision.

Finding:

- D. *That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

Facts in Support of Finding:

1. The VTMA is required for the subdivision of parcels in order to accommodate the development of the tennis club and courts, two (2) single-unit residential dwellings, and 41 hotel rooms on the Property. All construction for the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 of the NBMC and Section 66411 of the Subdivision Map Act. Compliance with all ordinances of the City and all Conditions of Approval for the Project will ensure that the Project will not cause any serious health problems.
2. All mitigation measures will be implemented as outlined in the Addendum to the MND to ensure the protection of the public health.
3. No evidence is known to exist that would indicate that the planned subdivision pattern will generate any serious public health problems.

Finding:

- E. *That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the decision-making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to easements previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Facts in Support of Finding:

1. The design of the Project will not conflict with any easements acquired by the public at large for access through or use of property within the Property.
2. An easement through the Property will be retained by the City to sewer and utilities purposes.
3. No other public easements for access through or use of the Property have been retained for use by the public at large.

Finding:

- F. *That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Fact in Support of Finding:

The Property is not subject to the Williamson Act since the Property is not considered an agricultural preserve and is less than 100 acres.

Finding:

- G. *That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (a) there is an adopted specific plan for the area to be included within the land project; and (b) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding:

1. The Property is not a "land project" as defined in Section 11000.5 of the California Business and Professions Code.
2. The Property is not located within a specific plan area.

Finding:

- H. *That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Fact in Support of Finding:

The VTMA and improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

- I. *That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.*

Facts in Support of Finding:

1. The proposed amendment to Vesting Tentative Tract Map is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need. The Project does not involve the elimination of residential rooms and therefore will not affect the City's ability to meet its share of housing needs.
2. Public services are available to serve the Project and the Addendum to the MND prepared for the Project indicates that the project's potential environmental impacts are properly mitigated.

Finding:

- J. *That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Facts in Support of Finding:

1. Waste discharge into the existing sewer system will be not violate Regional Water Quality Control Board (RWQCB) requirements.

2. Sewer connections have been conditioned to be installed per City Standards, the applicable provisions of Chapter 14.24 (Sewer Connection, Permits), and the latest revision of the Uniform Plumbing Code.

Finding:

- K. *For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

Facts in Support of Finding:

1. The Property is located in the Coastal Zone and subject to a coastal development permit.
2. The Property does not have access to any beaches, shoreline, coastal waters, tidelands, coastal parks or trails.
3. Facts in support of Findings E and F are hereby incorporated by reference.

Limited Term Permit

In accordance with Section 20.52.040 (Planning and Zoning, Permit Review Procedures, Limited Term Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The operation of the limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use;*

Facts in Support of Finding:

1. The limited term permit will allow two (2) temporary modular trailers and portable toilets. Both modular trailers are approximately 33 feet long and 13 feet wide. One (1) modular trailer is proposed to be used as a construction office located at the southwest portion of the Property and will be staged at this location through the entire duration of the Project. The second modular office is proposed to be used as a temporary office for tennis club operations and will be located on the easterly portion of the Property through the construction phase of the project (approximately 16 months after construction begins). The portable toilets are proposed to serve the temporary tennis club office and located nearby.

2. The operation of the temporary modular trailers is proposed to exceed 90 days from the date of the permit. The construction office is proposed to be staged for the duration of all construction activities, which is estimated to be approximately 20 months. The tennis club office is proposed to be staged for approximately 16 months, and will be removed upon completion of the Project.

Finding:

- B. *The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;*

Facts in Support of Finding:

The Property is approximately seven (7) acres in size. Based on the construction phasing plan, there is adequate area to accommodate the proposed modular trailers and portable toilets throughout the various phases of construction. The construction trailer will be located within an area which is fenced off from public view and access.

Finding:

- C. *The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate;*

Facts in Support of Finding:

1. The Property has an existing parking lot with two (2) entrances currently taken from Clubhouse Drive, which has a westerly outlet to East Coast Highway and an easterly outlet to Granville Drive and Newport Center Drive.
2. During the various phases of construction, the easterly entrance to the parking lot will remain available to the public for parking and will provide direct access for the modular office trailer and portable toilets, while the westerly entrance will be for construction access only. The construction trailer is intended for construction use only and not for the public. There are no traffic issues anticipated.

Finding:

- D. *Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator; and*

Facts in Support of Finding:

1. The proposed trailers will not create additional parking demand since it will be utilized as offices for construction activities and employees displaced during the renovation of the tennis clubhouse.
2. A portion of the existing parking lot will remain, with access available on the easterly side of the lot from Granville Drive and Newport Center Drive. The remaining parking lot provides adequate parking for employees and members of the tennis club.

Finding:

- E. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.*

Facts in Support of Finding:

1. The temporary trailers are conditioned to comply with all applicable provisions of the General Plan, Municipal Code, and other City regulations.
2. The Property is not located within a specific plan area.

Development Agreement Amendment

On March 27, 2012, the City Council of the City of Newport Beach ("City") adopted Ordinance No. 2012-3 approving Development Agreement No. DA2008-001 ("Agreement") between the City and the Applicant for the Approved Project. The Agreement was executed and recorded, as document number 2014000036369 on January 29, 2014, with a ten-year term.

On July 12, 2022, the City Council adopted Ordinance No. 2022-16, approving First Amendment to Agreement to extend the term of the Agreement by one (1) year.

Finding:

In accordance with Section 15.45.020(A)(2)(c) (Buildings and Construction, Development Agreement, Development Agreement Required) of the NBMC, an amendment to the DA is required as the Project, which includes an amendment to PC-47 and a General Plan Amendment to increase the number of hotel rooms from 27 to 41 rooms, which is new non-residential development in Statistical Area L1 (Newport Center/Fashion Island). Additionally, the Applicant requests an additional 10-year term of Agreement, pursuant to Section 15.45.070 (Buildings and Construction, Development Agreement, Amendment/Cancellation) of the NBMC. The Second Amendment to the Agreement satisfies the requirements of Chapter 15.45 (Buildings and Construction, Development Agreements) of the NBMC as follows:

Facts in Support of Finding:

1. The Second Amendment provides assurance that the Applicant may proceed with the Project in accordance with existing policies, rules and regulations, and conditions of approval. Additionally, the Second Amendment to the Agreement helps the Applicant avoid a waste of resources and escalated costs of the Project while encouraging a commitment to private participation in comprehensive planning.
2. The Second Amendment to the Agreement specifies the term of Agreement to be extended for a period of ten (10) years, as well as the updated permitted uses, density and intensity, and maximum height and size of proposed buildings, consistent with the Approved Project. Additionally, the Second Amendment to the Agreement includes all mandatory elements, including public benefits that are appropriate to support conveying the vested development rights consistent with the City's General Plan, NBMC, and Government Code Sections 65864 *et seq.*
3. Public benefits include the payment of ninety-three thousand dollars (\$93,000) per each residential dwelling unit and ten dollars (\$10) per square foot of construction for the tennis clubhouse.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby recommends the followings to the City Council:
 - a. Adopt Mitigated Negative Declaration Addendum No. ND2022-001 to Mitigated Negative Declaration No. ND2010-008 and Errata to Mitigated Negative Declaration No. ND2010-008 (SCH 2010091052), as depicted in Exhibit "A";
 - b. Approve General Plan Amendment, as depicted in Exhibit B;
 - c. Approved Local Coastal Program Implementation Plan Amendment; as depicted in Exhibit C
 - d. Approve Planned Community Development Plan Amendment, as depicted in Exhibit D;
 - e. Approve amendment to Major Site Development Review No. SD2011-002, with conditions of approval as depicted in Exhibit F;
 - f. Approve amendment to Coastal Development Permit No. CD2017-039 with conditions of approval as depicted in Exhibit F;
 - g. Approve amendment to Vesting Tentative Tract Map No. NT2005-003, with conditions of approval as depicted in Exhibit F

- h. Approve amendment to Limited Term Permit No. XP2011-004, with conditions of approval as depicted in Exhibit F; and
- i. Approve Second Amendment to Development Agreement No. DA2008-001, as depicted in Exhibit E.

PASSED, APPROVED, AND ADOPTED THIS 8TH DAY OF SEPTEMBER, 2022.

AYES: Ellmore, Harris, Kleiman, Lowrey, and Weigand

NOES: None

RECUSED: Weigand

ABSENT: Klaustermeier

BY: 

Lauren Kleiman, Chairman

BY: 

Mark Rosene, Secretary

EXHIBIT "A"

ADDENDUM TO MITIGATED NEGATIVE DECLARATION NO. ND2010-008 AND ERRATA TO
MITIGATED NEGATIVE DECLARATION NO. ND2010-008 (SCH NO. 2010091052)

Available separately due to bulk at:
www.newportbeachca.gov/ceqa

EXHIBIT "B"

GENERAL PLAN AMENDMENT TO ANOMALY NO. 46 OF TABLE LU2 OF THE 2006
NEWPORT BEACH GENERAL PLAN LAND USE ELEMENT

Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
46	L1	MU-H3/PR	3,725	8 Tennis Courts 41 Hotel Rooms*	Residential permitted in accordance with MU-H3 *27 rooms converted from 17 tennis courts per Council Resolution 2012-10 and 14 rooms per General Plan Amendment PA2022-260

EXHIBIT "C"
LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN AMENDMENT

**Local Coastal Program Implementation Plan Amendment Related to Development
Standards of the Tennis Club portion within the Newport Beach Country Club
Planned Community (PC-47) (PA2021-260)**

Amend Section 21.26.055.S (Newport Beach Country Club) of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code to read as follows:

- S. Newport Beach Country Club (PC-47).
 - 2. Tennis Club.
 - a. Density/intensity limit: ~~seven~~ **eight (8)** tennis courts; and three thousand seven hundred twenty-five (3,725) square foot clubhouse.
 - b. Height: thirty (30) feet for clubhouse.
 - c. Parking: ~~twenty-eight (28) spaces~~ **thirty-two (32) spaces**
 - 3. Residential.
 - a. Detached Residential (Villas)
 - i. Density/intensity limit: **two single-family dwelling units.**
 - ii. Development Standards:

Villa Designation	Villa A (TTM Lot #1)	Villa B (TTM Lot #2)
Lot Size	5,000 square feet minimum	
Lot Coverage (Maximum)	70%	65%
Building Height	39 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations	
Building Side Yard Setbacks	3 feet minimum	
Building Front and Rear Yard Setbacks	5 feet minimum	
Enclosed Parking Space for Each Unit	2	2
Open Guest Parking Space for Each Unit	One space - could be located on the private driveway – No overhang to the private street/cul-de-sac is allowed	

b. Attached Residential (Condominiums)

- i. Density/intensity limit: three (3) attached residential units.**
- ii. Setbacks: five (5) feet from any property line.**
- iii. Height: forty-six (46) feet (to be located atop of the 2-story hotel buildings).**
- iv. Parking: three (3) enclosed spaces and one guest space per dwelling unit.**

4. ~~(The Bungalows) Hotel~~

- a. Density/Intensity Limit: ~~forty-one (41) short-term guest rental units rooms.~~ The maximum ~~total~~ allowable gross floor area for the ~~hotel rooms~~ shall be ~~twenty-eight thousand three hundred (28,300)~~ **forty-seven thousand four hundred eighty-four (47,484)** square feet with a two thousand two hundred (2,200) square-foot concierge and guest center, **four thousand six hundred eighty-six (4,686)** square feet of ancillary hotel uses, and a seven thousand five hundred (7,500) square-foot spa facility.**
- b. Setbacks: five feet from any property line.**
- c. Height: thirty-one (31) feet.**
- d. Parking: ~~thirty-four (34) parking spaces.~~ **forty-one (41) parking spaces.****

EXHIBIT "D"

**NEWPORT BEACH COUNTRY CLUB PLANNED COMMUNITY DEVELOPMENT PLAN
AMENDMENT**

Newport Beach Country Club
Planned Community Development Plan

Adoption: March 27, 2012, Ordinance No. 2012-2

Amendment: ____, 2022, Ordinance No. __

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1.0 INTRODUCTION AND PURPOSE

The Newport Beach Country Club Planned Community District (the PCD) is composed of the Golf Club, Tennis Club, Bungalows and Villas facilities, totaling approximately 433 140 acres. The PCD has been developed in accordance with the Newport Beach General Plan and is consistent with the Local Coastal Land Use Plan.

The purpose of this PCD is to provide for the classification and development of coordinated, cohesive, comprehensive planning project with limited mixed uses, including the private ~~Ggolf Cclub~~, ~~Ttennis Cclub~~, ~~27 short-term rental units~~ **41-room boutique hotel** ~~called the Bungalows~~ with a spa/fitness area **center and ancillary uses**, and 5 ~~semi-custom single-unit residential dwellings~~ **units** ~~called the Villas~~.

Whenever the regulations contained in the PCD Regulations conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the PCD Regulations shall take precedence. The Newport Beach Municipal Code shall regulate all development within the PCD when such regulations are not provided within the PCD Regulations.

2.0 GENERAL CONDITIONS AND REGULATIONS

1. Alcoholic Beverage Consumption

The consumption of alcoholic beverages within the PCD shall be in compliance with the State of California Department of Alcoholic Beverage Control and the Newport Beach Municipal Code. A use permit shall be required if the establishment operates past 11:00 p.m. any day of the week and a minor use permit shall be required if the establishment operates until 11:00 p.m. any day of the week.

2. Amplified Music

All amplified music played after 10:00 p.m. within the PCD shall be confined within the interior of a building unless a Special Events Permit is obtained.

3. Archaeological/Paleontological Resources

Development of the site is subject to the provisions of City Council Policies K-5 and K-6 regarding archaeological and paleontological resources.

4. Architectural Design

All development shall be designed with high quality architectural standards and shall be compatible with the surrounding uses. The development should be well-designed with coordinated, cohesive architecture and exhibiting the highest level of architectural and landscape quality in keeping with the PCD's prominent location in the Newport Center Planning Area. Massing offsets, variation of roof lines, varied textures, openings, recesses, and design accents on all building elevations shall be provided to enhance the architectural style. Architectural treatments for all ancillary facilities (i.e. storage, truck loading and unloading, and trash enclosures) shall be provided.

5. Building Codes

Construction shall comply with applicable provisions of the California Building Code and the various other mechanical, electrical and plumbing codes related thereto as adopted by the Newport Beach Municipal Code.

6. Exterior Storage Areas

There shall be no exterior storage areas permitted with the exception of the greenskeeper/maintenance area which shall be enclosed by a minimum six-foot plastered block wall.

7. Flood Protection

Development of the subject property will be undertaken in accordance with the flood protection policies of the City.

8. Grading and Erosion Control

Grading and erosion control measures shall be carried out in accordance with the provisions of the Newport Beach Excavation and Grading Code and shall be subject to permits issued by the Community Development Department.

9. Gross Floor Area

Gross floor area shall be defined as the total area of a building including the surrounding exterior walls.

10. Height and Grade

The height of any structure within the PCD shall not exceed fifty (50) feet, unless otherwise specified. The height of a structure shall be the vertical distance between the highest point of the structure and the grade directly below. In determining the height of a sloped roof, the measurement shall be the vertical distance between the grade and the midpoint of the roof plane, provided that no part of the roof shall be extend more than five (5) feet above the permitted height in the height limitation zone, and any amendments shall be subject to the review and approval of the Community Development Director

11. Landscaping/Irrigation

Landscaping and irrigation shall be provided in all areas not devoted to structures, parking lots, driveways, walkways, and tennis courts to enhance the appearance of the development, reduce heat and glare, control soil erosion, conserve water, screen adjacent land uses, and preserve the integrity of PCD. Landscaping and irrigation shall consist of a combination of trees, shrubs, groundcover and hardscape improvements. Landscaping shall be prepared in accordance with the Landscaping Standards and Water-Efficient Landscaping Sections of the Newport Beach Municipal Code and installed in accordance with the approved landscape plans prepared by a licensed landscape architect.

12. Lighting – Outdoor

All new outdoor lighting shall be designed, shielded, aimed, located and maintained to shield adjacent uses/properties and to not produce glare onto adjacent uses/properties. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the

Newport Beach Municipal Code and shall be prepared by a licensed electrical engineer. All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans.

13. Lighting – Parking & Walkways

All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans. Light standards within parking lots shall be the minimum height required to effectively illuminate the parking area and eliminate spillover of light and glare onto adjoining uses/properties and roadways.

Parking lots and walkways accessing buildings shall be illuminated with a minimum of 0.5 foot-candle average on the driving or walking surface during the hours of operation and one hour thereafter. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the Newport Beach Municipal Code and shall be prepared by a licensed electrical engineer.

If the applicant wishes to deviate from this lighting standard, a lighting plan may be prepared by the applicant and submitted to the Community Development Director for review and approval.

14. Loading Areas for Non-Residential Uses

All loading and unloading of goods delivery shall be performed onsite. Loading platforms and areas shall be screened from public view.

15. Parking Areas

Parking spaces, driveways, maneuvering aisles, turnaround areas, and landscaping areas of the parking lots shall be kept free of dust, graffiti, and litter. All components of the parking areas including striping, paving, wheel stops, walls, and light standards of the parking lots shall be permanently maintained in good working condition. Access, location, parking space and lot dimensions, and parking lot improvements shall be in compliance with the Development Standards for Parking Areas Section of the Newport Beach Municipal Code.

16. Property Owner Approval

Written property owner approval shall be required for the submittal of any site development review application and/or prior to grading and/or building permit issuance.

17. Outdoor Paging

Outdoor paging shall be permitted at the Golf Club to call individuals to the tees and at the Tennis Club to call points during tennis tournaments.

18. Sewage Disposal

Sewage disposal service facilities for the PCD will be provided by Orange County Sanitation District No. 5 and shall be subject to applicable regulations, permits and fees as prescribed by the Sanitation District.

19. Screening of Mechanical Equipments

All new mechanical appurtenances (e.g., air conditioning, heating, ventilation ducts and exhaust vents, swimming pool and spa pumps and filters, transformers, utility vaults and emergency power generators) shall be screened from public view and adjacent land uses. The enclosure design shall be approved by the Community Development Department. All rooftop equipment (other than vents, wind turbines, etc.) shall be architecturally treated or screened from off-site views in a manner compatible with the building materials prior to final building permit clearance for each new or remodeled building. The mechanical appurtenances shall be subject to sound rating in accordance with the Exterior Noise Standards Section of the Newport Beach Municipal Code. Rooftop screening and enclosures shall be subject to the applicable height limit.

20. Screening of the Villas residential units from tennis courts

Adequate buffering between the Villas residential units and tennis courts shall be provided and subject to the Site Development Review process. The exterior perimeter of the tennis courts facing Granville Condominiums, Granville Drive, and the Tennis Clubhouse parking lot shall be screened by a minimum ten-foot-high chain link fence covered by a wind screen. Wind screen shall be maintained in good condition at all time.

21. Screening of the Villas' Pool/Spa Equipment

All pool and/or spa equipment shall be enclosed by a minimum five-foot high block wall plastered or otherwise textured to match the building.

22. Special Events

Temporary special community events, such as such as PGA Senior Classic golf tournaments, Team Tennis, Davis Cup Matches, and other similar events, are permitted in the PCD, and are subject to the Special Events Chapter of the Newport Beach Municipal Code. Temporary exterior storage associated with approved special events may be permitted provided it is appropriately screened and regulated with an approved Special Event Permit.

23. Temporary Structures and Uses

Temporary structures and uses, including modular buildings for construction-related activities are permitted.

24. Trash Container Storage for Residential Dwellings

Trash container storage shall be out of view from public places, and may not be located in the required parking areas. If trash container storage areas cannot be located out of public view, they shall be screened from public view. Screening shall consist of fences, walls, and landscaping to a height at least 6 inches above the tops of the containers.

25. Trash Enclosures for Non-Residential Uses

All trash enclosures for non-residential uses shall be provided and in accordance with the Solid Waste and Recyclable Materials Storage of the Newport Beach Municipal Code.

26. Tennis Club Site Phasing Plan-

The phasing plan for the tennis club site which consists of the tennis club, ~~villas~~ **residential units** and ~~bungalows~~ **hotel rooms** shall be subject to a site development review process.

27. Water Service

Water service to the PCD will be provided by the City of Newport Beach and will be subject to applicable regulations, permits and fees as prescribed by the City.

3.0 LAND USE AND DEVELOPMENT REGULATIONS

3.1 Golf Club

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the golf course and clubhouse.

A. Golf Course

An 18-hole championship golf course and related facilities (i.e. putting green, driving range, snack bar, starter shack, restroom facilities, etc.).

B. Golf Clubhouse and Ancillary Uses

1. Building Area

The maximum allowable gross floor area for a golf clubhouse building shall be 56,000 square feet, exclusive of any enclosed golf cart storage areas ramp and washing area. The greens keeper/maintenance buildings, snack bar, separate golf course restroom facilities, starter shack, and similar ancillary buildings are exempt from this development limit.

2. Building Height

The maximum allowable building height for the Golf Clubhouse shall be 50 feet and shall be measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulation of the PCD.

3. Permitted Ancillary Uses

The following ancillary uses are allowed:

- Golf shop
- Administrative Offices
- Dining, and event areas
- Kitchen & Bar areas
- Banquet Rooms
- Men and Women's Card Rooms
- Health and fitness facility
- Restroom and Locker facilities
- Golf Club storage areas
- Employee lounge/lunch areas
- Meeting rooms
- Golf Cart Parking Storage and Washing Area

- Separate Snack Bar
- Separate Starter Shack
- Separate Golf Course Restrooms
- Hand Carwash Area
- Greenskeeper Maintenance Facility
- Temporary Construction Facilities
- Guard House
- Others (subject to an approval of the Community Development Director)

4. Parking

Parking for the Golf Course and Golf Clubhouse shall be in accordance with following parking ratios (source: from Table 2 of the Circulation and Parking Evaluation by Kimley-Horn and Associates, Inc., September 2009 for Newport Beach Country Club – Clubhouse Improvement Project):

Golf Course: 8 spaces per hole

Golf Clubhouse:

Dining, assembly & meeting rooms: 1 per 3 seats or 1 per 35 square feet

Administrative Office: 4 per 1,000 square feet

Pro Shop: 4 per 1,000 square feet

Maintenance Facility: 2 per 1,000 square feet

Health and Fitness Facility: 4 per 1,000 square feet

The design of the parking lot and orientation of vehicular aisles and parking spaces shall be subject to the review and approval of the City Traffic Engineer and Community Development Director.

5. Fencing

Golf Course perimeter fencing shall be wrought-iron with a maximum permitted height of six (6) feet.

3.2 Tennis Club

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the tennis courts and clubhouse.

A. **The Tennis Courts**

1. Number of courts

The maximum allowable tennis courts shall be ~~seven~~ **eight** lighted tennis courts (~~six~~ **seven** lighted championship courts and one lighted stadium-center court).

B. Tennis Clubhouse and Ancillary Uses

1. Building Area

The maximum allowable gross floor area for the Tennis Clubhouse shall be 3,725 square feet.

2. Building Height

The maximum allowable building height for the Tennis Clubhouse shall be 30 feet and shall be measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCD.

3. Permitted Ancillary Uses

The following ancillary uses are allowed:

- Tennis Shop
- Administrative Offices
- Concessions
- Restroom and Locker facilities
- Storage areas
- Spectator seating
- Others (subject to an approval of the Community Development Director)

4. Parking

Parking for the Tennis Clubhouse and Courts shall be a minimum of ~~28~~ **32** parking spaces.

3.3. The Villas Residential

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the ~~villas~~ **units**.

A. Detached Residential (The Villas)

1. Number of Units

The maximum allowable number of single-family residential units shall be ~~five (5)~~ **two (2)**.

2. Development Standards

The following development standards shall apply to the Villas:

The Villas Development Standards Table

Villa Designation	Villa A TTM Lot #1	Villa B TTM Lot #2
Lot Size	5,000 square feet minimum	
Lot Coverage (Maximum)	70%	65%
Building Height	39 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations	
Building Side Yard Setbacks	3 feet minimum	
Building Front and Rear Yard Setbacks	5 feet minimum	
Enclosed Parking Space for Each Unit	2	2
Open Guest Parking Space for Each Unit	One space - could be located on the private driveway – No overhang to the private street/cul-de-sac is allowed	

B. Attached Residential

1. Number of Units

The maximum allowable number of attached residential units shall be three (3).

2. Building Setbacks

The building setback shall be a minimum of five (5) feet from any property line.

3. Building Height

The maximum allowable building height for attached residential units to be located atop of the 2-story hotel buildings shall be 46 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations.

4. Parking

Parking for the attached residential units shall be a minimum of 3 enclosed parking spaces and one guest parking space per unit.

3.4. The Bungalows Hotel

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the bungalows, concierge and guest center, and spa facility.

1. Number of Units Rooms

The maximum allowable number of ~~the Bungalows~~ **rooms** shall be ~~27~~ **41**, to be built in a clustered setting of single and two-story buildings.

2. Permitted Ancillary Uses

The following ancillary uses are allowed:

- **Administrative Offices**
- Concierge office and guest meeting facility
- **Performance Therapy Center**
- **Spa and Fitness Center**
- Swimming pool and Jacuzzi
- ~~Spa facility that includes treatment rooms, fitness areas, and snack bar serving drinks, snacks and light breakfast and lunch items~~

- **Yoga Pavilion**

3. Building Area

The maximum allowable gross floor area for the ~~bungalows~~ **hotel rooms** shall be ~~28,300~~ **47,484** square feet with a 2,200 square foot concierge & guest center, **4,686 square feet of ancillary hotel uses**, and a 7,500 square-foot spa facility.

4. Building Height

The maximum allowable building height for the ~~bungalows~~ **hotel rooms** shall be 31 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCD.

5. Building Setbacks

The **building** setback requirement shall be a minimum of 5 feet from any property line.

6. Parking

Parking for the ~~bungalows~~ **hotel rooms** shall be a minimum of ~~34~~ **41** parking spaces located in proximity to the use.

3.5 Signs

A. **Sign Allowance**

1. One (1) single or double-faced, ground-mounted entrance identification sign shall be allowed at Newport Beach Tennis Club's main entrance (Country Club Drive and Irvine Terrace). Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height.
2. One (1) single or double-faced, ground-mounted entrance identification sign shall be allowed at or near the vicinity of the Newport Beach Country Club's secondary entrance (Granville). Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height.
3. Building identification signs shall be allowed; one for each street frontage. If freestanding, this sign type shall not exceed a maximum height of five (5) feet in height. The maximum signage area shall not exceed seventy (70) square feet.
4. Vehicular and pedestrian directional signs shall be allowed. This sign type may occur as a single-faced or double-faced sign. The

sign shall be sized to allow for proper readability given the number of lines of copy, speed of traffic, setback off the road and viewing distance. This sign type shall not exceed a maximum of six (6) feet in height.

5. One (1) single or double faced, ground-mounted identification sign shall be allowed at the entrance road to the Bungalows. Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height and fifteen (15) feet in length.

B. Sign Standards

1. The design and materials of all permanent signs in the Newport Beach Country Club Planned Community District shall be in accordance with Sign Section 3.5, unless otherwise approved by the Community Development Director.
2. All permanent signs shall be subject to a sign permit issued by the Community Development Department.
3. All signs shall be subject to the review of the City Traffic Engineer to ensure adequate sight distance in accordance with the provisions of the Newport Beach Municipal Code.
4. Sign illumination is permitted for all sign types. No sign shall be constructed or installed to rotate, gyrate, blink or move, or create the illusion of motion, in any fashion.
5. All permanent signs together with the entirety of their supports, braces, guys, anchors, attachments and décor shall be properly maintained, legible, functional and safe with regards to appearance, structural integrity and electrical service.
6. Temporary signs that are visible from any public right-of-way shall be allowed up to a maximum of sixty (60) days and subject to a temporary sign permit issued by the Community Development Department.
7. If the applicant wishes to deviate from the sign standards identified herein, a comprehensive sign program may be prepared or a modification permit application may be submitted for review and consideration by the Zoning Administrator in accordance with the applicable provisions of the Newport Beach Municipal Code.

4.0 SITE DEVELOPMENT REVIEW

4.1 Purpose

The purpose of the Site Development Review process is to ensure new development proposals within the Newport Beach Country Club Planned Community Development are consistent with the goals and policies of the General Plan, provisions of this Planned Community Development Plan, the Development Agreement and the findings set forth below in sub-section 4.3.

4.2 Application

An approval of Site Development Review application by the Planning Commission shall be required for the construction of any new structure prior to the issuance of a grading or building permit or issuance of an approval in concept for Coastal Commission. Signs, tenant improvements to any existing buildings, kiosks, and temporary structures are exempt from the site development review process and subject to the applicable City's permits. The decision of Planning Commission is the final, unless appealed in accordance with the Newport Beach Municipal Code.

4.3. Findings

In addition to the general purposes set forth in sub-section 4.1 and in order to carry out the purposes of this chapter as established by said section, the Site Development Review procedures established by this Section shall be applied according to and in compliance with the following findings:

1. The development shall be in compliance with all other provisions of the Planned Community District Plan;
2. The development shall be compatible with the character of the neighboring uses and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;
3. The development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on Coast Highway; and

4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.

4.4. Contents

The Site Development Review application shall include all of the information and materials specified by the Community Development Director and any additional information review by the Planning Commission in order to conduct a thorough review of the project in question. The following plans/exhibits may include, but not limited to the following:

1. An aerial map showing the subject property, adjacent properties and identifying their uses.
2. Comprehensive elevations and floor plans for new structures with coordinated and complimentary architecture, design, materials and colors.
3. A parking and circulation plan showing golf cart and pedestrian paths in addition to streets and fire lanes.
4. A comprehensive, cohesive and coordinated preliminary landscape plan.
5. A comprehensive, cohesive and coordinated lighting plan showing type, location and color of all exterior lighting fixtures.
6. Comprehensive text and graphics describing the design philosophy for the architecture, landscape architecture, material and textures, color palette, lighting, and signage.
7. Text describing drainage and water quality mitigation measures.
8. A statement that the proposed new structure is consistent with the goals, policies, and actions of the General Plan and Planned Community Development Plan.

4.5 Public Hearing –Required Notice

A public hearing shall be held on all site development review applications. Notice of such hearing shall be mailed not less than ten (10) days before the hearing date, postage prepaid, using addresses from the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses, to owners of property within a radius of three hundred (300) feet of the exterior boundaries of the subject property. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this Section. In addition to the mailed notice, such hearing shall be posted in

not less than two (2) conspicuous places on or close to the property at least ten (10) days prior to the hearing.

4.6 Expiration and Revocation Site Development Review Approvals

1. Expiration. Any site development review approved in accordance with the terms of this planned community development plan shall expire within twenty-four (24) months from the effective date of final approval as specified in the Time Limits and Extensions Section of the Newport Beach Municipal Code, unless at the time of approval the Planning Commission has specified a different period of time or an extension is otherwise granted.
2. Violation of Terms. Any site development review approved in accordance with the terms of this planned community development plan may be revoked if any of the conditions or terms of such site development review are violated or if any law or ordinance is violated in connection therewith.
3. Public Hearing. The Planning Commission shall hold a public hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within sixty (60) days after receipt of the recommendation of the Planning Commission.

4.7. Fees

The applicant shall pay a fee as established by Resolution of the Newport Beach City Council to the City with each application for Site Development Review under this planned community development plan.

4.8 Minor Changes by the Director

1. The following minor changes to an approved site plan may be approved by the Director in compliance with Section 20.54.070 (Changes to an approved project) of the Newport Beach Municipal Code:
 - a) Minor relocation of any proposed structure.
 - b) Reduction in the square footage of any structure and a commensurate reduction in required parking, if applicable.
 - c) Reconfiguration of the golf clubhouse parking lot, including drive aisles and/or parking spaces, subject to review and approval of the City Traffic Engineer.
 - d) Reconfiguration of parking lot landscaping.
 - e) Modification of the approved architectural style.
 - f) Any other minor change to the site plan provided it does not

increase any structure area, height, number of units, number of hotel rooms, and/or change of use.

2. Any proposed changes that are not deemed minor shall be subject to review and approval by the Planning Commission.

Exhibit A

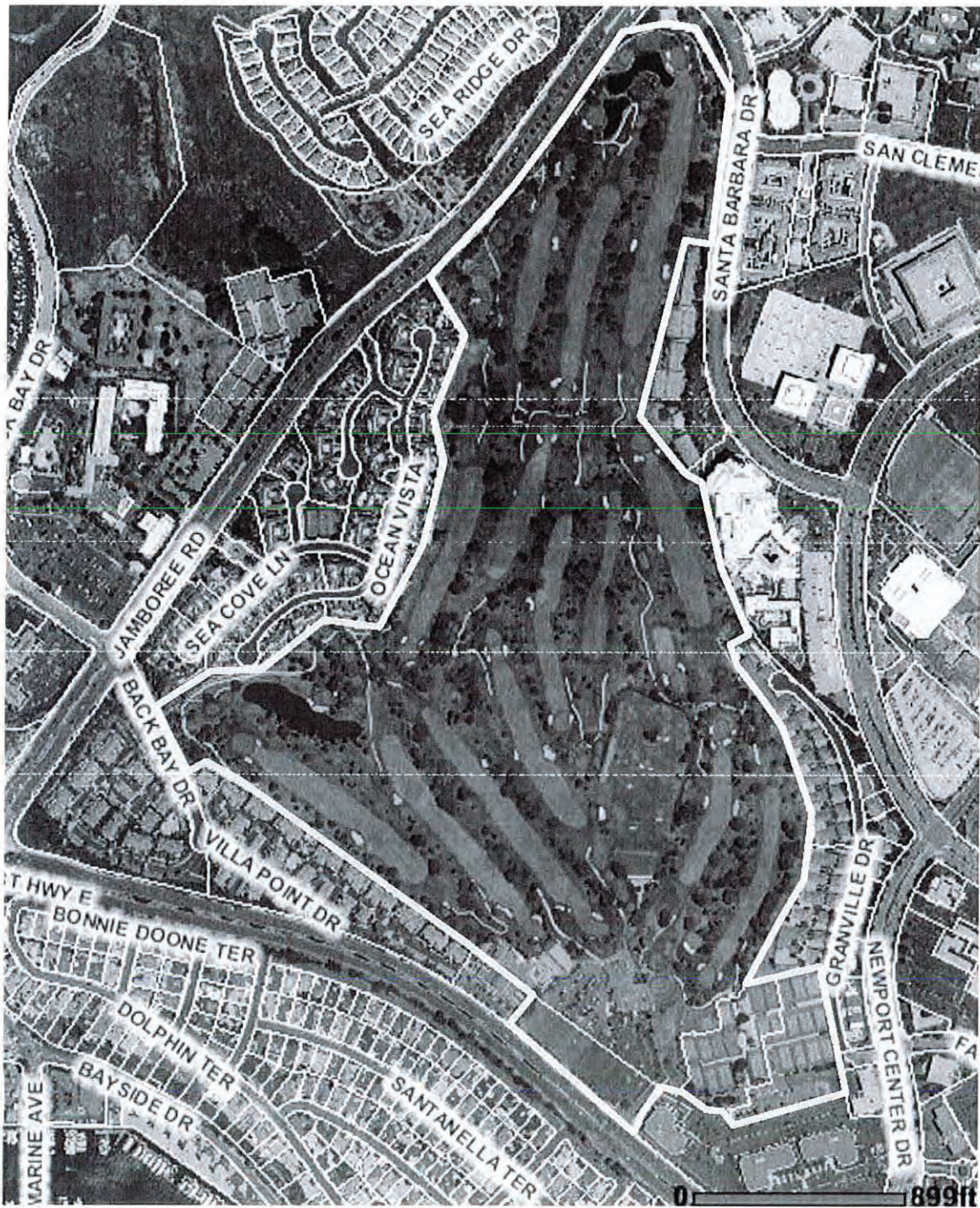


Exhibit B

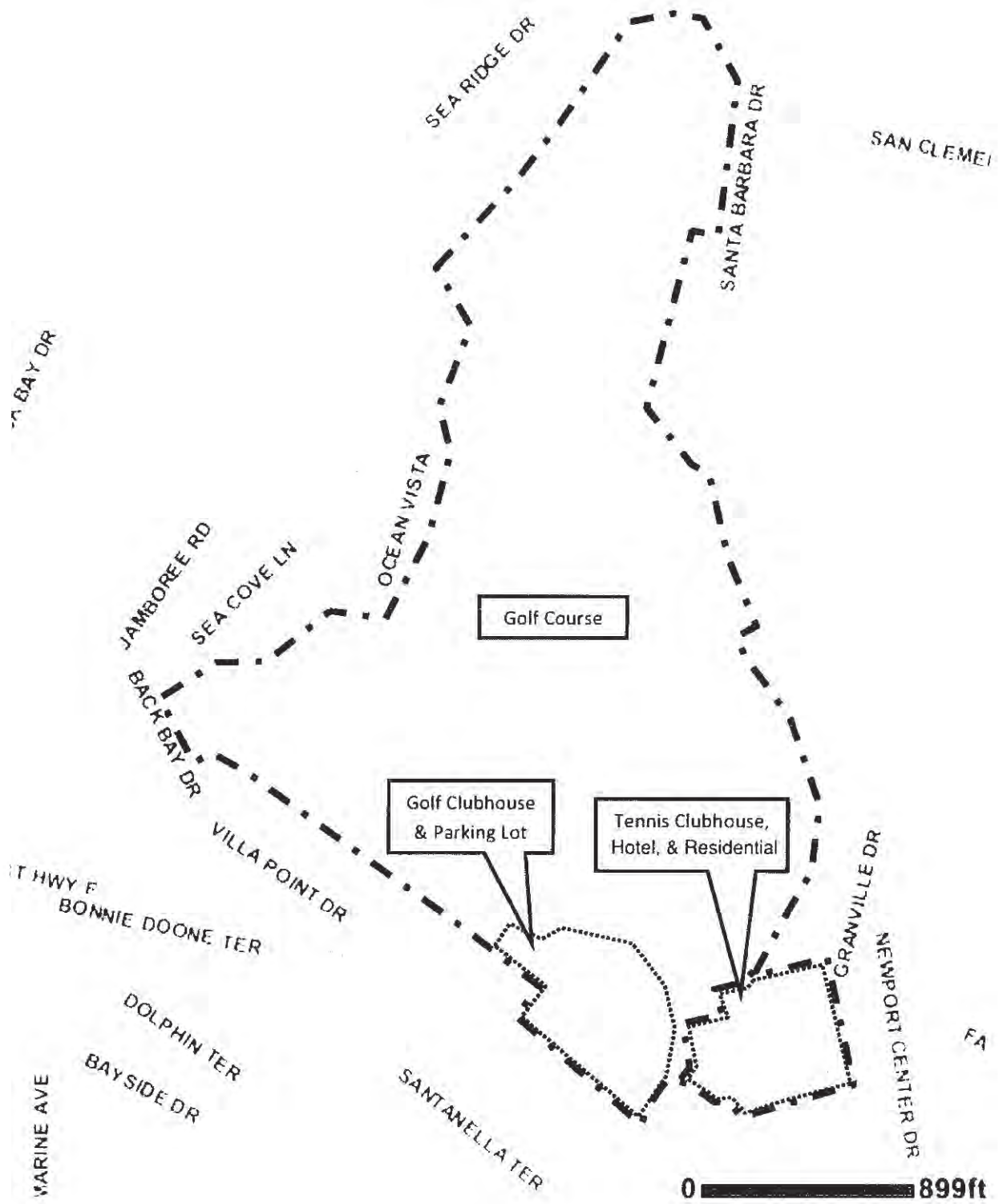


EXHIBIT "E"

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This First Amendment is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

between

CITY OF NEWPORT BEACH

and

GOLF REALTY FUND

**CONCERNING PROPERTIES LOCATED AT TENNIS CLUB AT NEWPORT BEACH
WITHIN THE
NEWPORT BEACH COUNTRY CLUB PLANNED COMMUNITY DISTRICT**

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

(Pursuant to California Government Code Sections 65864-65869.5)

This SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (the “**Second Amendment**”) is entered into and effective on the date it is recorded with the Orange County Recorder (“**Effective Date**”) by and between the CITY OF NEWPORT BEACH (“**City**”), and GOLF REALTY FUND, a California limited partnership (“**Property Owner**”). **City** and **Property Owner** are sometimes collectively referred to in this **Second Amendment** as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. **Property Owner** is the managing owner of and owns a fee interest in title to that certain real property located in the City of Newport Beach, County of Orange, State of California which is more particularly described in the legal description attached as Exhibit “A” and depicted on the site map attached hereto as Exhibit “B” (“**Property**”). The Property consists of approximately seven (7) acres within the area shown on the City’s Zoning Map as the Newport Beach Country Club Planned Community District. The Property comprises the Tennis Club at Newport Beach site shown on Exhibit “B” which consists of The Villas Sub-Area, The Tennis Club Sub-Area, and The Bungalows Sub-Area.

B. **City** and **Property Owner** entered into that certain Development Agreement between the City of Newport Beach and Golf Realty Fund dated March 27, 2012, and recorded in the Official Records of Orange County on January 29, 2014, as document number 2014000036369 (“**Agreement**”) attached hereto as Exhibit “C” and incorporated herein by reference for a term of ten (10) years.

C. On November 20, 2018, the City approved Coastal Development Permit No. CD2017-039 to allow the demolition of the eighteen (18) existing tennis courts and construction of the Tennis Club, Villas and Bungalows at the Tennis Property, however, the **Agreement** was not amended or modified.

D. **City** and **Property Owner** entered into the First Amendment to Development Agreement between the City of Newport Beach and Golf Realty Fund pursuant to Ordinance No. 2022-16 and recorded in the Official Records of Orange County on XX, XXXX, as document (“**First Amendment**”), attached hereto as Exhibit “D” and incorporated herein by reference.

E. The Parties now wish to enter into this Second Amendment to increase the number of tennis courts from seven (7) to eight (8), increase the number of hotel rooms from twenty-seven (27) to forty-one (41), increase the gross floor area of ancillary hotel uses by four thousand six hundred eight-six (4,686) square feet, and construct three (3) attached condominium units and two (2) single-family residences in lieu of five (5) single-family residences.

F. On September 8, 2022, the Planning Commission held the public hearing on the **Second Amendment** and considered the testimony and information submitted by City staff, **Property Owner**, and members of the public. Consistent with applicable provisions of the Development Agreement Statute and Ordinance, the Planning Commission adopted Resolution No. PC2022-022, recommending the City Council approve the **Second Amendment**.

G. On September 27, 2022, the City Council held a noticed public hearing on the **Second Amendment** and considered the testimony and information submitted by City staff, **Property Owner**, and members of the public. On October 13, 2022, consistent with applicable provisions of the Development Agreement Statute and Ordinance, the City Council held the second reading and adopted Ordinance No. 2022-___ approving the **Second Amendment**.

H. This **Second Amendment** is consistent with the City of Newport Beach General Plan ("General Plan"), including without limitation the General Plan's designation of the Property as "MU-H3/PR" (Mixed Use Horizontal / (Parks and Recreation) (Anomaly 46); Coastal Land Use Plan designation as "MU-H/PR (Mixed Use Horizontal / Parks & Recreation"; the Newport Beach Country Club Planned Community District that was adopted in 1997 by Ordinance No. 97-10, and amended in 2022 by Ordinance No. 2022-___ in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan; and Newport Beach Country Club Planned Community Development Plan No. PC2005-002 approved for the Property on March 27, 2012 by Ordinance No. 2012-2 and amended on October 13, 2022 by Ordinance No. 2022-___.

I. In recognition of the significant public benefits that this **Second Amendment** provides, the City Council finds that this **Second Amendment**: (i) is consistent with the City of Newport Beach General Plan as of the date of its adoption; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) is consistent and has been approved consistent with the Addendum No. ND2022-001 to the previously adopted Mitigated Negative Declaration No. ND2010-008 (SCH 2010091052) and Errata to Mitigated Negative Declaration No. ND2010-008 (together referred as "**MND**") for the Newport Beach Country Club Planned Community District (PA2021-260 amending PA2005-002) approved by the City Council, both of which analyze the environmental effects of the proposed development of the Project on the Property; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 *et seq.* and Chapter 15.45 City of Newport Beach Municipal Code ("**NBMC**").

AGREEMENT

NOW, THEREFORE, City and Property Owner agree as follows:

1. Definitions. Section 1 of the Agreement is hereby amended to add or revise the following definitions. Unless added or revised, all other definitions set forth in Section 1 of the Agreement shall remain unchanged:

"Adopting Ordinance" shall mean City Council Ordinance No. 2022-___ approving and adopting this Second Amendment.

"Agreement" shall mean this Development Agreement, as the same may be amended from time to time including, the First Amendment and Second Amendment.

"Agreement Date" shall mean October 13, 2022 which date is the date the City Council adopted the Adopting Ordinance.

“Development Plan” shall mean the Newport Beach Planned Community Development Plan Amendment No. PC2021-001 adopted by Ordinance No. 2022-___ which amends Newport Beach Planned Community Development Plan No. PC2005-002; Vesting Tentative Tract Map Amendment No. NT2021-002 adopted by Resolution No. 2022-___ which amends Vesting Tentative Tract Map No. NT2005-003; Site Development Review Amendment No. SD2021-004 adopted by Resolution No. 2022-___ which amends Site Development Review No. SD2011-002; Limited Term Permit No. XP2022-007 adopted by Resolution No. 2022-___ which amends Limited Term Permit No. XP2011-004; General Plan Amendment No. GP2021-004; Coastal Development Permit No. CD2021-068 adopted by Resolution No. 2022-___ which amends Coastal Development Permit No. CD2017-039; and Local Coastal Program Implementation Plan Amendment No. LC2021-004 adopted by Ordinance No. 2022-___.

“Development Regulations” shall mean the following regulations as they are in effect as of the Agreement Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted, approved, or imposed after the Agreement Date that impairs or restricts Property Owner’s rights set forth in this agreement, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by Property Owner in writing: the General Plan, the Coastal Land Use Plan, the Development Plan, the Local Coastal Program Implementation Plan; and, to the extent not expressly superseded by the Development Plan or this Agreement, all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, improvement, and construction standards and specifications, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to development of the Project on the Property during the Term of this Agreement that are set forth in Title 15 of the Municipal Code (buildings and construction), Title 19 of the Municipal Code (subdivisions), Title 20 of the Municipal Code (planning and zoning) and Title 21 of the Municipal Code (local coastal program implementation plan), but specifically excluding all other sections of the Municipal Code, including without limitation Title 5 of the Municipal Code (business licenses and regulations). Notwithstanding the foregoing, the term “Development Regulations,” as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments; (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or entry upon public property; or (v) the exercise of the power of eminent domain.

“Effective Date” shall mean the latest of the following dates, as applicable: (i) the date that is thirty (30) days after the Agreement Date; (ii) if a referendum concerning the Adopting Ordinance, the Development Plan, or any of the Development Regulations approved on or before the Agreement Date is timely qualified for the ballot and a referendum election is held concerning the Adopting Ordinance or any of such Development Regulations, the date on which the referendum is certified resulting in upholding and approving the Adopting Ordinance and the Development Regulations; or (iii) if a lawsuit is timely filed challenging the validity of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations approved on or before the Agreement Date, the date on which said challenge is finally resolved in favor of the validity or legality of the Adopting Ordinance, this Agreement, the Development Plan and/or the applicable Development Regulations, which such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement. Promptly after the Effective Date

occurs, the Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property memorializing the Effective Date.

“Project” shall mean all on-site and off-site improvements that Property Owner is authorized and/or may be required to construct with respect to each parcel of the Property, as provided in this Second Amendment and the Development Regulations, as amended by this Second Amendment, and/or as the same may be modified or amended from time to time consistent with this Second Amendment and applicable law.

2. Term of Agreement. Section 2.4 of the Agreement is hereby amended in its entirety to read as follows:

The term of this Agreement (“Term”) shall commence on the Effective Date of Second Amendment and shall terminate on the “Termination Date.”

Notwithstanding any other provision set forth in this Agreement to the contrary, if any Party reasonably determines that the Effective Date of Second Amendment will not occur because (i) the Adopting Ordinance of Second Amendment or any of the Development Regulations approved on or before the Agreement Date of Second Amendment for the Project has/have been disapproved by City’s voters at a referendum election or (ii) a final non-appealable judgment is entered in a judicial action challenging the validity or legality of the Adopting Ordinance of Second Amendment, this Agreement, and/or any of the Development Regulations for the Project approved on or before the Agreement Date of Second Amendment such that this Agreement and/or any of such Development Regulations is/are invalid and unenforceable in whole or in such a substantial part that the judgment substantially impairs such Party’s rights or substantially increases its obligations or risks hereunder or thereunder, then such Party, in its sole and absolute discretion, shall have the right to terminate this Agreement upon delivery of a written notice of termination to the other Party, in which event neither Party shall have any further rights or obligations hereunder except that Property Owner’s indemnity obligations set forth in Article 10 shall remain in full force and effect and shall be enforceable, and the Development Regulations applicable to the Project and the Property only (but not those general Development Regulations applicable to other properties in the City) shall be repealed by the City after delivery of said notice of termination except for the Development Regulations that have been disapproved by City’s voters at a referendum election and, therefore, never took effect.

The Termination Date shall be the earliest of the following dates: (i) the tenth (10th) anniversary of the Effective Date; (ii) such earlier date that this Agreement may be terminated in accordance with Articles 5, 7, and/or Section 8.3 of this Agreement and/or Sections 65865.1 and/or 65868 of the Development Agreement Statute; or (iii) completion of the Project in accordance with the terms of this Agreement, including Property Owner’s complete satisfaction, performance, and payment, as applicable, of all Development Exactions, the issuance of all required final occupancy permits, and acceptance by City or applicable public agency(ies) or private entity(ies) of all required offers of dedication.

As used herein, the term “Lot Termination Date” for any separate legal lot within the Property means the date on which all of the following conditions have been satisfied with respect to said lot: (i) the lot has been finally subdivided and sold or leased (for a period longer than one year), individually or in a “bulk” of four or fewer lots, to a member of the public or other ultimate

user; (ii) a final Certificate of Occupancy or "Release of Utilities" has been issued for the building or buildings approved for construction on said lot

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 13.10 (as well as any other Property Owner obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

3. Public Benefit Fee. Section 3.1 of the Agreement is hereby amended in its entirety to read as follows:

As consideration for City's approval and performance of its obligations set forth in this Agreement, Property Owner shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject (herein, the "Public Benefit Fee") in the total sum of five hundred two thousand two hundred fifty dollars (\$502,250.00) broken down as follows: (i) ninety-three thousand dollars and 00/100 (\$93,000.00 per residential dwelling unit) for a sum of four hundred sixty-five thousand dollars and 00/100 (\$465,000.00) for the residential units; and (ii) ten dollars and 00/100 (\$10.00) per square foot of construction for the three thousand seven hundred twenty-five (3,725) square foot Tennis Clubhouse for a sum of thirty-seven thousand two hundred fifty dollars (\$37,250.00). with the unpaid balance of said Public Benefit Fee increased on the first January 1 following the Effective Date of this Agreement by the percentage increase in the CPI Index between the Effective Date and said January 1st date (the first "Adjustment Date") and thereafter with the unpaid balance of said Public Benefit Fee increased on each subsequent January 1 during the Term of this Agreement (each, an "Adjustment Date") by the percentage increase in the CPI Index in the year prior to the applicable Adjustment Date. The amount of the percentage increase in the CPI Index on the applicable Adjustment Dates shall in each instance be calculated based on the then most recently available CPI Index figures such that, for example, if the Effective Date of this Agreement falls on July 1 and the most recently available CPI Index figure on the first Adjustment Date (January 1 of the following year) is the CPI Index for November of the preceding year, the percentage increase in the CPI Index for that partial year (a 6-month period) shall be calculated by comparing the CPI Index for November of the preceding year with the CPI Index for May of the preceding year (a 6-month period). In no event, however, shall application of the CPI Index reduce the amount of the Public Benefit Fee (or unpaid portion thereof) below the amount in effect prior to any applicable Adjustment Date. Property Owner shall pay the Public Benefit Fee at the following time(s): (i) As to the residential dwelling units, prior to the issuance of the first building permit for any residential unit; and (ii) as to the tennis clubhouse, prior to the issuance of the first building permit. Notwithstanding any other provision set forth in this Agreement to the contrary, during the Term of this Agreement, City shall not increase the Public Benefit Fee except pursuant to the CPI Index as stated in this Section 3.1. The Public Fee Benefit Fee shall be calculated based on the total square feet of construction for the tennis clubhouse. Property Owner shall not be entitled to any credit or offset to the Public Benefit Fee for any existing buildings or structures. Property Owner acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee, that its obligation to pay the Public Benefit Fee is an essential term of this Agreement and is not severable from City's obligations and Property Owner's vesting rights to be acquired hereunder, and that Property Owner expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth

and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for Property Owner's default, if Property Owner shall fail to timely pay any portion of the Public Benefit Fee when due City shall have the right to withhold issuance of any further building permits, occupancy permits, or other development or building permits for the Development Plan.

4. Amendment or Cancellation of Agreement. Section 5 of the Agreement is hereby amended in its entirety to read as follows

This Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code Section 65868 and Newport Beach Municipal Code Section 15.45.070 or by unilateral termination by City in the event of an uncured default of Property Owner.

5. Procedure. Section 7.3 of the Agreement is hereby amended in its entirety to read as follows:

The Zoning Administrator shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not Property Owner has, for the period under review, complied with the terms of this Agreement. If the Zoning Administrator finds that Property Owner has so complied, the annual review shall be concluded. If the Zoning Administrator finds, on the basis of substantial evidence, that Property Owner has not so complied, written notice shall be sent to Property Owner by first class mail of the Zoning Administrator's finding of non-compliance, and Property Owner shall be given at least ten (10) calendar days to cure any noncompliance that relates to the payment of money and thirty (30) calendar days to cure any other type of noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) calendar days for reasons which are beyond the control of Property Owner, Property Owner must commence the cure within such thirty (30) calendar days and diligently pursue such cure to completion. If Property Owner fails to cure such noncompliance within the time(s) set forth above, such failure shall be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 8 below.

6. General Provisions. Section 8.1 of the Agreement is hereby amended in its entirety to read as follows:

In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time (twenty (20) calendar days if the Default relates to the failure to timely make a monetary payment due hereunder and not less than thirty (30) calendar days in the event of non-monetary Defaults) in which the Default must be cured ("Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than thirty (30) calendar days after it receives the Notice of Default, and thereafter diligently pursue said cure to completion. Notwithstanding the

foregoing, the City is not required to give Property Owner notice of default and may immediately pursue remedies for a Property Owner Default that result in an immediate threat to public health, safety or welfare.

7. Full Force and Effect. Except as modified by this **Second Amendment**, the entire **Agreement**, First Amendment its exhibits, and the exhibits attached hereto, are incorporated herein to this **Second Amendment** and shall remain in full force and effect.

8. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

9. Recordation. The City Clerk shall record this **Second Amendment** in the Office of the County Recorder of the County of Orange within the period required by California Government Code Section 65858.5 and Section 15.45.100 of the NBMC.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE TO
FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

“PROPERTY OWNER”

GOLF REALTY FUND, a California
limited partnership

By: _____

Its: _____

By: _____

Its: _____

“CITY”

CITY OF NEWPORT BEACH, a California
municipal corporation

By: _____
Kevin Muldoon, Mayor

ATTEST:

Leilani I. Brown, City Clerk

APPROVED AS TO FORM:

Aaron C. Harp, City Attorney

Attachments: Exhibit A – Legal Description of Property
 Exhibit B – Depiction of Property
 Exhibit C – Development Agreement Recorded January 29, 2014
 Exhibit D – First Amendment to Development Agreement

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 A

LEGAL DESCRIPTION OF PROPERTY

PARCELS A, B, C AND D OF PARCEL MAP 2016-151, LOCATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 402 PAGES 24 THROUGH 32 INCLUSIVE OF PARCEL MAPS, RECORDS OF SAID COUNTY.

EXHIBIT B

DEPICTION OF PROPERTY

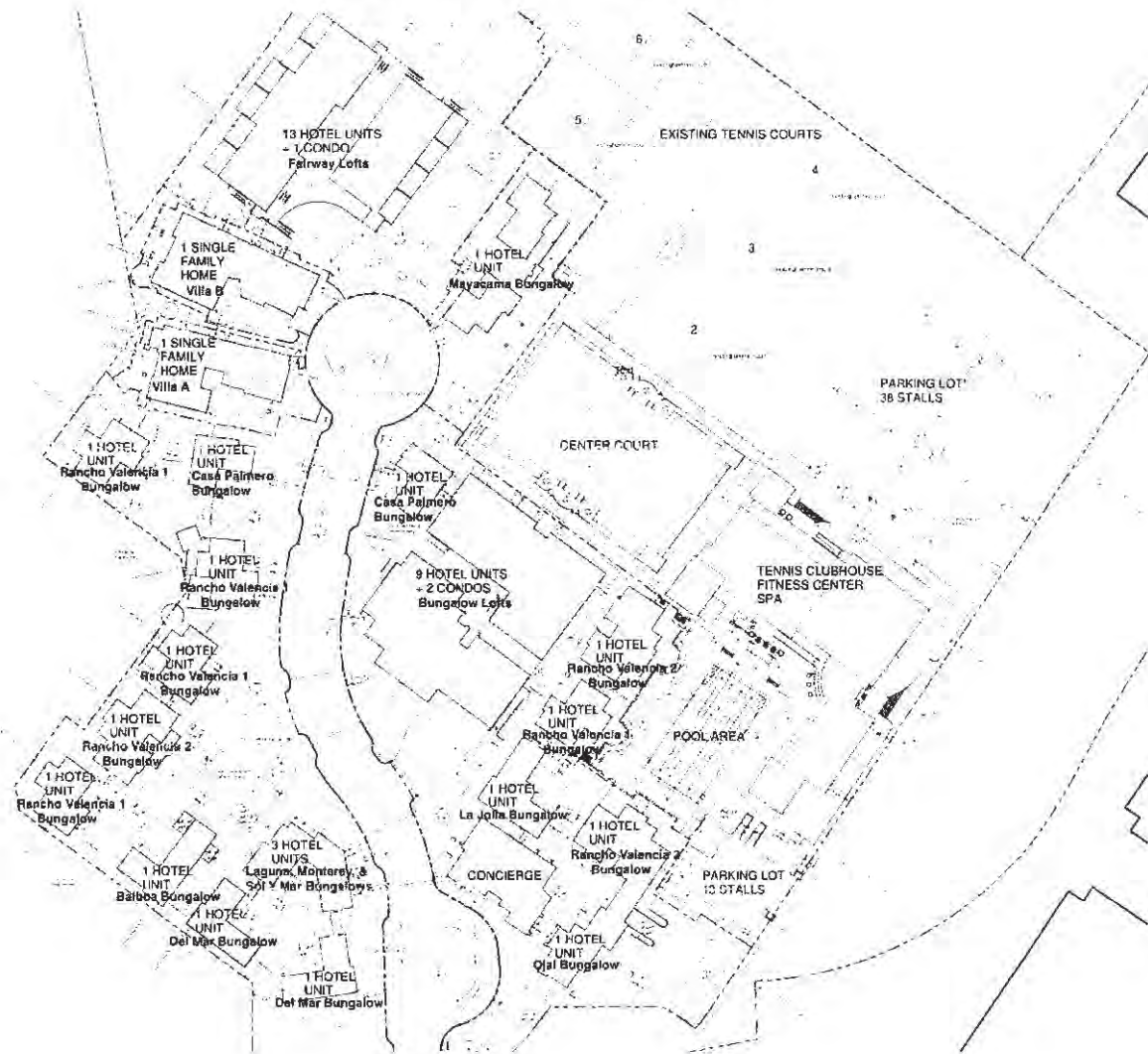


EXHIBIT C

**DEVELOPMENT AGREEMENT BETWEEN CITY OF NEWPORT BEACH AND
GOLF REALTY FUND RECORDED JANUARY 29, 2014**

Available separately due to bulk at:

<https://www.newportbeachca.gov/government/departments/community-development/planning-division/development-agreements>

EXHIBIT D

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN CITY OF
NEWPORT BEACH AND GOLF REALTY FUND**

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This First Amendment is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

between

CITY OF NEWPORT BEACH

and

GOLF REALTY FUND

**CONCERNING PROPERTIES LOCATED AT TENNIS CLUB AT NEWPORT BEACH
WITHIN THE
NEWPORT BEACH COUNTRY CLUB PLANNED COMMUNITY DISTRICT**

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

(Pursuant to California Government Code Sections 65864-65869.5)

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the “**First Amendment**”) is entered into and effective on the date it is recorded with the Orange County Recorder (“**Effective Date**”) by and between the CITY OF NEWPORT BEACH (“**City**”), and GOLF REALTY FUND, a California limited partnership “**Property Owner**”). **City** and **Property Owner** are sometimes collectively referred to in this **First Amendment** as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. **Property Owner** is the managing owner of and owns a fee interest in title to that certain real property located in the City of Newport Beach, County of Orange, State of California which is more particularly described in the legal description attached as Exhibit “A” and depicted on the site map attached hereto as Exhibit “B” (“**Property**”). The Property consists of approximately seven (7) acres within the area shown on the City’s Zoning Map as the Newport Beach Country Club Planned Community District. The Property comprises the Tennis Club at Newport Beach site shown on Exhibit “B” which consists of The Villas Sub-Area, The Tennis Club Sub-Area, and The Bungalows Sub-Area.

B. **City** and **Property Owner** entered into that certain Development Agreement between the City of Newport Beach and Golf Realty Fund dated March 27, 2012, and recorded in the Official Records of Orange County on January 29, 2014, as document number 2014000036369 (“**Agreement**”) attached hereto as Exhibit “C” with a ten (10) year term.

C. On November 20, 2018, the City approved Coastal Development Permit No. CD2017-039 to allow the demolition of the 18 existing tennis courts and construction of the Tennis Club, Villas and Bungalows at the Tennis Property, however, the **Agreement** was not amended or modified.

D. The Parties now wish to enter into that **First Amendment** extending the term for an additional year and updating certain provisions.

E. On May 12, 2022, the Planning Commission opened the noticed public hearing on this **First Amendment** and continued the item to May 26, 2022.

F. On May 26, 2022, the Planning Commission held the public hearing on this **First Amendment** and considered the testimony and information submitted by City staff, **Property Owner**, and members of the public. Consistent with applicable provisions of the Development Agreement Statute and Ordinance, the Planning Commission adopted Resolution No. PC2022-008, recommending the City Council approve this **First Amendment**.

G. On June 28, 2022, the City Council held a noticed public hearing on this **First Amendment** and considered the testimony and information submitted by City staff, **Property Owner**, and members of the public. On July 12, 2022, consistent with applicable provisions of the Development Agreement Statute and Ordinance, the City Council held the second reading and adopted Ordinance No. _____ approving this **First Amendment**.

H. This **First Amendment** is consistent with the City of Newport Beach General Plan ("General Plan"), including without limitation the General Plan's designation of the Property as "MU-H3/PR" (Mixed Use Horizontal / (Parks and Recreation) (Anomaly 46); Coastal Land Use Plan designation as "MU-H/PR (Mixed Use Horizontal / Parks & Recreation"; the Newport Beach Country Club Planned Community District that was adopted in 1997 by Ordinance No. 97-10 in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan; and Newport Beach Country Club Planned Community Development Plan No PC2005-002 approved for the Property on March 27, 2012 by Ordinance No. 2012-2.

I. The City Council finds that this **First Amendment**: (i) is consistent with the City of Newport Beach General Plan as of the date of this **First Amendment**; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) is consistent and has been approved consistent with the Mitigated Negative Declaration No. ND2010-008 (SCH 2010091052) and an Errata to Mitigated Negative Declaration No. ND2010-008 (together referred as "**MND**") for the Newport Beach Country Club Planned Community District (PA2005-002) approved by the City Council, both of which analyze the environmental effects of the proposed development of the Project on the Property; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 *et seq.* and Chapter 15.45 City of Newport Beach Municipal Code ("**NBMC**").

AGREEMENT

NOW, THEREFORE, City and Property Owner agree as follows:

1. Term of Agreement. Section 2.4 of the Agreement is hereby amended in its entirety to read as follows:

"The term of this Agreement (the "Term") shall commence on the Effective Date and continue until _____ 2023, unless otherwise terminated or modified pursuant to its terms.

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 13.10 (as well as any other Property Owner obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement."

2. Attorneys' Fees. Section 8.10 of the Agreement is hereby amended in its entirety to read as follows:

“In any judicial proceeding, arbitration, or mediation (collectively, an “Action”) between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall not recover any of its costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure section 1033.5 or California Civil Code section 1717 in the absence of this Agreement. These costs and expenses include, but are not limited to, court costs, expert witness fees, attorneys’ fees, City staff costs (including overhead), and costs of investigation and preparation before initiation of the Action.”

3. Notices. Section 13.1 of the Agreement is hereby amended in its entirety to read as follows:

“Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY: City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Manager

With a copy to: City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Attorney

TO PROPERTY OWNER: Golf Realty Fund
One Upper Newport Plaza
Newport Beach, CA 92660
Attn: Robert O’Hill

Either Party may change the address stated in this Section 13.1 by delivering notice to the other Party in the manner provided in this Section 13.1, and thereafter, notices to such Party shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received or (iii) three business days after deposit in the mail as provided above.”

4. Full Force and Effect. Except as modified by this **First Amendment**, the entire **Agreement**, its exhibits, and the exhibits attached hereto, are incorporated herein to this **First Amendment** and shall remain in full force and effect.

5. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

6. Recordation. The City Clerk shall record this **First Amendment** in the Office of the County Recorder of the County of Orange within the period required by California Government Code Section 65858.5 and Section 15.45.100 of the NBMC.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE TO
FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

“PROPERTY OWNER”

GOLF REALTY FUND, a California
limited partnership

By: _____

Its: _____

By: _____

Its: _____

“CITY”

CITY OF NEWPORT BEACH, a California
municipal corporation

By: _____
Kevin Muldoon, Mayor

ATTEST:

Leilani I. Brown, City Clerk

APPROVED AS TO FORM:

Aaron C. Harp, City Attorney

Attachments: Exhibit A – Legal Description of Property
 Exhibit B – Depiction of Property
 Exhibit C – Development Agreement Recorded January 29, 2014

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)

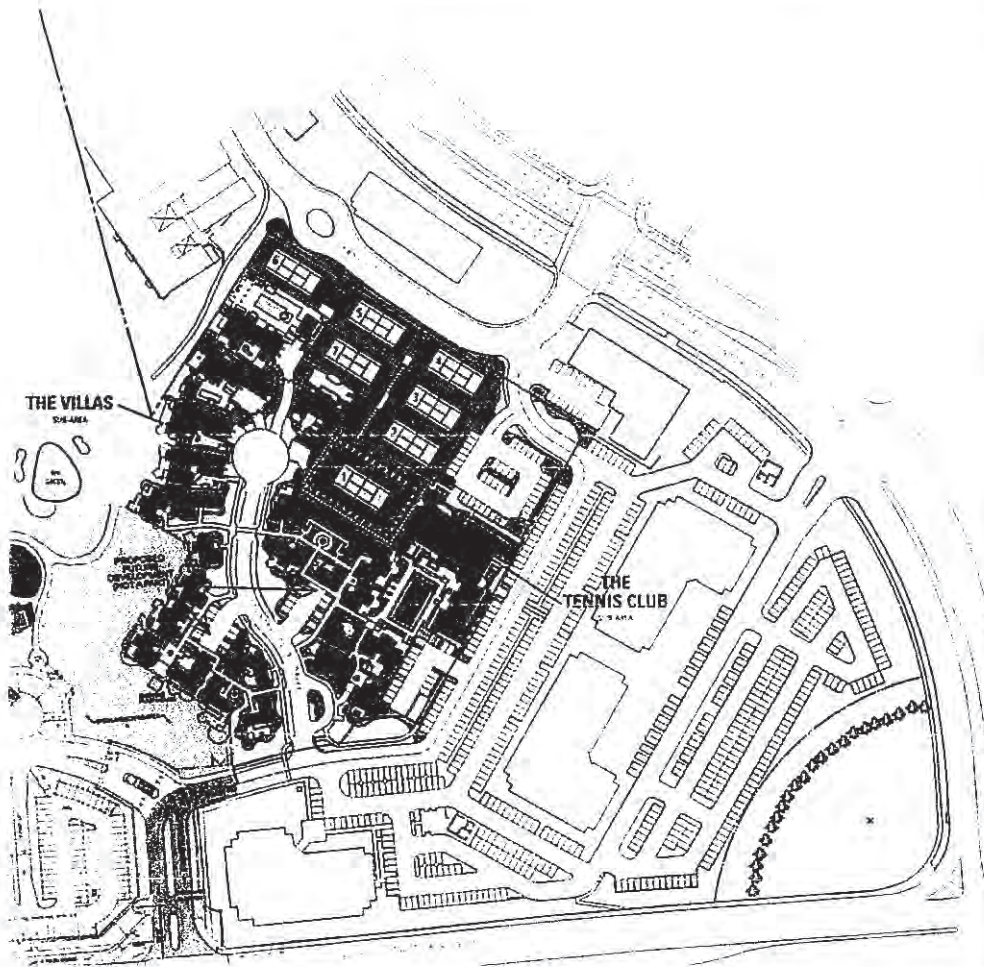
EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Parcel 1 and Parcel 2 of Parcel Map 94-102, in the City of Newport Beach, County of Orange, State of California, as per Map filed in Book 316, Pages 3 to 6, inclusive, of Parcel Maps, in the office of the County Recorder of Orange County.

EXHIBIT B

DEPICTION OF PROPERTY



MASTER PLAN

- THE TENNIS CLUB
 - 1 new stadium court
 - Tennis Clubhouse
- THE VILLAS
 - 5 single family homes
- THE BUNGALOWS
 - 27 guest rental units
- THE GOLF CLUB

EXHIBIT “F”**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

Planning Division

1. The project shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to compliance with all applicable submittals approved by the City of Newport Beach (“City”) and all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. *Notwithstanding the legislative actions (ie. General Plan Amendment, Planned Community Development Plan, and Local Coastal Program Amendment) activities reviewed under Planning Activity No. PA2021-260 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted by the City for a period of time provided for in the Development Agreement pursuant to the provisions of California Government Code Section 66452.6(a).*
4. *The Vesting Tentative Tract Map Amendment, as reviewed under Planning Activity No. PA2021-260, shall expire in accordance with the Subdivision Code, unless an extension is otherwise granted consistent with the Subdivision Code and Subdivision Map Act. The expiration date shall be extended for the unexpired term of the Second Amendment to Development Agreement between City of Newport Beach and Golf Realty Fund.*
5. *The project shall consist of the followings:*
 - a. *Tennis Club: A 3,725 square-foot tennis clubhouse and eight (8) tennis courts;*
 - b. *Hotel: Forty-one (41) hotel rooms of 47,484 square feet, a 2,200 square-foot concierge and guest meeting facility, a 7,500 square-foot spa/fitness center, and 4,686 square feet of ancillary uses; and*
 - c. *Residential: two (2) single-family units and three (3) condominium units*
6. *Pickleball courts shall not be permitted after the issuance of a Certificate of Occupancy for the Tennis Clubhouse and Spa and Fitness Center unless the property owner and/or pickleball facility operator follows any and all City of Newport Beach General Plan, Municipal Code, or other applicable requirements in order to continue the use of pickleball courts.*

7. *The project shall be subject to all applicable development standards prescribed in Planned Community Development Plan Amendment, as reviewed under Planning Activity No. PA2021-260, for the Tennis Club site, such as but not limited to, building height, building setbacks, parking, lighting, sign standards, etc.*
8. *Upon the effective date of Local Coastal Program Implementation Plan Amendment, as reviewed under Planning Activity No. PA2021-260, Site Development Permit No. SD2011-002, Limited Term Permit No. XP2011-004, and Vesting Tentative Map No. NT2005-003, approved for the Approved Project, shall be deemed of no further force.*
9. *The temporary modular building to accommodate on-going tennis club operation during the construction of new tennis clubhouse shall be located on the existing tennis courts, shall not interfere with the construction activities or parking, and shall be removed from the project site upon completion/occupancy of the new clubhouse.*
10. *Prior to the issuance of a building permit, the applicant shall pay all applicable development fees (i.e. school, park in-lieu, transportation corridor agency), unless otherwise addressed separately in the Development Agreement.*
11. *Prior to recordation of the Final Tract Map and the issuance of building permits, the Final Tract Map shall be signed by all of the current record owners of the property, which presently include: (1) Elliot Feuerstein as Managing Member of Mesa Shopping Center-West LLC; (2) Elliot Feuerstein as Managing Member of Mesa Shopping Center-East LLC; (3) Irving Chase as General Partner of Fainbarg III L.P.; and (4) Robert O Hill as Executive Director of Golf Realty Fund LP.*
12. Any substantial change to the approved plans, shall require an amendment to all non-legislative activities reviewed under Planning Activity No. PA2021-260, or the processing of new permits.
13. This Site Development Review, Coastal Development Permit, and Limited Term Permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed development, uses, and/or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
14. A copy of the Resolution, including conditions of approval Exhibit "F" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
15. *Prior to the issuance of a building permit, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Site Development Review file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Site Development Review and shall*

highlight the approved elements such that they are readily discernible from other elements of the plans.

16. Prior to the issuance of a building permit, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division.
17. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
18. Prior to the final of issuance of a certificate of occupancy, the applicant shall schedule an inspection by the Planning Division to confirm that all landscaping was installed in accordance with the approved plan.
19. Prior to the issuance of a building permit, the applicant shall prepare photometric study in conjunction with a final lighting plan for approval by the Planning Division. The survey shall show that lighting values are "1" or less at all property lines.
20. *Lighting shall be in compliance with applicable standards of Planned Community Development Plan Amendment, as reviewed under Planning Activity No. PA2021-260 and Section 20.30.070 of the Newport Beach Municipal Code. Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. "Walpak" and up-lighting type fixtures are not permitted. Parking area lighting shall have zero cut-off fixtures.*
21. The entire project shall not be excessively illuminated based on the outdoor lighting standards contained within Section 20.30.070 of the Newport Beach Municipal Code, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
22. Prior to the final of issuance of a certificate of occupancy or final of building permits for each component of the project (i.e. residential, hotel, or tennis club), the applicant shall schedule an evening inspection by the Code Enforcement Division to confirm control of all lighting sources.
23. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
24. All noise generated by the proposed use shall comply with the provisions of Chapter

10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

25. *The construction and equipment staging area for each phase of the project shall be located in the least visually prominent area on the site and shall be properly maintained and/or screened to minimize potential unsightly conditions.*
26. *A screen and security fence that is a minimum of six feet high shall be placed around the construction site during construction for each phase of the project.*
27. *Construction equipment and materials shall be properly stored on the site when not in use for each phase of the project.*
28. *Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.*
29. *Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.*
30. *Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development.*
31. *A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.*
32. *All proposed signs shall be in conformance with the provision of the Planned Community Development Plan Amendment, as reviewed under Planning Activity No. PA2021-260, and Chapter 20.42 of the Newport Beach Municipal Code and shall be reviewed and approved by the City Traffic Engineer if located adjacent to the vehicular ingress and egress.*

33. *The final location of the signs shall be reviewed by the City Traffic Engineer and shall conform to City Standard 110-L to ensure that adequate vehicular sight distance is provided.*
34. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of ***The Tennis at Newport Beach Project Amendment*** including, but not limited to, ***General Plan Amendment, Local Coastal Land Use Plan Amendment, Planned Community Development Plan Amendment, Amendment to Major Site Development Review No. SD2011-002, Amendment to Coastal Development Permit No. CD2017-039, Amendment to Vesting Tentative Tract Map No. NT2005-003, Amendment to Limited Term Permit No. XP2011-004, & Second Amendment to Development Agreement No. DA2008-001 (PA2021-260)***. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Fire Department

35. An automatic fire sprinkler system shall be required for the residential and hotel components of the project.
36. A fire alarm system shall be required for the hotel component of the project.
37. A Fire Master Plan shall be submitted to the Fire Prevention Division for approval. The plan shall include information on the following (but not limited to) subjects: fire department vehicle access to the project site, secondary emergency vehicle access, firefighter access (hose pull) around structures, fire lane identification, location of fire hydrants and other fire department appliances, and the location and type of gates or barriers that restrict ingress/egress.
38. All portions of the perimeter of all structures shall be located within 150' of a fire lane as measured along an approved route. A portion of the proposed structure exceeding this distance is considered "out of access" and shall be corrected during plan check review by one of the following methods:
 - a. Provide additional fire lanes to bring the entire structure "in access", or

- b. Propose an alternate form of mitigation via the Alternate Methods and Materials provisions of the fire code for the Fire Marshal's review. There is no guarantee that the Alternate Methods and Materials proposal will be approved as proposed.
- 39. Fire department access roads shall comply with Newport Beach Fire Guidelines C.01 and C.02.
- 40. Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet (45 720 mm) of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility.
- 41. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to the premises. Fire-flow requirements for buildings or portions of buildings and facilities shall be determined by Appendix B of the 2019 California Fire Code.
- 42. Fire hydrants shall be spaced along fire department access roads in compliance with the 2019 California Fire Code Appendix C.
- 43. Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided.
- 44. Additional facilities or changes to the current facilities shall require submitted plans to the Newport Beach Fire Prevention Division for all changes, additions and modifications to existing or new fire protection systems.
- 45. The use or storage of portable propane heaters shall be prohibited. Heaters for future outdoor areas shall be fixed and plumbed with natural gas.
- 46. All fire hydrants and fire access road shall be installed and approved by the Fire Department prior to the delivery of combustible material on site.

Building Division

- 47. Pursuant to CBC Chapter 1, Division 1.9, all temporary construction trailers, modular office buildings, and safe pedestrian passageways around the construction sites shall be disabled accessible.
- 48. All temporary modular office buildings shall be approved by the State of California for the proposed use.

49. Foundations for temporary construction trailers and modular office buildings shall be designed to provide anchorage for these structures against seismic and wind loads; and provided with temporary utility connections.
50. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
51. The applicant shall employ the following best available control measures ("BACMs") to reduce construction-related air quality impacts:

Dust Control

- Water all active construction areas at least twice daily.
- Cover all haul trucks or maintain at least two feet of freeboard.
- Pave or apply water four times daily to all unpaved parking or staging areas.
- Sweep or wash any site access points within two hours of any visible dirt deposits on any public roadway.
- Cover or water twice daily any on-site stockpiles of debris, dirt or other dusty material.
- Suspend all operations on any unpaved surface if winds exceed 25 mph.

Emissions

- Require 90-day low-NOx tune-ups for off road equipment.
- Limit allowable idling to 30 minutes for trucks and heavy equipment.

Off-Site Impacts

- Encourage car-pooling for construction workers.
- Limit lane closures to off-peak travel periods.
- Park construction vehicles off traveled roadways.
- Wet down or cover dirt hauled off-site.
- Sweep access points daily.
- Encourage receipt of materials during non-peak traffic hours.
- Sandbag construction sites for erosion control.

Fill Placement

- The number and type of equipment for dirt pushing will be limited on any day to ensure that SCAQMD significance thresholds are not exceeded.
- Maintain and utilize a continuous water application system during earth placement and compaction to achieve a 10 percent (10%) soil moisture content in the top six-inch surface layer, subject to review/discretion of the geotechnical engineer.

52. Prior to the issuance of a grading permit, a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to comply with the General Permit for Construction Activities shall be prepared, submitted to the State Water Quality Control Board for approval and made part of the construction program. The project applicant will provide the City with a copy of the NOI and their application check as proof of filing with the State

Water Quality Control Board. This plan will detail measures and practices that will be in effect during construction to minimize the project's impact on water quality.

53. Prior to the issuance of a grading permit, the applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division and Code and Water Quality Enforcement Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur, and must show amount of stormwater retained prior to going into the proprietary filtration system.
54. A list of "good housekeeping" practices will be incorporated into the long-term post-construction operation of the site to minimize the likelihood that pollutants will be used, stored or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The Stage 2 WQMP shall list and describe all structural and non-structural BMPs. In addition, the WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.

Public Works Department

55. The Final Tract Map shall be legible, scaled, dimensioned, and complete with all necessary pertinent information and details such as easement limits and descriptions; annotated lot lines, centerlines, and boundary lines; signature certificates; curve and line tables; etc.
56. The Final Tract Map shall be prepared on the California coordinate system (NAD88). Prior to Map recordation, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said Map in a manner described in the Orange County Subdivision Code and Orange County Subdivision Manual. **The Final Tract Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
57. Prior to recordation, the Final Map boundary shall be tied onto the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one-inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the City Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
58. A hydrology and hydraulic study and a master plan of water, sewer and storm drain facilities for the on-site improvements shall be prepared by the applicant and approved by the Public Works Department prior to Final Tract Map recordation.

59. Easements for public emergency and security ingress/egress, weekly refuse service, and public utility purposes on all private streets shall be dedicated to the City.
60. No structures shall be constructed within the limits of any utility easements.
61. All easements shall be recorded as a part of the Final Tract Map.
62. All applicable fees shall be paid prior to the City approval of the Final Tract Map.
63. Construction surety in a form acceptable to the City, guaranteeing the completion of the various required public improvements, shall be submitted to the Public Works Department prior to the City approval of the Final Tract Map.
64. Street, drainage and utility improvements shall be submitted on City standard improvement plan formats. All plan sheets shall be sealed and signed by the California licensed professionals responsible for the designs shown on the Plans.
65. All improvements shall be designed and constructed in accordance with the current edition of the City Design Criteria, Standard Special Provisions, and Standard Drawings.
66. All storm drains and sanitary sewer mains shall be installed with MacWrap.
67. All runoff discharges shall comply with the City's water quality and on-site non-storm runoff retention requirements.
68. New concrete sidewalks, curbs, gutters, curb disabled access ramps, roadway pavement, traffic detector loops, traffic signal devices, and street trees shall be installed along the development's Coast Highway frontage.
69. Public improvements may be required along the development's Granville Drive frontage upon building permit plan check submittal.
70. All on-site drainage, sanitary sewer, water and electrical systems shall be privately owned, operated, and maintained. The water system shall be owned operate and maintained by the City.
71. All curb return radii shall be 5-feet (5') minimum.
72. Each detached residential dwelling unit or bungalow building shall be served with an individual water service and sewer lateral connection.
73. All overhead utilities serving the entire proposed development shall be made underground.
74. ADA compliant curb ramps shall be installed within the interior parking area.

75. The intersection of the public streets, internal roadways, and drive aisle shall be designed to provide adequate sight distance per City of Newport Beach Standard Drawing Standard 105. Slopes, landscaping, walls, signs, and other obstructions shall be considered in the sight distance requirements. Landscaping within the sight lines (sight cone) shall not exceed 24-inches in height and the monument identification sign must be located outside the line of sight cone. The sight distance may be modified at non-critical locations, subject to approval by the Traffic Engineer.
76. Any damage to public improvements within the public right-of-way attributable to on-site development may require additional reconstruction within the public right-of-way at the discretion of the Public Works Inspector.
77. The parking lot and vehicular circulation system shall be subject to further review and approval by the City Traffic Engineer. Parking layout shall be per City Standard 805. Parking layout shall be full dimensioned. On-street parking spaces shall be 8 feet wide by 22 feet long. Drive aisles to parking areas shall be 26 feet wide minimum. The one-way drive aisle adjacent to the hotel's concierge office and guest meeting building shall be 14 feet wide minimum with no parking, otherwise the drive aisle shall be widened to accommodate parking.
78. Cul-de-sacs shall comply with City Standards 102 and 103 and shall have a minimum diameter of 80 feet curb to curb.
79. County Sanitation District fees shall be paid prior to the issuance of any building permits.
80. Prior to the issuance of a building permit, a sewer and water demand study shall be submitted for review by the Public Works and Utilities Department.
81. Prior to the commencement of demolition and grading of the project, the applicant shall submit a construction management plan (CMP) to be reviewed and approved by the Community Development Director, City Fire Marshal, and City Traffic Engineer. The plan shall include discussion of project phasing, parking arrangements during construction, anticipated haul routes and construction mitigation. Upon approval of the CMP, the applicant shall be responsible for implementing and complying with the stipulations set forth in the approved CMP.
82. Prior to the issuance of a building permit, a sewer system management plan shall be submitted for review and approval by the Public Works and Utilities Department.
83. Prior to the issuance of a building permit, various water and sewer easement for City mains located on the adjacent properties shall be obtained and conveyed to the City.
84. A storm drain easement on behalf of the project shall be obtained from the adjacent property owner prior to issuance of a building permit. Provide documentation of said easement.

85. The City sewer manhole located within 1600 East Coast Highway shall be relocated to an area outside of the landscape and parking stalls. The manhole location shall be accessible at all time. A new sewer easement shall be provided for the sewer manhole and sewer main within the 1600 East Coast Highway property.
86. The public sewer connection to the OCSD main shall utilize the existing OCSD manhole located within East Coast Highway unless otherwise approved by OCSD and the City. Final design shall be approved by OCSD and the City.
87. The existing private sewer main from the proposed point of connection to the City's manhole located near East Coast Highway shall be video inspected and any damage repaired prior.
88. Utility easements shall be provided for all City water meters, fire hydrants, valves and back flow devices.



CITY OF

NEWPORT BEACH

City Council Staff Report

September 27, 2022
Agenda Item No. 16

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Kevin Pekar, Parks & Trees Superintendent
kpekar@newportbeachca.gov

PHONE: 949-644-3069

TITLE: Call for Review - Denial of Reforestation Request for 938 Sandcastle Drive

ABSTRACT:

On August 2, 2022, the Parks, Beaches and Recreation (PB&R) Commission considered a reforestation request of a City of Newport Beach (City) owned Magnolia (*Magnolia grandiflora*) located at 938 Sandcastle Drive. Following PB&R Commission consideration of this item, the PB&R Commission denied the reforestation request. Councilmember Joy Brenner is requesting this PB&R Commission decision be brought before the full City Council for further review and consideration.

RECOMMENDATION:

- a) Determine this action is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Sections 15301 (Existing Facilities) and 15304 (Minor Alterations to Land) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because the activities are in the classes of projects which have been determined not to have a significant effect on the environment;
- b) Conduct a public hearing on this Reforestation Request for 938 Sandcastle Drive; and
- c) Review and reconsider the Parks, Beaches & Recreation Commission denial of the applicant's request for removal and replacement of a City Magnolia (*Magnolia grandiflora*) tree located at 938 Sandcastle Drive, and:
 - i. If it is desired to preserve the Magnolia tree, adopt Resolution No. 2022-68, *A Resolution of the City Council of Newport Beach, California, Denying the Applicants' Appeal of the Parks, Beaches and Recreation Commission's Decision to Prohibit the Removal of a City Magnolia Tree at 938 Sandcastle* **OR**
 - ii. If it is desired to allow the removal and replacement of the City Magnolia tree, direct City of Newport Beach (City) staff to return with a resolution reversing the decision of the Parks, Beaches & Recreation Commission.

DISCUSSION:

On April 1, 2022, Mr. Marovic, residing at 938 Sandcastle Drive, submitted a reforestation request to the City's arborist for the removal of a City-owned Magnolia (*Magnolia grandiflora*) located at 938 Sandcastle Drive, citing root damage to public infrastructure, private walkways, and irrigation. Additionally, the applicant plans to extensively rehabilitate the landscaping on his property and would like the tree replaced before improvements are completed.

Staff inspected the tree and determined it is in good health and condition and did not meet the criteria for removal referenced in the City Council Policy G-1. Both the public infrastructure and visible private property areas were inspected, and no significant damages were discovered. The City has performed three curb patches in 2017, a curb patch in 2015, and light grinding of the sidewalk, all of which is routine maintenance and is not substantial enough to warrant City removal at this location. There is no other history of sidewalk work, including removals or replacements at 938 Sandcastle Drive in the last 10 years. The applicant is concerned about continued damage in the future.

Since Mr. Marovic did not qualify for a tree removal under the City Council Policy G-1, he was advised of the reforestation process as an option. He was willing to pay for the tree removal and a Western Redbud (*Cercis occidentalis*) 36-inch box replacement tree if the reforestation request was approved. The Little Gem Magnolia is the Designated Street Tree for the Harbor View Hills South Homeowners Association. However, due to the current infestation of Tulip Tree Scale on Magnolias in the area, staff did not recommend replacement with this tree species. If the reforestation was approved, staff recommended accepting the Western Redbud as the replacement species.

On August 2, 2022, the PB&R Commission considered the reforestation request to remove and replace the Magnolia tree. There was no public comment regarding this item at the Commission meeting. Commissioners denied the reforestation request because they understood that the only known damage was to the sidewalk, which can be repaired while preserving the healthy Magnolia tree. Also, there was no evidence presented of private property damage.

Councilmember Joy Brenner is requesting the PB&R Commission's decision be brought before the full City Council for further review and consideration. Council may either uphold the PB&R Commission's decision to preserve the tree in place, or allow the Magnolia tree to be removed and replaced as originally requested by the applicant.

FISCAL IMPACT:

If the decision is to leave the existing Magnolia tree in place, there is no additional cost to the City as the maintenance of the tree and surrounding hardscape is already included within the City's operating budget. Furthermore, if the PB&R Commission's decision is overturned, there is still no associated cost to the City as the applicant will then be responsible for the cost of removing the current Magnolia tree and replanting the specified replacement tree.

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).

Additionally, Mr. Marovic and Harbor View Hills South Homeowners Association have received a copy of this report.

ATTACHMENTS:

Attachment A – August 2, 2022 PBR Staff Report
Attachment B – Resolution No. 2022-68



CITY OF

NEWPORT BEACH

PB&R Commission Staff Report

Agenda Item **VII- E**
August 2, 2022

TO: Parks, Beaches & Recreation Commission

FROM: Public Works Department / Municipal Operations Division
Micah Martin, Deputy Public Works Director, Municipal Operations
949 644-3055, mmartin@newportbeachca.gov

PREPARED BY: Kevin Pekar, Landscape Manager
949 644-3055, kpekar@newportbeachca.gov

TITLE: Reforestation Request – 938 Sandcastle Drive

RECOMMENDATION:

Staff recommends the Parks, Beaches & Recreation (PB&R) Commission consider the reforestation request of a City of Newport Beach (City) Magnolia tree (*Magnolia grandiflora*) located at 938 Sandcastle Drive. The applicant, Mario Marovic, has met the procedural requirements for reforestation established in City Council Policy G-1 (*Retention, Removal and Maintenance of City Trees*). If approved by PB&R, a one-for-one replacement tree, a 36-inch box Western Redbud (*Cercis occidentalis*) will be installed at the applicant's cost.

DISCUSSION:

On April 1, 2022, Mr. Marovic, residing at 938 Sandcastle Drive, submitted a reforestation request to the City Arborist for the removal of a Magnolia (*Magnolia grandiflora*) located at 938 Sandcastle Drive, citing root damage to public infrastructure, private walkways and irrigation. Additionally, the applicant plans to extensively rehabilitate the landscaping on the property and would like the tree replaced before improvements are completed.

Staff inspected the tree and determined it is in good condition and did not meet the criteria for removal referenced in the City Council Policy G-1. Both the public infrastructure and visible private property areas were inspected, and no significant damages were discovered. The City has performed three curb patches in 2017 and a curb patch in 2015 at this location, however due to the proximity from the tree and the minor nature of the repairs, this did not warrant City tree removal. Also, there is evidence of a light grind on the sidewalk, which is routine maintenance, and is not substantial enough to warrant City removal. There is no other history of sidewalk work, including removals or replacements at 938 Sandcastle Drive in the last ten years. The applicant is concerned about continued damages in the future.

Since Mr. Marovic does not qualify for a tree removal, he was advised of the Reforestation process as an option. He is willing to pay for the tree removal and a Western Redbud (*Cercis occidentalis*) 36-inch box replacement tree, if the Reforestation is approved. The Little Gem Magnolia is the Designated Street Tree for the Harbor View Hills South Homeowners Association. However, due to the current infestation of Tulip Tree Scale on Magnolias in the area, staff does not recommend

this tree species. If the Reforestation is approved, Staff recommends accepting the Western Redbud as the replacement species.

NOTICING:

Mr. Marovic, Council Member Joy Brenner, and Harbor View Hills South Homeowners Association have received a copy of this report. The tree was posted with information regarding the Reforestation request. The agenda item has also been noticed according to the Brown Act (72 hours in advance of the meeting at which PB&R considers the item).

ATTACHMENTS:

Attachment A – Reforestation Application

Attachment B – Harbor View Hills South Homeowners Association Meeting Minutes

Attachment C – Tree Removal Report/Review

Attachment D – Info Sheet – Western Redbud



CITY OF NEWPORT BEACH

Public Works Department

Municipal Operations Division

Tree Removal or Reforestation Application

Per City Council Policy G-1 (Retention, Removal, and Maintenance of City Trees), I am requesting a tree removal(s) to be reviewed by staff and submitted to either the Parks, Beaches, and Recreation Commission for consideration at a future meeting or the appropriate City approving authority. I am aware that Commission meetings are regularly held on the first Tuesday of each month (except for holidays) at 6:00 p.m. in the Council Chambers.

Magnolia Tree (Little Gem)

Quantity and species, if known, of tree(s).

938 Sandcastle Drive, Corona Del Mar, CA 92625

Location of tree(s)

Please be as specific as possible

Requestor

<input checked="" type="checkbox"/>	Property Owner
<input type="checkbox"/>	Community Association
<input type="checkbox"/>	Other _____

Address/ Phone (Daytime) / Email

938 Sandcastle Drive
Corona Del Mar, CA 92625
mario@loungegroup; ashlee@loungegroup.com

Signature: _____

Date: 4-1-22

Print Name: Mario Marovic

REFORESTATION REQUESTS: Please proceed to Section B.

Section A. For Tree Removal Requests Only

Removal Criteria (Check one or more)

Please provide copies of photos, bills, documents or any other related material that will verify the checked items.

- | | |
|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> | Proven and repeated history of damaging public or *private, sewers, water mains, roadways, sidewalks, curbs, walls, fences, underground utilities or foundations. (*Greater than \$500) |
| <input checked="" type="checkbox"/> | Repeated history of significant interference with street or sidewalk drainage. |
| <input type="checkbox"/> | Dying Has no prospect of recovery. |
| <input type="checkbox"/> | Diseased Cannot be cured by current arboricultural methods. In advanced state of decline with no prospect of recovery. |
| <input type="checkbox"/> | Hazardous Defective, potential to fail, could cause damage to persons/property upon failure. Assessment by City Arborist will identify structural defects, parts likely to fail, targets-if fails, procedures and actions to abate. |
| <input type="checkbox"/> | Beautification Project In conjunction with a City Council-approved City, commercial, neighborhood, or community association beautification program. |

Section B. For Reforestation Requests Only

Reforestation is the concept of systematically replacing Problem or All Other Trees which are creating hardscape and/or view problems and cannot be properly trimmed, pruned or modified to alleviate the problem(s) they create, or those which have reached their full life, and are declining in health, or are simply the wrong species of tree(s) for the planted location.

As initiated by:

<input checked="" type="checkbox"/>	Property Owner
<input checked="" type="checkbox"/>	Community Association
<input type="checkbox"/>	Other _____

Check all items applicable:

<input checked="" type="checkbox"/>	Tree(s) causing curb, gutter, sidewalk or underground utilities damage.
<input checked="" type="checkbox"/>	Wrong tree species for location
<input type="checkbox"/>	View encroachment
<input type="checkbox"/>	Area has clearly defined contiguous boundaries that include the tree(s) proposed.
<input type="checkbox"/>	Residential communities, neighborhoods, or business organizations who apply for reforestation must submit a petition signed by a minimum of 60% of the property owners within the area defined.
<input checked="" type="checkbox"/>	Areas represented by a legally established community association, may submit a resolution of the Board of Directors formally requesting a reforestation.
<input type="checkbox"/>	Individual property owners must submit a petition signed by a minimum of 60% of a maximum of 30 private property owners (up to 15 contiguous private properties on both sides of the street up to 500' in either direction from the location of the proposed reforestation site) as well as the endorsement of the appropriate homeowners' association, if applicable.

*A request for reforestation requires a written agreement submitted to the Parks, Beaches, and Recreation Commission by the petitioning sponsor (Individual private property owner(s) or group) to pay 100% of the costs of the removal and replacement of the public tree(s) in advance of any removal activity. The actual removal and replanting will be coordinated by the Public Works Department/Municipal Operations Division using the City tree maintenance contractor.

*There shall be a minimum of a one-for-one replacement of all tree(s) removed in reforestation projects. Replacement tree(s) shall be a minimum size of 36" boxed tree and cost ranges from \$706 to \$910, unless the parkway space will not accommodate a 36" boxed tree or a tree cannot be planted due to planting restrictions contained in City Council Policy G-6.

This form does not replace the requirements of any of the City tree policies. Its use is intended to expedite the tree removal or reforestation requests and to ensure compliance with all City requirements. Please refer to individual City Council Policy G-1 for additional information.

REQUESTOR COMMENTS: We would like to replace the existing
Magnolia tree with a Western Redbud tree.

Removals, except emergency, will be subject to the notification processes, time frames and authority as specified in the City Council G-1 Policy.

MINUTES
GENERAL SESSION
BOARD OF DIRECTORS MEETING
HARBOR VIEW HILLS HOMEOWNERS ASSOCIATION (SOUTH)
A California Nonprofit Corporation

OCTOBER 6, 2021

Notice of Meeting

In accordance with Civil Code §4920, notice of the meeting and the agenda was posted at the community bulletin board at Park Green Drive at least four (4) days prior to the General Session of the Board of Directors of Harbor View Hills Homeowners Association (South) held on the above date via Zoom teleconference.

Roll Call

A quorum of the Board was established with the following Directors in attendance:

Directors Present: Mark Poochigian, President
 Jim Salomon Vice President
 Patricia Dreyfus, Secretary
 Stephen Bright, Member At Large

Others Present: Rhonda M. Drews, PCAM | RealManage
 Lisa Chastain | RealManage
 Various Homeowners

Executive Session Disclosure

In accordance with Civil Code §4935(e), notification is hereby provided of an Executive Session of the Board of Directors held prior to this meeting on October 6, 2021 for the following reasons:

- Delinquencies: A/R Aging & Collection Reports
- Legal: Correspondence
- Minutes: Executive Session

Call to Order General Session

President Mark Poochigian, called the General Session of the Board of Directors to order directly following the Executive Session at 6:35 p.m.

Homeowner Forum

In accordance with State Statute, the homeowners present were given an opportunity to address the Board of Directors. Various Items were brought before the Board.

COMMITTEE REPORTS

Architectural Committee: Committee reported 13 preliminary approvals and 1 final approval.

Landscape Committee: Mark Poochigian made a motion to approve \$165.00 in landscape extras, Patricia Dreyfus seconded the motion, all in favor, motion passed.

Mark Poochigian made a motion to give the Landscape Committee a not to exceed amount of \$750.00 to approval landscape extras without prior Board approval, Jim Salomon seconded the motion, all in favor, motion passed.

938 Sandcastle, Resolution to remove tree- Mark Poochigian made the motion to approve removal of the tree, Jim Salomon seconded the motion, all in favor, motion passed.

Tree View Committee: No updates to report .

Harbor View Hills Homeowners Association (South)

General Session Minutes

October 6, 2021

Page 2 of 2

Activities Committee

No updates to report.

Communications Committee

The November Newsletter will be submitted to management by 10/15/21.

Secretary's Report / Minutes

Patricia Dreyfus made a motion to approve the Board of Directors meeting minutes of September 1 2021 with revisions, Mark Poochigian seconded the motion, all in favor, motion passed.

Financial Statements

The August, 2021 financial report prepared by RealManage were reviewed. Management to confirm Architectural payments have been received and where are they being posted. Mark Poochigian, made a motion to accept the financial report as presented. Patricia Dreyfus seconded the motion, all in favor, motion passed.

New Business

2021 Annual Election- Mark Poochigian made a motion to approve the proposal submitted by The Ballot Box, Patricia Dreyfus seconded the motion, all in favor, motion passed.

1201 Keel Dr. Pest Control Issue- Slope is maintained by the homeowner

Old Business

Greenbelt Irrigation Project- Table for the November 3, 2021 meeting.

Next Meeting,

The next meeting of the Board of Directors is scheduled for Wednesday, November 3, 2021 at 6:30 p.m.; Executive Session at 5:30 p.m.

Adjourn General Session

There being no further business to come before the Board of Directors in General Session, a motion was made, seconded and unanimously carried to adjourn at 7:36p.m.

SECRETARY'S CERTIFICATE

I, Patricia A. Dreyfus, duly Appointed and Acting Secretary of Harbor View Hills Homeowners Association (South), do hereby certify that the foregoing is a true and correct copy of the Minutes of the General Session of the Board of Directors held on the above date, as approved by the Board of Directors of Harbor View Hills Homeowners Association (South).

ATTEST:

Patricia A. Dreyfus

Appointed Secretary

Oct. 7, 2021

Dated



Public Works Department/Municipal Operations Division

TREE INSPECTION REPORT

Name: Mario Marovic

Location(s) of tree(s): 938 Sandcastle Drive / Front - 1

Request: The applicant, Mario Marovic, contacted the City Arborist to request the removal of a City Magnolia (*Magnolia grandiflora*) tree located at 938 Sandcastle Drive due to root damage to public and private walkways on the property.

Botanical/Common Names: *Magnolia grandiflora* / Magnolia

Estimated Tree Value: \$2,070.00

Replacement Street Tree: Western Redbud (*Cercis occidentalis*)

Damage: N/A

Parkway: Concrete Brick Turf (X) Other

Comments: A field inspection determined the Magnolia tree is in good condition and does not meet the criteria for removal referenced in the G-1 Policy.

The applicant, Mario Marovic, residing at 938 Sandcastle Drive, contacted the City Arborist to request the removal of a Magnolia (*Magnolia grandiflora*) tree located at 938 Sandcastle Drive due to claims of root damage to public and private walkways on the property. There were three curb patches in 2017 and one curb patch in 2015. There is no other history of sidewalk work, including removals or replacements at 938 Sandcastle Drive in the last 10 years.

Mr. Marovic is willing to pay for the tree removal and a Western Redbud (*Cercis occidentalis*) 36-inch box replacement tree.

Inspected by:

Date: June 27, 2022

Brian George, Acting City Arborist

Recommendation: Staff is denying the removal request of the Magnolia tree and has advised Mr. Marovic of the appeal process.

Reviewed by:

Date: June 27, 2022

Kevin Pekar, Landscape Manager



Public Works Department/Municipal Operations Division

June 27, 2022

TO: Landscape Manager
FROM: City Arborist
SUBJECT: *Tree Removal Review*

PROPERTY OWNER(S) / REQUESTER INFORMATION:

Name: Mario Marovic

Tree Location: 938 Sandcastle Drive / Front - 1

The applicant, Mario Marovic, residing at 938 Sandcastle Drive, contacted the City Arborist to request the removal of a Magnolia (*Magnolia grandiflora*) tree located at 938 Sandcastle Drive. Mr. Marovic is requesting the tree replaced due to claims of root damage to public or private walkways on the property.

A field inspection determined the Magnolia (*Magnolia grandiflora*) tree is in good condition and does not meet the criteria for removal referenced in the G-1 Policy. There were three curb patches in 2017 and 1 curb patch in 2015. There is no other history of sidewalk work, including removals or replacements at 938 Sandcastle Drive in the last 10 years.

Staff is denying the removal request of the Magnolia (*Magnolia grandiflora*) tree and has advised Mr. Marovic of the appeal process. Mr. Marovic is willing to pay for the tree removal and a Western Redbud (*Cercis occidentalis*) 36-inch box replacement tree.

REPLACEMENT TREE(S): ☒ **YES** ☐ **NO**

REPLACEMENT TREE(S): Western Redbud (*Cercis occidentalis*)

LANDSCAPE MANAGER – COMMENTS / RECOMMENDATIONS:

Signature: _____

Date: _____

7/21/22

Detail

Notes

Images

Documents

Observations

Inventory Detail

Tree ID	737043	Old Tag #		Save
District	8			
Area	8			
Address	938 SANDCASTLE DR			
Side/Site	Front - 1			
Alt Address				
Tree Species	Magnolia grandiflora / Magnolia			
Common Name	Southern Magnolia			
Size	0-6			
Height	01-15			
DBH				
Condition	FAIR			
Grow Space				
Space Size				
Overhead Utility				
Sidewalk Damage				
Note:				
Irrigation Flag	Yes	No		
Monitor Flag	Yes	No		
Service Type	Grid Pruning			
Season	JAN/APR			
Estimated Value	\$2,070.00			
Next Date	04/22			

Latitude: 33.598881642 Longitude: -117.86275167 [\(edit\)](#)

Service History							New
Scope	WO Ref #	Description	Who	Service Date	Invoice Date	Service	Price
Completed	135378	2022 - GRID 8 (Harbor View Hills South) - Broadleaves	GSTS	4/06/22		Grid Pruning	56.58
Invoiced	40415	2020 - GRID 8 (Harbor View Hills South) - Broadleaves (April Progress)	GSTS	4/20/20	4/30/20	Grid Pruning	53.85
Invoiced	32856	2018 - Grid 8 (Harbor View Hills South) - Broadleaves	GSTS	4/12/18	4/30/18	Grid Pruning	51.33
Invoiced	24734	2016 - Grid 8 (Harbor View Hills South)	GSTS	4/28/16	4/28/16	Grid Pruning	49.43
Invoiced	19771	2014 - Grid 8 (Harbor View Hills South)	GSTS	11/03/14	12/05/14	Grid Pruning	48.00
Work History			WCA		8/05/13	Other	0.00
Work History			WCA		4/29/13	Other	0.00
Work History			WCA		4/21/11	Other	0.00
Work History			WCA		4/07/08	Other	0.00
Work History			WCA		7/05/06	Other	0.00
Work History			WCA		4/05/05	Other	0.00
Work History			WCA		1/12/04	Other	0.00
Work History			WCA		9/02/02	Other	0.00
Work History			WCA		3/16/99	Other	0.00
Work History			WCA		8/27/98	Other	0.00







City of Newport Beach: Trees Section – Tree Info Sheet



Western Redbud (*Cercis occidentalis*)

Western Redbud is a commonly used native shrub, commonly found in riparian canyons. The thin, shiny brown branches bear shiny heart-shaped leaves which are light green early in the season and darken as they age. The showy flowers develop in the spring and are bright pink or magenta, and grow in clusters all over the shrub, making the plant very colorful and noticeable in the landscape. The shrub bears 3-inch-long brown legume pods which are very thin and dry. It tolerates dry conditions, but exhibits more vigorous, lush growth with regular deep watering. It blooms best in full sun. Otherwise, it is quite reliable once established. It is resistant to oak root fungus.

Description:

Has deciduous foliage

Height: 20 feet

Spread: 10 to 20 feet

Crown shape:

Rounded

Growth rate:

24-36-inch per year



ATTACHMENT B

RESOLUTION NO. 2022- 68

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, DENYING THE APPLICANTS' APPEAL OF THE PARKS, BEACHES AND RECREATION COMMISSION'S DECISION TO PROHIBIT THE REMOVAL OF A CITY MAGNOLIA TREE AT 938 SANDCASTLE DRIVE

WHEREAS, Mario Marovic ("Applicant") requested the removal of a City Magnolia tree (*Magnolia grandiflora*) located at 938 Sandcastle Drive ("Magnolia Tree"), based on his assertion that the tree is damaging and lifting the public infrastructure, which he claims presents undue cost to the City and danger to pedestrians;

WHEREAS, the Applicant has offered to pay for one 36-inch box Western Redbud tree as a replacement tree;

WHEREAS, City Council Policy G-1 (Retention, Removal, and Maintenance of City Trees) classifies the Magnolia Tree as a standard City tree;

WHEREAS, on June 27, 2022, City staff denied Applicant's request for removal of the Magnolia Tree in finding that Magnolia Tree is healthy and stable, and any damage to infrastructure has been minor in nature and can be addressed at a reasonable cost;

WHEREAS, at its August 2, 2022 meeting, the Parks, Beaches and Recreation Commission ("Commission") held a public hearing to consider Applicant's appeal of City staff's decision;

WHEREAS, after considering the evidence, including the Harbor View Hills South Board's approval of the removal request, the Commission denied the appeal and upheld City staff's decision;

WHEREAS, Councilmember Joy Brenner called up the item for review by the City Council; and

WHEREAS, the City Council held a public hearing on September 27, 2022, in the Council Chambers located at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Council Policy G-1. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

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

Section 1: The City Council has considered Applicant's appeal and makes the following findings:

a. City staff conducted a field inspection of the Magnolia Tree and found that it is in good condition and does not meet the criteria for removal under Council Policy G-1. The results of City staff's inspection and determination are presented in the Tree Inspection Report dated June 27, 2022, which is attached hereto as Exhibit "A," and incorporated herein by this reference.

b. The City has previously addressed damage and uplifts in the surrounding infrastructure with grinding, patching and panel replacement. Any similar damage to the sidewalk can be addressed with similar mitigation measures at a reasonable cost that will allow for the retention of the Magnolia Tree.

c. The Magnolia Tree is worth \$2,070.

Section 2: The City Council hereby denies the appeal and upholds the decision of City staff and the Commission denying Applicant's request for removal and replacement of the Magnolia Tree.

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 hereby 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 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 27th day of September 2022.

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachment(s): Exhibit A - Tree Inspection Report dated June 27, 2022



Public Works Department/Municipal Operations Division

TREE INSPECTION REPORT

Name: Mario Marovic

Location(s) of tree(s): 938 Sandcastle Drive / Front - 1

Request: The applicant, Mario Marovic, contacted the City Arborist to request the removal of a City Magnolia (*Magnolia grandiflora*) tree located at 938 Sandcastle Drive due to root damage to public and private walkways on the property.

Botanical/Common Names: *Magnolia grandiflora* / Magnolia

Estimated Tree Value: \$2,070.00

Replacement Street Tree: Western Redbud (*Cercis occidentalis*)

Damage: N/A

Parkway: Concrete Brick Turf (X) Other

Comments: A field inspection determined the Magnolia tree is in good condition and does not meet the criteria for removal referenced in the G-1 Policy.

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Mr. Marovic is willing to pay for the tree removal and a Western Redbud (*Cercis occidentalis*) 36-inch box replacement tree.

Inspected by: Brian George

Date: June 27, 2022

Brian George, Acting City Arborist

Recommendation: Staff is denying the removal request of the Magnolia tree and has advised Mr. Marovic of the appeal process.

Reviewed by: Kevin Pekar

Date: June 27, 2022

Kevin Pekar, Landscape Manager



Public Works Department/Municipal Operations Division

June 27, 2022

TO: Landscape Manager
FROM: City Arborist
SUBJECT: *Tree Removal Review*

PROPERTY OWNER(S) / REQUESTER INFORMATION:

Name: Mario Marovic

Tree Location: 938 Sandcastle Drive / Front - 1

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REPLACEMENT TREE(S): ☒ **YES** ☐ **NO**

REPLACEMENT TREE(S): Western Redbud (*Cercis occidentalis*)

LANDSCAPE MANAGER – COMMENTS / RECOMMENDATIONS:

Signature: _____

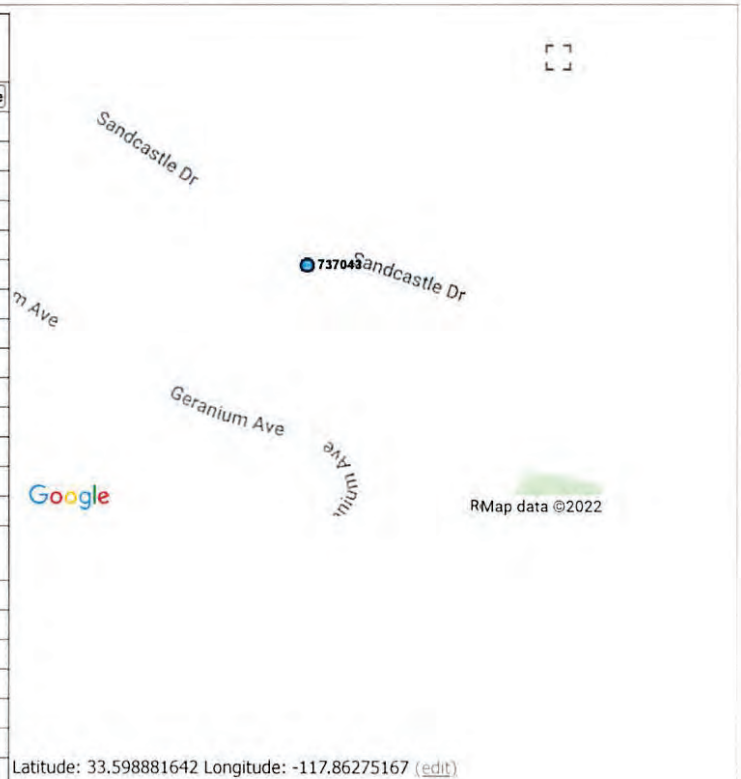
Date: _____

7/21/22

Detail Notes Images Documents Observations

Inventory Detail

Tree ID	737043	Old Tag #	<input type="text"/>	<input type="button" value="Save"/>
District	8			
Area	8			
Address	938 SANDCASTLE DR			
Side/Site	Front - 1			
Alt Address				
Tree Species	<u>Magnolia grandiflora</u> / Magnolia			
Common Name	Southern Magnolia			
Size	0-6			
Height	01-15			
DBH				
Condition	FAIR			
Grow Space				
Space Size				
Overhead Utility				
Sidewalk Damage				
Note:				
Irrigation Flag	Yes	No		
Monitor Flag	Yes	No		
Service Type	Grid Pruning			
Season	JAN/APR			
Estimated Value	\$2,070.00			
Next Date	04/22			



Latitude: 33.598881642 Longitude: -117.86275167 ([edit](#))

Service History							New
Scope	WO Ref #	Description	Who	Service Date	Invoice Date	Service	Price
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Work History			WCA		9/02/02	Other	0.00
Work History			WCA		3/16/99	Other	0.00
Work History			WCA		8/27/98	Other	0.00









CITY OF

NEWPORT BEACH

City Council Staff Report

September 27, 2022
Agenda Item No. 17

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Micah Martin, Deputy Public Works Director,
mmartin@newportbeachca.gov

PHONE: 949-644-3055

TITLE: Ordinance No. 2022-21: Non-Exclusive Commercial Solid Waste
Franchise Agreements

ABSTRACT:

On August 23, 2022, the City Council adopted Resolution No. 2022-55, declaring its intention to conduct a public hearing on September 27, 2022, to consider granting Non-Exclusive Commercial Solid Waste Franchises to Al Rivera Gardening & Landscape, American Dream Construction Clean-up, Corp. and Key Disposal & Recycling Inc. with an effective date of October 27, 2022, and an expiration date of October 7, 2027. Following a public hearing, the City Council will consider an ordinance granting franchises to these three entities.

RECOMMENDATION:

- a) Conduct a Public Hearing to consider the award of Non-Exclusive Commercial Solid Waste Franchises pursuant to Resolution No. 2022-55;
- b) 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
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2022-21, *An Ordinance of the City Council of the City of Newport Beach, California, Granting Non-Exclusive Franchise Agreements for Commercial Solid Waste and Divertible Materials Handling Services Within the City of Newport Beach*, and pass to second reading on October 11, 2022.

DISCUSSION:

The City of Newport Beach (City) utilizes a non-exclusive franchise system to manage commercial solid waste collection within the city. This system allows the City to meet the solid wastes collection needs of the business community in a comprehensive manner while still complying with State of California (State) law.

Over the past several years, the State has been making significant changes to its laws regarding the disposal of solid waste, as well as the amount that is required to be diverted away from landfills and recycled or reused (Assembly Bill 939 and 341, Senate Bill 1383).

Newport Beach Municipal Code (NBMC) Section 12.63.030 provides that no person shall provide commercial solid waste handling services or conduct a solid waste enterprise in the City without having first been awarded a franchise and entered into a franchise agreement with the City. At the August 23, 2022 meeting, the City Council passed a Resolution of Intention, Resolution No. 2022-55 (Attachment A), to conduct a public hearing at its September 27, 2022 meeting to consider granting franchises to the three entities listed therein.

At this time, the City Council is conducting the first reading of Ordinance No. 2022-21 (Attachment B) to consider granting the non-exclusive franchises. The second reading is scheduled for October 11, 2022. NBMC Section 12.63.080 allows the City Council to approve or conditionally approve an application for a franchise if, on the basis of the application, information, materials and testimony submitted, the City Council finds that:

- The application complies with NBMC Chapter 12;
- The applicant or any person responsible for the management of the entity submitting the application has not within the past three years: (1) had a franchise for commercial solid waste handling services terminated by the City; and/or (2) operated a solid waste enterprise within the City without a franchise;
- Awarding the franchise is in accord with the objectives of NBMC Chapter 12;
- Granting of such franchise will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the city or be materially detrimental to the public welfare or injurious to property or public improvements; and
- The applicant has sufficient experience, equipment or recycling plan to safely comply with the requirements of the franchise agreement.

Staff has received and reviewed the franchise applications from the entities listed in Resolution 2022-55: Al Rivera Gardening & Landscape, American Dream Construction Clean-up, Corp. and Key Disposal & Recycling Inc. Based on staff's review, the submitted applications meet all criteria required under NBMC 12.63.080.

The new Non-Exclusive Commercial Solid Waste Franchises will take effect 30 days after the proposed adoption of the ordinance with an effective date of October 27, 2022, contingent on the execution of the individual franchise agreements, and approval of each firm's required insurance and bonds.

FISCAL IMPACT:

Companies (Franchisees) that are approved and granted a 2020 Non-Exclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services within the City are required to pay a franchise fee to the City which is equal to a total of sixteen percent (16%) of the gross receipts for all commercial franchise services provided by Franchisee in the City.

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. 2022-55
Attachment B – Ordinance No. 2022-21

ATTACHMENT A

RESOLUTION NO. 2022-55

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, DECLARING ITS INTENTION TO CONDUCT A PUBLIC HEARING TO CONSIDER GRANTING NON-EXCLUSIVE COMMERCIAL SOLID WASTE AND DIVERTIBLE MATERIALS HANDLING FRANCHISES

WHEREAS, the City Council of the City of Newport Beach ("City") finds and determines that the collection of municipal solid waste and divertible materials, including recyclable materials, food scraps, green waste, wood waste, construction and demolition debris, and all other materials that can be diverted from landfill disposal (collectively "Commercial Solid Waste") generated within the City is a vital public service;

WHEREAS, the City Council further finds and determines that the collection, transportation, storage, and disposal of municipal solid waste and the collection, transportation, processing, and diversion of processable municipal solid waste and divertible materials ("Commercial Franchise Services") is a matter of great public concern because improper control of such matters subjects the City to potential liability, damages and penalties, and may create a public nuisance, air pollution, fire hazard, infestation and other problems affecting the public health, safety and welfare;

WHEREAS, the non-exclusive franchises for the use of public streets to provide Commercial Franchise Services promotes the public health, safety and welfare by providing permanence and stability among those businesses wishing to provide such service and accountability to the City for compliance with current and future state mandates;

WHEREAS, on October 22, 2019, the City Council approved a new model franchise agreement in compliance with state law ("2020 Franchise"), that expires in the year 2027;

WHEREAS, the City has since received applications from new applicants that wish to perform work under the 2020 Franchise;

WHEREAS, pursuant to Article XIII (Franchises) of the City Charter, Chapter 12.63 (Solid Waste Management) of the Newport Beach Municipal Code ("NBMC"), and California Public Resources Code Sections 40059, 49300, and 49500 through 49523, or any successor statutes, the City is authorized to enter into non-exclusive franchise agreements for Commercial Franchise Services with private solid waste haulers;

WHEREAS, pursuant to City Charter Section 1301 (Resolution of Intention. Notice and Public Hearing), the City Council, prior to granting any franchise, shall pass a resolution declaring its intention to grant same, stating the name of the proposed grantee(s), the character of the franchise, and the terms and conditions upon which it is proposed to be granted; and

WHEREAS, such resolution shall fix and set forth the day, hour and place when and where any persons having any interest therein or any objection to the granting thereof may appear before the City Council and be heard thereon.

NOW, THEREFORE, be it resolved by the City Council of the City of Newport Beach:

Section 1: The City Council does hereby declare its intention to grant non-exclusive franchises, subject to the following general terms and conditions ("Non-Exclusive Franchise"):

- a. Effective date. November 10, 2022;
- b. Franchise fees. Sixteen percent (16%) of gross monthly receipts. Five and one-half percent (5.5%), shall be earmarked for the purposes of indemnifying and holding the City harmless from environmental liability associated with the franchisee's operations in the City. This portion of the franchise fee shall be paid into the City's Environmental Liability Fund. One-half percent (0.5%) shall be attributable to the maintenance and implementation of the City's Source Reduction and Recycling Element;
- c. Term. November 10, 2022 to October 7, 2027;
- d. Rates. The City shall not set franchisees' bin rates;
- e. Indemnification. Franchisees shall indemnify and hold City harmless from penalties and damages for failure to meet state recycling requirements with respect to the portion of the Commercial Solid Waste stream collected by franchisees;

f. Diversion requirements. Franchisees shall divert the minimum amounts required by state law, of all processable municipal solid waste, recyclable materials, food scraps, green waste, and construction and demolition debris collected by franchisees;

g. Disposal requirements. Franchisees shall dispose of Commercial Solid Waste, not otherwise diverted, in Orange County landfills pursuant to the City's waste disposal agreement with the County of Orange. City maintains the right to designate disposal facilities to be used by franchisees;

h. Billing. Franchisees shall be responsible for all billing and collection for its accounts;

i. Termination. Franchise shall not be revoked unless franchisee has defaulted in the performance of any obligation of the 2020 Franchise, and the Franchise may be terminated pursuant to Newport Beach Municipal Code Section 12.63.140 (Solid Waste Management - Termination);

j. Application requirements. Prior to obtaining the 2020 Franchise, franchisees shall designate the specific Commercial Franchise Services for which it desires to apply and shall demonstrate competence in and compliance with the City's insurance, equipment, and diversion requirements with respect to those Commercial Franchise Services;

k. Public education. Franchisees shall meet City's requirements to implement recycling, diversion, and source reduction public education activities;

l. Recycling/diversion programs. Franchisees shall implement and provide recycling and diversion programs for all customers subject to California State Assembly Bills 939, 341, and 1826, Senate Bill 1383, and the California Green Building Standards Code, codified in the California Code of Regulations Title 24, Part 11, ("CALGreen");

m. Hauler representative. Franchisees shall designate a representative to assist in implementing State-imposed recycling and diversion programs; and

n. Compliance. Franchisees shall comply with all state, federal laws and regulations, terms and conditions of the franchise agreement, the City Charter and the Newport Beach Municipal Code.

Section 2: The City intends to grant the 2020 Franchise to the following entities (collectively, "Proposed Grantees"), which do not currently hold a franchise with the City:

- a. Al Rivera Gardening & Landscape;
- b. American Dream Construction Cleanup, Corp; and
- c. Key Disposal, Inc.

Section 3: The City Council shall conduct a public hearing on September 27, 2022 at 5:00 p.m., or as soon thereafter as is practical, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California, to consider granting the Proposed Grantees the 2020 Franchise. Persons who have an interest in or objection to the granting of the 2020 Franchise to the Proposed Grantees may appear before the City Council and be heard at that date and time.


Section 4: The City Council finds the adoption of this resolution is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Sections 15301 and 15308 of the California Code of Regulations set forth in Title 14, Division 6, Chapter 3 which exempts "existing operations and facilities" and "actions by regulatory agencies for protection of the environment." Application of Sections 15301 and 15308 is appropriate because the resolution does not change nor expand existing solid waste operations and facilities within the City. This resolution is also consistent with the goals of California State Assembly Bills 939, 341, and 1826, Senate Bill 1383 and *The California Solid Waste Management Act*, CALGreen, as well as the objectives of the City's Source Reduction and Recycling Element.

Section 5: The recitals provided above are true and correct and are incorporated into the operative portion of this resolution.


Section 6: 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 thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 7: Pursuant to City Charter Section 1301, this resolution shall be published in the City's official newspaper within fifteen (15) days of its adoption and at least ten (10) days prior to September 27, 2022.

ADOPTED this 23rd day of August, 2022.



Kevin Muldoon
Mayor

ATTEST:


Leilani I. Brown
City Clerk



APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE


Aaron C. Harp
City Attorney

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; the foregoing resolution, being Resolution No. 2022-55 was duly introduced before and adopted by the City Council of said City at a regular meeting of said Council held on the 23rd day of August, 2022; and the same was so passed and adopted by the following vote, to wit:

AYES: Mayor Kevin Muldoon, Mayor Pro Tem Noah Blom, Council Member Brad Avery,
Council Member Joy Brenner, Council Member Diane Dixon, Council Member
Duffy Duffield

NAYS: None

ABSENT: Council Member Will O'Neill

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 24th day of August, 2022.



Leilani I. Brown
City Clerk
Newport Beach, California



ATTACHMENT B

ORDINANCE NO. 2022-21

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, GRANTING NON-EXCLUSIVE FRANCHISE AGREEMENTS FOR COMMERCIAL SOLID WASTE AND DIVERTIBLE MATERIALS HANDLING SERVICES WITHIN THE CITY OF NEWPORT BEACH

WHEREAS, the City Council of the City of Newport Beach ("City Council") finds and determines that the collection of municipal solid waste and divertible materials, including recyclable materials, food scraps, green waste, wood waste, construction and demolition debris and all other materials that can be diverted from landfill disposal (collectively, "Commercial Solid Waste") generated within the City of Newport Beach ("City") is a vital public service;

WHEREAS, the City Council further finds and determines the collection, transportation, storage, and disposal of municipal solid waste and the collection, transportation, processing and diversion of processable municipal solid waste and divertible materials ("Commercial Franchise Services") is a matter of great public concern because improper control of such matters subjects the City to potential liability, damages and penalties and may create a public nuisance, air pollution, fire hazard, infestation and other problems affecting the public health, safety and welfare;

WHEREAS, the non-exclusive franchises for use of public streets to provide Commercial Franchise Services promotes the public health, safety and welfare by providing permanence and stability among those businesses wishing to provide such service and accountability to the City for compliance with current and future state mandates;

WHEREAS, in 2017, the City Council adopted a model non-exclusive commercial solid waste franchise agreement for private solid waste haulers and, thereafter, entered into franchise agreements with a number of commercial solid waste franchise haulers ("2017 Franchise"), effective through November 8, 2024;

WHEREAS, although the 2017 Franchise did not expire until November 8, 2024, on October 22, 2019, the City Council approved a new model franchise agreement in compliance with Assembly Bill 1826 and Assembly Bill 341 ("2020 Franchise"), that expires in the year 2027;

WHEREAS, the City has since received applications from new applicants that wish to perform work under the 2020 Franchise;

WHEREAS, pursuant to Article XIII of the City Charter, Chapter 12.63 (Solid Waste Management) of the Newport Beach Municipal Code ("NBMC"), and California Public Resources Code Sections 40059, 49300, and 49500 through 49523, or any successor statutes, the City is authorized to enter into non-exclusive franchise agreements for Commercial Franchise Services with private solid waste haulers;

WHEREAS, pursuant to City Charter Section 1301 (Resolution of Intention. Notice and Public Hearing), on August 23, 2022, the City Council adopted Resolution No. 2022-55, providing notice of a public hearing to be held on September 27, 2022 to grant the 2020 Franchise to the franchise haulers identified in the resolution;

WHEREAS, a public hearing was held on September 27, 2022, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Section 1301 of the City Charter. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing;

WHEREAS, pursuant to Section 12.63.080 (Required Findings) of the NBMC, the City Council finds, on the basis of the application, information, materials, and testimony submitted, that:

- The applications submitted by Franchisees (defined herein) complies with Chapter 12.63 (Solid Waste Management) of the NBMC;
- The Franchisees have not within the past three years: (1) had a franchise terminated by the City; and/or (2) operated a solid waste enterprise within the City without a franchise;
- Awarding the 2020 Franchise is in accordance with the objectives of Chapter 12.63 (Solid Waste Management) of the NBMC;
- Granting the 2020 Franchise to Franchisees will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the City or be materially detrimental to the public welfare or injurious to property or public improvements; and

- Franchisees have demonstrated sufficient experience, equipment and a recycling plan and diversion program to safely comply with the requirements of the 2020 Franchise; and

WHEREAS, having considered all oral and documentary evidence presented at the public hearing, the City Council determines that the granting of the 2020 Franchise to Franchisees is in the public interest.

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

Section 1: There is hereby granted to each entity listed below (collectively, "Franchisees"), which do not currently hold a franchise with the City, the 2020 Franchise attached hereto as Attachment 1:

- a. Al Rivera Gardening & Landscape;
- b. American Dream Construction Cleanup, Corp; and
- c. Key Disposal, Inc.

Section 2: Franchisees' right to use City's public streets, ways, alleys and places for the purposes set forth in this ordinance, is not exclusive and the City reserves the right to grant a similar use of public streets, ways, alleys and places to any person at any time from the effective date of this ordinance until the expiration of the 2020 Franchise on October 7, 2027.

Section 3: Franchisees shall comply with and shall be bound by all terms, provisions and conditions contained in the City Charter and the NBMC including, but not limited to, Chapters 6.04 (Garbage, Refuse and Cuttings), 6.06 (State Mandated Municipal Solid Waste Diversion Programs), and 12.63 (Solid Waste Management), Resolution No. 2022-55, this ordinance, and the 2020 Franchise attached hereto as Attachment 1.

Section 4: The 2020 Franchise granted under this ordinance shall take effect on November 10, 2022, and shall expire October 7, 2027, unless terminated earlier pursuant to the terms of the agreement. Notwithstanding the effective date above, the 2020 Franchise granted by this ordinance shall not become effective unless and until the Franchisee files written acceptance of the 2020 Franchise with the City Clerk and delivers to the City all bonds and insurance policies required to be furnished in accordance with the requirements of Chapter 12.63 of the NBMC and the 2020 Franchise. The written acceptance shall be in form and substance as prescribed by the City Attorney and shall operate as an acceptance of each and every term, condition and limitation contained in this ordinance, the 2020 Franchise, Article XIII (Franchises) of the City Charter, Resolution No. 2022-55, and Chapter 12.63 (Solid Waste Management) of the NBMC. A Franchisee shall file written acceptance of the 2020 Franchise no later than ten (10) days after the adoption of this ordinance.

Section 5: During the term of the 2020 Franchise, Franchisee shall pay to City franchise fees for the privilege of providing Commercial Solid Waste and Divertible Materials Handling Services in the City of Newport Beach and use of public streets, ways, alleys and places for such purposes. Franchise fee payments shall be paid quarterly and shall be computed and paid on the basis of paid receipts received by the Franchisee for all Commercial Solid Waste and Divertible Materials Handling Services provided by the Franchisee within the City. Franchise fees shall total sixteen percent (16%) of Franchisee's gross receipts as follows:

(a) Franchisee shall pay to the City ten and one-half percent (10.5%) of the Franchisee's gross receipts, of which one-half of one percent (0.5%) shall be attributable for the preparation, adoption, and implementation of an integrated waste management plan consistent with of the City's Source Reduction and Recycling Element; and

(b) Franchisee shall pay to the City Environmental Liability Fund five and one-half percent (5.5%) of Franchisee's gross receipts for the City to, among other things, take reasonable actions to obtain protection and indemnification from environmental liability associated with the franchisee's operations in the City as set forth in the 2020 Franchise.

Section 6: The City Council authorizes the Mayor and City Clerk to execute the attached 2020 Franchise in substantially the same form as the attached.

Section 7: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

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

Section 9: The City Council of the City of Newport Beach finds that this ordinance is not a project subject to the California Environmental Quality Act ("CEQA") in accordance with Sections 15060(c)(2), 15060(c)(3), 15061(b)(3) and 15308 of the California Code of Regulations Title 14, Division 6, Chapter 3. The City Council further finds that this ordinance is categorically exempt under Sections 15301 and 15308, which exempts "existing operations and facilities" and "actions by regulatory agencies for protection of the environment." Application of Sections 15301 and 15308 is appropriate because neither this ordinance nor the 2020 Franchise changes or expands existing solid waste operations and facilities within the City. This ordinance is also consistent with the goals of California State Assembly Bills 939, 341, and 1826, *The California Solid Waste Management Act*, CALGreen, as well as the objectives of the City's Source Reduction and Recycling Element.

Section 10: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, held on the 27th day of September 2022, and adopted on the 11th day of October 2022, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

KEVIN MULDOON, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

Attachment: Agreement Template for 2020 Non-Exclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services

**NON-EXCLUSIVE FRANCHISE AGREEMENT BETWEEN THE CITY OF
NEWPORT BEACH AND _____ FOR COMMERCIAL
SOLID WASTE AND DIVERTIBLE MATERIALS HANDLING SERVICES**

This Non-exclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services ("Agreement") is entered into this ____ day of _____, 2022 ("Effective Date") by and between the City of Newport Beach, a California municipal corporation and charter city organized and existing under the laws of the State of California ("City"), and _____, a *[insert name and type of business entity e.g. corporation, LLC, partnership]* ("Franchisee") (City and Franchisee may collectively be referred to as "Parties"), whose address is _____ and is made with reference to the following:

RECITALS

This Agreement is entered into on the basis of the following facts:

A. Assembly Bill ("AB") 939 (the California Integrated Solid Waste Management Act of 1989, hereinafter the "Act"; Public Resources Code Sections 40000 *et seq.*) requires the City to divert from landfill disposal a minimum of fifty percent (50%) of all municipal solid waste generated within the City.

B. In 2011, the Act was amended by AB 341 to establish a statewide goal of diverting from landfills seventy-five percent (75%) of all municipal solid waste by 2020 and required the City, on or before July 1, 2012, to provide a commercial recycling program.

C. AB 341 also requires all businesses generating more than four (4) cubic yards per week of commercial municipal solid waste and all multifamily dwellings of five (5) units or more to arrange for recycling services by July 1, 2012.

D. In 2014, the Act was further amended by AB 1826 to require the City, on or before January 1, 2016, to provide a diversion program for collection and diversion of food scraps and green waste.

E. AB 1826 also requires commercial generators of certain quantities of food scraps and green waste to participate in a diversion program beginning on a date between April 1, 2016 and January 1, 2019, depending on the quantity of waste generated. Some smaller commercial generators are required by CalRecycle to participate on or after January 1, 2020.

F. The City has received written notification from CalRecycle of its intention to enforce the deadlines for implementation of AB 341 and AB 1826 programs within the City as required by the Act; therefore, it is important that Franchisee implement and maintain successful AB 341 and AB 1826 diversion programs for all commercial customers as required by the Act, to the satisfaction of both the City and CalRecycle.

G. Pursuant to Article XIII of the City Charter, Code Chapter 12.63, and Public Resources Code Sections 40059, 49300, and 49500 through 49523, or any successor statutes, the City is authorized to enter into non-exclusive franchise agreements for commercial solid waste and divertible materials handling services.

H. On October 10, 2017, the City Council of the City of Newport Beach ("City Council") adopted Ordinance No. 2017-16, An Ordinance of the City Council of the City of Newport Beach, California, Granting Non-Exclusive Solid Waste Franchises to Provide Commercial Solid Waste Handling Services Within the City of Newport Beach.

I. As part of its adoption of Ordinance No. 2017-16, the City entered into a number of nonexclusive franchise agreements allowing solid waste haulers to operate in the City.

J. On October 22, 2019, the City Council approved revisions to the nonexclusive franchise agreement with solid waste haulers to improve procedures for compliance with Assembly Bills 341 and 1826. The revised nonexclusive franchise agreement also extended the term for an additional two (2) years.

K. Pursuant to Code Chapter 12.63, Franchisee has filed a franchise application with the City to operate under the new Nonexclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services.

L. The Parties now wish to terminate the franchise agreement adopted pursuant to Ordinance No. 2017-16 and enter into a new Nonexclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services.

ALTERNATIVE, IF THEY DO NOT HAVE A CURRENT FRANCHISE AGREEMENT, THEN L. WOULD READ, "The Parties now wish to enter into a Nonexclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services."

M. City has reviewed Franchisee's application and Franchisee has represented it is capable of providing collection services for commercial recyclable materials, food scraps, green waste, municipal solid waste, and/or construction and demolition debris in the City.

N. Pursuant to this Agreement, City desires to authorize Franchisee to provide those non-exclusive commercial services for collection, transportation, delivery, and disposal of Municipal Solid Waste and/or collection, transportation, processing and diversion of recyclable materials, food scraps, green waste, wood waste, and construction and demolition debris as requested in Franchisee's application and for which Franchisee has demonstrated capability.

O. The City Council has determined that this grant of a non-exclusive franchise is in the public interest.

NOW, THEREFORE, the City and Franchisee do hereby agree as follows:

SECTION 1. GRANT OF FRANCHISE

A. By Ordinance No. 2020-20, City has granted to Franchisee a non-exclusive Franchise authorizing Franchisee to provide Commercial Franchise Services within all or any part of the City and to use the public streets and public right-of-ways for such purpose. Franchisee acknowledges that the Franchise is not exclusive and that the Franchise is subject to all provisions of applicable law, including, but not limited to, Article XIII of the City Charter, Ordinance No. 2020-20, Code Chapter 12.63, and the terms and conditions of this Agreement.

B. Upon the Effective Date of this Agreement, the parties agree that any prior authorization relating to the provision of Commercial Franchise Services within all or any part of the City arising under and pursuant to any prior franchise issued to Franchisee shall be deemed to be abandoned and of no further force or effect except the Franchisee's obligation(s) to comply with the Diversion requirements set forth in Sections 12 through 15, the Continuing Obligations set forth in Section 23(J), or any other obligations specified in the franchise agreement granted pursuant to Ordinance No. 2017-16.

SECTION 2. TERM OF FRANCHISE

This Agreement shall commence on the Effective Date, and shall terminate on the Termination Date, unless terminated earlier as set forth herein.

SECTION 3. DEFINITIONS

"AB 341 Generator" means all Municipal Solid Waste generators required by AB 341 (Public Resources Code Section 41780.01) to divert Recyclable Materials generated on-site from Disposal including (A) all businesses located and operating within the City, and the responsible party, property owners, owners, operators, property managers, tenants and lessees of same, that generate four (4) or more cubic yards of Municipal Solid Waste per week; including but not limited to, retail stores, restaurants, offices, supermarkets, convenience stores, malls, strip malls, service businesses, hospitals, assisted living facilities, and federal, state and local government facilities; (B) Multifamily Dwellings consisting of five (5) or more units regardless of the amount of Municipal Solid Waste generated; (C) the City, its facilities, its non-residential properties, and (D) special events that take place in the City that generate four (4) or more cubic yards of municipal solid waste per event whether or not sponsored by the City.

"AB 1826 Generator" means all food-generating businesses within the City, and the responsible parties, property owners, owners, operators, property managers, tenants and lessees of same, that generate four (4) or more cubic yards of Municipal Solid Waste per week and are required by AB 1826, as codified in Public Resources Code Section 42649.82, to divert all Food Scraps generated on-site from Disposal; including but not limited to, all restaurants, cafeterias, hospitals, and supermarkets; (B) all non-food-generating businesses and the responsible parties, property owners, owners, operators, property managers, tenants and lessees of same, that generate four (4) or more cubic

yards of Municipal Solid Waste per week and that generate Green Waste and/or Wood Waste (C) all Multifamily Dwellings consisting of five (5) or more units regardless of the amount of Municipal Solid Waste generated; (D) federal, state and local government facilities, schools, the City, its facilities, and its non-residential properties; and (E) special events that take place within the City that generate four (4) or more cubic yards of municipal solid waste per event, whether or not sponsored by the City. As of the effective date of this Agreement, the threshold amount of Municipal Solid Waste provided for in Public Resources Code Section 42649.81 is four (4) or more cubic yards of Municipal Solid Waste per week on or after January 1, 2020. If CalRecycle changes the quantities of Municipal Solid Waste necessary to be considered an AB 1826 Generator, the definition of an AB 1826 Generator shall be automatically amended to reflect these new quantities.

“Act” means the California Integrated Waste Management Act of 1989 (Public Resources Code Sections 40000, *et seq.*) as amended and as implemented by regulations of CalRecycle (or its successor agency) and the Air Resources Board (or its successor agency).

“Alternative Daily Cover” or “ADC” means cover material other than earthen material placed on the surface of the active face of a Municipal Solid Waste Landfill at the end of each operating day to control vectors, flies, fires, odors, blowing litter and scavenging. Prior to 2014, Green Waste was included in the list of CalRecycle-approved ADC materials and use of Green Waste for this purpose was counted as “Diversion” for purposes of the Act. AB 1594, passed and signed into law in 2014, phases out the use of Green Waste as ADC effective January 1, 2020. As of January 1, 2020, no Green Waste Collected within the City will not be used as ADC and Green Waste must be diverted for processing such as mulching, Composting, as feedstock for Anaerobic Digestion or other CalRecycle-approved means that counts as Diversion.

“Anaerobic Digestate” or “Digestate” means the material left at the conclusion of a biological process that decomposes organic matter in an enclosed environment with little or no oxygen, resulting in a biogas and a liquid/solid stream called Digestate (CCR Section 17896.2(a)(6)). Any Digestate created from Green Waste, Food Scraps or other organic materials Collected within the City must be further processed at a permitted Composting Facility or utilized in another manner that is fully permitted and approved by all federal, state and local regulatory agencies, including but not limited to CalRecycle, and that is considered as “Diversion” by CalRecycle for purposes of the Act.

“Anaerobic Digestion” means a biological process that decomposes organic matter in an environment with little or no oxygen, resulting in a biogas and a liquid/solid stream called Anaerobic Digestate. Such activity takes place at an “Anaerobic Digestion Facility.”

“Bin(s)” means open top rectangular containers with wheels, with attached plastic or metal lids, used for storage of Municipal Solid Waste, Recyclable Materials, Green Waste, Food Scraps, Construction and Demolition Debris or other materials that are Collected by Franchisees or other Persons authorized to Collect and transport such materials within City.

“Bioengineered Feedstock” means a mixture of materials utilized in Wastewater Treatment Plants (WWTP’s) or publically-owned treatment works (POTW’s) to produce biogas. (This process is also referred to as “wet anaerobic digestion.”) Bioengineered Feedstock may include primary and secondary sludge, greases from the WWTP grease trap, and organic materials such as Food Scraps from businesses and households or other organic materials from industries that have been pre-treated and liquefied to the required consistency.

“Bioengineered Feedstock Facility” means a Processing Facility that accepts Food Scraps and other Bioengineered Feedstock, chops, macerates or otherwise size-reduces the incoming materials, mixes the material with liquid and produces a slurry which is then transported or otherwise delivered to a Wastewater Treatment Plant or similar facility that uses Bioengineered Feedstock to produce methane,

“CalRecycle” means the California Department of Resources Recycling and Recovery, the successor agency to the former California Integrated Waste Management Board.

“Can” means a receptacle for Municipal Solid Waste, Recyclable Materials, Green Waste, Food Scraps or wood provided by the Customer and Collected using manual (instead of automated) means of Collection.

“Cart” means a plastic wheeled Container with a hinged lid used to store Municipal Solid Waste, Recyclable Materials, Green Waste or Food Scraps that is Collected by an automated or semi-automated vehicle.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC §9601 *et seq.*).

“City Council” means the City Council of the City of Newport Beach.

“City Manager,” “Finance Director,” and “Public Works Director” mean the City Manager, Finance Director and Public Works Director of the City or their designee.

Clean Materials Recovery Facility (“Clean MRF”) means a materials recovery facility (“MRF”), or that portion of a MRF, that processes Recyclable Materials that have been separated from Municipal Solid Waste such as Single Material Recyclables and Single Stream Recyclable Materials, containing no more than the maximum Residue or contamination allowed by CalRecycle (10% Residue).

“Code” means the Newport Beach Municipal Code.

“Collect” or “Collection” means taking physical possession of Commercial Solid Waste, or other materials, from Customers and transporting such materials by means of a motor vehicle, or other means, to a MRF, Compost Facility, other Organics Processing Facility, Construction and Demolition Debris Processing Facility, transfer station or Landfill.

“Commercial Franchise Services” means the services provided by Franchisees pursuant to the terms and conditions of the Franchise and includes the Collection, transportation, storage, and Disposal of Municipal Solid Waste and the Collection, transportation, Processing and Diversion of Processible Municipal Solid Waste, Recyclable Materials, Green Waste, Wood Waste, Food Scraps and/or Construction and Demolition Debris by private solid waste enterprises, and includes, without limitation, the placement of Commercial Solid Waste and Divertible Materials Containers on public property.

“Commercial Premises” means all occupied real property in the City used for commercial purposes including, without limitation, wholesale or retail establishments, restaurants, other food establishments, bars, stores, shops, offices, mechanized manufacturing facilities, repair, research and development or professional services, sports or recreational facilities, industrial facilities, federal, state and local government facilities, schools, Multi-Family Dwellings that receive centralized Collection service and construction and demolition sites.

“Compactor” means an enclosed rectangular or square metal container containing a ramrod to condense and compress the contents, and is typically used to store Municipal Solid Waste, Green Waste, Recyclable Materials, Food Scraps or Construction and Demolition Debris. Compactors may be small (3 or 4 cubic yards) for use on smaller Commercial Premises or large (10, 20, 30 or cubic yards) for use at large Commercial Premises such as supermarkets, hotels, and large retail stores or at construction sites. A special Roll Off vehicle equipped with hooks and a winch to pull the Compactor on to the railed bed of the vehicle is used to Collect Compactors and transport them to a Landfill or to a Processing Facility.

“Compost” means the product resulting from the controlled biological decomposition of organic wastes which are separated from the Municipal Solid Waste stream at the point of generation and includes Food Scraps, Green Waste, and wood that are not hazardous wastes.

“Compost Facility” means a facility that processes one (1) or more of the following: Food Scraps, Green Waste, wood and food-soiled fiber such as paper napkins and paper towels, by means of outdoor windrow composting, aerated static pile composting, covered composting, vermiculture or other outdoor composting methods or covered composting with use of either finished compost or fiber, synthetic or other type(s) of cover(s) applied to the compost piles.

“Composting” means the controlled microbial degradation of organic materials yielding a safe and nuisance-free finished product called Compost, a soil amendment suitable for incorporating into topsoil and for growing plants.

“Construction and Demolition Debris” means all inert material of every nature, description or kind, which has resulted from the building or demolition of a structure, pavements, sidewalks, curbs, gutters and other concrete structures, including all lumber scraps, shingles, plaster, sheetrock, packaging, rubble, brick, stone, concrete, asphalt,

dirt, rock and other building material. A facility that accepts Construction and Demolition Debris for separation and further processing to prepare materials for sale or re-use (such as removing nails and screws from wood, or grinding of concrete and asphalt) and then markets the materials for re-use is a "Construction and Demolition Debris Processing Facility."

"Container(s)" means any object designed and used to hold or store Municipal Solid Waste, Recyclable Materials, Food Scraps, Green Waste, or Construction and Demolition Debris to be Collected by Franchisees. Containers include Carts, Bins, open top Roll Off Boxes, and Compactors.

"Contamination" means materials that are not specified for Collection in particular Containers or for processing at either a Clean MRF or a Dirty MRF, which would either interfere with such processing and/or reduce the quality and value of the Recovered Materials. For example, for purposes of Collection, metals and plastics would constitute "Contamination" if placed in a Food Scrap Container and tree trimmings would constitute "Contamination" if placed in a Recyclable Materials Container.

"Customer" means the owner, occupant, manager or user of premises at which Municipal Solid Waste, Recyclable Materials, Green Waste, Wood Waste, Food Scraps or Construction and Demolition Debris are generated who requests and receives Commercial or Multifamily Collection services for Municipal Solid Waste and/or Divertible Materials from one or more Franchisees. In the event a business, non-residential property, Multifamily dwelling or Commercial Premises shares Containers and/or Collection services, "Customer" refers only to the entity that arranges and pays for such services.

Dirty Materials Recovery Facility ("Dirty MRF") means a facility, or that certain portion of a facility, that processes Processable Municipal Solid Waste to separate Recyclable Materials, Green Waste, Wood Waste, Construction and Demolition Debris and other Divertible materials for sale to end users. Franchisees shall not utilize any Dirty MRF that has not been approved by City and that does not meet the standards and requirements of Public Resources Code Section 42649 and all subsequent amendments, rules, and regulations promulgated in furtherance thereof requiring a Dirty MRF to be a source-separated comparable MRF.

"Disposal" means the final disposition of solid waste of Municipal Solid Waste at a permitted landfill or transformation at a permitted facility, as transformation is defined and limited by the Act other permitted solid waste disposal facility.

"Diversion" or "Divert" means any combination of Recycling, sorting, Composting and other processing activities conducted at a Clean MRF, a Dirty MRF, a Compost Facility, an Anaerobic Digestion Facility, a Bioengineered Feedstock Facility, and/or a Construction and Demolition Debris Processing Facility in order to use or market the materials for re-use, remanufacture, reconstitution or otherwise return the materials to the economic marketplace and to prevent the materials from being Disposed in a Landfill.

“Diversion Plan” or “the Plan” means a plan prepared for a Customer by Franchisee pursuant to Exhibit E, Section A 2 of this Franchise Agreement that describes in detail the Diversion Program(s) recommended by Franchisee to be implemented at Customer’s premises. A Diversion Plan contains estimated quantities of Divertible Materials generated at the Customer’s premises, recommended types and sizes of outside Containers for storage of Divertible Materials, recommended frequency of Collection; modifications to sizes, types and Collection frequency for Containers for Municipal Solid Waste to adjust for the separate storage and Collection of Divertible Materials, and plans for the flow of materials through Customer’s premises, including the location and sizing of interior Containers required for separation and interim storage of Divertible Materials. Diversion Plans also contain projected costs and any projected cost savings to the Customer for implementing the Diversion Plan.

“Diversion Program(s),” “Recycling Program(s)” and “Diversion Services” mean Recyclable Materials Collection, Green Waste Collection, Wood Waste Collection, Food Scraps Collection, Processable Municipal Solid Waste Collection, Construction and Demolition Debris Collection and subsequent processing of the Collected materials at a Clean MRF, a Dirty MRF, a Compost Facility, an Anaerobic Digestion Facility, a facility creating Engineered Feedstock for digestion at a wastewater treatment plant, a Construction and Demolition Debris Processing Facility and all other programs operated by Franchisees, the City, Residents, Customers or other Persons that have the effect of Diverting Municipal Solid Waste from Landfill Disposal. Diversion Programs includes, but is not limited to, all of the programs included in the City’s SRRE and all of the programs included in this Agreement.

“Divertible Materials” or “Divertible” means Recyclable Materials, Food Scraps, Green Waste, Wood Waste, Construction and Demolition Debris, electronic waste, universal waste and all other materials that can be diverted from Landfill Disposal. Divertible Materials includes, but is not limited to, all materials required to be diverted from Landfill Disposal by City, CalRecycle or any state or federal agency.”

“Edible Food For Human Consumption” or “Edible Food” means food that has been prepared but not served, and includes, but is not limited to: any appetizer, soup, salad, entrée, dessert, raw fruit and vegetable, that may or may not have been sliced, grated, cooked, baked or otherwise prepared for consumption but not served; any packaged sandwich, salad, fruit and fruit salad and any other non-served food that meets state and local requirements as being edible for human consumption.

“Effective Date” means the date upon which this Agreement is effective as set forth in the first paragraph of this Agreement.

“Environmental Laws” means any and all present and future federal, state or local laws (whether common law, statute, rule, regulation or otherwise), permits, orders and any other requirements of Governmental Authorities relating to the environment or any “Hazardous Substance” or “Hazardous Substance Activity” as defined herein, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sections 9601 *et seq.*) as amended from time to time and

the applicable provisions of the California Health and Safety Code and California Water Code.

“Food Scraps” means material resulting from the production, processing, preparation or cooking of food for human consumption that is separated from Municipal Solid Waste. Food scraps include surplus or unsold edible food, raw food left over after food preparation, leftover cooked food, as well as spoiled food such as vegetables and culls, and plate scrapings. Food scraps includes food-soiled paper that is mixed in with the food scraps. “Food Scraps” are Collected and transported to Food Scrap Processing Facilities which include Compost Facilities, Anaerobic Digestion Facilities, and Wastewater Treatment Plants utilizing Engineered Feedstock.

“Food Soiled Paper” means paper towels, tissue products, paper napkins, paper plates and cups, coffee filters, tea bags, waxed paper, butcher paper, paper take-out boxes and containers, greasy pizza boxes, paper bags, cardboard and wax-coated cardboard produce boxes that are Contaminated with Food Scraps. Food Soiled Paper does not include polystyrene, aluminum foil, foil-lined wrap or diapers.

“Franchise” or “Franchise Agreement” means this Agreement between the City and a Franchisee, granted pursuant to Agreement Section 1(A), providing Franchisee the right, for a specified period of time and pursuant to Article XIII of the City Charter, the Code, and the terms and conditions of this Agreement, to provide for the Collection and Diversion of Commercial Solid Waste Handling Services to Commercial Premises and Multifamily Dwellings within all or any part of the City of Newport Beach and to use the public streets and public right-of-ways for such purpose. Throughout this Agreement, the terms “Agreement,” “Franchise” or “Franchise Services” may be used interchangeably unless otherwise specified or the context requires otherwise.

“Franchisee” means the individual or business entity identified as “Franchisee” on the signature page of this Agreement.

“Franchise Fee” means the fee or assessment imposed by the City on a Franchisee, which among other things, is intended to offset the City’s expenses related to the administration of the Franchise Agreement, the Integrated Waste Management Program, the maintenance and implementation of the City’s Source Reduction and Recycling Element, compliance with the California Integrated Waste Management Act, to compensate the City for damages to its streets, sidewalks, curbs and gutters and other infrastructure resulting from the Franchisee’s exercise of its rights under the franchise, City’s reporting requirements and other related expenses.

“Generator” means a resident, an owner or responsible party for a Multifamily Dwelling, Commercial Premises, or business that Generates Municipal Solid Waste, Recyclable Materials, Green Waste, Food Scraps and/or Construction and Demolition Debris as a result of its business, commercial facility or property activity. Generator may also include tenants, property managers for facilities with leased space, employees and contractors of Generator.

“Generate” means to bring into existence or create, or to use, maintain, or possess an item, material or product, the result of which such creation, bringing into existence, use, maintenance or possession is that the item, material or product first becomes, or is converted transformed, evolved or deemed as Municipal Solid Waste, Recyclable Materials, Food Scraps, Green Waste or Construction and Demolition Debris.

“Green Waste” means any debris that is composed of organic material or plantlike matter, which is a result of seasonal variations, landscape or gardening activities. Green Waste includes, without limitation, grass clippings, leaves, shrubs, trees, branches, stumps, flowers, plant stalks and non-hazardous wood. Green Waste does not include Food Scraps.

“Gross Receipts” means all money, whether paid by cash, check, debit or credit, or other consideration collected from Customers by Franchisee that relates in any way to Commercial Franchise Services provided by Franchisee to Customers, whether or not such services occur wholly or partially within the City, including, but not limited to, Collection, processing, removal, marketing and Diversion of Recyclable Materials, Green Waste, Food Scraps, Processable Municipal Solid Waste and Construction and Demolition Debris and Disposal of Non-Processable Municipal Solid Waste, Industrial Waste, trash, litter, as well as fuel surcharges. Gross receipts shall also include all money received by any Person other than the Franchisee, where the money was paid to the Person to avoid the Franchisee’s obligations under this chapter and/or the Franchise. Gross Receipts shall not include (or if included there shall be deducted, but only to the extent they have been included) the following: (1) if any sales taxes are levied on the Franchisee’s Commercial Franchise Services in the City, the amount of State sales taxes collected in connection with Franchisee’s provision of such services in the City and remitted to the State pursuant to State law; (2) the amount of documented bad debt write-offs due to uncollectible accounts for Franchisee’s Commercial Franchise Services in the City, not to exceed three percent (3%) of Gross Receipts; and (3) revenues collected for Franchisee’s Commercial Franchise Services provided to the City through a written contract.

“Hazardous Waste” or “Hazardous Substance” means any (a) chemical, compound, material, mixture or substance that is now or hereinafter defined or listed in, or otherwise classified pursuant to any Environmental Law as a “hazardous substance,” “hazardous material,” “hazardous waste,” “extremely hazardous waste,” “infectious waste,” “toxic waste,” “toxic pollutant,” or any other formulation intended to define, list or classify substances by reason of deleterious properties or effect and (b) petroleum, petroleum by-products, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas in such synthetic gas), ash, steam, drilling fluids, produced waters and other wastes associated with the exploration, development and production of crude oil, natural gas or geothermal resources.

“Industrial Waste” means solid waste originating from mechanized manufacturing facilities, factories, refineries, construction and demolition projects, publicly operated treatment works, or solid waste placed in Commercial Solid Waste containers excluding hazardous waste.

"Landfill" means a fully permitted disposal site that accepts Municipal Solid Waste that is in compliance with all Federal, State and local laws, regulations and permits conditions at the time Municipal Solid Waste is delivered and unloaded at the disposal site.

"Multifamily Dwelling" mean housing projects containing or consisting of five (5) or more units, whether apartment houses, condominiums, townhomes, or mixed use projects, mixed use condominiums and rental housing, which use centralized Commercial Solid Waste Containers (including Bins, Carts and/or Compactors) for storage of Municipal Solid Waste, Recyclable Materials, Green Waste and/or Food Scraps. Multifamily Dwelling does not include single-family residences, duplexes, tri-plexes or four-plexes that receive individual Collection services for Municipal Solid Waste, Recyclable Materials, Green Waste and/or Food Scraps stored in wheeled carts. For purposes of the implementation of the Diversion programs, reporting requirements, and the percentage Diversion requirements, "Commercial Tons" shall include only Tons Collected from Multifamily Dwellings in Carts, Bins, Compactors or Roll Off Boxes and shall not include any Tons Collected from Containers Collected from Commercial Premises. Tons Collected from Containers Collected from Commercial Premises shall be reported separately.

"Municipal Solid Waste" means all Processable Municipal Solid Waste and all Non-Processable Municipal Solid Waste, putrescible and nonputrescible solid and semisolid wastes, Generated in or upon, related to the occupancy of, remaining in or emanating from residential, commercial, and/or industrial premises, including, but not limited to, garbage, trash, refuse, rubbish, ashes, Industrial Waste, discarded home and industrial appliances, manure, vegetable or animal solid or semisolid wastes, and other solid and semisolid wastes. Municipal Solid Waste excludes Recyclable Materials, Green Waste, Food Scraps, Construction and Demolition Debris, liquid wastes, abandoned vehicles and hazardous, biohazardous and biomedical wastes.

"Non-Processable Municipal Solid Waste" means putrescible and non-putrescible solid and semi-solid wastes Generated in or upon, related to the occupancy of, remaining or emanating from residential, Commercial, and/or industrial premises, that has been segregated or separated from Recyclable Materials, Food Scraps, Green Waste, wood and/or Construction and Demolition Debris such that the remaining constituents in the Non-Processable Municipal Solid Waste (such as broken glass, diapers, ashes, Industrial Waste, discarded Bulky Goods that cannot be re-used or dismantled for Recycling, manure, vegetable or animal solid or semi-solid wastes that remain after segregation of Food Scraps and Green Waste) cannot be diverted by reasonable economic or technologically available means. Non-Processable Municipal Solid Waste does not include Recyclable Materials, Green Waste, Food Scraps, wood, Construction and Demolition Debris, Bulky Goods or other materials that have been segregated for Diversion; liquid wastes; low level radioactive waste regulated under California Health and Safety Code Sections 20015, *et seq.*; abandoned vehicles and auto parts; hazardous, biohazardous and biomedical wastes.

"Person" means an individual, firm, association, organization, partnership, corporation, business trust, joint venture, Limited Liability Company, the United States,

the State of California, the County, municipality, special purpose district or any other business entity whatsoever.

“Processable Municipal Solid Waste” means putrescible and non-putrescible solid and semi-solid wastes Generated in or upon, related to the occupancy of, remaining or emanating from residential, commercial, and/or industrial premises that can be sorted at a Dirty MRF to separate any Divertible Materials contained therein for Recycling. Processable Municipal Solid Waste may also contain non-divertible constituents including but not limited to, broken glass, diapers, ashes, Industrial Waste, discarded Bulky Goods that cannot be re-used or dismantled for Recycling, manure, vegetable or animal solid or semi-solid wastes that remain after segregation of Food Scraps and Green Waste, which cannot be separated or sorted out of the Processable Municipal Solid Waste by reasonable economic or technologically available means.

“Processing Facility/Facilities” means a facility or facilities where the following activities are conducted: sorting, cleaning, treating, Composting and reconstituting Collected materials and returning these materials to the economic mainstream in the form of raw materials for new, reused or reconstituted products which meet the quality standards of the market place (activities are herein collectively defined as “Processing”). Processing Facilities include Materials Recovery Facilities (both Clean and Dirty MRF’s as defined herein), Composting Facilities, Anaerobic Digestion Facilities, Wastewater Treatment Plants, Construction and Demolition Debris sorting facilities, and concrete and asphalt grinding facilities. Processing Facilities do not include waste-to-energy, thermal destruction or any type of Transformation facilities.

“Recycle/Recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become Non-Processable Municipal Solid Waste, and returning them to the economic mainstream in the form of raw materials for new, reused, or reconstituted products which meet the quality standards used in the marketplace. Recycling does not include Transformation.

“Recycling Facility” means a Recycling Materials Recovery Facility (either a Clean or Dirty MRF), a Construction and Demolition Debris sorting facility or a re-use facility that is fully permitted and operating in compliance with federal, state and local laws and regulations and includes Recycling Facilities that receive, process, and market Recyclable Materials that have been source separated by the Generator or segregated from Processable Municipal Solid Waste, such as Single-Material Recyclables and Single Stream Recyclable Materials. The Recycling Facility may be located at a landfill.

“Recyclable Materials” means items in the solid waste stream which can be reused or processed into a form suitable for reuse consistent with the requirements of State law (*i.e.*, AB 939). Recyclable materials include, but are not limited to, aluminum and tin cans, glass bottles, plastic bottles, plastic containers, newspaper, paper, printed materials, paper containers, cardboard and textiles.

“Recycling Requirements” means the obligations imposed by or upon the City pursuant to State, Federal and local law, ordinance, resolution, policy, plan or program relative to Diverting all, or a portion, of the Municipal Solid Waste generated within the

City including, without limitation, State mandates to Divert fifty percent (50%) of the Municipal Solid Waste Generated within the City, achievement of the per capita Diversion requirements in the Act, and the provision of City-approved Diversion services to all Customers. Recycling Requirements includes future changes to the Act that may require the City to Divert higher percentages of Municipal Solid Waste Generated within the City and/or to provide additional and/or enhanced or expanded Diversion Programs.

“Residue” means the Non-Processable Municipal Solid Waste destined for Disposal in a Landfill, which remains after processing at a Processing Facility has taken place. Residue does not include Anaerobic Digestate. The percent of Residue is calculated by dividing the weight of the Residue by the weight of the total materials delivered for processing at the facility. State law and regulations govern the allowable amount of Residue that can be Generated by a Processing Facility. Franchisees shall not utilize Processing Facilities that exceed State-required maximum Residue Generation rates for any materials Collected within the City.

“Responsible Party” means the individual or entity responsible for the Generator’s management of solid waste and/or Recycling at the Generator’s commercial premises, business, or non-residential property.

“Roll Off Boxes” means large open top rectangular metal Containers used to store and transport Municipal Solid Waste, Recyclable Materials, Green Waste, Construction and Demolition Debris or other materials.

“Single Material Recyclables” means those Recyclable Materials which satisfy each of the following requirements: (1) have been segregated from Processable Municipal Solid Waste for separate handling and Diversion by or for the Generator thereof; (2) have been further segregated or sorted so that various types of Recyclable Materials, such as glass, metals, paper, cardboard, plastics are not commingled; and (3) after such segregation, contain no more than five percent (5%) by weight (measured by each load being transported, Collected and/or Disposed) of any Residue or Contamination material which cannot be Recycled, Composted or similarly utilized, and which instead must be Disposed in a Landfill.

“Single Stream Recyclable Materials” or “Single Stream Recyclables” means those Recyclable Materials collected as separated from Processable Municipal Solid Waste by the Generator or Customer and consisting of a mixture of metals, glass, plastics #1-7, and all paper from Residential Premises, Commercial Premises, Multifamily Dwellings and industrial premises. Single Stream Recyclable Materials are distinguished from Single-Material Recyclables, which consist of only a single type of material such as cardboard, separated from other Recyclable Materials.

“Split Bins” means Bins that have a divider down the middle, dividing the Bin into two (2) separate compartments. Such Bins have separate locking lids for each side of the Bin that allows the Bin to be emptied one (1) side at a time. The lid on the side of the Bin that is for storage of Recyclable Materials is designed such that it allows for the placement of Recyclable Materials in the Bin without unlocking or opening the lid, and yet

does not allow Recyclable Materials to spill out when the lid is closed and locked for the emptying of the MSW stored on the opposite side of the Bin.

“SRRE” means the Source Reduction and Recycling Element of the Integrated Waste Management document for the City prepared and updated pursuant to the California Public Resources Code.

“Term” means the finite amount of time that commences on the Effective Date and terminates on the Termination Date.

“Termination Date” means October 7, 2027.

“State” means the State of California.

“Transformation” means incineration, pyrolysis, distillation, or biological conversion (other than Composting) to turn Municipal Solid Waste and/or organic materials into a fuel used to produce energy (example: waste-to-energy). Transformation does not include Composting, gasification, Biomass Conversion, or wet or dry Anaerobic Digestion.

“Transformation Facility” means a facility using a Transformation process to turn Municipal Solid Waste and/or organic materials into a fuel used to produce energy. A Franchisee may only utilize Transformation for the quantity of Municipal Solid Waste allowed by CalRecycle to be counted as Diversion pursuant to the Act, as this may be changed in the future by legislation or regulations. The Act currently provides that a jurisdiction can only use Transformation to divert up to ten percent (10%) of the Municipal Solid Waste generated in the jurisdiction. Therefore, materials collected by a Franchisee and processed at a Transformation Facility shall be limited to ten percent (10%) of the Non-Processable Municipal Solid Waste Collected by the Franchisee within City.

“Ton” means a short ton of two-thousand (2,000) pounds avoirdupois.

“Wood Waste” means all non-hazardous wood material that is not painted with lead-based or other paints containing materials identified as hazardous waste, or treated with creosote or other hazardous materials. Wood Waste includes, but is not limited to, tree branches and other wood trimmings, dimensional lumber and other pieces of wood generated during the manufacture or processing of wood products. For wood generated from construction and/or demolition activities, see the definition of “Construction and Demolition Debris.”

SECTION 4. FRANCHISE FEES

A. During the Term of this Franchise, Franchisee shall pay to City Franchise Fees for the privilege of providing Commercial Franchise Services in the City and for the use of public streets, right-of-ways and places for such purposes. The Franchise Fees that Franchisee shall pay to the City shall total sixteen percent (16%) of the gross receipts which are reasonably related to the value of Agreement for all Commercial Franchise Services provided by Franchisee in the City as follows:

1. Ten and one-half percent (10.5%) of the Gross Receipts for all Commercial Franchise Services provided by the Franchisee in the City ("Commercial Franchise Service Fee"), of which one half percent (.5%) shall be attributable to the maintenance and implementation of the City's SRRE, and shall be separately accounted for, and used only for the costs stated in Public Resources Code Section 41901 or any successor provision.

2. Five and one-half percent (5.5%) of the Gross Receipts for all Commercial Franchise Services provided by Franchisee in the City shall be paid into an Environmental Liability Fund, which shall be a separate fund established and maintained by City ("Environmental Liability Fund Fee"). Hereinafter, Environmental Liability Fund Fee and Commercial Franchise Fee shall be collectively referred to as "Fees."

B. City and Franchisee acknowledge the potential environmental liability that may result from Commercial Franchise Services under Federal and State environmental protection laws and the Public Resources Code. City intends to take reasonable actions to obtain protection and indemnification against future environmental liability for Commercial Solid Waste and Divertible Materials generated within the City and the activities of Franchisee under this Agreement for handling such Commercial Solid Waste and Divertible Materials. To provide protection and indemnification to City for Franchisee's Commercial Franchise Services in the City, Franchisee agrees to collect from its customers an Environmental Liability Fund Fee for payment into the Environmental Liability Fund. The Environmental Liability Fund may be used by the City for any expense associated with this Franchise, including, but not limited to, the purchase of environmental liability insurance and paying all costs, expenses, and penalties that arise from or in any way relate to liability incurred by the City as a result of any act, negligence, or omission by the City, Franchisee, Franchisee Customer, or any of their respective officers, directors, shareholder members, volunteers, partners, employees, agents, subcontractors, suppliers, representatives or affiliates. The Environmental Liability Fund may also be used by the City to pay for any Disposal, Diversion, or Recycling activity required of the City, Franchisee, or any Generator under State, Federal or local law. The Fund shall not be commingled with or included in the City's General Fund.

1. The Fees shall be paid concurrently.

2. Compliance with this Section shall not limit Franchisee's indemnification as set forth in Agreement Section 10; however, the indemnification provisions of Agreement Section 10 shall be secondary to the Environmental Liability Fund established by this Section or any insurance purchased by the Environmental Liability Fund.

C. The Fees shall be paid on a calendar quarterly basis on forms prescribed by the Finance Director.

D. All payments shall be made in lawful money of the United States of America and shall be paid to City in person or by United States' mail, or overnight mail service, at the Cashier's Office located at 100 Civic Center Drive, P.O. Box 1768, Newport Beach,

California, 92658, or to such other address as City may from time to time designate in writing to Franchisee. If requested by City, Franchisee shall make payments electronically (at www.newportbeachca.gov) or by wire transfer (at Franchisee's cost). Franchisee assumes all risk of loss and responsibility for late charges and delinquency rates if payments are not timely received by City regardless of the method of transmittal.

E. Franchisee hereby acknowledges that the late payment of Fees or other sums due hereunder will cause City to incur costs not contemplated by this Agreement, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, any payment of any sum to be paid by Franchisee not paid within five (5) calendar days of its due date shall be subject to a ten percent (10%) late charge plus interest on the amount due at the rate of ten percent (10%) per annum from the date due and payable by the terms of this Agreement until the same shall be paid. City and Franchisee agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to City for its loss suffered by such late payment by Franchisee.

F. With the exception of October 30, 2020, Fees shall be due and payable on April 30, July 30, October 30 and January 30 of each calendar year of the Term. Any dates falling on a weekend or holiday may be paid the first business day following the weekend or holiday. Fees must be received by City, not merely postmarked, by or before the aforementioned dates.

G. In the event Franchisee believes that it has paid Fees in excess of the Fees due to City, Franchisee may submit a request for refund to the Finance Director on a form provided by the Finance Director. If proof of overpayment is satisfactory to the Finance Director, the Finance Director shall refund to Franchisee any overpayment. Franchisee shall not apply any overpayment as a credit against any other amounts payable to City unless specifically authorized by the Finance Director in writing.

H. Each Franchise Fee and Environmental Liability Fund Fee payment shall be accompanied by a written statement described in Code Section 12.63.090, or any successor section, on a form provided by the Finance Director. No statement filed under this Section shall be conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude the City from collecting by appropriate action the sum that is actually due and payable.

I. Franchisee may separately list the actual Franchise Fee rate and Environmental Liability Fund Fee rate as established by this Section, and any other fees required by this Agreement, on its invoices to its customers. In no case may the Franchise Fee rate or Environmental Liability Fund Fee rate listed by the Franchisee on the invoice exceed the actual Franchise Fee or Environmental Liability Fund Fee rates imposed by the City.

SECTION 5. PERFORMANCE BOND/DEPOSIT

A. Prior to the placement of any Container for Commercial Franchise Services on public or private property, Franchisee shall, to ensure compliance with the duties and

obligations imposed by the provisions of the Code, State regulation, regulations adopted by the City Manager and this Agreement, either: (1) provide City with a cash deposit ("Deposit"); or (2) obtain, provide and maintain, at its own expense, a faithful performance bond ("Bond"). The amount of the Deposit and Bond shall be determined in the Public Works Director's sole and absolute discretion.

B. If Franchisee decides to provide a Bond, the 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. The Bond shall be in the form attached hereto as Exhibit "A," which is incorporated herein by this reference.

SECTION 6. DIVERSION AND DISPOSAL OF MUNICIPAL SOLID WASTE, RECYCLABLE MATERIALS, FOOD SCRAP AND GREEN WASTE

A. Franchisee shall comply with all Diversion requirements imposed by law, ordinance, or regulation on City, Franchisee, and/or any Commercial Premises or Multifamily Dwelling. On a monthly basis, Franchisee shall Divert a minimum of fifty-five percent (55%) of all Processable Municipal Solid Waste, Recyclable Materials, Food Scraps and Green Waste Collected in the City by Franchisee. This Diversion requirement is separate from and in addition to any Diversion requirements set forth in Agreement Sections 7, 12, 13, 14 and 15. In the event new or additional Diversion requirements are imposed by law, ordinance or regulation on City, Franchisee, and/or any Commercial Premises or Multifamily Dwelling, the City shall have the right to require Franchisee to Divert additional Municipal Solid Waste, Recyclable Materials, Food Scraps, and/or Green Waste by providing Franchisee with thirty (30) calendar days written notice of the new Diversion requirements. Upon request of the Public Works Director, Franchisee shall provide all documents and information requested by the Public Works Director to prove that Franchisee has complied with this subsection, any applicable law, ordinance, regulation, or condition related to Recycling and Diversion of Municipal Solid Waste, Recyclable Materials, Food Scraps and/or Green Waste.

B. Franchisee shall Dispose of all Non-Processable Municipal Solid Waste collected in the City, over which Franchisee has control, in accordance with the Franchise Hauler Acknowledgment, attached hereto as Exhibit "B" and incorporated herein by reference. Franchisee hereby accepts and agrees to abide by all terms of the Franchise Hauler Acknowledgment. If, during the Term of this Agreement, the City's Waste Disposal Agreement with Orange County expires, lapses, or is terminated, the Franchise Hauler Acknowledgment shall be null and void and Franchisee shall Dispose of Municipal Solid Waste Collected in the City only by taking it to a fully permitted Orange County certified/licensed landfill or to a fully permitted licensed transfer station, which is lawfully authorized to accept that specific type of solid waste material and has been approved by the City.

C. Franchisee shall not Dispose of Municipal Solid Waste, Recyclable Materials, Food Scraps, or Green Waste by depositing it on any land except a permitted facility, whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system. Nothing in this Agreement shall be deemed or construed as authorizing Franchisee to operate a Landfill, Recycling Facility, or other solid waste disposal facility in the City.

D. If Franchisee violates the terms in Agreement Section 6(A) and/or Section 6(B) above, Franchisee agrees that the City has the future right to direct that all Municipal Solid Waste be delivered to a fully permitted Disposal facility designated by City and that Recyclable Materials, Food Scraps, Green Waste and/or Wood Waste be delivered to a fully permitted Processing Facility designated by City. This exercise of "flow control" by the City shall be made upon at least thirty (30) calendar days prior written notice to Franchisee, and written notice shall include the violation(s) prompting the City's action regarding "flow control." Failure to comply with the Recycling, Diversion, and/or Disposal requirements set forth in this Section shall be a material breach of this Agreement.

E. Franchisee shall include as a condition to its contractual agreement with its Customers a provision prohibiting disposal of Hazardous Waste in any Container.

F. Franchisee shall implement a load check program that includes, at a minimum, a visual check of all Containers to be emptied to protect against inclusion of Hazardous Waste and shall prepare a written record of all Hazardous Waste discovered during the process. The records shall comply with all State and Federal Hazardous Waste Regulations and shall be maintained for the length of the Term of the Franchise and for a minimum period of three (3) years, or for any longer period required by law, after the Extended Termination Date. The records shall be made available to the City in Franchisee's monthly reports submitted pursuant to Agreement Section 16.

G. This Agreement does not purport to grant Franchisee or City ownership over materials that Franchisee's Customers discard for pickup by Franchisee or that Franchisee handles under this Agreement. The right to possession or ownership of those materials shall be determined in accordance with law and any agreement between Franchisee and its Customers, and not as a result of this Agreement. Parties acknowledge that City has no ownership rights in Divertible Materials or revenue from sale thereof, except as provided in this Agreement.

H. City makes no representations or warranties with respect to characterization of Municipal Solid Waste, Recyclable Materials, Food Scraps, or Green Waste within City. City expressly disclaims any representations and warranties, either express or implied, as to the merchantability or fitness of Municipal Solid Waste, Recyclable Materials, Food Scraps, or Green Waste for any particular purpose.

SECTION 7. DIVERSION OF CONSTRUCTION AND DEMOLITION DEBRIS

A. On a monthly basis, Franchisee shall Divert a minimum of sixty-five percent (65%) of all Construction and Demolition Debris collected in the City by Franchisee. This Diversion requirement shall be in addition to and separate from any Diversion

requirements set forth in Agreement Section 6. Franchisee shall also comply with all requirements of Section 15. If new or additional Diversion requirements are imposed by law, ordinance or regulation on City, Franchisee, and/or any Commercial Premises or Multifamily Dwelling, the City shall have the right to require Franchisee to Divert additional Construction and Demolition Debris by providing Franchisee with ten (10) calendar days written notice of the new Diversion requirements. Upon request of the Public Works Director, Franchisee shall provide all documents and information requested by the Public Works Director to prove that Franchisee has complied with this subsection, any applicable law, ordinance, regulation, or condition related to Recycling and Diversion of Construction and Demolition Debris.

B. Franchisee shall Dispose of, or oversee Disposal of, any Construction and Demolition Debris collected in the City by Franchisee, and not diverted pursuant to Agreement Section 7(A), in accordance with the Franchise Hauler Acknowledgment, attached hereto as Exhibit "B." Franchisee hereby accepts and agrees to abide by all terms of the Franchise Hauler Acknowledgment. If, during the Term of this Agreement, the City's Waste Disposal Agreement with Orange County expires, lapses or is terminated, the Franchise Hauler Acknowledgment shall be null and void and Franchisee shall Dispose of non-Diverted Construction and Demolition Debris collected by Franchisee in the City only by taking such debris to an Orange County certified/licensed landfill, State certified/licensed transfer station, State certified/licensed recycling facility or State certified/licensed materials recovery facility which is lawfully authorized to accept that specific type of solid waste material. Franchisee shall not dispose of Construction and Demolition Debris by depositing it on any land except a permitted facility, whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system.

C. If Franchisee violates the terms in Agreement Section 7(A) and/or Section 7(B) above, Franchisee agrees that the City has the future right to direct that Construction and Demolition Debris be delivered to a permitted processing and/or disposal facility designated by City. This exercise of "flow control" by the City shall be made upon at least thirty (30) calendar days prior written notice to Franchisee, and written notice shall include the violation(s) prompting the City's action regarding "flow control." Failure to comply with the Recycling, Diversion, and/or Disposal requirements set forth in this Section shall be a material breach of this Agreement.

D. Franchisee shall include as a condition to its contractual agreement with its Customers a provision prohibiting disposal of Hazardous Waste in any Container.

E. Franchisee shall implement, or require a third party to implement, a load check program that includes, at a minimum, a visual check of all Containers to be emptied to protect against inclusion of Hazardous Waste and shall prepare a written record of all Hazardous Waste discovered during the process. The records shall comply with all local, State and Federal Hazardous Waste regulations, and shall be maintained for the length of the Term of the Franchise and for a minimum period of three (3) years, or for any longer period required by law, after the Extended Termination Date. The records shall be made available to the City upon request.

F. This Agreement does not purport to grant Franchisee or City ownership over materials that Franchisee's Customers discard for pickup by Franchisee or that Franchisee handles under this Agreement. The right to possession or ownership of those materials shall be determined in accordance with law and any agreement between Franchisee and its customers, and not as a result of this Agreement. Parties acknowledge that City has no ownership rights in Recyclable Materials or revenue from sale thereof, except as provided in this Agreement.

G. City makes no representations or warranties with respect to characterization of Construction and Demolition Debris within City. City expressly disclaims any representations and warranties, either express or implied, as to the merchantability or fitness of Construction and Demolition Debris for any particular purpose.

SECTION 8. FRANCHISEE'S APPLICATION; RECORDS; AUDITS

A. Application. Franchisee has submitted an application to City in substantially the same form as the template attached hereto as Exhibit "C" and incorporated herein by reference as a condition of entering into this Agreement. Franchisee hereby represents and warrants that all information contained in the application submitted to City, and any information submitted by Franchisee to City supplementary thereto, is true and correct and does not contain any untrue statement of a material fact nor omit a material fact that makes a statement contained therein misleading.

B. Records. Franchisee shall maintain all records relating to Franchisee's Commercial Franchise Services provided hereunder including, but not limited to, Customer lists, billing records, accounts payable records, maps, service requests, cash receipts records, AB 939/341/1826 compliance records, tonnage reports, weight tickets and invoices from all Landfills, Processing Facilities, and Recycling Facilities utilized for Commercial Solid Waste collected within City, and all other documents and materials which reasonably relate to Franchisee's compliance with and performance of the provisions of this Agreement ("Records"), for the full Term of this Agreement and an additional period thereafter of not less than three (3) years, or any longer period required by law. Such Records shall be made available to City at Franchisee's regular place of business, but in no event outside the County of Orange. All Records shall be clearly identifiable, and Franchisee shall maintain record security sufficient to preserve records from destruction or damage from foreseeable events. Data maintained in an electronic medium shall be protected, and backed up, with a copy stored at a separate site from the original data.

C. CERCLA Defense Records. City's ability to defend against CERCLA and related litigation is a matter of great importance. Franchisee shall maintain and preserve records establishing where Solid Waste Collected in the City was landfilled for the full Term of this Agreement and an additional period thereafter of not less than five (5) years, or any longer period required by law. At any time, including after the expiration of the Term, Franchisee shall provide copies of such records to City within three (3) business days of City's request.

D. Inspection; Audit. On an annual or as-needed basis, City shall have the right, upon five (5) business days advance notice, to inspect Franchisee's Records and/or conduct, or to contract with an independent auditing firm to perform, an audit, at City's expense, of Franchisee's Records ("City Audit") to ensure compliance with the provisions of this Agreement. The City Audit shall include, without limitation, review and/or copying of Franchisee's cash receipts, books of account, Municipal Solid Waste and Divertible Materials tonnage reports, Collection, Disposal and Diversion records, and other related records, as well as those of each of its parent, subsidiary and/or affiliated companies, as appropriate. As part of the City Audit, Franchisee's Customer accounts and related records may be subject to review. While Franchisee will not be required to submit for copying detailed account records, such as Customer names, Franchisee shall make such records and information available for review in connection with the City Audit. The purpose of the City Audit shall be for: (a) verification of the Fees paid by Franchisee under this Agreement, and the accuracy thereof; (b) verification of the amounts of Municipal Solid Waste and Divertible Materials reported as Collected, processed, Diverted and Disposed by Franchisee pursuant to this Agreement; (c) verification of Recycling/Diversion program implementation efforts and actions taken by Franchisee pursuant to this Agreement; and (d) verification of such other information as is reasonably deemed appropriate by the Public Works Director to evaluate Franchisee's performance hereunder.

E. Reimbursement. Franchisee shall reimburse City for all of City's costs in performance of an audit if, as a result of the audit, it is determined:

1. There was any intentional misrepresentation by Franchisee with respect to the amount of Fees due to the City;
2. There is a One Thousand and 00/100 Dollars (\$1,000.00) or greater discrepancy in the amount of Fees due to the City.
3. There was any intentional misrepresentation by Franchisee with respect to Franchisee's Commercial Franchise Services and/or Franchisee's handling and transportation of Municipal Solid Waste and/or Divertible Materials or with regard to any information provided about Diversion; or
4. There is a discrepancy (whether intentional or not) in the number of Tons of Municipal Solid Waste, Recyclable Materials, Green Waste, Foods Scraps and/or Construction and Demolition Debris Collected, Recycled, processed and/or Disposed that equals or exceeds two percent (2%).

Such reimbursement shall be paid by Franchisee within ten (10) calendar days of the date City notifies Franchisee in writing that Franchisee is liable to reimburse the City in conformance with this subsection and the amount of City's audit costs.

SECTION 9. INSURANCE REQUIREMENTS

Without limiting Franchisee's indemnification of City, and prior to commencement of the Effective Date of this Agreement, Franchisee shall obtain, provide copies to City and maintain at its own expense during the Term of this Agreement policies of insurance of the type and amounts described in the Insurance Requirements attached hereto as Exhibit "D" and incorporated herein by reference.

SECTION 10. RESPONSIBILITY FOR DAMAGES AND INJURY/INDEMNIFICATION

A. Franchisee Responsibility. Franchisee shall be solely responsible for any damages caused as a result of Franchisee's acts, negligence, or omissions including, but not limited to, injuries to or death of any person or damage to public and/or private property and damages to public improvements arising from or as a result of Franchisee's Commercial Franchise Services.

B. General Indemnification. Franchisee shall indemnify, hold harmless, and defend City, and each of its past, present and future elected officials, officers, employees, agents, consultants, volunteers, affiliates, assignees, representatives, attorneys, subsidiaries, and affiliated entities and their respective successors, heirs and assigns (collectively, "Indemnified Parties") from and against any costs, expenses, damages, and losses, including actual attorneys' fees ("Losses") of any kind or character to any person or property arising directly or indirectly from or caused by any of the following: (i) any act, negligence, or omission of Franchisee or its respective officers, directors, shareholder members, partners, employees, agents, Franchisee's subcontractors, suppliers, representatives and affiliates ("Franchisee Representatives"); (ii) Franchisee's or Franchisee Representative's activities; (iii) any accident or casualty within or arising out of the performance of Franchisee's Commercial Franchise Services under this Franchise; (iv) any violation or alleged violation of any law, ordinance or statute now or hereafter enacted arising out of Commercial Recyclable Materials, Food Scraps, Green Waste, Wood Waste, Construction and Demolition Debris and/or Municipal Solid Waste services performed pursuant to the Franchise; (v) the negligence or willful misconduct of Franchisee or any of Franchisee Representatives in the performance of Franchisee's Commercial Franchise Services under the Franchise; and (vi) any breach of the Franchise.

Franchisee shall not be required to indemnify, hold harmless and defend the Indemnified Parties 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 Franchisee.

C. Hazardous Substances Indemnification. Franchisee shall indemnify the Indemnified Parties from and against all claims, actual damages including, but not limited to, special and consequential damages, natural resource damage, punitive damages, injuries, costs, response, remediation, and removal costs, losses, demands, debts, liens,

liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnified Parties or Franchisee arising directly or indirectly from or caused by any of the following: (i) the violation of any environmental laws or the failure to clean up and mitigate the consequences of the spill or release of any Hazardous Substance; and (ii) Franchisee's activities under this Agreement concerning any Hazardous Substance at any place where Franchisee stores or disposes of solid or Hazardous Waste pursuant to this Agreement, or preceding Agreements between City and Franchisee. The foregoing indemnity is intended to operate as an agreement pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9607(e)) and any amendments thereto, and California Health and Safety Code Section 25364, or any successor statute, to insure, protect, hold harmless, and indemnify City from liability.

D. AB 939 Indemnification. Franchisee agrees to meet all requirements of City's SRRE as to the portion of the Commercial Solid Waste stream Collected and/or handled by Franchisee. Franchisee agrees to protect, defend, indemnify, and hold the Indemnified Parties harmless against all fines or penalties imposed by CalRecycle, or other entity, arising from the failure of Franchisee to meet Act Diversion requirements with respect to the portion of the Commercial Solid Waste stream collected by Franchisee.

E. AB 341 Indemnification. Franchisee agrees to meet all requirements of AB 341, specifically Public Resources Code Section 42649, or any successor statute, as to the portion of the Municipal Solid Waste and Recyclable Materials stream Collected and/or handled by Franchisee. Franchisee agrees to protect, defend, indemnify, and hold the Indemnified Parties harmless against all fines or penalties imposed by CalRecycle, or other entity, arising from the failure of Franchisee to meet AB 341 diversion and recycling requirements with respect to the Municipal Solid Waste and Divertible Materials Collected and/or handled by Franchisee.

F. AB 1826 Indemnification. Franchisee agrees to meet all requirements of AB 1826, specifically Public Resources Code Section 42649.82, or any successor statute, as to the portion of the Food Scraps, Green Waste and Wood Waste streams Collected and/or handled by Franchisee. Franchisee agrees to protect, defend, indemnify, and hold the Indemnified Parties harmless against all fines or penalties imposed by CalRecycle, or other entity, arising from the failure of Franchisee to meet AB 1826 recycling requirements with respect to the Food Scraps and Green Waste collected and/or handled by Franchisee.

G. Notice. City agrees to give notice to Franchisee when the City receives a claim for damages or other liability for which Franchisee has provided indemnification under this Section.

SECTION 11. COMMERCIAL SOLID WASTE AND DIVERTIBLE MATERIALS COLLECTION SERVICES

A. Authorized Collection Services. Franchisee may only provide those Commercial Franchise Services designated in Franchisee's application, or any amended application, and for which Franchisee has demonstrated compliance with Code Section 12.63.050, or any successor section.

B. Frequency of Collection. Franchisee shall collect all Municipal Solid Waste and Divertible Materials from Commercial Premises and Multifamily Dwellings on a schedule to be agreed upon between Franchisee and its Customers, subject to the restrictions set forth in Agreement Section 11(C); provided, however, that such schedule complies with Code Subsections 6.04.110 and 6.04.120 and does not permit the accumulation of Commercial Solid Waste or Divertible Materials in quantities that are unreasonable or detrimental to the public health or safety. Requests for Collection from Customer Premises with overflowing Containers, or from Customer Premises where there have been missed pickups, shall be serviced within twenty-four (24) hours of any such request by the Customer or City. Should City receive a Customer complaint related to or arising from Franchisee's failure to collect Commercial Solid Waste and Divertible Materials as provided herein, Franchisee's Collection schedule shall be submitted to the City for review.

C. Hours and Days of Collections.

1. Franchisee shall not collect Commercial Solid Waste or Divertible Materials in any area of the City after 6:30 p.m. and prior to 5:00 a.m.

2. Franchisee shall not Collect Commercial Solid Waste or Divertible Materials from any Commercial Premises or Multifamily Dwelling located within five hundred (500) feet of an occupied residential premise, motel or hotel, nor shall any of Franchisee's Collection vehicles be operated in any residential areas of the City except between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, nor on any Saturday or Sunday, except between the hours of 8:00 a.m. and 6:00 p.m.

3. Franchisee shall neither operate its Collection vehicles nor Collect Commercial Solid Waste or Divertible Materials from any Commercial Premises, governmental facility, or Multifamily Dwelling located within five hundred (500) feet of a school, or other educational facility between the hours of 7:30 a.m. and 9:00 a.m. or 1:00 p.m. and 3:00 p.m., Monday through Friday. The limitations in Agreement Section 11(C)(3) notwithstanding, Franchisee's operation of Collection vehicles on any non-residential arterial roadway within the City are subject to Section 6.04.130(A) but shall not be prohibited or limited under this Agreement.

4. Commercial Solid Waste and Divertible Materials collection on Sundays shall be limited to Food Scraps and Municipal Solid Waste from Commercial Premises, which require Collection every day due to public health and safety concerns.

5. At Franchisee's request, the City shall provide maps illustrating the geographic limitations placed on Franchisee's Collection services pursuant to Agreement Section 11(C)(3) ("Maps"). City expressly disclaims any liability related to or arising from the accuracy of any Maps provided by City. City may update the Maps as needed, and Franchisee's failure to request or secure the Maps, or any updated Maps, shall not relieve Franchisee of any obligations under this Agreement.

D. Containers. Franchisee shall provide the appropriate sized Containers to each Customer for storage of the Commercial Solid Waste and Divertible Materials Collected by Franchisee. Containers provided by Franchisee must be identified with Franchisee's name and be in the color identified by Franchisee in Franchisee's application.

SECTION 12. AB 341 RECYCLING PROGRAM FOR COMMERCIAL PREMISES AND MULTIFAMILY DWELLINGS

A. Diversion Program. The Act requires all AB 341 Generators to arrange for Recyclable Materials Collection services by July 1, 2012. The Act requires all cities to provide a commercial Recyclable Materials Collection Program for AB 341 Generators on or before July 1, 2012. Franchisee acknowledges these requirements and agrees that, subject to the restrictions contained in Agreement Section 11(A), for all AB 341 Generators that contract with or pay Franchisee to haul Municipal Solid Waste and/or Divertible Materials, Franchisee shall implement a Recyclable Materials Collection Program using one or more of the following:

1. Provide Single Stream Recyclable Materials and (if applicable) Single Material Collection service on a weekly or more frequent basis.
2. Provide Collection of Recyclable Materials commingled with Municipal Solid Waste and process the Collected material at a City-approved Dirty MRF that yields Diversion results comparable to source separation. No Dirty MRF may be used for separation of AB 341 materials unless the Dirty MRF has been approved by City as meeting the standards and requirements of Public Resources Code Section 42649 and all rules, amendments and regulations promulgated in furtherance thereof.
3. If Franchisee observes that the AB 341 Generator has one (1) or more internal Programs that Divert Recyclable Materials, is self-hauling or backhauling Recyclable Materials, donating or selling Recyclable Materials to a third party, or is using a third party or other Franchisee to Collect Recyclable Materials, Franchisee shall report this to City and City, in its sole discretion, shall make a final determination as to the adequacy of the internal and/or third party Recyclable Materials Diversion Program(s). If the City finds the internal and/or third party Program(s) inadequate, Franchisee shall proceed to implement a Recyclable Materials Diversion Program to Divert all the remaining AB

341 Recyclable Materials generated by the AB 341 Generator as described in Exhibit E, which is incorporated herein by reference.

B. Act Compliance. The Parties agree that provision of an AB 341 Diversion Program, as set forth in this Section 12 and in Exhibit "E," is of paramount importance for the City to comply with the Act. The Parties further agree that providing high quality Diversion Services, public education and technical assistance to AB 341 Generators to obtain their full participation in AB 341 Diversion Program is essential for Franchisee to implement an effective Diversion Program for each and every AB 341 Generator it serves. The Parties acknowledge that achievement of this requirement is integral to the City's compliance with the Act and that failure to implement said AB 341 Diversion Programs may cause City to be non-compliant with the Act and be grounds for termination of this Agreement.

C. Program Implementation. Within ninety (90) calendar days of either: (1) the Effective Date of this Agreement; or (2) the date an AB 341 Generator initiates service with Franchisee to collect or transport Municipal Solid Waste and/or Divertible Materials, whichever is later, Franchisee shall implement a Recyclable Materials Diversion Program for said AB 341 Generator. For purposes of this Section 12, "implement" as provided herein shall mean Franchisee's completion of all of the steps and requirements in Exhibit E.

SECTION 13. AB 1826 FOOD SCRAP DIVERSION PROGRAM FOR COMMERCIAL PREMISES

A. Food Scrap Diversion Program. The Act requires AB 1826 Generators to implement Diversion Programs as follows. On or after January 1, 2017, all owners and responsible parties of Commercial Premises generating four (4) or more cubic yards of Food Scraps and/or Green Waste per week must arrange for Diversion Programs for those materials. On or after January 1, 2019, all owners and responsible parties of Commercial Premises generating four (4) or more cubic yards of Commercial Solid Waste per week must arrange for Diversion Programs for Food Scraps and Green Waste. The Act requires cities to provide a commercial Food Scrap Diversion Program for AB 1826 Food Scrap Generators on or before January 1, 2016. Franchisee acknowledges these requirements and agrees that, subject to the restrictions contained in Agreement Section 11(A), for all AB 1826 Food Scrap Generators that contract with or pay Franchisee to haul Municipal Solid Waste and/or Divertible Materials Franchisee shall implement a Food Scrap Diversion Program. The City will maintain a listing of all AB 1826 Food Scrap Generators. City expressly disclaims any liability related to or arising from the accuracy of any lists provided by City. Franchisee's failure to request or secure the list on an annual basis shall not relieve Franchisee of any obligations under this Section. Franchisee shall implement a Food Scrap Diversion Program using one or more of the following:

1. Provide source separated Food Scrap Collection service on a weekly or more frequent basis.
2. If Franchisee observes that the AB 1826 Food Scrap Generator has one (1) or more internal Food Scrap Diversion Programs, is self-hauling

or backhauling Food Scraps, is donating or selling Food Scraps, is donating edible food for human consumption, and/or is using a third party or other Franchisee to Collect Food Scraps, Franchisee shall report this to City and City, in its sole discretion, shall make a final determination as to the adequacy of the internal and/or third party Food Scrap Diversion Program(s). If the City finds the internal and/or third party program(s) are inadequate, Franchisee shall proceed to implement a Diversion Program to Divert all the remaining AB 1826 Food Scraps generated by the AB 1826 Generator.

B. Act Compliance. The parties agree that provision of a Food Scrap Diversion Program as described in this Section 13 and in Exhibit "E" is of paramount importance for the City to comply with the Act. The parties further agree that providing high quality Diversion Services, public education, and technical assistance to AB 1826 Food Scrap Generators to obtain their full participation in AB 1826 Diversion Programs is essential for Franchisee to implement an effective Food Scrap Diversion Program for each and every AB 1826 Food Scrap Generator it serves. The parties acknowledge that achievement of this requirement is integral to the City's compliance with the Act and that failure to implement said Diversion Program may cause City to be non-compliant with the Act and be grounds for termination of this Agreement.

C. Program Implementation. Within ninety (90) calendar days of either: (1) the Effective Date of this Agreement; or (2) the date an AB 1826 Food Scrap Generator initiates service with Franchisee to Collect and/or transport Municipal Solid Waste and/or Divertible Materials, whichever is later, Franchisee shall implement a Food Scrap Diversion Program for said AB 1826 Food Scrap Generator. For purposes of this Section, Franchisee shall be found to have "implemented" a Food Scrap Diversion Program for an AB 1826 Food Scrap Generator only if Franchisee completes all of the steps and requirements in Exhibit E.

SECTION 14. AB 1826 COMMERCIAL AND MULTIFAMILY GREEN WASTE AND WOOD WASTE COLLECTION PROGRAM.

A. Act Requirements. The Act requires all AB 1826 Generators of Green Waste and/or Wood Waste to implement Diversion Programs as follows. All Commercial Premises and all Multifamily Dwellings generating four (4) or more cubic yards of Food Scraps and/or Green Waste and Wood Waste must arrange for Diversion Programs for Green Waste and Wood Waste on or before January 1, 2017. On or after January 1, 2019, all owners and responsible parties of Commercial Premises and Multifamily Dwellings generating four (4) or more cubic yards of Commercial Solid Waste per week are required to arrange for Diversion Programs for Green Waste and Wood Waste. The Act requires cities to provide Commercial and Multifamily Green Waste and Wood Waste Diversion Programs for AB 1826 Green Waste and Wood Waste Generators on or before January 1, 2016. Franchisee acknowledges these requirements and agrees that, subject to the restrictions contained in Agreement Section 11(A), for all AB 1826 Green Waste and Wood Waste Generators that contract with or pay Franchisee to haul Municipal Solid Waste and/or Divertible Materials, Franchisee shall implement a Green Waste and Wood Waste Diversion Program. (For wood generated by construction and demolition projects,

the requirements of Sections 7 and 15 shall apply.) The City will maintain a listing of all AB 1826 Green Waste and Wood Waste Generators. City expressly disclaims any liability related to or arising from the accuracy of any lists provided by City. Franchisee's failure to request or secure the list on an annual basis shall not relieve Franchisee of any obligations under this Section. Franchisee shall implement a Green Waste and Wood Waste Diversion Program using one or more of the following:

Provide source separated Green Waste and Wood Waste Collection service on a weekly or more frequent basis.

1. Provide Collection of Green Waste and Wood Waste co-mingled with Municipal Solid Waste and process the Collected material at a City-approved Dirty MRF that yields Diversion results comparable to source separation. No Dirty MRF may be used for separation of AB 1826 Green Waste or Wood Waste materials unless the Dirty MRF has been approved by City as meeting the standards and requirements of Public Resources Code Section 42649 and all rules, amendments and regulations promulgated in furtherance thereof.
2. If Franchisee observes that the AB 1826 Green Waste and Wood Waste Generator has one (1) or more internal Green Waste and/or Wood Waste Diversion Program(s), is self-hauling or backhauling Green Waste and/or Wood Waste, is donating or selling Green Waste and/or Wood Waste, or is using a third party or other Franchisee to Collect Green Waste and/or Wood Waste, Franchisee shall report this to City and City, in its sole discretion, shall make a final determination as to the adequacy of the internal and/or third party Green Waste and/or Wood Waste Diversion Program(s). If the City finds the internal and/or third party program(s) are inadequate, Franchisee shall proceed to implement a Diversion Program to Divert all the remaining Green Waste and Wood Waste generated by the Customer.
3. If the AB 1826 Green Waste and Wood Waste Generator is using a landscaping company to haul away Green Waste and Wood Waste, Franchisee shall report this to the City and City, in its sole discretion, shall make a final determination as to the adequacy of the landscaper program to Divert all the Green Waste and Wood Waste. If the City finds the landscaper program to be inadequate and/or lacking the proper documentation of the end use for the Collected Green Waste and Wood Waste, Franchisee shall proceed to implement a Diversion Program to Divert all the Green Waste and Wood Waste generated by the AB 1826 Generator.

All Green Waste and Wood Waste Collected by Franchisee shall be delivered to a permitted Green Waste and/or Wood Waste Processing Facility for Diversion. No Green Waste or Wood Waste Collected in City may be used as Alternative Daily Cover at a

landfill as an end use. This prohibition includes Green Waste and Wood Waste processed at a permitted Processing Facility as well as the residue from such Facility.

B. Act Compliance. The parties agree that provision of a Green Waste and Wood Waste Diversion Program as described in this Section 14 and in Exhibit "E" is of paramount importance for the City to comply with the Act. The parties further agree that providing high quality Diversion Services, public education, and technical assistance to AB 1826 Green Waste and Wood Waste Generators to obtain their full participation in AB 1826 Diversion Programs is essential for Franchisee to implement an effective Green Waste and Wood Waste Diversion Program for each and every AB 1826 Green Waste and Wood Waste Generator it serves. The parties acknowledge that achievement of this requirement is integral to the City's compliance with the Act and that failure to implement said Diversion Programs may cause City to be non-compliant with the Act and be grounds for termination of this Agreement.

C. Program Implementation. Within ninety (90) calendar days of either: (1) the Effective Date of this Agreement; or (2) the date an AB 1826 Green Waste and Wood Waste Generator initiates service with Franchisee to Collect and/or transport Municipal Solid Waste and/or Divertible Materials, whichever is later, Franchisee shall implement a Green Waste and Wood Waste Diversion Program for said AB 1826 Green Waste and Wood Waste Generator. For purposes of this Section, Franchisee shall be found to have "implemented" a Green Waste and Wood Waste Diversion Program for an AB 1826 Green Waste and Wood Waste Generator only if Franchisee completes all of the steps and requirements in Exhibit E.

SECTION 15. CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING PROGRAM

A. Act Requirements. The California Green Building Standards Code codified in the California Code of Regulations Title 24, Part 11, ("CalGreen") and adopted by reference in Code Section 15.11.010, requires mandatory diversion of Construction and Demolition Debris. Contractor shall comply with all requirements of CalGreen, as it may be amended from time to time. In the event CalGreen and the City's Construction and Demolition Debris diversion requirements differ, Franchisee shall comply with the highest Construction and Demolition Debris Diversion percentage. Further, City reserves the right to amend and/or expand its own Construction and Demolition Debris Recycling ordinance at any time during the Term. Contractor shall provide all services necessary to (a) inform Customers of, (b) support Customer compliance with, and (c) support City's enforcement of, the Construction and Demolition Debris Recycling requirements pursuant to CalGreen and the Code.

B. Construction and Demolition Debris Diversion Program. Franchisee acknowledges these requirements and agrees that, subject to the restrictions contained in Agreement Section 11(A), for all Customers that contract with or pay Franchisee to haul Construction and Demolition Debris, Franchisee shall implement a Diversion Program as described and set forth in Exhibit "F" which is incorporated herein by reference.

SECTION 16. REPORTING REQUIREMENTS.

A. Monthly Reports. Franchisee shall submit monthly reports to the Public Works Director identifying, at a minimum, the following information:

1. The address of each facility serviced and the precise services provided to each address including, but not limited to, Commercial Franchise Services broken down by type (*i.e.*, Recyclable Materials, Food Scraps, Green Waste, Wood Waste, Construction and Demolition Debris, and/or Municipal Solid Waste) presented in an Excel format acceptable to the City;

2. The frequency of Commercial Franchise Services provided to each address;

3. The number of containers by type and size at each address and the frequency of collection;

4. The actual tonnage, by material category, collected per month in tons.;

5. The location of the Landfill and/or Processing Facility to which the Municipal Solid Waste, Recyclable Materials, Green Waste, Wood Waste and/or Food Scraps were taken during the previous month and the Diversion rate achieved if the facility accepts mixed waste materials/Processable Municipal Solid Waste;

6. AB 341 and AB 1826 compliance information by Generators, including the total number of AB 341 and AB 1826 accounts serviced by the Franchisee, the total number of accounts that have a Recycling Program, Food Scrap Diversion Program, and/or Green Waste/Wood Waste Diversion Program provided by the Franchisee, the number of Customers with Franchisee-documented internal Diversion programs that comply with AB 1826 and AB 341, the number of Customers that comply with AB 341 or AB 1826 via a Clean or Dirty MRF, the number of Customers that do not have an AB 341 or AB 1826-compliant Diversion program, and a description of outreach efforts for non-compliant Generators;

7. The "Exhibit E Tracking Document" described in subparts D, E and F of Exhibit E.

8. Such other tonnage or other information as requested by the Public Works Director including weight tickets and Diversion records.

B. Form of Report. Monthly reports shall be included in the City provided electronic template. No other templates or formats will be accepted. Use of any alternate format or template shall result in the monthly report being considered incomplete and inaccurate and the Franchisee shall be subject to assessment of liquidated damages pursuant to Section 24(B) of the Franchise.

C. Report Due Date. Each monthly report shall be submitted on or before the 25th day of the month following the end of the month.

D. Submission. Franchisee shall submit each monthly report to:

Public Works Director
City of Newport Beach
P.O. Box 1768
100 Civic Center Dr.
Newport Beach, CA 92658

E. No Waiver. Franchisee shall file the monthly report required under Agreement Section 16(A) regardless of whether Franchisee has provided Commercial Franchise Services in the City during the reported month.

F. Compliance. Franchisee shall comply with all Recycling and Diversion requirements imposed by law, ordinance, or regulation on the City. At the end of each calendar month, reports will be evaluated for compliance with City Recycling and Diversion requirements. Failure to comply with City Recycling and Diversion requirements shall be a material breach of this Agreement.

SECTION 17. HAULER REPRESENTATIVE

Franchisee shall designate, at a minimum, one (1) individual employed by Franchisee to assist City in implementing the Agreement's Recycling and Diversion programs, as applicable, and to manage all reporting requirements set forth herein ("Hauler Representative"). Franchisee shall provide City with the Hauler Representative's contact information, and the Hauler Representative shall be the primary contact for the City. The Hauler Representative shall respond to any City questions or concerns relating to or arising from Franchisee's performance under this Agreement within five (5) business days of City submitting such question or concern.

SECTION 18. VEHICLES AND EQUIPMENT

A. Containers. Any and all Containers provided to Customers for storage, Collection or transportation of Municipal Solid Waste, Recyclable Materials, Food Scraps, and/or Green Waste shall meet the requirements designated by the Public Works Director as well as State of California minimum standards for solid waste handling established under Public Resources Code Section 43020 and applicable health requirements, or any successor statutes or requirements.

B. Identification. All Containers and vehicles used by Franchisee in the performance of Commercial Franchise Services shall be marked with Franchisee's name in letters which are not less than four inches (4") high and which are easily read by the general public.

C. Equipment.

1. Maintenance; Records. Franchisee shall, at all times, provide such number of vehicles and such equipment as will be adequate for the Commercial Franchise Services, which it is authorized to provide under this Agreement. All vehicles utilized by Franchisee in the performance of this Agreement shall be registered with the California Department of Motor Vehicles. All vehicles must pass annual "BIT" and brake inspections and Franchisee shall provide evidence of such to the Public Works Department upon request. Upon request by the City, Franchisee shall provide records from the most recent California Highway Patrol biennial inspection of the terminal(s) responsible for the maintenance and repair of equipment used in the City. All vehicles shall be properly maintained, kept clean and in good condition and repair, shall not leak any fluids, and shall be uniformly painted. All Commercial Solid Waste and Divertible Materials Containers used in the performance of this Agreement shall be kept clean and in good repair, shall not leak any fluids, and shall be uniformly painted in the color identified by Franchisee in Franchisee's application. All equipment required by City in the performance of this Agreement, including vehicle mirrors and the collision avoidance system, may be subject to inspection by the City upon twenty-four (24) hours' notice by the Public Works Director. All drivers employed by Franchisee and operating equipment in the City shall be properly licensed for the class of vehicle they drive, enrolled in the Department of Motor Vehicles Employee Pull Notice (EPN) program, and abide by all State and federal regulations for driver hours and alcohol and controlled substances testing.

2. Solid Waste and Divertible Materials Retention. Each vehicle shall be so constructed and used in a manner so that no rubbish, garbage, debris, oil, grease or other material will blow, fall, or leak out of the vehicle. All Municipal Solid Waste and Divertible Materials shall be transported by means of vehicles that are covered in such a manner as to securely contain all Solid Waste and Divertible Materials and to prevent such Municipal Solid Waste and Divertible Materials from projecting, blowing, falling or leaking out of the vehicles. Any Municipal Solid Waste or Divertible Materials dropped or spilled in Collection, transfer or transportation shall be immediately cleaned up by Franchisee. A broom and a shovel shall be carried at all times on each vehicle for this purpose. In addition, each Collection vehicle shall be equipped with trash bags, masking tape and notice of non-Collection tags for the purpose of separating Hazardous Waste for return to the Generator. A communications device such as a two-way radio or a cellular telephone shall also be maintained on each vehicle at all times.

3. Vehicle Mirrors. All equipment used by Franchisee for Commercial Franchise Services in the City with a gross vehicle weight rating of twenty-six thousand (26,000) pounds or more shall be equipped with a convex mirror on the front of each vehicle, adjusted so as to enable the operator to see all points on an imaginary horizontal line which:

- (a) Is three feet (3') above the road;
- (b) Is one foot (1') directly forward from the midpoint of the front of the vehicles; and

(c) Extends the full width of the front of the vehicle.

4. Collision Avoidance System. All vehicles operated by Franchisee in the City shall include the best available collision avoidance system that is capable of detecting adjacent pedestrians and bicyclists. City reserves the right to inspect Franchisee's vehicles, at any time, to confirm that the installation and capability of Franchisee's collision avoidance system is consistent with Section 18(C)(4).

On or before January 1 of each year, Franchisee shall submit to City a certification signed under penalty of perjury containing the following:

- i. List of any collection vehicle (including front loader, rear loader, side loader, and roll off vehicles and all "spares") of such vehicles that franchisee operate in the City.
- ii. Collision Avoidance System installed on each vehicle including name of system, manufacturer, date installed, name of Person who installed the system, name of Person(s) who tested the system to ensure proper installation and operation of system.

5. Storage. Franchisee shall not store any vehicle or equipment on any public street, public right-of-way or other public property in the City without obtaining a Temporary Street Closure Permit from the Public Works Department and prior written consent of the Public Works Development.

6. Compliance. Should the Public Works Director at any time give written notification to Franchisee that any vehicle does not comply with the standards hereunder, the vehicle shall be promptly removed from service by Franchisee and not used again until inspected and authorized in writing by the Public Works Director.

7. City Standards. Placement of Containers and equipment shall be in accordance with the standards set by the City.

8. Equipment Standards. All equipment provided by Franchisee shall be in accordance with standards set by the Public Works Department.

SECTION 19. ABANDONED CONTAINERS

A. If Franchisee abandons any Commercial Solid Waste or Divertible Materials Container within the City, the City may remove the Container and/or dispose of the contents of the Container and recover its cost from Franchisee.

B. For the purposes of this Section, "abandons" includes:

1. Franchisee's failure to remove the Container within the time period specified by the City Council upon termination of the Franchise pursuant to Section 12.63.140 of the Code, or any successor statute;

2. Franchisee's failure to remove the Container within ten (10) calendar days after the expiration or termination of the Franchise granted to Franchisee, except in the case where Franchisee has been granted an extension of the Term of said Franchise or Franchisee has been granted a subsequent franchise authorizing Franchisee to Collect and transport the type or types of Commercial Solid Waste for which the Container was used pursuant to this Agreement; or

3. Franchisee's failure to collect the Container and dispose of the contents of the Container within two (2) calendar days after the Public Works Director issues written notice to Franchisee to dispose of the contents.

4. Franchisee's failure to replace a Container that fails to comply with the City's aesthetic standards, as set forth in this Agreement, within five (5) calendar days of receiving written notice from the Public Works Director of non-compliance.

SECTION 20. COMPLIANCE WITH LAW

A. Franchisee shall perform all Commercial Franchise Services in accordance with applicable federal, state, and local law, including, but not limited to, Code Chapter 12.63, Article XIII of the City Charter, Ordinance No. 2020-20 and the terms and conditions of this Agreement.

B. During the Term of this Agreement, Franchisee and City agree that the City's ordinances may be amended as provided herein, as provided in Chapter 12.63 or as necessary to permit the City to comply with changes to federal, state, and local legislative regulatory requirements, which may affect or alter City's obligations or requirements for Commercial Solid Waste management. Franchisee agrees to comply with any such amendment of the City's ordinances without the need to amend this Agreement.

SECTION 21. PERMITS AND LICENSES

A. Applicable Permits and Licenses. Franchisee shall obtain and maintain, at Franchisee's sole cost and expense, all permits and licenses applicable to Franchisee's operations under the Franchise, which are required of Franchisee by any governmental agency. Payment of the Franchise Fee and Environmental Liability Fund Fee shall be in addition to any permit or license fees or business tax prescribed by the City for the same period.

B. Orange County Landfill Account. Franchisee shall obtain and maintain for the Term of this Agreement an account with the Orange County landfills. If Franchisee disposes of any Municipal Solid Waste collected from the City at an Orange County landfill, the Franchisee shall utilize its landfill account only (no "cash" disposal).

SECTION 22. PUBLIC EDUCATION ACTIVITIES

A. Informational Materials. Each year during the Term of this Agreement, Franchisee shall transmit informational materials to all Customers and to such prospective Customers as it may select, informing them of the Commercial Franchise Services that are required of them under State law as well as Hazardous Waste Disposal requirements.

B. Customer Compliance Notification. Each year during the Term of this Agreement, Franchisee shall notify all AB 1826 and AB 341 accounts for which it provides Commercial Franchise Services of the Customer's compliance obligations.

C. Submission to City of Informational Materials. Franchisee's informational materials shall be provided to the Public Works Director upon request if, in City's sole and absolute discretion, such informational materials are necessary for City to comply with State reporting requirements.

SECTION 23. SUSPENSION; TERMINATION; APPEAL

A. City's Right to Suspend or Terminate. The Franchise granted to Franchisee may be suspended or terminated by the City Council pursuant to Code Section 12.63.140, or any successor statute.

B. Notice of Default. Should the Public Works Director determine Franchisee has defaulted in the performance of any obligation hereunder, the Public Works Director may provide written notice to Franchisee of such default ("Default Notice"). The Public Works Director may, in the Default Notice, set a reasonable time within which Franchisee may cure such default. Unless a longer or shorter time is otherwise specified by the Public Works Director, a reasonable time for correction shall be thirty (30) calendar days from the date the Default Notice is issued.

C. Public Works Director Review. Within ten (10) business days of the Public Works Director's issuance of the Default Notice, at the request of Franchisee, the Public Works Director will hold a meeting with Franchisee to discuss the failure(s) described in the Default Notice. Such request shall immediately suspend any deadlines set forth in Agreement Section 23(B) or the Default Notice. During Franchisee's meeting with the Public Works Director, Franchisee shall have an opportunity to present evidence explaining or justifying the failures described in the Default Notice. After the meeting, the Public Works Director will make a determination, in his or her sole discretion, as to whether to uphold the Default Notice, or any portion thereof, and shall issue such determination within five (5) business days of the meeting. Franchisee will have thirty (30) calendar days from the date the Public Works Director's determination is issued to cure the upheld Default Notice or portion thereof.

D. Appeal to City Manager. Within five (5) business days of the Public Works Director issuing his/her determination, Franchisee may appeal the Public Works Director's determination, in writing, to the City Manager. City's receipt of such appeal request shall immediately suspend any deadlines set forth in Agreement Section 23(C).

The City Manager will hold a meeting with Franchisee no more than ten (10) business days after receiving Franchisee's written appeal request. After the meeting, the City Manager will make a determination, in his or her sole discretion, as to whether to uphold the Default Notice, or any portion thereof, and shall issue such determination within five (5) business days of the meeting. The decision of the City Manager shall be final. Franchisee will have thirty (30) calendar days from the date the City Manager's determination is issued to cure the upheld Default Notice or any portion thereof.

F. Failure to Timely Cure. If Franchisee fails to timely cure a Default Notice, or any portion thereof, then the applicable liquidated damages set forth in Agreement Section 24 shall be final and conclusive and the amount(s) shall be immediately due and payable. Franchisee's failure to timely cure three (3) Default Notices shall be a material breach of this Agreement.

G. Audit Findings. Notwithstanding anything to the contrary, if Franchisee disagrees with City's audit findings, then Franchisee may, within ten (10) business days after service of the audit finding, appeal to the City Manager specifying the basis for its disagreement with City's audit findings. If Franchisee fails to timely request such an appeal, then the discrepancy determinations shall be final and conclusive and the violation shall be deemed established.

H. Termination Without Right to Cure. City shall have the right of suspension or termination as a result of Franchisee's failure to timely cure any deficiency or default as set forth above, which right is in addition to City's right to terminate this Agreement without affording Franchisee an opportunity to cure in circumstances where Franchisee is determined to have materially breached this Agreement. Notwithstanding anything to the contrary, in the event of any material breach hereof, City shall have the right to terminate this Agreement without affording Franchisee the right to cure including, without limitation, any action, inaction or circumstance defined herein as a material breach and/or under any of the following circumstances which are hereby defined as material breaches:

1. If Franchisee conducts, or attempts to conduct, fraud upon City.
2. If Franchisee becomes insolvent, unable, or unwilling to pay its debts.
3. If Franchisee fails to materially comply with any insurance or indemnification requirement set forth in this Agreement; provided, however, that Franchisee shall have a reasonable opportunity to cure any default relating to the Franchisee's failure to provide the City with proof of insurance, so long as such insurance is in effect at all times.
4. If City is required to pay any fine or penalty, which Franchisee is required by the terms hereof to pay, yet which Franchisee fails, refuses, neglects or is unable to timely pay.

5. If Franchisee fails to submit Records thirty (30) calendar days or more following a written request by City, or its designated representative for Records disclosure.

6. Franchisee fails to meet the Diversion requirements of this Agreement or pursuant to applicable laws.

I. Removal of Commercial Solid Waste and Divertible Materials Containers; Customer Notification. In the event this Franchise is terminated or expires without a grant of a subsequent franchise allowing Franchisee to continue performing Commercial Franchise Services in City, then within ten (10) calendar days of such termination or expiration Franchisee shall:

1. Remove all of Franchisee's Municipal Solid Waste and Divertible Materials Containers from all Franchisee's Collection service locations and properly dispose of all Municipal Solid Waste in such containers and deliver all Divertible Materials to Processing Facilities for Diversion within the time period specified by the City Council; and

2. Submit to the Public Works Director a list of the names and addresses of Generators in the City for which Franchisee provided Commercial Franchise Services as of the date of termination or expiration (i.e., Franchisee's City of Newport Beach customer list); or

3. Send written notification to each Solid Waste Generator, AB 341 Generator and AB 1826 Generator on Franchisee's customer list that Franchisee is no longer authorized to provide Commercial Franchise Services in the City. Such notification shall be in the form provided by the Public Works Director and shall be personally delivered or shall be sent by first class mail, postage prepaid, to the customers' billing addresses. Franchisee shall submit to the Public Works Director an affidavit, signed under penalty of perjury, stating that the required notification has been provided by Franchisee to all of Franchisee's City Customers.

J. Continuing Obligations. Upon Agreement termination, suspension or expiration:

1. Franchisee shall have no right or authority to engage in Commercial Franchise Services in the City, subject to the provisions of Sections 49520-49524 of the Public Resources Code, or any successor statutes.

2. Franchisee shall remain liable to City for any and all Franchise Fees and Environmental Liability Fund Fees that would otherwise be payable by Franchisee, for any and all liquidated damages, late charges and/or interest assessed.

3. Franchisee shall have a continuing obligation to submit to City all reports and records required by this Agreement. Franchisee's obligation shall survive this Agreement shall continue for such period of time as required by this Agreement or applicable law.

4. Franchisee shall allow the Commercial Solid Waste Generators, AB 341 Generators and AB 1826 Generators served by Franchisee to arrange for Commercial Franchise Services with another Franchise Holder or Person authorized to perform such services, without penalty or liability for breach of contract on the part of the generators, for such period of time as Franchisee is not authorized to perform such services because of termination or suspension.

5. Franchisee shall have a continuing obligation to provide the indemnifications required in this Agreement. Such indemnifications include, but are not limited to, the Hazardous Materials indemnification and AB 939, AB 341, and AB 1826 indemnifications as set forth in Agreement Section 10.

SECTION 24. CITY'S REMEDIES

A. The City incurred considerable time and expense procuring this Agreement to secure an improved level and quality of Recycling and compliance with State Diversion mandates.

B. Liquidated Damages. The Parties agree the following liquidated damages schedule represents a reasonable estimate of the amount of damages, considering all the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be expected in anticipation that proof of actual damages would be costly or inconvenient:

Applicable Section(s)	Failure(s)*	Damages
6(A), 7(A)	Comply with City-mandated Diversion requirements within thirty (30) calendar days of notification by City	Two hundred fifty dollars (\$250) per business day until compliant
6(B), 7(B)	Deliver Commercial Solid Waste as designated	Two hundred fifty dollars (\$250) per truck delivery
8(B)	Provide requested records	Two hundred fifty dollars (\$250) per business day until completed
11(A)	Provide only those Commercial Franchise Services for which Franchisee has applied	Two hundred fifty dollars (\$250)
11(C)	Collect at unauthorized locations and/or during unauthorized hours five (5) or more times in a twelve (12) month period	Two hundred fifty dollars (\$250)

11(D)	Label Containers; paint vehicles and/or Containers corporate color	Fifty dollars (\$50) per business day until corrected
12(A), 12(C), Exhibit E, Parts A, B and C	Implement AB 341 Diversion Program including Tasks 1-16 in Exhibit E, Part A within the timeframe in Franchise Section 12C. Comply with the requirements of Exhibit E, Parts B and C within ninety (90) days of the events described in Part B, or within ninety (90) days of a previously operating AB 341 Program malfunctioning as required by Part C.	One thousand dollars (\$1,000) per occurrence
13(A), 13(C), Exhibit E, Parts A, B and C	Implement AB 1826 Food Scrap Diversion Program including Tasks 1-16 in Exhibit E, Part A, within the timeframe in Franchise Section 13C. Comply with the requirements of Exhibit E, Parts B and C within ninety (90) days of the events described in Part B or within ninety (90) days of a previously operating Food Scrap Diversion Program malfunctioning as required by Part C.	One thousand dollars (\$1,000)
14(A), 14(C), Exhibit E, Parts A, B and C	Implement AB 1826 Green Waste and Wood Waste Diversion Program including Tasks 1-16 in Exhibit E, Part A, within the timeframe in Franchise Section 14C. Comply with the requirements of Exhibit E, Parts B and C within ninety (90) days of the events described in Part B or within ninety (90) days of a previously operating Green Waste and Wood Waste Diversion Program malfunctioning as required by Part C.	Five hundred dollars (\$500)
15(B)	Implement Construction and Demolition Diversion Program	One thousand dollars (\$1,000)
16(A), 16(B), 16(E)	Submit complete and accurate monthly reports	One hundred dollars (\$100) per business day until corrected or completed

16(C)	Submit timely monthly reports	One hundred dollars (\$100) – if not submitted when due Five hundred dollars (\$500) – if not submitted w/in thirty (30) calendar days after due date
17	Designate qualified Hauler Representative; Failure of Hauler Representative to timely respond to City	Fifty dollars (\$50) per business day until completed
18(C)	Secure or maintain vehicles or vehicle equipment	One hundred dollars (\$100) per business day until completed
19	Remove, replace, or collect abandoned Container(s)	Fifty dollars (\$50) per business day until completed

*Unless otherwise designated, reference to “failure(s)” refers to each occurrence of specified breach (such as for each Customer or each Customer record entry or complaint) and not for aggregate occurrences of those breaches (such as for all Customers on a given route or day).

C. City’s Remedies Cumulative. The rights and remedies of City set forth herein shall be in addition to any and all other rights and privileges City may have, and shall not be deemed to limit any such other rights or privileges of City under this Agreement or by virtue of any law.

By placing its initials below, each party specifically confirms:

- (1) the accuracy of the statements made in Agreement Section 24; and
- (2) it has had ample opportunity to consult with legal counsel and obtain an explanation of liquidated damage provisions prior to signing this Agreement.

FRANCHISEE
Initial Here: _____

CITY
Initial Here: _____

SECTION 25. CONFIDENTIAL INFORMATION.

A. Confidential Information. In the performance of this Agreement or in contemplation thereof, the parties and their respective employees and agents may have access to private or confidential information owned or controlled by the other party and such information may contain proprietary details and disclosures. All information and

data identified in writing as proprietary or confidential by either party ("Confidential Information") and so acquired by the other party or its employees or agents under this Agreement or in contemplation thereof shall be and shall remain the disclosing party's exclusive property. The recipient of Confidential Information shall use all reasonable efforts (which in any event shall not be less than the efforts the recipient takes to ensure the confidentiality of its own proprietary and other confidential information) to keep, and have its employees and agents keep, any and all Confidential Information confidential, and shall not copy, or publish or disclose it to others, nor authorize its employees, agents or anyone else to copy or disclose it to others, without the disclosing party's written approval; nor shall the recipient make use of the Confidential Information except for the purposes of executing its obligations hereunder, and (except as provided for herein) shall return the Confidential Information and data to the first party at its request. The City's duty to maintain confidentiality as described hereunder shall be subject to the laws of the State of California.

B. Excluded Information. The foregoing conditions will not apply to information or data which is, or which becomes generally known to the public by publication or by any means other than a breach of duty on the part of the recipient hereunder, is information previously known to the recipient, is information independently developed by or for the recipient or is information generally released by the owning party without restriction.

C. Public Records Request. Should City receive a public records request, or otherwise be directed by any governmental authority to disclose any or all Confidential Information in City's possession, custody or control, City shall promptly provide notice to Franchisee of such request to allow Franchisee an opportunity to prevent disclosure.

D. Right to Injunctive Relief. Because of the unique nature of the Confidential Information, the parties agree that each party may suffer irreparable harm in the event that the other party fails to comply with any of its obligations under this Section, and that monetary damages may be inadequate to compensate either party for such breach. Accordingly, the parties agree that either party will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief to enforce the terms of this Section.

SECTION 26. ASSIGNMENT

Franchisee shall not assign, sell, subcontract, transfer or otherwise delegate its authority to perform any portion of the Commercial Franchise Services or obligations under the Franchise without prior express consent of the City Council. This prohibition includes any transfer of ownership or control of Franchisee, or the conveyance of a majority of Franchisee's stock to a new controlling interest. City's consent shall not be unreasonably withheld.

SECTION 27. MISCELLANEOUS PROVISIONS

A. Notices. Except as otherwise provided in this Agreement, all notices required by this Agreement shall be given by personal service or by deposit in the United States mail, postage pre-paid and return receipt requested, addressed to the parties as follows:

To: Public Works Director
City of Newport Beach
P.O. Box 1768
100 Civic Center Dr.
Newport Beach, CA 92660

To Franchisee: _____

Notice shall be deemed effective on the date personally served or, if mailed, three (3) calendar days after the date deposited in the mail.

B. Integrated Agreement. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the City and Franchisee, and all preliminary negotiations and other agreements of any kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

C. Amendments. This Agreement supersedes all prior agreements and understandings between the parties and may not be modified or terminated orally, and no modification, termination or attempted waiver of any of the provisions hereof shall be binding unless in writing and signed by both parties.

D. Recitals. The Parties acknowledge that the Recitals are true and correct and are hereby incorporated by reference into this Agreement.

E. Applicable Law. The laws of the City, State of California, and applicable Federal law, 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.

F. Authority. The parties signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

G. 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.

H. 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 difference character.

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

J. Equal Opportunity Employment. Franchisee represents that it is an equal opportunity employer and it shall not discriminate against any authorized subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age or any other impermissible basis under law.

K. Compliance with Laws. Franchisee 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. Franchisee agrees to obtain a business license from the City in accordance with the Code. The parties hereto agree that the Franchise and this Agreement are the only authorizations to conduct Commercial Franchise Services in the City and that the issuance of a business license does not grant the Franchisee a right to conduct Commercial Franchise Services or other business in the City.

L. Conflicts of Interest. Franchisee and its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "California Political Reform Act"), which (i) requires such persons to disclose any financial interest that may foreseeably be materially affected by the work performed under this Agreement, and (ii) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest. If subject to the California Political Reform Act, Franchisee shall conform to all requirements of the California Political Reform Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Franchisee shall indemnify and hold harmless City for any and all claims for damages resulting from Franchisee's violation of this subsection.

M. 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.

N. 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.

O. 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 FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year written below.

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

Date: _____

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____

Aaron C. Harp
City Attorney

By: _____

Will O'Neill
Mayor

ATTEST:

Date: _____

FRANCHISEE:

Date: _____

By: _____

Leilani I. Brown
City Clerk

By: _____

Date: _____

By: _____

[END OF SIGNATURES]

Attachments: Exhibit A – Faithful Performance Bond
 Exhibit B – Franchise Hauler Acknowledgement
 Exhibit C – Franchisee Application Template
 Exhibit D – Insurance Requirements
 Exhibit E – Required Tasks for Implementation of Diversion Programs
 Exhibit F – Construction and Demolition Debris Diversion Program

EXHIBIT A

CITY OF NEWPORT BEACH BOND NO. _____ FAITHFUL PERFORMANCE BOND

The premium charges on this Bond is \$ _____.

WHEREAS, the City of Newport Beach, State of California, has awarded to _____ hereinafter designated as the "Principal," a Non-exclusive Franchise for Commercial Solid Waste and Divertible Materials Handling Services ("Franchise Agreement") in the City of Newport Beach, in strict conformity with the Franchise 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 Franchise Agreement and the terms thereof require the furnishing of a Bond for the faithful performance of the Franchise 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 Seven Thousand Five Hundred Dollars and 00/100 (\$7,500.00) lawful money of the United States of America, 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 services, covenants, conditions, and agreements in the Franchise Agreement documents and any alteration thereof made as therein provided on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to 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 attorney's 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 Franchise Agreement or to the services 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 services or to the specifications.

This Faithful Performance Bond shall be extended and maintained by the Principal in full force and effect for seven (7) years following the date Principal is granted the Franchise Agreement 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)

EXHIBIT B

FRANCHISE HAULER ACKNOWLEDGEMENT

THIS FRANCHISE HAULER ACKNOWLEDGMENT is entered into as of this ____ day of _____, 2022 (the "Acknowledgment"), by and between the City of Newport Beach, a charter city and municipal corporation (the "City"), and _____ (the "Franchise Hauler").

WITNESSETH

WHEREAS, the City and the Franchise Hauler have heretofore entered into an agreement entitled NONEXCLUSIVE FRANCHISE AGREEMENT BETWEEN THE CITY OF NEWPORT BEACH AND _____ FOR COMMERCIAL SOLID WASTE AND DIVERTIBLE MATERIALS HANDLING SERVICES (the "Franchise"); and

WHEREAS, the Franchise provides for the collection and disposal of certain municipal commercial solid waste as described therein ("Franchise Waste") generated within the City; and

WHEREAS, the County of Orange (the "County") owns, manages and operates a sanitary landfill disposal system for municipal solid waste generated within the County; and

WHEREAS, the City and the County have heretofore entered into a Waste Disposal Agreement as of 2009, and subsequent Amendment to the Waste Disposal Agreement dated April 28, 2016 (collectively, the "Disposal Agreement"), determining that the execution of such Disposal Agreement will serve the public health, safety and welfare of the residents of the City and County, by maintaining public ownership and stewardship over the Orange County Landfill Disposal System (the "Disposal System"); and

WHEREAS, under the Disposal Agreement, the County has agreed to provide long-term disposal of all municipal solid waste generated within the City and the City has agreed to exercise all legal, and contractual power which it possesses from time to time to deliver or cause the delivery of such waste to the Disposal System; and

WHEREAS, the provisions of the Waste Disposal Agreement which guarantee capacity for the long term disposal of waste at specified rates generated in the City provide significant benefits to the Franchise Hauler; and

WHEREAS, notwithstanding any Franchise provisions to the contrary, the Franchise Hauler explicitly acknowledges the aforementioned benefits to the City, the County and the Franchise Hauler in providing for the disposal of all Franchise Waste to the Disposal System; and

WHEREAS, the City and the Franchise Hauler desire to enter into this Acknowledgment to assure that the City and the Franchise Hauler will be entitled to the benefits of the Waste Disposal Agreement and to assure conformity with the waste



CITY OF

NEWPORT BEACH

City Council Staff Report

September 27, 2022
Agenda Item No. 18

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Seimone Jurjis, Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov

PREPARED BY: Lauren Wooding Whitlinger, Real Property Administrator, lwooding@newportbeachca.gov

PHONE: 949-644-3236

TITLE: Community Development Block Grant Program Year 2021-22, Consolidated Annual Performance and Evaluation Report

ABSTRACT:

For the City Council's consideration is a request to authorize the City Manager or her designee to submit the 2021-22 Consolidated Annual Performance and Evaluation Report (CAPER) to the U.S. Department of Housing and Urban Development (HUD). After the close of every fiscal year, HUD requires the City of Newport Beach (City) to prepare and submit a CAPER to account for the funding issued to program subrecipients and outline their progress in meeting the goals established in the Community Development Block Grant (CDBG) 2021-22 Annual Action Plan that was approved by the City Council on April 27, 2021. This report must be submitted to HUD by the end of September 2022. The Program Year 2021-22 CAPER was prepared and made available for the HUD-required 15-day public review and comment period, which began on September 10, 2022, and concludes with the public hearing before the City Council on September 27, 2022.

RECOMMENDATION:

- a) Conduct a public hearing to receive comments on the Program Year 2021-22 CAPER;
- b) Find this activity exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly;
- c) Approve the Program Year 2021-22 CAPER; and
- d) Authorize the City Manager or her designee to submit the Program Year 2021-22 CAPER to HUD.

DISCUSSION:

On September 10, 2022, the City published a notice in the *Daily Pilot* informing the general public that the Draft 2021-22 CAPER (Attachment A) would be available for review and comment from September 10, 2022 to September 27, 2022. The public was informed of the opportunity to provide oral and/or written comments on the CAPER. At the time this staff report was written, no public comments have been received. Additionally, the CDBG Citizen Participation Plan requires that a public hearing be held to receive comments from interested parties regarding the CAPER. The City Council's September 27 public hearing will address the CDBG citizen participation requirement.

The program year 2021-22 CDBG allocation from HUD was \$391,662. Under the 2020 federal stimulus plan – CARES Act, the City received an additional \$960,403 to fund activities that prevent, prepare for, or respond to the impacts of COVID-19 (CDBG-CV funds). Pursuant to Substantial Amendments to the 2020-21 Annual Action Plan, the CDBG-CV funds were budgeted to an Economic Development Grant Program and to the Be Well OC Mobile Response Clinic (included under public service activities in the table below). Together with \$250,371 of unallocated CDBG funds from prior years, the City programmed a total of \$1,602,436 in CDBG funds for the program year. The table below shows the annual CDBG budget and expenditures.

<i>FY 2021-2022 Program Categories</i>	<i>Budget</i>	<i>Expenditures</i>
Public Service Activities	\$774,974	\$57,896*
Capital Improvement Project		
<i>Section 108 Loan Repayment</i>	\$202,387	\$202,387
<i>Economic Development Grant Program</i>	\$425,831	\$182,501**
<i>Homeless Shelter: Modification to Shelter</i>	\$48,497	\$0
Program Administration & Fair Housing	\$150,747	\$119,160
Total	\$1,602,436	\$561,944

*Note: Be Well OC has undrawn expenditures for the 2021-22 program year, which will be drawn in the 2022-23 program year.

**Note: Unspent economic development grant program funds will be reprogrammed to an eligible activity in a future program year.

The accomplishments for this year include, but are not limited to, a senior mobile meals program serving 101 residents, a homelessness prevention program serving 12 residents, fair housing services for 138 residents, a motel voucher program for homeless individuals serving 18 residents, and the final payment of the debt service for the Section 108 loan that funded prior public improvements in Balboa Village.

The economic development program, approved by the City Council under an amendment to the City's 2020-21 Annual Action Plan, successfully assisted 31 small businesses in Newport Beach who were negatively impacted by COVID-19. Over 200 applications were received and reviewed, and 31 businesses met HUD's strict eligibility criteria and provided the necessary documentation. The program, funded through a combination of CDBG-CV funds and unspent prior years' CDBG grant funds, has been completed and closed out. The balance of funds allocated to this activity and not spent will be programmed to another eligible activity in a future action plan.

Additionally, the Be Well OC Mobile Response Clinic surpassed its estimated goals and served 561 individuals since the program was rolled out in February 2022. The program is ongoing and will continue to assist Newport Beach residents in the next fiscal year. The balance of funds allocated to the program, including the associated administration costs, will carry forward and be spent in the 2022-23 program year.

A more detailed explanation of accomplishments can be found in the attached draft 2021-22 CAPER.

FISCAL IMPACT:

This item is a report on accomplishments for the past year; there is no fiscal impact related to this item. The CAPER is a requirement for all CDBG program recipients.

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:

In accordance with HUD requirements for a 15-day public review and comment period, a notice of this public hearing was published in the *Daily Pilot* on September 10, 2022. Further, 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 – CAPER

Attachment A

Draft Consolidated Annual Performance and Evaluation Report (CAPER)
for the 2021-22 Program Year



City of Newport Beach

Program Year 2021-2022

**Consolidated Annual Performance
and Evaluation Report
(CAPER)**

September 27, 2022

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CR-05 - Goals and Outcomes

Progress the jurisdiction has made in carrying out its strategic plan and its action plan.

91.520(a)

The City of Newport Beach has prepared the 2021-2022 Consolidated Annual Performance and Evaluation Report (CAPER) as required by the U.S. Department of Housing and Urban Development (HUD) which describes the use of federal Community Development Block Grant (CDBG) funds during the second program year of the 2020-2024 Consolidated Plan period, covering July 1, 2021, to June 30, 2022.

The City receives CDBG funds from HUD on a formula basis each year, and in turn, implements projects and awards grants to nonprofit, for-profit or public organizations for projects in furtherance of the adopted Consolidated Plan. The CDBG program generally provides for a range of eligible activities for the benefit of low- and moderate-income Newport Beach residents.

For the 2021-2022 program year, the City received \$391,662 of CDBG funds from HUD, and allocated \$250,371 from prior years' resources. This investment of CDBG funds was a catalyst for positive change in the community. Together with other federal, state and local investments, HUD resources allowed the City and its partners to:

- Provide fair housing services to 138 residents
- Provide homelessness prevention and assistance services to 30 residents
- Provide public services such as home delivered meals to 101 senior residents
- Provide funds for Section 108 Loan Repayment

Under the 2020 federal stimulus plan - CARES Act, the City received \$960,403 in CDBG-CV funds to be used for activities that prevent, prepare for, or respond to the impacts of COVID- 19. The City Council allocated those funds to an economic development program to assist small businesses suffering from hardship due to COVID- 19, and to Be Well OC Mobile Response Clinic to help address the increase in behavioral and mental health crisis exacerbated by COVID-19. HUD resources allowed the City to:

- Provide business grants to 30 businesses
- Connect 501 people experiencing homelessness (and other residents) to available resources

Table 1 provides a summary of the five-year and one-year accomplishments for the period ending June 30, 2022, arranged by each of the Strategic Plan Goals included in the 2020-2024 Strategic Plan of the Consolidated Plan.

Comparison of the proposed versus actual outcomes for each outcome measure submitted with the consolidated plan and explain, if applicable, why progress was not made toward meeting goals and objectives. 91.520(g)

Table 1 - Accomplishments – Program Year & Strategic Plan through June 30, 2022

Goal	Category	2021-2022 Amount	Indicator	Unit of Measure	5-Year Strategic Plan			2021-2022 Program Year No. 2		
					Expected	Actual	Percent Complete	Expected	Actual	Percent Complete
Fair Housing Services	Affordable Housing	CDBG: \$12,000	Other	Other	625	250	40%	125	138	110%
Homelessness Prevention Services	Homeless	CDBG: \$27,896	Homelessness Prevention	Persons Assisted	120	71	59%	25	30	120%
Public Facilities and Section 108 Debt Service	Non-Housing Community Development	CDBG: \$250,884	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Project	1	0	0%	1	0	0%
			Other	Other	5	2	40%	1	1	100%
Public Services	Non-Housing Community Development	CDBG: \$30,000	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	500	119	24%	100	101	101%
		CDBG-CV: \$717,078			500	501	102%	500	561	112%
Economic Development	Economic Development	CDBG: \$250,371 PY	Non-Housing Community Development	Business Assisted	3	2	67%	3	2	67%
		CDBG-CV: \$175,460			20	30	150%	20	30	150%
Planning	Planning and Administration	CDBG: \$70,882 CDBG-CV: \$67,865	Other	Other	N/A	N/A	N/A	N/A	N/A	N/A

Assess how the jurisdiction’s use of funds, particularly CDBG, addresses the priorities and specific objectives identified in the plan, giving special attention to the highest priority activities identified.

During the program year, the City and local nonprofit organizations made progress on several 2021-2022 activities. All CDBG funded activities addressed specific high priority objectives identified in the 2020-2024 Consolidated Plan.

The majority of CDBG funds available in the 2021-2022 Action Plan were allocated to public service activities carried out by nonprofit organizations during the Program Year including fair housing services, homelessness prevention services, and other public services benefitting low- and moderate-income residents.

All the activities funded during the program year are listed in Figure 1, including the amount of CDBG funds allocated to the activity and the amount spent as of June 30, 2022. Figure 2 provides the numeric accomplishment goal and the accomplishments as of June 30, 2022.

Figure 1 – Use of CDBG and CDBG-CV Funds

Strategic Plan Goal / Activity	Source	Allocation	Spent through 6/30/22	% Spent
1. Fair Housing Services				
Fair Housing Services	CDBG	\$12,000	\$12,000	100.00%
2. Public Services				
Age Well Senior Services: Home Delivered Meals	CDBG	\$30,000	\$30,000	100.00%
Be Well OC	CDBG-CV	\$717,078	\$0*	0%
3. Homelessness Prevention Services				
Families Forward Housing Program	CDBG	\$16,000	\$16,000	100%
Newport Beach: City Motel Voucher Program	CDBG	\$11,896	\$11,896	100%
4. Public Facilities and Infrastructure Improvements				
Public Facilities - TBD	CDBG	\$0	\$0	0%
5. Public Facilities and Section 108 Debt Service				
Section 108 Loan Repayment	CDBG	\$202,387	\$202,387	100%
Economic Development – Small Business Grant Program	CDBG	\$250,371	\$7,041	3%
Economic Development – Small Business Grant Program	CDBG-CV	\$175,460	\$175,460	100%
Homeless Shelter: Modification to Shelter	CDBG	\$48,497	\$0	0%
6. Planning and Administration				
CDBG Administration	CDBG	\$70,882	\$53,295	70%
CDBG-CV Administration	CDBG-CV	\$67,865	\$53,865	38%
Total for all Goals:		\$1,602,436	\$561,944	35%

**Note: Be Well OC has undrawn expenditures for the 2021-2022 program year; however, they are not reflected in the CDBG-CV PR26. The expenditures will be drawn in IDIS in the 2022-2023 program year.*

Figure 2 – Program Year Accomplishments by Strategic Plan Goal

Strategic Plan Goal / Activity	Unit of Measure	Expected	Actual
1. Fair Housing Services			
Fair Housing Services	People	125	138
2. Public Services			
Age Well Senior Services: Home Delivered Meals	People	100	101
Be Well OC	People	500	561
3. Homelessness Prevention Services			
Families Forward Housing Program	People	12	12
Newport Beach: City Motel Voucher Program	People	13	18
4. Public Facilities and Infrastructure Improvements			
Public Facilities/Infrastructure ADA Improvements	People	0	0
5. Public Facilities and Section 108 Debt Service			
Section 108 Loan Repayment	Other	1	1
Economic Development – CDBG Small Business Grant Program	Business	3	1
Economic Development – CDBG-CV Small Business Grant Program	Business	20	30
Homeless Shelter: Modification to Shelter	Building	1	0
6. Planning and Administration			
CDBG Administration	N/A	N/A	N/A
CDBG-CV Administration	N/A	N/A	N/A

CR-10 - Racial and Ethnic composition of families assisted

Describe the families assisted (including the racial and ethnic status of families assisted).

91.520(a)

Table 2 – Assistance to Racial and Ethnic Population by Source of Funds

	CDBG
White	532
Black or African American	29
Asian	21
American Indian or Alaskan Native	2
American Indian/Alaskan Native & White	1
Other Multi-Racial	245
Total	830
Hispanic	83
Non-Hispanic	747

****Note:** The data in this table is supplied by HUD's database and reports. The figures in this table represent the sum of the reported number of people, families, households, or housing units reported during the fiscal year, without regard to the number of people in each family, household or housing unit. In addition, the data in this table reflects 100 percent completed activities only.*

Narrative

Table 2 provides an aggregate of race and ethnicity data for the combined number of people, families, households or housing units served during the program year based on accomplishment data from all CDBG activities reported in HUD's Integrated Disbursement and Information System (IDIS).

CR-15 - Resources and Investments 91.520(a)

Identify the resources made available

Table 3 – Resources Made Available

Source of Funds	Resources Made Available 2021-2022	Amount Expended During Program Year
CDBG	\$642,033	\$332,619
CDBG-CV	\$960,403	\$229,325

Narrative

The CDBG and CDBG-CV resources made available included \$391,662 of 2021-2022 formula grant, \$250,371 from previous year funds, and \$960,403 of CDBG-CV funds. The total amount expended during this program year was \$561,944.

Identify the geographic distribution and location of investments

Table 4 – Identify the geographic distribution and location of investments

Target Area	Planned Percentage of Allocation	Actual Percentage of Allocation	Narrative Description
Citywide	100%	100%	Citywide Area

Narrative

During 2021-2022, the City expended CDBG funds in a manner consistent with the National Objectives of the program. One hundred percent of the CDBG funds expended were for activities that benefit low to moderate income persons. The percentage includes Administration and Planning activities.

The City's investments in Fair Housing Services, Public Services, and Homelessness Prevention Services projects are based on a citywide geography because individuals in need of these services may live anywhere within the jurisdiction—particularly services for special needs populations such as individuals recovering from substance abuse.

Leveraging

Explain how federal funds leveraged additional resources (private, state and local funds), including a description of how matching requirements were satisfied, as well as how any publicly owned land or property located within the jurisdiction that were used to address the needs identified in the plan.

The City used CDBG funds to leverage appropriate state, local and private resources secured by each nonprofit organization providing public services. In addition, the City will seek to leverage other sources including but not limited to those listed below and as outlined in the Consolidated Plan.

State Resources

- State Low-Income Housing Tax Credit Program
- Building Equity and Growth in Neighborhoods Program (BEGIN)
- CalHome Program
- Multifamily Housing Program (MHP)
- Housing Related Parks Grant
- CalHFA Single and Multi-Family Program
- Mental Health Service Act (MHSA) Funding

Local Resources

- Orange County Housing & Finance Agency (OCHFA) Funding
- Southern California Home Financing Authority (SCHFA) Funding
- Orange County Continuum of Care Program
- Orange County Housing Authority (OCHA) Programs

Private Resources

- Federal Home Loan Bank Affordable Housing Program (AHP)
- Community Reinvestment Act Programs
- United Way Funding
- Private Contributions

During the 2021-2022 Program Year, the City's nonprofit public service organizations used CDBG funds in conjunction with over \$8.4 million of other federal, state, and local funds to implement their programs.

Matching Requirements

The CDBG program does not require matching funds.

Publicly Owned Land or Property

The City does not own any publicly owned land or property that used CDBG funds to address needs identified in the 5-year Consolidated Plan and Action Plan.

CR-20 - Affordable Housing 91.520(b)

Evaluation of the jurisdiction's progress in providing affordable housing, including the number and types of families served, the number of extremely low-income, low-income, moderate-income, and middle-income persons served.

Table 5- Number of Households Supported

	One-Year Goal	Actual
Number of homeless households to be provided affordable housing units	0	0
Number of non-homeless households to be provided affordable housing units	0	0
Number of special-needs households to be provided affordable housing units	0	0
Total	0	0

Table 6 - Number of Households Supported

	One-Year Goal	Actual
Number of households supported through rental assistance	0	0
Number of households supported through the production of new units	0	0
Number of households supported through the rehab of existing units	0	0
Number of households supported through the acquisition of existing units	0	0
Total	0	0

Discuss the difference between goals and outcomes and problems encountered in meeting these goals.

Two high priority affordable housing needs were identified in the 2020-2024 Consolidated Plan. The City of Newport Beach will continue to use non-CDBG funding sources such as the local Affordable Housing Fund to address the following goals:

Expand the Supply of Affordable Housing

Based on evaluation of 2013-2017 ACS and CHAS data, there is a need for additional rental housing units affordable for households earning less than 50 percent of AMI. Of the households earning 0-80 percent of AMI, 8,725 are cost burdened households — meaning households paying more than 30 percent of their income for housing. Additionally, 6,580 of the cost burdened households are considered severely cost burdened households — meaning that they pay more than 50 percent of their income for housing. Of the 4,580 severely cost burdened households, 3,715 are renters. Of those severely cost burdened renter households, 3,805 households earn less than 50 percent of AMI and are considered the most at risk of becoming homeless. The City will continue to use its Affordable Housing Trust Fund and other available options under the State Density Bonus law.

Preserve the Supply of Affordable Housing

As the City's housing stock ages, a growing percentage of housing units may need rehabilitation to allow them to remain safe and habitable. The situation is of concern for low- and moderate-income homeowners who are generally not in a financial position to properly maintain their homes.

The age and condition of Newport Beach's housing stock is an important indicator of potential rehabilitation needs. Preservation of the physical and functional integrity of existing housing units occupied by low- and moderate-income households is a cost-effective way to invest limited resources to retain existing housing units that are already affordable to low- and moderate-income households in the community.

In addition, the City addressed affordable housing needs through fair housing services to ensure equal access to housing opportunities to low- and moderate-income people and by providing support to homelessness prevention through the following activities:

- Fair Housing Foundation – Fair Housing Services assisted 138 people
This agency addressed the priority need of ensuring equal access to housing opportunities.
- Families Forward – Housing Program assisted 11 people
This agency addressed the priority need of preventing and eliminating homelessness.

Discuss how these outcomes will impact future annual action plans.

The outcomes of this priority need will not impact future annual action plans since the City will use other source of funds for affordable housing programs as indicated in the Consolidated Plan.

Include the number of extremely low-income, low-income, and moderate-income persons served by each activity where information on income by family size is required to determine the eligibility of the activity.

Table 7 – Number of Persons Served

Number of Persons Served	CDBG Actual
Extremely Low-income	75
Low-income	732
Moderate-income	23
Total	830

Narrative Information

The Strategic Plan identified two high priority needs to expand the supply of affordable housing and preserve the supply of affordable housing. The Consolidated Plan indicated that CDBG funds will not be used for affordable housing. The City will continue to use other funding sources and methods to create affordable housing opportunities such as the Affordable Housing Fund and the State Density Bonus law. In addition, as outlined in the adopted 2020-2024 Consolidated Plan, the City will continue to provide CDBG funds to support fair housing services, homelessness prevention programs and public services.

The City continues to work to expand the supply of affordable housing through implementation of Density Bonuses as follows:

- In 2016, the City granted a Density Bonus that will result in 455 total units at Uptown Newport, of which 92 units will be affordable to very low-income households. The affordable units became available in mid-2019.
- In 2017, the Newport Crossings Mixed-Use project, a 350-dwelling unit mixed-use development, was submitted within the Airport Area under the Residential Overlay of the Newport Place Planned Community. In exchange for providing 78 units affordable to low-income households, the developer requested a density bonus of 91 units (35 percent bonus), an incentive to allow for flexibility with unit mix, and a development waiver of building height. The Environmental Impact Report (EIR) was certified, and the project was approved by the Planning Commission on

February 21, 2019. The project is currently in plan check review for building permit issuance.

- In December 2019, an application was submitted for a new mixed-use development located at 2510 West Coast Highway that includes the development of 36 dwelling units, 3 of which would be restricted for very low-income households. In exchange for providing the very low-income units, the developer has requested a density bonus of 9 units (35 percent bonus) and development waiver of building height. The project was approved by the Planning Commission in February of 2021 and the City Council in July of 2021. The project is currently in plan check review for building permit issuance.
- In December of 2014, an application for the Newport Airport Village was filed, requesting approval of a General Plan Amendment, Planned Community Development Plan (PCDP), and a Development Agreement that would allow for the future redevelopment of the 16.46-acre property with up to 444 dwelling units (329 base units and 115 density bonus units) and 297,572 square feet of retail, office, and other airport supporting uses. Approvals were granted by City Council on September 22, 2020. The property owner is actively seeking a builder to implement and construct the project.
- In April of 2020, an application was submitted for Residences at 4400 Von Karman, requesting the rezoning of nonresidential property to mixed-use land uses, including up to 260 residential units plus an allowance for density bonus units up to a total of 312 units (13 Very-Low Income units). The project was approved by the City Council in February 2021.
- In June of 2021, an application was submitted for a new 193-unit apartment complex located at 1300 Bristol Street. The project consists of 77 base units (including 24 very-low-income units), 77 transfer of development units, and a density bonus of 39 units. The project was recommended for approval by the Planning Commission on February 17, 2022 and approved by the City Council on March 22, 2022.

As a result of the City's former Inclusionary Housing Ordinance, the City collected approximately \$4.2 million in the Affordable Housing Fund. The fees were paid by developers of residential housing in-lieu of providing affordable units. The purpose of the Affordable Housing Fund is to construct, rehabilitate or subsidize affordable housing or assist other governmental entities, private organizations, or individuals to provide or preserve affordable housing. On April 29, 2015, the City published a Request for Proposals for the use of the Affordable Housing Fund toward affordable housing development or programming. The City received three proposals discussed below that ultimately were recommended for funding from an evaluation panel and the City's Affordable Housing Task Force.

- Newport Shores Project: An agreement with Community Development Partners granting \$1,975,000 to assist with the acquisition, rehabilitation, and conversion of an existing 12-

unit apartment building located at 6001 Coast Boulevard for affordable housing. This project opened as of March 2018.

- Senior Home Repair Program: The City granted up to \$600,000 to Habitat for Humanity Orange County for the purpose of establishing a critical home repair program for lower-income seniors. This program is active, has approved nine project applications, completed seven projects, and is continuing to accept applications.
- Seaview Lutheran Plaza Rehabilitation: The City Council approved an agreement granting \$800,000 to Seaview Lutheran Plaza to rehabilitate 100 apartment bathrooms to include ADA toilets, removal of tubs, installation of new showers with safety grab bars, new flooring, and paint. The project was completed during the 2017-2018 Program Year.
- Costa Mesa Bridge Shelter: The City of Costa Mesa, in partnership with the City of Newport Beach, opened a bridge shelter in May 2021. With 72 beds, the facility provides temporary shelter and support services to individuals experiencing homelessness in Newport Beach and Costa Mesa, with the goal of assisting those individuals to find permanent supportive housing in the area. The shelter is operated by a case management provider that helps clients locate appropriate permanent housing, assists with job searches, and other on-site services. The City contributed \$1.4 million to the initial construction costs and will spend \$1 million per year to support ongoing operational costs. The shelter has assisted dozens of homeless individuals and 8 people have been housed from Newport Beach.

CR-25 - Homeless and Other Special Needs 91.220(d, e); 91.320(d, e); 91.520(c)

Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs

As stated in prior years, the City of Newport Beach will continue to support the efforts of Orange County Continuum of Care (CoC) and its member organizations that address homelessness throughout Orange County.

According to the Ten-Year Plan to End Homelessness in Orange County adopted in 2012 (Ten-Year Plan), the CoC is in the process of implementing several regional strategies that will enhance local coordination to more effectively assist people in need. To rapidly identify and assess people experiencing homelessness, the CoC is working to create regional homeless access centers that will offer fully coordinated systems of outreach and will facilitate universal assessment, intake, referral and transportation to resources. The CoC is also developing resources of information (such as 2-1-1) to better serve individuals who are homeless or at risk of becoming homeless. In addition, the CoC is working to implement a database using real time information from intake and assessment that is housed in the Homeless Management Information System (HMIS). Collectively these strategies will help minimize duplication of effort and better connect the most vulnerable individuals and families, chronically homeless, and people at risk of becoming homeless to appropriate resources.

The CoC utilizes the (CES) Coordinated Entry System that enables people to move through the system faster by reducing the amount of time people spend moving from program to program. Secondly, it reduces new entries into homelessness by offering prevention resources. Third, it improves data collection and quality information to enable providing more accurate information on what kind of assistance is needed.

To reach out to unsheltered homeless persons and assess their individual needs for the purpose of connecting them with available emergency shelter and transitional housing resources, the City of Newport Beach, through its homeless coordinator, homeless liaison police officer, and third-party contractor partners provided information and referrals — primarily to 2-1-1 Orange County. Additionally, to reduce and end homelessness, the City of Newport Beach provided CDBG funds for the following public service activities:

- Families Forward – Housing Program assisted 12 people
This agency helped addressing the priority need of preventing and eliminating homelessness.
- City Motel Voucher Program – Assisted 18 people
The City of Newport Beach Motel Voucher program provides homeless Newport Beach residents with financial assistance to stay in a motel.

Addressing the emergency shelter and transitional housing needs of homeless persons

The ultimate solution to ending homelessness is transitional to permanent housing closely aligned with supportive services that ensure housing stability can be maintained. However, because the demand for affordable housing far outpaces the region's supply, the CoC continues to rely on its emergency and transitional housing system in order to address the immediate needs of Orange County's homeless population.

2-1-1 CoC assists homeless residents in connecting with homeless prevention programs. 2-1-1 CoC maintains a list of homeless shelters and services in the region. City Net collects data on homeless persons to better enable homeless service providers to fulfill their mission. Additionally, Homeless Shelter Directory is a non-profit organization that provides a directory for resources in the City of Newport Beach.

The CoC is improving the efficacy of emergency shelters and the access system until a year-round permanent emergency shelter can be established to replace various seasonal emergency shelters and the County's Armory Cold Weather Shelter program. The Cold Weather Shelter program provides up to 400 beds for homeless along with showers, warm clothing, and free nutritious meals during cold weather. These beds are located in Fullerton and Santa Ana.

For transitional housing, the CoC recognizes a need to maintain a level of transitional housing for the target populations that benefit most from a staged approach to housing, such as mentally ill and chronically homeless individuals. While the CoC continues to support transitional housing in special circumstances, the CoC is currently examining ways to shorten stays in emergency shelters and transitional housing so that resources may be used for rapid re-housing or placement in permanent supportive housing.

To address the emergency shelter and transitional housing needs of homeless persons, the City supports the Families Forward Housing Program that provides transitional housing, counseling and case management to families at risk of homelessness. Each year, Families Forward serves approximately 12 additional unduplicated people because of CDBG funding. In addition, the City will support a City-run motel voucher program to assist 18 homeless individuals.

Costa Mesa Bridge Shelter: The City of Costa Mesa, in partnership with the City of Newport Beach, opened a bridge shelter in May 2021. With 72 beds, the facility provides temporary shelter and support services to individuals experiencing homelessness in Newport Beach and Costa Mesa, with the goal of assisting those individuals to find permanent supportive housing in the area. The shelter is operated by a case management provider that helps clients locate appropriate permanent housing, assists with job searches, and other on-site services. The City contributed \$1.4 million to the initial construction costs and will spend \$1 million per year to support ongoing operational costs. The shelter has assisted dozens of homeless individuals and 8 people have been housed from Newport Beach.

Other organizations in the CoC also address the emergency shelter and transitional housing needs of homeless persons, including Orange Coast Interfaith Shelter, Orange County Rescue Mission and WISEPlace.

Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs

An individual or family is considered to be at-risk of becoming homeless if it experiences extreme difficulty maintaining their housing and has no reasonable alternatives for obtaining subsequent housing. Homelessness often results from a complex set of circumstances that require people to choose between food, shelter, and other basic needs. Examples of common circumstances that can cause homelessness include eviction, loss of income, insufficient income, disability, increase in the cost of housing, discharge from an institution, irreparable damage, or deterioration to housing, and fleeing from family violence.

Orange County's current CoC system encourages services aimed at reducing incidences of homelessness for those receiving public assistance and individuals likely to become homeless after being discharged from publicly funded institutions and systems of care, including:

- Emergency Rental and Utility Assistance: Short-term financial assistance to prevent eviction and utility shut-off.
- Credit Counseling: Financial counseling and advocacy to assist households to repair credit history.
- Legal/Mediation Services: Tenant-landlord legal/mediation services to prevent eviction.
- Food Banks and Pantries: Direct provision of food, toiletries, and other necessities.
- Transportation Assistance: Direct provision of bus vouchers and other forms of transportation assistance.
- Clothing Assistance: Direct provision of clothing for needy families and individuals.
- Prescription/Medical/Dental Services: Direct provision of prescription, medical and dental services.
- Workforce Development: Direct provision of job training services designed to develop and enhance employment skills, as well as to help clients secure and retain living wage jobs.
- Information & Referral Services: Direct provision of 24-hour/7-days-a-week call center services to provide health and human service information to at-risk populations.
- Recuperative care for homeless individuals who become ill or injured.

In addition, the City provided CDBG funds to nonprofit organizations to meet the goals of the Consolidated Plan. The following is a detailed description of services provided by each organization per activity and according to the Action Plan:

Families Forward – Housing Program

The Families Forward Housing Program transitions homeless families from crisis to stability and self-sufficiency. Services include housing, counseling, food, career coaching, life-skills, education and acquisition of permanent housing. Individualized self-sufficiency plans are developed with case managers, and progress is monitored on a regular basis at monthly case management meetings. Depending on financial capacity, families will pay 0-30 percent of their income in rent. Transitional housing ranges from 1-24 months. Case managers conduct pre and post program surveys to document this data. Additionally, services provided through this program are mentioned through ClientTrack, HMIS-compliant client data system, at regular intervals. Families Forward assisted 12 people.

City Motel Voucher Program

The City Motel Voucher Program provide motel rooms to bridge the gap between living on the street and permanent supportive housing for individuals experiencing homelessness. Motel rooms were secured to bridge the gap between living on the street and having access to available shelter beds and/or detox/rehabilitation rooms. In addition, funds assist with the transition to supportive housing including: clothing, food and travel to necessary housing-related appointments. The Program assisted 18 people.

Be Well OC Mobile Response Program

Be Well OC help address the increase in behavioral and mental health crises exacerbated by COVID-19. The Be Well Newport Beach team is prepared to help with a variety of non-emergency and non-medical situations, which may include: mental health / behavioral crisis, suicidal ideation, public assistance including lack of basic needs (food, shelter, water, clothing), engage homeless individuals and families living on the street, prevent families and individuals from becoming homeless, reach out to unsheltered homeless people; connect them with emergency shelter, housing, or critical services; and provide urgent, non-facility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or an appropriate health facility. The Program assisted 561 people.

Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again

The City of Newport Beach continues to support CoC efforts. The 2020-2024 Strategic Plan prioritized the use of CDBG funds to support activities implemented by local nonprofit organizations that provide services to help prevent and eliminate homelessness, including families at risk of homelessness. To address the needs of homeless families, families with children, veterans and their families, the City provided funds to support the Families Forward Housing Program, which provides transitional housing, counseling, and case management to families at risk of homelessness. When paired with financial counseling, career coaching and other available case management services, Families Forward makes certain that families are ready to succeed in their transition to permanent housing.

The City supports a number of programs to assist low-income individuals and families to avoid becoming homeless, including Section 8 Housing Choice vouchers. Other support services, such as job and training assistance, food assistance, and counseling are also available to help individuals recover from homelessness and to avoid becoming homeless. Case management services are offered to help prevent individuals from falling back into homelessness.

2-1-1 CoC maintains a list of homeless shelters and services in the region that homeless residents or at-risk residents can utilize. Additionally, Homeless Shelter Directory is a non-profit organization that provides a directory for resources in the City of Newport Beach.

In support of CoC efforts, the Strategic Plan provides for the use of CDBG funds to support activities implemented by local nonprofit organizations that provide services to help prevent and eliminate homelessness, including families at risk of homelessness, veterans, victims of domestic violence and emancipated foster youth. The City also leverages CDBG funds to expand the supply of affordable housing in Newport Beach.

Additional efforts are underway at the regional level to shorten the period of time that individuals and families experience homelessness and to prevent individuals and families who were recently homeless from becoming homeless again. Many transitional housing providers are working with the Commission to End Homelessness to evaluate strategies to lower program threshold requirements and improve outcomes including shorter shelter stays and more rapid transitions to permanent housing.

2-1-1 CoC assists homeless residents in connecting with homeless prevention programs. City Net collects data on homeless persons to better enable homeless service providers to better fulfill their mission.

CR-30 - Public Housing 91.220(h); 91.320(j)

Actions taken to address the needs of public housing

Newport Beach is within the service area of the Orange County Housing Authority (OCHA) for the purposes of Section 8 and Public Housing. The data presented below is for Newport Beach and the narrative responses address the needs for the entire county, with specific references to the City of Newport Beach.

As of July 2022, OCHA administered 92 Housing Choice Vouchers utilized by Newport Beach residents, including 23 for families, 12 for households with disabled members, and 57 for elderly households.

Actions planned during the next year to address the needs to public housing

During the current five-year planning period, OCHA's goals are:

- Apply for additional housing assistance funding and programs that may become available.
- Explore the use of Project-Based Housing Choice Vouchers or other housing funds to promote the construction or acquisition activities that will result in additional units or developments that will serve special needs populations.
- Ensure consistent quality of assisted housing services by maintaining high performer status in Section Eight Management Assessment Program (SEMAP) scores.
- Promote Family Self-Sufficiency incentives and homeownership opportunities for Housing Choice Voucher participants in partnership with local programs and related service providers.
- Expand assisted housing choices by conducting outreach efforts to increase the number of property owners and their participation in housing assistance programs.
- Identify and utilize technology to enhance operational effectiveness and efficiency in delivery of housing assistance services

Actions taken to encourage public housing residents to become more involved in management and participate in homeownership

OCHA supports resident councils and actively seeks input from PHA residents on the management and implementation of OCHA policies and procedures.

Housing prices in Orange County are so high that homeownership opportunities are limited for OCHA residents. On a limited basis, OCHA has partnered with Habitat for Humanity to provide two affordable homeownership units, but these types of efforts are limited.

OCHA also manages a Housing Choice Voucher Homeownership Program that it markets to all OCHA program tenants.

Actions taken to provide assistance to troubled PHAs

Not applicable. OCHA is designated as a High Performing PHA.

CR-35 - Other Actions 91.220(j)-(k); 91.320(i)-(j)

Actions taken to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment. 91.220 (j); 91.320 (i)

Based on information gathered during community meetings, the Consolidated Plan Needs Assessment Survey, the 2014-2021 Housing Element and market analysis, the primary barriers to affordable housing in Newport Beach are housing affordability and the lack of monetary resources necessary to develop and sustain affordable housing. The two barriers are related in the sense that demand for affordable housing exceeds the supply and insufficient resources are available to increase the supply of affordable housing to meet demand.

The City evaluated significant public policies affecting affordable housing development such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges and growth limitations. Based on this evaluation, the City determined that it has taken all appropriate and necessary steps to ameliorate the negative effects of public policies that may have been a barrier to affordable housing.

On March 9, 2021, the City Council adopted Resolution No. 2021-18 adding City Council Policy K-4 (Reducing the Barriers to the Creation of Housing). Council Policy K-4 recognizes that the City has several major constraints on existing lands that severely limit or totally restrict the City's ability to accommodate growth to the extent identified in the 6th Cycle Regional Housing Needs Allocation ("RHNA"). As a result, new and flexible land use and zoning regulations and strategies should be developed in order to reasonably and practically accommodate this ambitious State housing mandate while protecting the character and maintaining a quality of life that makes Newport Beach a special place to live, work, and visit.

The policy focuses on the three distinct housing-related efforts recommended by the Council:

- Production of ADUs – Sets forth directives to further encourage and incentivize the development of ADUs beyond the minimum State law requirements as an important strategy to accommodate future growth in combination with other strategies to meet the RHNA Allocation. To implement this policy, the City has completed the following: 1) Developed a fee waiver program for new ADU development; 2) contracted design services to develop pre-approved ADU plans that property owners can utilize at no-cost to construct ADUs and to expediate the approval process; 3) contracted design services to create a user-friendly website dedicated to inform property owners on the benefits of ADU development, clear instructions and a comprehensive guidebook, incentives for ADU development, and development standards; and 4) formed an ADU Planning Commission Ad-Hoc Committee and held community meetings to development more flexible development standards to encourage ADU development.
- Planning Commission Review and Recommendations for Mixed-Use Designations- Despite the new mixed-use housing opportunities that were created in the 2006 Comprehensive General Plan Update, a majority of these sites remain underutilized with a single, non-

residential use, such as retail or office. It is evident the City's existing development standards related to mixed-use development may create constraints to the redevelopment of these properties. Therefore, the policy directs staff and the Planning Commission to review annually the established mixed-use zones in the City and recommend code changes or policy ideas to the City Council that reduce regulatory barriers and incentivize mixed-use residential development. To implement this policy, the City has adopted Housing Policy Action 4H (Review Mixed-Use Zones) as part the 6th Cycle Housing Element update. Completion of the initial review and recommendations are scheduled for October 2023.

- **Mixed-Use Resort Opportunities** –Mixed-use resorts provide an opportunity to revitalize older resort hotels by incorporating accessory residential units. The policy affirms the City Council's direction to interpret ambiguities in code provisions to allow for limited residential units as an accessory use to the principal use of a hotel and to pursue any needed amendments to accommodate such uses. To implement this policy, the City Council upheld Director's Determination No. DD2021-001 on August 24, 2021 finding that accessory residential is an allowed use within resort hotels. On May 12, 2022, the Planning Commission approved the Ritz-Carlton Residences located at 900 Newport Center Drive and involved the conversion of 159 hotel rooms into hotel branded residences. The project was conditioned to require the payment of \$100,000 per unit fee as the means determined appropriate by the Community Development Director to address potential impacts to public services, public safety, public access, and affordable housing. Of the \$100,000 per unit fee, \$65,000 per unit would be reserved for a future affordable housing project.

Moreover, to address housing affordability and the lack of monetary resources for affordable housing, the City will continue to invest Affordable Housing Fund resources to incentivize the development of affordable housing during the five-year period of the Consolidated Plan. In addition, the City will continue to work with the County and refer low- and moderate-income residents for participation in their Housing Rehabilitation Program.

Actions taken to address obstacles to meeting underserved needs. 91.220(k); 91.320(j)

The primary obstacles to meeting the underserved needs of low- and moderate-income people include lack of funding from federal, state, and other local sources, and the high cost of housing that is not affordable to low-income people.

To address these obstacles, the City invested CDBG funds through the 2021-2022 Action Plan in projects that provide assistance to those with special needs, projects that prevent homelessness, and strengthen economic opportunities for low- and moderate-income residents. Additionally, the City allocated 100 percent of its non-administrative CDBG investments for program year 2021-2022 to projects and activities that benefit low- and moderate-income people or people presumed under HUD regulations to be low- and moderate-income. The following are the activities funded this program year:

Fair Housing Foundation – Fair Housing Services

The Fair Housing Foundation provided fair housing and landlord/tenant mediation to ensure universal access to fair housing to low- and moderate-income residents. This agency assisted 138 people.

Age Well Senior Services Home - Delivered Meal Program

Provided home delivered meals to seniors and disabled persons to reduce the possibility of institutionalization. This agency assisted 101 seniors.

City Motel Voucher Program

The City Motel Voucher Program provides motel rooms to bridge the gap between living on the street and permanent supportive housing for individuals experiencing homelessness. Motel rooms were secured to bridge the gap between living on the street and having access to available shelter beds and/or detox/rehabilitation rooms, family reunification, and other permanent housing solutions. In addition, funds assist with the transition to supportive housing including: clothing, food, and travel to necessary housing-related appointments. The Program assisted 18 people.

Families Forward - Housing Programs

This program provided assistance to transit homeless families and at risk to become homeless families from crisis to stability and self-sufficiency. Services include housing, counseling, food, career coaching, life-skills, education, and acquisition of permanent housing. This agency assisted 12 people.

Be Well OC Mobile Response Program

Be Well OC help address the increase in behavioral and mental health crises exacerbated by COVID-19. The Be Well Newport Beach team is prepared to help with a variety of non-emergency and non-medical situations. This agency assisted 561 people.

Actions taken to reduce lead-based paint hazards. 91.220(k); 91.320(j)

The City of Newport Beach does not currently implement a Residential Rehabilitation Program with CDBG funds; however, if such a program is implemented in the future, the City will disseminate brochures provided by the U.S. Environmental Protection Agency to all applicants as part of the transmittal of the program application. Any unit receiving assistance through the program that was built prior to January 1, 1978, will be tested for lead-based paint. If lead-based paint is present, appropriate abatement procedures are implemented as part of the rehabilitation contract consistent with the requirements of 24 CFR Part 35.

Actions taken to reduce the number of poverty-level families. 91.220(k); 91.320(j)

The implementation of CDBG activities meeting the goals established in the 2020-2024 Consolidated Plan-Strategic Plan and this Annual Action Plan helped to reduce the number of poverty-level families by:

- Supporting activities that expand the supply of housing that is affordable to low- and moderate-income households, including investment of the City's Housing Trust Fund resources and using the State Density Bonus law to incentivize the development of additional affordable housing units;
- Supporting a continuum of housing and public service programs to prevent and eliminate

homelessness;

- Supporting housing preservation programs that ensure low-income households have a safe, decent and appropriate place to live; and
- Supporting public services through various nonprofits funded by CDBG that serve the community's youth, seniors, families and those with special needs.

In addition to these local efforts, mainstream state and federal resources also contribute to reducing the number of individuals and families in poverty. Federal programs such as the Earned Income Tax Credit and Head Start provide a pathway out of poverty for families who are ready to pursue employment and educational opportunities. Additionally, in California, the primary programs that assist families in poverty are CalWORKs, CalFresh (formerly food stamps) and Medi-Cal. These programs provide individuals and families with employment assistance, subsidy for food, medical care, childcare and cash payments to meet basic needs such as housing, nutrition, and transportation. Other services are available to assist persons suffering from substance abuse, domestic violence, and mental illness.

Actions taken to develop institutional structure. 91.220(k); 91.320(j)

The institutional delivery system in Newport Beach is high-functioning and collaborative — particularly the relationship between local government and the nonprofit sector comprised of a network of capable community-based organizations that are delivering a full range of services to residents. Affordable housing development and preservation activities will be carried out by the Planning Division of the Community Development Department in partnership with other agencies. Public service activities will be carried out by nonprofit organizations to achieve the Strategic Plan goals. The Planning Division and the Public Works Department will work together with contractors to implement public facility improvement projects in subsequent program years implementing the 2020-2024 Consolidated Plan Strategic Plan.

One of the keyways the City is developing and expanding institutional structure to meet underserved needs is by funding a wide variety of services targeted to seniors, and individuals or families at risk of homelessness with CDBG public service grants.

Actions taken to enhance coordination between public and private housing and social service agencies. 91.220(k); 91.320(j)

To enhance coordination between public and private housing and social service agencies, the City invested CDBG funds and will continue consulting with and inviting the participation of a wide variety of agencies and organizations involved in the delivery of housing and supportive services to low- and moderate-income residents in Newport Beach.

In the implementation of the 2021-2022 Action Plan, the City invested CDBG resources to public service agencies to assist low- and moderate- income residents in Newport Beach such as Fair Housing Foundation, Families Forward, City Motel Voucher Program, and Age Well Senior Services.

Identify actions taken to overcome the effects of any impediments identified in the jurisdictions analysis of impediments to fair housing choice. 91.520(a)

Consolidated Plan regulations require CDBG recipients to (1) examine and attempt to alleviate housing discrimination within their jurisdiction; (2) promote fair housing choice for all persons; (3) provide opportunities for all persons to reside in any given housing development, regardless of race, color, religion, sex, disability, familial status, or national origin; (4) promote housing that is accessible to and usable by persons with disabilities; (5) and comply with the non-discrimination requirements of the Fair Housing Act. HUD encourages jurisdictions to consult with one another and initiate metropolitan wide area fair housing planning. The Analysis of Impediments (AI) to Fair Housing Choice is the primary document utilized for this purpose.

Consistent with HUD's directive, the City partnered with 15 Orange County jurisdictions to prepare an updated AI in 2015. The AI summarizes regional and local fair housing impediments and an action plan to address impediments.

During the 2021-22 reporting period, the City funded the Fair Housing Foundation (FHF), which provides fair housing services to City residents, including low- and moderate-income and special needs populations. Services provided by FHF include outreach, education, and fair housing enforcement. A total of 138 households were assisted during the reporting period.

CR-40 - Monitoring 91.220 and 91.230

Describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements

To ensure that CDBG funds are used efficiently and in compliance with applicable regulations, the City provides technical assistance to all subrecipients at the beginning of each program year and monitors subrecipients throughout the program year.

Technical Assistance

To enhance compliance with federal program regulations, the City made technical assistance available to prospective applicants for CDBG Notice of Funding Availability (NOFA) upon request to review the Strategic Plan goals, program requirements and available resources with potential applicants. After the approval of the Annual Action Plan, a mandatory subrecipient workshop was held to review program regulations in detail, to provide useful forms and resources for documenting compliance and to review the City's compliance procedures and requirements. Additionally, individualized technical assistance was provided on an as-needed basis throughout a program year.

Activity Monitoring

All activities are monitored, beginning with a detailed review upon receipt of an application to determine eligibility, conformance with a National Objective and conformance with a Plan goal. This review also examines the proposed use of funds, eligibility of the service area, eligibility of the intended beneficiaries and likelihood of compliance with other federal requirements such as the National Environmental Policy Act, the System for Award Management (SAM) debarment list, prevailing wage, Minority and Women Business Enterprise, Section 3 and federal acquisition and relocation regulations, as applicable.

Subrecipients are required to submit an audit and other documentation to establish their capacity, and any findings noted in the audit are reviewed with the applicant. Eligible applications are then considered for funding. Once funded, desk monitoring includes ongoing review of required quarterly performance reports.

For CDBG public service activities, an on-site monitoring is conducted at least once every two years, or more frequently as needed to ensure compliance. These reviews include both a fiscal and programmatic review of the subrecipient's activities. The reviews determine if the subrecipient is complying with the program regulations and City contract. Areas routinely reviewed include overall administration, financial systems, appropriateness of program expenditures, program delivery, client eligibility determination and documentation, reporting systems, and achievement toward achieving contractual goals. Following the monitoring visit, a written report is provided delineating the results of the review and any findings of non-compliance and the required corrective action. Subrecipients normally have 30 days to provide the City with corrective actions taken to address any noted findings. Individualized technical assistance is provided, as noted above as soon as compliance concerns are identified. For CDBG

capital projects, monitoring also includes compliance with regulatory agreement requirements.

All agencies were determined to be in compliance with the CDBG requirements. Technical Assistance was provided at the beginning of the program year in a congregate workshop setting as well as 1:1 technical assistance as needed during the program year. Desk monitoring conducted of all subrecipients throughout the program year did not reveal any instances of noncompliance.

Citizen Participation Plan 91.105(d); 91.115(d)

Describe the efforts to provide citizens with reasonable notice and an opportunity to comment on performance reports.

In accordance with the City's adopted Citizen Participation Plan, a public notice was published in the Daily Pilot on September 10, 2022, notifying the public of the availability of the Consolidated Annual Performance and Evaluation Report for a 15-day public review and comment period beginning September 10, 2022, and ending September 27, 2022. A copy of the public notices is included in Appendix A.

The draft CAPER was available on the City website and at the following locations:

Community Development Department

100 Civic Center Drive
Newport Beach, CA, 92660
(949) 644-3200

City Clerk's Office

100 Civic Center Drive
Newport Beach, CA 92660
(949) 644-3005

Central Library

1000 Avocado Ave
Newport Beach, CA 92660
(949) 717-3800

City Website

<http://www.newportbeachca.gov/CDBGreports>

A public hearing was conducted before the City Council on Tuesday, September 27, 2022, to solicit comments from residents and interested parties. A summary of any written or oral comments received during the public hearing will be included in Appendix B of the final CAPER document.

CR-45 - CDBG 91.520(c)

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

The City amended its 2020-2021 Annual Action plan to include CARES Act funds. Under the 2020 federal stimulus plan - CARES Act, the City received \$960,403 in CDBG-CV funds to be used for activities that prevent, prepare for, or respond to the impacts of COVID- 19. The City Council allocated those funds to an economic development program to assist small businesses suffering from hardship due to COVID- 19, and to Be Well OC Mobile Response Clinic to help address the increase in behavioral and mental health crisis exacerbated by COVID-19.

CDBG and CDBG-CV funds are making a significant impact on strategies to address the high priority needs identified in the 2021-2022 Consolidated Plan Strategic Plan. As shown in Figure 1 in section CR-05 of this document, CDBG funds contributed to all six Strategic Plan goals as indicated below:

Fair Housing Services – Fair Housing Foundation - \$12,000

The Fair Housing Services project provided fair housing assistance to 138 people. The estimated outcome was 125 moderate-income people. The agency utilized the full amount of its grant.

Public Services:

Age Well Senior Services: Home Delivered Meals Program - \$30,000

This Public Service project provided assistance to 101 people. The annual goal was 100 presumed low-income elderly people. The agency utilized the full amount of the grant.

Be Well OC Mobile Response Program - \$717,078

Be Well OC help address the increase in behavioral and mental health crises exacerbated by COVID-19. The Be Well Newport Beach team is prepared to help with a variety of non-emergency and non-medical situations. This agency assisted 561 people. Be Well OC has undrawn expenditures for the 2021-2022 program year; however, they are not reflected in the CDBG-CV PR26. The expenditures will be drawn in IDIS in the 2022-2023 program year.

Homelessness Prevention:

Families Forward: Housing Program - \$16,000

This Homelessness Prevention project provided supportive services to 11 people. The estimated outcome was 12 presumed extremely-low income homeless people. The agency utilized the full amount of the grant.

City Motel Voucher Program - \$11,896

The City Motel Voucher program provided motel rooms to bridge the gap between living on the street and permanent supportive housing for 18 individuals experiencing homelessness. The Police Department utilize the full amount of the grant.

Section 108 Loan Debt Service - \$202,387

The City completed its obligations with Section 108 Loan Repayment as planned in the Action Plan.

Small Business Assistance Program – \$425,831 (CDBG: \$250,371/CDBG-CV: \$175,460)

Provide one-time funding to small businesses located within the city that need financial assistance to aid in their recovery from the temporary loss of revenue due to the COVID-19 public health emergency. To date the program has assisted 30 businesses.

The City has met or exceeded the majority of the annual goals for the aforementioned objectives.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

The City does not receive Brownfields Economic Development Initiative grants.

[BEDI grantees] Describe accomplishments and program outcomes during the last year.

N/A



APPENDICES



APPENDIX "A"

PUBLIC NOTICE



NOTICE OF PUBLIC HEARING AND 15-DAY PUBLIC REVIEW FOR THE CITY OF NEWPORT BEACH

NOTICE IS HEREBY GIVEN that on **Tuesday, September 27, 2022, at 5p.m.**, a public hearing will be conducted in the City Council Chambers at 100 Civic Center Drive, Newport Beach. The City Council of the City of Newport Beach will receive public comments and consider this matter.

Draft Consolidated Annual Performance and Evaluation Report (CAPER) 2021-2022 – The City prepared the draft CAPER for the Fiscal Year, beginning July 1, 2021, and ending June 30, 2022, as required by the U.S. Department of Housing and Urban Development. The draft CAPER provides a detailed account of how the City utilized its Community Development Block Grant (CDBG) funds in Fiscal Year 2021-22 to pursue the strategies, goals, and objectives proposed in the 2021-2022 Action Plan to address the housing and community development needs identified in the 2020-2024 Consolidated Plan. The purpose of the Public Hearing for the CAPER is to allow the public the opportunity to comment on the draft CAPER.

NOTICE IS HEREBY FURTHER GIVEN that the review and approval of the draft CAPER 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.

NOTICE IS HEREBY FURTHER GIVEN that the publication of this notice commences a minimum 15-day public review period. Copies of the draft CAPER will be available during the public review and comment period from **September 10, 2022**, through **September 27, 2022**. The public is invited to submit written comments on the draft document to the Community Development Department no later than 4p.m. on September 27, 2022. Copies of the 2021-2022 draft CAPER will be available for public review on the City's website at www.newportbeachca.gov/CDBGreports and at the following locations:

City Clerk's Office 100 Civic Center Drive Newport Beach, CA, 92660 949-644-3005	Community Development Department 100 Civic Center Drive Newport Beach, CA, 92660 949-644-3200	Central Library 1000 Avocado Ave Newport Beach, CA 92660 949-717-3800
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ACCESSIBILITY TO MEETINGS AND DOCUMENTS

It is the objective of the City to comply with Section 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act (ADA) of 1990 and the ADA Amendment Act of 2008, the Fair Housing Act, and the Architectural Barriers Act in all respects. If you require public documents in an accessible format, the City will make reasonable efforts to accommodate your request. If you require a disability-related accommodation to attend or participate in a hearing or meeting, including auxiliary aids or services, please contact the City Clerk's Office at least 72 hours prior to the meeting at 949-644-3005, to inform us of your needs and to determine if accommodation is feasible.

The City does not and shall not discriminate on the basis of race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, military status, or other protected class status in any of its activities or operations.

All interested parties may appear and present testimony at the public hearing in regard to this matter. If you challenge this matter in court, you may be limited to raising only those issues you raised at the public hearing or in written correspondence delivered to the City, at, or prior to, the public hearing. The matter may be continued to a specific future meeting date, and if such an action occurs additional public notice of the continuance will not be provided. The immediate Friday prior to the public hearing the agenda, staff report, and documents may be reviewed on the City of Newport Beach website at www.newportbeachca.gov. Individuals not able to attend the meeting may contact the Community Development Department or access the City's website after the meeting to review the action on this matter.

Questions concerning the draft CAPER or the hearing and written comments may be addressed to Priscila Dávila, CDBG Consultant, at 100 Civic Center Drive, Newport Beach, CA 92660, or via telephone at 562-673-3388. You may also contact Lauren Wooding Whitlinger, Real Property Administrator, at 100 Civic Center Drive, Newport Beach, CA 92660, or by telephone at 949-644-3236, with any questions concerning this notice.

Leilani I. Brown, MMC
City Clerk
City of Newport Beach

Publish: September 10, 2022



APPENDIX "B"

SUMMARY OF CITIZEN PARTICIPATION COMMENTS

SUMMARY OF CITIZEN PARTICIPATION COMMENTS

In compliance with the City's approved Citizen Participation Plan and implementing regulation 24 CFR 91.105, a public notice was published on (see attached proof of publication) to solicit public comments from interested citizens regarding the draft 2021-2022 CAPER. The draft CAPER was made available to the public for a period of 15 days in order to provide an opportunity for the public to review the document.

The public hearing to solicit public input and comment on the CAPER and the City's performance during Program Year 2021-2022 was held at the Newport Beach City Council Chambers at 100 Civic Center Drive, Newport Beach, California, on September 27, 2022.

The following is a summary of Citizen Participation comments:

- INSERT



APPENDIX “C”

IDIS REPORTS

- PR01 - HUD Grants and Program Income
- PR03 - CDBG Activity Summary
- PR06 - Summary of Consolidated Plan Projects
- PR23 - Summary of Accomplishments
- PR26 - CDBG Financial Summary
- PR26 – CDBG-CV Financial Summary

PR01 - HUD Grants and Program Income

Program	Fund Type	Grantee Name	Grantee State Code	Grant Year	Grant Number	Authorized Amount	Suballocated Amount	Amount Committed to Activities	Net Drawn Amount	FY YTD Net Draw Amount	Available to Commit	Available to Draw	Recapture Amount
CDBG	EN	NEWPORT BEACH	CA	1989	B89MC060546	\$423,000.00	\$0.00	\$423,000.00	\$423,000.00	\$0.00	\$0.00	\$0.00	\$0.00
				1990	B90MC060546	\$406,000.00	\$0.00	\$406,000.00	\$406,000.00	\$0.00	\$0.00	\$0.00	\$0.00
				1991	B91MC060546	\$453,000.00	\$0.00	\$453,000.00	\$453,000.00	\$0.00	\$0.00	\$0.00	\$0.00
				1992	B92MC060546	\$469,000.00	\$0.00	\$469,000.00	\$469,000.00	\$0.00	\$0.00	\$0.00	\$0.00
				1993	B93MC060546	\$472,000.00	\$0.00	\$472,000.00	\$472,000.00	\$0.00	\$0.00	\$0.00	\$0.00
				1994	B94MC060546	\$513,000.00	\$0.00	\$513,000.00	\$513,000.00	\$0.00	\$0.00	\$0.00	\$0.00
				1995	B95MC060546	\$534,000.00	\$0.00	\$534,000.00	\$534,000.00	\$0.00	\$0.00	\$0.00	\$0.00
				1996	B96MC060546	\$520,000.00	\$0.00	\$520,000.00	\$520,000.00	\$0.00	\$0.00	\$0.00	\$0.00
				1997	B97MC060546	\$515,000.00	\$0.00	\$515,000.00	\$515,000.00	\$0.00	\$0.00	\$0.00	\$0.00
				1998	B98MC060546	\$492,000.00	\$0.00	\$492,000.00	\$492,000.00	\$0.00	\$0.00	\$0.00	\$0.00
				1999	B99MC060546	\$495,000.00	\$0.00	\$495,000.00	\$495,000.00	\$0.00	\$0.00	\$0.00	\$0.00
				2000	B00MC060546	\$498,000.00	\$0.00	\$498,000.00	\$498,000.00	\$0.00	\$0.00	\$0.00	\$0.00
				2001	B01MC060546	\$518,000.00	\$0.00	\$518,000.00	\$518,000.00	\$0.00	\$0.00	\$0.00	\$0.00
				2002	B02MC060546	\$490,000.00	\$0.00	\$490,000.00	\$490,000.00	\$0.00	\$0.00	\$0.00	\$0.00
				2003	B03MC060546	\$426,000.00	\$0.00	\$426,000.00	\$426,000.00	\$0.00	\$0.00	\$0.00	\$0.00
				2004	B04MC060546	\$437,000.00	\$0.00	\$437,000.00	\$437,000.00	\$0.00	\$0.00	\$0.00	\$0.00
				2005	B05MC060546	\$412,233.00	\$0.00	\$412,233.00	\$412,233.00	\$0.00	\$0.00	\$0.00	\$0.00
				2006	B06MC060546	\$373,292.00	\$0.00	\$373,292.00	\$373,292.00	\$0.00	\$0.00	\$0.00	\$0.00
				2007	B07MC060546	\$370,332.00	\$0.00	\$370,332.00	\$370,332.00	\$0.00	\$0.00	\$0.00	\$0.00
				2008	B08MC060546	\$355,659.00	\$0.00	\$355,659.00	\$355,659.00	\$0.00	\$0.00	\$0.00	\$0.00
				2009	B09MC060546	\$357,354.00	\$0.00	\$357,354.00	\$357,354.00	\$0.00	\$0.00	\$0.00	\$0.00
				2010	B10MC060546	\$385,189.00	\$0.00	\$385,189.00	\$385,189.00	\$0.00	\$0.00	\$0.00	\$0.00
				2011	B11MC060546	\$323,777.00	\$0.00	\$323,777.00	\$323,777.00	\$0.00	\$0.00	\$0.00	\$0.00
				2012	B12MC060546	\$350,669.00	\$0.00	\$350,669.00	\$350,669.00	\$0.00	\$0.00	\$0.00	\$0.00
				2013	B13MC060546	\$367,271.00	\$0.00	\$367,271.00	\$367,271.00	\$0.00	\$0.00	\$0.00	\$0.00
				2014	B14MC060546	\$366,830.00	\$0.00	\$366,830.00	\$366,830.00	\$0.00	\$0.00	\$0.00	\$0.00
				2015	B15MC060546	\$361,557.00	\$0.00	\$361,557.00	\$361,557.00	\$0.00	\$0.00	\$0.00	\$0.00
				2016	B16MC060546	\$359,743.00	\$0.00	\$359,743.00	\$359,743.00	\$0.00	\$0.00	\$0.00	\$0.00
				2017	B17MC060546	\$319,676.00	\$0.00	\$319,676.00	\$239,895.43	\$0.00	\$0.00	\$79,780.57	\$0.00
				2018	B18MC060546	\$358,444.00	\$0.00	\$327,316.62	\$304,196.58	\$7,041.00	\$31,127.38	\$54,247.42	\$0.00
				2019	B19MC060546	\$367,434.00	\$0.00	\$367,434.00	\$287,403.06	\$0.00	\$0.00	\$80,030.94	\$0.00
				2020	B20MC060546	\$372,775.00	\$0.00	\$372,775.00	\$305,335.55	\$0.00	\$0.00	\$67,439.45	\$0.00
				2021	B21MC060546	\$391,662.00	\$0.00	\$338,615.25	\$325,578.25	\$325,578.25	\$53,046.75	\$66,083.75	\$0.00
				NEWPORT BEACH 5		\$13,854,897.00	\$0.00	\$13,770,722.87	\$13,507,314.87	\$332,619.25	\$84,174.13	\$347,582.13	\$0.00
		EN Subtotal:				\$13,854,897.00	\$0.00	\$13,770,722.87	\$13,507,314.87	\$332,619.25	\$84,174.13	\$347,582.13	\$0.00

SL	NEWPORT BEACH CA	2000	B00MC060546	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
			B00MC060546-OLD	\$2,400,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,400,000.00	\$2,400,000.00	\$0.00
		NEWPORT BEACH \$		\$2,400,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,400,000.00	\$2,400,000.00	\$0.00
	SL Subtotal:			\$2,400,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,400,000.00	\$2,400,000.00	\$0.00
PI	NEWPORT BEACH CA	2016	B16MC060546	\$511,559.79	\$0.00	\$511,559.79	\$511,559.79	\$0.00	\$0.00	\$0.00	\$0.00
		2017	B17MC060546	\$3,155.49	\$0.00	\$3,155.49	\$3,155.49	\$0.00	\$0.00	\$0.00	\$0.00
		2018	B18MC060546	\$280.44	\$0.00	\$280.44	\$280.44	\$0.00	\$0.00	\$0.00	\$0.00
		NEWPORT BEACH \$		\$514,995.72	\$0.00	\$514,995.72	\$514,995.72	\$0.00	\$0.00	\$0.00	\$0.00
	PI Subtotal:			\$514,995.72	\$0.00	\$514,995.72	\$514,995.72	\$0.00	\$0.00	\$0.00	\$0.00
GRANTEE				\$16,769,892.72	\$0.00	\$14,285,718.59	\$14,022,310.59	\$332,619.25	\$2,484,174.13	\$2,747,582.13	\$0.00



U.S. Department of Housing and Urban Development
Office of Community Planning and Development
Integrated Disbursement and Information System
CDBG Activity Summary Report (GPR) for Program Year 2021
NEWPORT BEACH

Date: 09-Sep-2022
Time: 14:35
Page: 1

PGM Year:	2020
Project:	0007 - CDBG-CV Program Administration
IDIS Activity:	286 - CDBG-CV Program Administration

Status: Open Objective:
Location: , Outcome:
Matrix Code: General Program Administration (21A) National Objective:

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 04/12/2021

Description:

CDBG-CV Program Administration Costs.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$67,865.00	\$28,100.00	\$53,600.00
Total	Total			\$67,865.00	\$28,100.00	\$53,600.00

Proposed Accomplishments

Actual Accomplishments

Number assisted:	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:					0	0		
Black/African American:					0	0		
Asian:					0	0		
American Indian/Alaskan Native:					0	0		
Native Hawaiian/Other Pacific Islander:					0	0		
American Indian/Alaskan Native & White:					0	0		

Asian White:					0	0		
Black/African American & White:					0	0		
American Indian/Alaskan Native & Black/African American:					0	0		
Other multi-racial:					0	0		
Asian/Pacific Islander:					0	0		
Hispanic:					0	0		
Total:	0	0	0	0	0	0	0	0

Female-headed Households: 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low			0	
Low Mod			0	
Moderate			0	
Non Low Moderate			0	
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year:	2020			
Project:	0008 - CDBG-CV Economic Development Assistance			
IDIS Activity:	287 - CDBG-CV ED Grant - La Vita			
Status:	Completed 2/18/2022 6:15:52 PM	Objective:	Create economic opportunities	
Location:	2721 E Coast Hwy Ste 110 Corona Del Mar, CA 92625-2160	Outcome:	Sustainability	
		Matrix Code:	Micro-Enterprise Assistance (18C)	National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 04/12/2021

Description:

CDBG-CV Economic Development Assistance.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$0.00	\$5,000.00
Total	Total			\$5,000.00	\$0.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0		0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	1	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	1	0

Female-headed Households:

0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	1
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	1
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2021	Grant funds used to pay business rent.	
PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	288 - CDBG-CV ED Grant - Nagisa	
Status:	Completed 2/22/2022 12:34:13 PM	Objective: Create economic opportunities
Location:	3840 E Coast Hwy Corona Del Mar, CA 92625-2536	Outcome: Sustainability
		Matrix Code: ED Direct Financial Assistance to For- National Objective: LMJ

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 04/12/2021

Description:

Provided \$5,000 in CDBG-CV funds.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$0.00	\$5,000.00
Total	Total			\$5,000.00	\$0.00	\$5,000.00

Proposed Accomplishments

Jobs : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	1	1
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	2	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0

Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	3	1

Female-headed Households: 0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	2
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	1
Total	0	0	0	3
Percent Low/Mod				66.7%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
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2021 Received \$5,000 in assistance.

PGM Year: 2020

Project: 0008 - CDBG-CV Economic Development Assistance

IDIS Activity: 289 - CDBG-CV ED Grant - True Flow Yoga Inc.

Status: Completed 2/18/2022 6:16:31 PM

Objective: Create economic opportunities

Location: 3848 Campus Dr Ste 114 Newport Beach, CA 92660-2697

Outcome: Sustainability

Matrix Code: Micro-Enterprise Assistance (18C)

National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 04/12/2021

Description:

Provided \$5,000 in CDBG-CV grant.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$0.00	\$5,000.00
Total	Total			\$5,000.00	\$0.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	1	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	1	0
Female-headed Households:	0		0		0			

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	1
Non Low Moderate	0	0	0	0
Total	0	0	0	1
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2021	Received \$5,000 of assistance.	
PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	290 - CDBG-CV ED Grant - Coury & Buehler Physical Therapy - Newport, Inc.	
Status:	Completed 2/22/2022 2:37:57 PM	Objective: Create economic opportunities

Location: 3300 Irvine Ave Ste 130 Newport Beach, CA 92660-3119

Outcome: Sustainability

Matrix Code: ED Direct Financial Assistance to For-

National Objective: LMJ

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 04/12/2021

Description:

Provided \$7,500 in CDBG-CV grant.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$7,500.00	\$0.00	\$7,500.00
Total	Total			\$7,500.00	\$0.00	\$7,500.00

Proposed Accomplishments

Jobs : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	6	3
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	1	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	7	3

Female-headed Households: 0 0 0

Income Category:

Owner Renter Total Person

Extremely Low	0	0	0	4
Low Mod	0	0	0	0
Moderate	0	0	0	2
Non Low Moderate	0	0	0	1
Total	0	0	0	7
Percent Low/Mod				85.7%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2021	Completed.	
PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	291 - CDBG-CV ED Grant - Nail Salon Near Me	
Status:	Completed 2/18/2022 6:17:16 PM	Objective: Create economic opportunities
Location:	4509 W Coast Hwy Newport Beach, CA 92663-2617	Outcome: Sustainability
		Matrix Code: Micro-Enterprise Assistance (18C) National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 04/12/2021

Description:

Provided \$5000 in CDBG-CV grant.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$0.00	\$5,000.00
Total	Total			\$5,000.00	\$0.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

	Owner		Renter		Total		Person	
Number assisted:	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0		0
Black/African American:	0	0	0	0	0	0	0	0

Asian:	0	0	0	0	0	0	1	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	1	0

Female-headed Households: 0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	1
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	1
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
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2021	Received \$5,000 assistance through grant.	
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PGM Year: 2020

Project: 0008 - CDBG-CV Economic Development Assistance

IDIS Activity: 292 - CDBG-CV ED Grant - Studio A

Status: Completed 2/18/2022 6:17:50 PM

Location: 2818 Newport Blvd Ste A Newport Beach, CA 92663-3247

Objective: Create economic opportunities

Outcome: Sustainability

Matrix Code: Micro-Enterprise Assistance (18C)

National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 04/12/2021

Description:

Provided \$5000 in CDBG-CV grant.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$0.00	\$5,000.00
Total	Total			\$5,000.00	\$0.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	1	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	1	0

Female-headed Households:

0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	1
Non Low Moderate	0	0	0	0
Total	0	0	0	1
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2021	Received \$5,000 in assistance.	
PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	293 - CDBG-CV ED Grant - CDM Blackbelt	
Status:	Completed 2/18/2022 6:18:22 PM	Objective: Create economic opportunities
Location:	2612 E Coast Hwy Corona Del Mar, CA 92625-2133	Outcome: Sustainability
		Matrix Code: Micro-Enterprise Assistance (18C) National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 04/12/2021

Description:

Provided \$5000 in CDBG-CV grant.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$0.00	\$5,000.00
Total	Total			\$5,000.00	\$0.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	0	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	1	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0

Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	1	0

Female-headed Households: 0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	1
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	1
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
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2021 Received \$5,000 in assistance.

PGM Year: 2020

Project: 0008 - CDBG-CV Economic Development Assistance

IDIS Activity: 294 - CDBG-CV ED Grant - Bohemia Gals

Status: Completed 2/18/2022 6:18:53 PM

Objective: Create economic opportunities

Location: 613 E Balboa Blvd Newport Beach, CA 92661-0240

Outcome: Sustainability

Matrix Code: Micro-Enterprise Assistance (18C)

National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 04/12/2021

Description:

Provided \$5,000 on CDBG-CV grant.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$0.00	\$5,000.00
Total	Total			\$5,000.00	\$0.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0		0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	1	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	1	0
Female-headed Households:	0		0		0			

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	1
Non Low Moderate	0	0	0	0
Total	0	0	0	1
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2021	Received assistance of \$5,000.	
PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	295 - CDBG-CV ED Grant - Rooted Soul	
Status:	Completed 2/18/2022 6:19:19 PM	Objective: Create economic opportunities

Location: 700 Carnation Ave Corona Del Mar, CA 92625-2061

Outcome: Sustainability

Matrix Code: Micro-Enterprise Assistance (18C)

National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 04/12/2021

Description:

Provided \$5000 in CDBG-CV grant.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$0.00	\$5,000.00
Total	Total			\$5,000.00	\$0.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	1	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	1	0

Female-headed Households: 0 0 0

Income Category:

Owner Renter Total Person

Extremely Low	0	0	0	0
Low Mod	0	0	0	1
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	1
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2021	Received \$5,000 of assistance.	
PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	296 - CDBG-CV ED Grant - Anthony Armijo	
Status:	Completed 2/18/2022 6:19:46 PM	Objective: Create economic opportunities
Location:	309 Palm St Newport Beach, CA 92661-1200	Outcome: Sustainability
		Matrix Code: Micro-Enterprise Assistance (18C) National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 04/12/2021

Description:

Provided \$5000 in CDBG-CV grant.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$0.00	\$5,000.00
Total	Total			\$5,000.00	\$0.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

	Owner		Renter		Total		Person	
Number assisted:	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0		0
Black/African American:	0	0	0	0	0	0	0	0

Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	1	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	1	0

Female-headed Households: 0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	1
Non Low Moderate	0	0	0	0
Total	0	0	0	1
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
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2021	Received \$5,000 in assistance.	
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PGM Year: 2020

Project: 0008 - CDBG-CV Economic Development Assistance

IDIS Activity: 297 - CDBG-CV ED Grant - Richer Growth Concepts, LLC.

Status: Completed 2/18/2022 6:20:19 PM

Location: 5001 Birch St Newport Beach, CA 92660-2116

Objective: Create economic opportunities

Outcome: Sustainability

Matrix Code: Micro-Enterprise Assistance (18C)

National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 04/12/2021

Description:

Provided \$5000 in CDBG-CV grant.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$0.00	\$5,000.00
Total	Total			\$5,000.00	\$0.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	1	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	1	0

Female-headed Households:

0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	1
Non Low Moderate	0	0	0	0
Total	0	0	0	1
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2021	Received \$5,000 in assistance.	
PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	298 - CDBG-CV ED Grant - Boxing Lab	
Status:	Completed 2/22/2022 4:13:20 PM	Objective: Create economic opportunities
Location:	2125 San Joaquin Hills Rd Newport Beach, CA 92660-6507	Outcome: Sustainability
		Matrix Code: ED Direct Financial Assistance to For- National Objective: LMJ

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 05/10/2021

Description:

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$7,500.00	\$0.00	\$7,500.00
Total	Total			\$7,500.00	\$0.00	\$7,500.00

Proposed Accomplishments

Jobs : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	2	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0

Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	2	0

Female-headed Households: 0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	2
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	2
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
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2021 Received assistance.

PGM Year: 2020

Project: 0008 - CDBG-CV Economic Development Assistance

IDIS Activity: 299 - CDBG-CV ED Grant - Bradley Reid (Cormier Auto)

Status: Completed 2/18/2022 6:20:50 PM

Objective: Create economic opportunities

Location: 2082 SE Bristol St Ste 7 Newport Beach, CA 92660-1739

Outcome: Sustainability

Matrix Code: Micro-Enterprise Assistance (18C)

National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 05/10/2021

Description:

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$0.00	\$5,000.00
Total	Total			\$5,000.00	\$0.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	1	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	1	0
Female-headed Households:	0		0		0			

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	1
Non Low Moderate	0	0	0	0
Total	0	0	0	1
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2021	Received \$5,000 in assistance.	
PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	300 - CDBG-CV ED Grant - Jamgle Jam US	
Status:	Completed 2/22/2022 3:59:36 PM	Objective: Create economic opportunities

Location: 6480 W Coast Hwy Newport Beach, CA 92663-1926

Outcome: Sustainability

Matrix Code: ED Direct Financial Assistance to For-

National Objective: LMJ

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 05/10/2021

Description:

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$10,000.00	\$0.00	\$10,000.00
Total	Total			\$10,000.00	\$0.00	\$10,000.00

Proposed Accomplishments

Jobs : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	10	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	10	0

Female-headed Households: 0 0 0

Income Category:

Owner Renter Total Person

Extremely Low	0	0	0	0
Low Mod	0	0	0	2
Moderate	0	0	0	4
Non Low Moderate	0	0	0	4
Total	0	0	0	10
Percent Low/Mod				60.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2021	Completed	
PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	301 - CDBG-CV Small Business Assistance Program - Stanley Getty (Cafe Artys II)	
Status:	Completed 2/18/2022 6:21:25 PM	Objective: Create economic opportunities
Location:	1301 Dove St Ste 150 Newport Beach, CA 92660-2457	Outcome: Sustainability
		Matrix Code: Micro-Enterprise Assistance (18C) National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 08/16/2021

Description:

CDBG-CV Small Business Assistance Program - Stanley Getty

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$0.00	\$5,000.00
Total	Total			\$5,000.00	\$0.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

	Owner		Renter		Total		Person	
Number assisted:	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0		0
Black/African American:	0	0	0	0	0	0	0	0

Asian:	0	0	0	0	0	0	1	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	1	0

Female-headed Households: 0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	1
Non Low Moderate	0	0	0	0
Total	0	0	0	1
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
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2021	Received \$5,000 in assistance.	
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PGM Year: 2020

Project: 0008 - CDBG-CV Economic Development Assistance

IDIS Activity: 302 - CDBG-CV Small Business Assistance Program - Royal Thai

Status: Completed 2/18/2022 6:21:55 PM

Location: 4020 Birch St Ste 111 Newport Beach, CA 92660-2215

Objective: Create economic opportunities

Outcome: Sustainability

Matrix Code: Micro-Enterprise Assistance (18C)

National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 08/16/2021

Description:

CDBG-CV Small Business Assistance Program

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$0.00	\$5,000.00
Total	Total			\$5,000.00	\$0.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	1	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	1	0

Female-headed Households:

0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	1
Non Low Moderate	0	0	0	0
Total	0	0	0	1
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2021	Received \$5,000 in assistance.	
PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	303 - CDBG-CV Small Business Assistance Program - Boxing Haus	
Status:	Completed 2/22/2022 3:18:43 PM	Objective: Create economic opportunities
Location:	1342 Bison Ave Newport Beach, CA 92660-9071	Outcome: Sustainability
		Matrix Code: ED Direct Financial Assistance to For- National Objective: LMJ

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 08/16/2021

Description:

CDBG-CV Small Business Assistance Program

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$10,000.00	\$0.00	\$10,000.00
Total	Total			\$10,000.00	\$0.00	\$10,000.00

Proposed Accomplishments

Jobs : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	25	5
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0

Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	25	5

Female-headed Households: 0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	25
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	25
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
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2021 Completed.

PGM Year: 2020

Project: 0008 - CDBG-CV Economic Development Assistance

IDIS Activity: 304 - CDBG-CV Small Business Assistance Program - Wig and Hair

Status: Completed 2/22/2022 4:24:33 PM

Objective: Create economic opportunities

Location: 2400 W Coast Hwy Newport Beach, CA 92663-4700

Outcome: Sustainability

Matrix Code: Micro-Enterprise Assistance (18C)

National Objective: LMJ

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 08/16/2021

Description:

CDBG-CV Small Business Assistance Program

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$0.00	\$5,000.00
Total	Total			\$5,000.00	\$0.00	\$5,000.00

Proposed Accomplishments

Jobs : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	2	1
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	2	1
Female-headed Households:	0		0		0			

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	1
Moderate	0	0	0	1
Non Low Moderate	0	0	0	0
Total	0	0	0	2
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2021	Received \$5,000 in assistance.	
PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	305 - CDBG-CV Small Business Assistance Program - Minuteman Press	
Status:	Completed 2/22/2022 3:49:47 PM	Objective: Create economic opportunities

Location: 4000 Birch St Newport Beach, CA 92660-2211

Outcome: Sustainability

Matrix Code: Micro-Enterprise Assistance (18C)

National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 08/16/2021

Description:

CDBG-CV Small Business Assistance Program

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$0.00	\$5,000.00
Total	Total			\$5,000.00	\$0.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	1	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	1	0

Female-headed Households: 0 0 0

Income Category:

Owner Renter Total Person

Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	1
Non Low Moderate	0	0	0	0
Total	0	0	0	1
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2021	Received \$5,000 in assistance.	
PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	306 - CDBG-CV Small Business Assistance Program - Nuzuna Corp	
Status:	Completed 5/27/2022 1:33:58 PM	Objective: Create economic opportunities
Location:	1451 Quail St Newport Beach, CA 92660-2742	Outcome: Sustainability
		Matrix Code: ED Direct Financial Assistance to For- National Objective: LMJ

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 08/16/2021

Description:

CDBG-CV Small Business Assistance Program

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$10,000.00	\$0.00	\$10,000.00
Total	Total			\$10,000.00	\$0.00	\$10,000.00

Proposed Accomplishments

Jobs : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	11	1
Black/African American:	0	0	0	0	0	0	0	0

Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	11	1

Female-headed Households: 0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	11
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	11
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
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2021	Completed.	
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PGM Year:	2020
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Project:	0008 - CDBG-CV Economic Development Assistance
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IDIS Activity:	307 - CDBG-CV Small Business Assistance Program - 31 Marbles (Lashes on the Beach)
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Status: Completed 2/22/2022 4:04:26 PM

Location: 3848 Campus Dr Ste 222 Newport Beach, CA 92660-2649

Objective: Create economic opportunities

Outcome: Sustainability

Matrix Code: Micro-Enterprise Assistance (18C)

National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 08/16/2021

Description:

CDBG-CV Small Business Assistance Program

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$0.00	\$5,000.00
Total	Total			\$5,000.00	\$0.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	1	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	1	0

Female-headed Households:

0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	1
Non Low Moderate	0	0	0	0
Total	0	0	0	1
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
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2021	Completed	
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PGM Year:	2021
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Project:	0001 - CDBG Program Administration
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IDIS Activity:	308 - CDBG Program Administration
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Status:	Open
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Objective:	
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Location:	,
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Outcome:	
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Matrix Code:	General Program Administration (21A)
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National Objective:	
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Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 01/06/2022

Description:

Effective and cost-efficient implementation of the CDBG program.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2021	B21MC060546	\$66,332.00	\$53,295.00	\$53,295.00
Total	Total			\$66,332.00	\$53,295.00	\$53,295.00

Proposed Accomplishments

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:					0	0		
Black/African American:					0	0		
Asian:					0	0		
American Indian/Alaskan Native:					0	0		
Native Hawaiian/Other Pacific Islander:					0	0		
American Indian/Alaskan Native & White:					0	0		
Asian White:					0	0		
Black/African American & White:					0	0		
American Indian/Alaskan Native & Black/African American:					0	0		
Other multi-racial:					0	0		

Asian/Pacific Islander:					0	0		
Hispanic:					0	0		
Total:	0	0	0	0	0	0	0	0

Female-headed Households: 0

Income Category:	Owner	Renter	Total	Person
Extremely Low			0	
Low Mod			0	
Moderate			0	
Non Low Moderate			0	
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year:	2021	
Project:	0002 - Fair Housing Services	
IDIS Activity:	309 - Fair Housing Services	
Status:	Open	Objective:
Location:	,	Outcome:
		Matrix Code: Fair Housing Activities (subject to 20% National Objective:

Activity to prevent, prepare for, and respond to Coronavirus: No

Initial Funding Date: 01/06/2022

Description:

Affirmatively further fair housing choice through the provision of fair housing education, counseling, anti-discrimination and landlord- tenant mediation services.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2021	B21MC060546	\$12,000.00	\$12,000.00	\$12,000.00
Total	Total			\$12,000.00	\$12,000.00	\$12,000.00

Proposed Accomplishments**Actual Accomplishments**

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
<i>Number assisted:</i>								
White:					0	0		
Black/African American:					0	0		
Asian:					0	0		
American Indian/Alaskan Native:					0	0		
Native Hawaiian/Other Pacific Islander:					0	0		
American Indian/Alaskan Native & White:					0	0		
Asian White:					0	0		
Black/African American & White:					0	0		
American Indian/Alaskan Native & Black/African American:					0	0		
Other multi-racial:					0	0		
Asian/Pacific Islander:					0	0		
Hispanic:					0	0		
Total:	0	0	0	0	0	0	0	0

Female-headed Households:

0

Income Category:

	Owner	Renter	Total	Person
Extremely Low			0	
Low Mod			0	
Moderate			0	
Non Low Moderate			0	
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year:	2021			
Project:	0003 - Public Services			
IDIS Activity:	310 - Age Well Senior Services			
Status:	Open		Objective:	Create suitable living environments
Location:	23101 Lake Center Dr Ste 325 Lake Forest, CA 92630-2898		Outcome:	Availability/accessibility
			Matrix Code:	Senior Services (05A)
			National Objective:	LMC

Activity to prevent, prepare for, and respond to Coronavirus: No

Initial Funding Date: 01/06/2022

Description:

Provide home delivered meals to seniors.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2021	B21MC060546	\$30,000.00	\$30,000.00	\$30,000.00
Total	Total			\$30,000.00	\$30,000.00	\$30,000.00

Proposed Accomplishments

People (General) : 100

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
<i>Number assisted:</i>	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	97	2
Black/African American:	0	0	0	0	0	0	1	0
Asian:	0	0	0	0	0	0	3	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0

American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	101	2

Female-headed Households: 0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	101
Non Low Moderate	0	0	0	0
Total	0	0	0	101
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
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2021	This Public Service project provided assistance to 101 people. The annual goal was 100 presumed low-income elderly people. The agency utilized	
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PGM Year: 2021

Project: 0004 - Homeless Services

IDIS Activity: 311 - City Motel Voucher Program

Status: Open

Location: 870 Santa Barbara Dr Newport Beach, CA 92660-6303

Objective: Create suitable living environments

Outcome: Availability/accessibility

Matrix Code: Other Public Services Not Listed in 05A-

National Objective: LMC

Activity to prevent, prepare for, and respond to Coronavirus: No

Initial Funding Date: 01/06/2022

Description:

Provide funding to provide motel vouchers and critical services to homeless.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2021	B21MC060546	\$11,896.00	\$11,896.00	\$11,896.00
Total	Total			\$11,896.00	\$11,896.00	\$11,896.00

Proposed Accomplishments

People (General) : 13

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	17	1
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	1	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	18	1

Female-headed Households: 0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	18
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	18
Percent Low/Mod				100.0%

Annual Accomplishments

Years	Accomplishment Narrative	# Benefitting
2021	The City Motel Voucher program provided motel rooms to bridge the gap between living on the street and permanent supportive housing for 18	
PGM Year:	2021	

Project:	0004 - Homeless Services				
IDIS Activity:	312 - Families Forward				
Status:	Open	Objective:	Create suitable living environments		
Location:	8 Thomas Irvine, CA 92618-2763	Outcome:	Availability/accessibility		
		Matrix Code:	Other Public Services Not Listed in 05A-	National Objective:	LMC

Activity to prevent, prepare for, and respond to Coronavirus: No

Initial Funding Date: 01/06/2022

Description:

Provide funding to offer critical services for homeless and other special needs populations.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2021	B21MC060546	\$16,000.00	\$16,000.00	\$16,000.00
Total	Total			\$16,000.00	\$16,000.00	\$16,000.00

Proposed Accomplishments

People (General) : 12

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	11	4
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	11	4

Female-headed Households: 0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	11
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	11
Percent Low/Mod				100.0%

Annual Accomplishments

Years **Accomplishment Narrative** **# Benefitting**

2021 This Homelessness Prevention project provided supportive services to 11 people. The estimated outcome was 11 presumed extremely-low income

PGM Year: 2021

Project: 0005 - Public Facilities and Infrastructure Improv.

IDIS Activity: 313 - Repayment of Section 108 Loan

Status: Open

Location: ,

Objective:

Outcome:

Matrix Code: Planned Repayment of Section 108

National Objective:

Activity to prevent, prepare for, and respond to Coronavirus: No

Initial Funding Date: 01/06/2022

Description:

Repayment of Section 108 loan.

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2021	B21MC060546	\$202,387.25	\$202,387.25	\$202,387.25
Total	Total			\$202,387.25	\$202,387.25	\$202,387.25

Proposed Accomplishments

Actual Accomplishments

<i>Number assisted:</i>	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:					0	0		

Black/African American:	0	0							
Asian:	0	0							
American Indian/Alaskan Native:	0	0							
Native Hawaiian/Other Pacific Islander:	0	0							
American Indian/Alaskan Native & White:	0	0							
Asian White:	0	0							
Black/African American & White:	0	0							
American Indian/Alaskan Native & Black/African American:	0	0							
Other multi-racial:	0	0							
Asian/Pacific Islander:	0	0							
Hispanic:	0	0							
Total:	0	0	0	0	0	0	0	0	0

Female-headed Households: 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low			0	
Low Mod			0	
Moderate			0	
Non Low Moderate			0	
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year:	2020								
Project:	0009 - CDBG-CV Mobile Crisis Unit								
IDIS Activity:	314 - CDBG-CV BeWell OC								
Status:	Open								
Location:	18650 Macarthur Blvd Ste 220 Irvine, CA 92612-1269								
Objective:	Create economic opportunities								
Outcome:	Sustainability								
Matrix Code:	Mental Health Services (050)								
National Objective:	LMC								

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 02/23/2022

Description:

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$717,079.00	\$0.00	\$0.00
Total	Total			\$717,079.00	\$0.00	\$0.00

Proposed Accomplishments

People (General) : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	0	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	0	0

Female-headed Households: 0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0

Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	315 - CDBG-CV Economic Development Assistance - Mr. Best Cleaners	
Status:	Open	Objective: Create economic opportunities
Location:	2939 E Coast Hwy Corona Del Mar, CA 92625-2233	Outcome: Sustainability
		Matrix Code: Micro-Enterprise Assistance (18C) National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 02/23/2022

Description:

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$5,000.00	\$5,000.00
Total	Total			\$5,000.00	\$5,000.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

Owner		Renter		Total		Person	
Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic

White:	0	0	0	0	0	0	0	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	0	0

Female-headed Households: 0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	316 - CDBG-CV Economic Development Assistance - Sunrise Martial Arts	
Status:	Open	Objective: Create economic opportunities
Location:	3810 E Coast Hwy Corona Del Mar, CA 92625-2524	Outcome: Sustainability

Matrix Code: Micro-Enterprise Assistance (18C)

National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 02/23/2022

Description:

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$5,000.00	\$5,000.00
Total	Total			\$5,000.00	\$5,000.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0		0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	0	0

Female-headed Households: 0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0

Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	317 - CDBG-CV Small Business Assistance Program - My Gym	
Status:	Open	Objective: Create economic opportunities
Location:	2040 Quail St Newport Beach, CA 92660-2220	Outcome: Sustainability
		Matrix Code: Micro-Enterprise Assistance (18C) National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 02/23/2022

Description:

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$7,500.00	\$7,500.00	\$7,500.00
Total	Total			\$7,500.00	\$7,500.00	\$7,500.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

OwnerRenterTotalPerson

Number assisted:

	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0		0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	0	0

Female-headed Households: 0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year: 2020

Project: 0008 - CDBG-CV Economic Development Assistance

IDIS Activity: 318 - CDBG-CV Economic Development Assistance - Stevie Sister

Status: Open

Objective: Create economic opportunities

Location: 257 Newport Center Dr Newport Beach, CA 92660-6934

Outcome: Sustainability

Matrix Code: Micro-Enterprise Assistance (18C)

National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 02/23/2022

Description:

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$7,500.00	\$7,500.00	\$7,500.00
Total	Total			\$7,500.00	\$7,500.00	\$7,500.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	0	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	0	0

Female-headed Households: 0 0 0

Income Category:

Owner Renter Total Person

Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	319 - CDBG-CV Economic Development Assistance - First Cut CDM	
Status:	Open	Objective: Create economic opportunities
Location:	2614 E Coast Hwy Corona Del Mar, CA 92625-2133	Outcome: Sustainability
		Matrix Code: Micro-Enterprise Assistance (18C) National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 02/23/2022

Description:

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$5,000.00	\$5,000.00
Total	Total			\$5,000.00	\$5,000.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

<i>Number assisted:</i>	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0		0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	0	0

Female-headed Households:

0 0 0

Income Catearv:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year: 2020

Project: 0008 - CDBG-CV Economic Development Assistance

IDIS Activity: 320 - CDBG-CV Economic Development Assistance - Roll It Sushi

Status: Open
 Location: 4221 Macarthur Blvd Ste B5 Newport Beach, CA 92660-2016

Objective: Create economic opportunities
 Outcome: Sustainability
 Matrix Code: Micro-Enterprise Assistance (18C) National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 02/23/2022

Description:

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$7,500.00	\$7,500.00	\$7,500.00
Total	Total			\$7,500.00	\$7,500.00	\$7,500.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	0	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	0	0

Female-headed Households: 0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	321 - CDBG-CV Economic Development Assistance - Janna Middel	
Status:	Open	Objective: Create economic opportunities
Location:	100 Civic Center Dr Newport Beach, CA 92660-3267	Outcome: Sustainability
		Matrix Code: Micro-Enterprise Assistance (18C) National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 03/10/2022

Description:

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$5,000.00	\$5,000.00
Total	Total			\$5,000.00	\$5,000.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0		0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	0	0

Female-headed Households:

0 0 0

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year: 2020
 Project: 0008 - CDBG-CV Economic Development Assistance

IDIS Activity: 322 - CDBG-CV ED Grant - PKIM

Status: Open

Objective: Create economic opportunities

Location: 4540 Campus Dr Newport Beach, CA 92660-1815

Outcome: Sustainability

Matrix Code: Micro-Enterprise Assistance (18C)

National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 08/26/2022

Description:

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2020	B20MW060546	\$5,000.00	\$5,000.00	\$5,000.00
Total	Total			\$5,000.00	\$5,000.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	0	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	0	0
Female-headed Households:	0		0		0			

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year:	2020	
Project:	0008 - CDBG-CV Economic Development Assistance	
IDIS Activity:	323 - CDBG-CV ED Grant - Heirloom LLC	
Status:	Open	Objective: Create economic opportunities
Location:	3848 Campus Dr Ste 105 Newport Beach, CA 92660-2664	Outcome: Sustainability
		Matrix Code: Micro-Enterprise Assistance (18C)
		National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: Yes

Initial Funding Date: 08/26/2022

Description:

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2018	B18MC060546	\$2,041.00	\$2,041.00	\$2,041.00
		2020	B20MW060546	\$2,959.00	\$2,959.00	\$2,959.00
Total	Total			\$5,000.00	\$5,000.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments*Number assisted:*

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0		0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0
Total:	0	0	0	0	0	0	0	0
Female-headed Households:	0		0		0			

Income Category:

	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

PGM Year: 2020
Project: 0006 - CDBG Economic Development Assistance
IDIS Activity: 324 - CDBG Small Business Assistance Program - Wallada Corp
 Status: Open Objective: Create economic opportunities
 Location: 3848 Campus Dr Ste 105 Newport Beach, CA 92660-2664 Outcome: Sustainability
 Matrix Code: Micro-Enterprise Assistance (18C) National Objective: LMCMC

Activity to prevent, prepare for, and respond to Coronavirus: No

Initial Funding Date: 08/29/2022

Description:

Financing

	Fund Type	Grant Year	Grant	Funded Amount	Drawn In Program Year	Drawn Thru Program Year
CDBG	EN	2018	B18MC060546	\$5,000.00	\$5,000.00	\$5,000.00
Total	Total			\$5,000.00	\$5,000.00	\$5,000.00

Proposed Accomplishments

Businesses : 1

Actual Accomplishments

Number assisted:

	Owner		Renter		Total		Person	
	Total	Hispanic	Total	Hispanic	Total	Hispanic	Total	Hispanic
White:	0	0	0	0	0	0	0	0
Black/African American:	0	0	0	0	0	0	0	0
Asian:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native:	0	0	0	0	0	0	0	0
Native Hawaiian/Other Pacific Islander:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & White:	0	0	0	0	0	0	0	0
Asian White:	0	0	0	0	0	0	0	0
Black/African American & White:	0	0	0	0	0	0	0	0
American Indian/Alaskan Native & Black/African American:	0	0	0	0	0	0	0	0
Other multi-racial:	0	0	0	0	0	0	0	0
Asian/Pacific Islander:	0	0	0	0	0	0	0	0
Hispanic:	0	0	0	0	0	0	0	0

Total:	0	0	0	0	0	0	0	0	0
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Female-headed Households:	0		0		0				
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<i>Income Category:</i>	Owner	Renter	Total	Person
Extremely Low	0	0	0	0
Low Mod	0	0	0	0
Moderate	0	0	0	0
Non Low Moderate	0	0	0	0
Total	0	0	0	0
Percent Low/Mod				

Annual Accomplishments

No data returned for this view. This might be because the applied filter excludes all data.

Total Funded Amount:	\$5,021,643.60
Total Drawn Thru Program Year:	\$4,026,891.60
Total Drawn In Program Year:	\$411,178.25

PR06 - Summary of Consolidated Plan Projects for Report Year

Page by:

Grantee: NEWPORT BEACH

Plan Year	IDIS Project	Project Title and Description		Program	Project Estimate	Committed Amount	Amount Drawn Thru Report Year	Amount Available to Draw	Amount Drawn in Report Year
2021	1	CDBG Program Administration	Effective and cost-efficient implementation of the CDBG program. This includes CDBG-CV program administration to pay the City's costs to plan for the use of CDBG-CV funds, process all required grant administration documents, forms, agreements, and payments, and to monitor and report to HUD concerning implementation of activities in compliance with federal regulations.	CDBG	\$70,882.00	\$66,332.00	\$53,295.00	\$13,037.00	\$53,295.00
	2	Fair Housing Services	Affirmatively further fair housing choice through the provision of fair housing education, counseling, anti-discrimination and landlord-tenant mediation services.	CDBG	\$12,000.00	\$12,000.00	\$12,000.00	\$0.00	\$12,000.00
	3	Public Services	Provide public services for low- and moderate-income residents.	CDBG	\$30,000.00	\$30,000.00	\$30,000.00	\$0.00	\$30,000.00
	4	Homeless Services	Provide funding to community-based organizations who offer critical services for homeless and other special needs populations as determined via a competitive application.	CDBG	\$27,896.00	\$27,896.00	\$27,896.00	\$0.00	\$27,896.00
	5	Public Facilities and Infrastructure Improv.	Section 108 Debt Service and modification to Shelter.	CDBG	\$250,884.00	\$202,387.25	\$202,387.25	\$0.00	\$202,387.25



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Count of CDBG Activities with Disbursements by Activity Group & Matrix Code

Activity Group	Activity Category	Open Count	Open Activities Disbursed	Completed Count	Completed Activities Disbursed	Program Year Count	Total Activities Disbursed
Economic Development	ED Direct Financial Assistance to For-Profits (18A)	1	\$0.00	6	\$0.00	7	\$0.00
	Micro-Enterprise Assistance (18C)	10	\$57,500.00	15	\$0.00	25	\$57,500.00
	Total Economic Development	11	\$57,500.00	21	\$0.00	32	\$57,500.00
Public Facilities and Improvements	Other Public Improvements Not Listed in 03A-03S (03Z)	1	\$0.00	0	\$0.00	1	\$0.00
	Total Public Facilities and Improvements	1	\$0.00	0	\$0.00	1	\$0.00
Public Services	Senior Services (05A)	1	\$30,000.00	1	\$0.00	2	\$30,000.00
	Mental Health Services (05O)	1	\$0.00	0	\$0.00	1	\$0.00
	Other Public Services Not Listed in 05A-05Y, 03T (05Z)	2	\$27,896.00	2	\$0.00	4	\$27,896.00
	Total Public Services	4	\$57,896.00	3	\$0.00	7	\$57,896.00
General Administration and Planning	General Program Administration (21A)	2	\$81,395.00	1	\$0.00	3	\$81,395.00
	Fair Housing Activities (subject to 20% Admin Cap) (21D)	1	\$12,000.00	1	\$0.00	2	\$12,000.00
	Total General Administration and Planning	3	\$93,395.00	2	\$0.00	5	\$93,395.00
Repayment of Section 108 Loans	Planned Repayment of Section 108 Loan Principal (19F)	1	\$202,387.25	1	\$0.00	2	\$202,387.25
	Total Repayment of Section 108 Loans	1	\$202,387.25	1	\$0.00	2	\$202,387.25
Grand Total		20	\$411,178.25	27	\$0.00	47	\$411,178.25



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CDBG Sum of Actual Accomplishments by Activity Group and Accomplishment Type

Activity Group	Matrix Code	Accomplishment Type	Open Count	Completed Count	Program Year Totals
Economic Development	ED Direct Financial Assistance to For-Profits (18A)	Business	0	0	0
		Jobs	0	58	58
	Micro-Enterprise Assistance (18C)	Business	0	14	14
		Jobs	0	2	2
	Total Economic Development		0	74	74
Public Services	Senior Services (05A)	Persons	101	96	197
	Mental Health Services (05O)	Persons	0	0	0
	Other Public Services Not Listed in 05A-05Y, 03T (05Z)	Persons	29	41	70
	Total Public Services		130	137	267
Grand Total			130	211	341



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CDBG Beneficiaries by Racial / Ethnic Category

Housing-Non Housing	Race	Total Persons		Total Hispanic Persons Total Households		Total Hispanic Households
Non Housing	White	243	15	0	0	0
		65	11	0	0	0
	Black/African American	7	0	0	0	0
	Asian	11	0	0	0	0
		7	0	0	0	0
	American Indian/Alaskan Native	1	0	0	0	0
		1	0	0	0	0
	American Indian/Alaskan Native & White	2	0	0	0	0
	Other multi-racial	3	0	0	0	0
		1	0	0	0	0
	Total Non Housing	341	26	0	0	0
Grand Total	White	243	15	0	0	0
		65	11	0	0	0
	Black/African American	7	0	0	0	0
	Asian	11	0	0	0	0
		7	0	0	0	0
	American Indian/Alaskan Native	1	0	0	0	0
		1	0	0	0	0
	American Indian/Alaskan Native & White	2	0	0	0	0
	Other multi-racial	3	0	0	0	0
		1	0	0	0	0
	Total Grand Total	341	26	0	0	0



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CDBG Beneficiaries by Income Category

	Income Levels	Owner Occupied	Renter Occupied	Persons
Non Housing	Extremely Low ($\leq 30\%$)	0	0	29
		0	0	46
	Low ($> 30\%$ and $\leq 50\%$)	0	0	0
		0	0	5
	Mod ($> 50\%$ and $\leq 80\%$)	0	0	101
		0	0	17
	Total Low-Mod	0	0	130
		0	0	68
	Non Low-Mod ($> 80\%$)	0	0	0
		0	0	6
	Total Beneficiaries	0	0	130
		0	0	74



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Count of CDBG Activities with Disbursements by Activity Group & Matrix Code

Activity Group	Activity Category	Open Count	Open Activities Disbursed	Completed Count	Completed Activities Disbursed	Program Year Count	Total Activities Disbursed
Economic Development	ED Direct Financial Assistance to For-Profits (18A)	1	\$0.00	6	\$0.00	7	\$0.00
	Micro-Enterprise Assistance (18C)	10	\$57,500.00	15	\$0.00	25	\$57,500.00
	Total Economic Development	11	\$57,500.00	21	\$0.00	32	\$57,500.00
Public Facilities and Improvements	Other Public Improvements Not Listed in 03A-03S (03Z)	1	\$0.00	0	\$0.00	1	\$0.00
	Total Public Facilities and Improvements	1	\$0.00	0	\$0.00	1	\$0.00
Public Services	Senior Services (05A)	1	\$30,000.00	1	\$0.00	2	\$30,000.00
	Mental Health Services (05O)	1	\$0.00	0	\$0.00	1	\$0.00
	Other Public Services Not Listed in 05A-05Y, 03T (05Z)	2	\$27,896.00	2	\$0.00	4	\$27,896.00
	Total Public Services	4	\$57,896.00	3	\$0.00	7	\$57,896.00
General Administration and Planning	General Program Administration (21A)	2	\$81,395.00	1	\$0.00	3	\$81,395.00
	Fair Housing Activities (subject to 20% Admin Cap) (21D)	1	\$12,000.00	1	\$0.00	2	\$12,000.00
	Total General Administration and Planning	3	\$93,395.00	2	\$0.00	5	\$93,395.00
Repayment of Section 108 Loans	Planned Repayment of Section 108 Loan Principal (19F)	1	\$202,387.25	1	\$0.00	2	\$202,387.25
	Total Repayment of Section 108 Loans	1	\$202,387.25	1	\$0.00	2	\$202,387.25
Grand Total		20	\$411,178.25	27	\$0.00	47	\$411,178.25



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CDBG Sum of Actual Accomplishments by Activity Group and Accomplishment Type

Activity Group	Matrix Code	Accomplishment Type	Open Count	Completed Count	Program Year Totals
Economic Development	ED Direct Financial Assistance to For-Profits (18A)	Business	0	0	0
		Jobs	0	58	58
	Micro-Enterprise Assistance (18C)	Business	0	14	14
		Jobs	0	2	2
	Total Economic Development		0	74	74
	Public Services	Senior Services (05A)	Persons	101	96
Mental Health Services (05O)		Persons	0	0	0
Other Public Services Not Listed in 05A-05Y, 03T (05Z)		Persons	29	41	70
Total Public Services		130	137	267	
Grand Total			130	211	341



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CDBG Beneficiaries by Racial / Ethnic Category

Housing-Non Housing	Race	Total Persons		Total Hispanic Persons Total Households		Total Hispanic Households
Non Housing	White	243	15	0	0	0
		65	11	0	0	0
	Black/African American	7	0	0	0	0
	Asian	11	0	0	0	0
		7	0	0	0	0
	American Indian/Alaskan Native	1	0	0	0	0
		1	0	0	0	0
	American Indian/Alaskan Native & White	2	0	0	0	0
	Other multi-racial	3	0	0	0	0
		1	0	0	0	0
	Total Non Housing	341	26	0	0	0
Grand Total	White	243	15	0	0	0
		65	11	0	0	0
	Black/African American	7	0	0	0	0
	Asian	11	0	0	0	0
		7	0	0	0	0
	American Indian/Alaskan Native	1	0	0	0	0
		1	0	0	0	0
	American Indian/Alaskan Native & White	2	0	0	0	0
	Other multi-racial	3	0	0	0	0
		1	0	0	0	0
	Total Grand Total	341	26	0	0	0



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CDBG Beneficiaries by Income Category

	Income Levels	Owner Occupied	Renter Occupied	Persons
Non Housing	Extremely Low ($\leq 30\%$)	0	0	29
		0	0	46
	Low ($> 30\%$ and $\leq 50\%$)	0	0	0
		0	0	5
	Mod ($> 50\%$ and $\leq 80\%$)	0	0	101
		0	0	17
	Total Low-Mod	0	0	130
		0	0	68
	Non Low-Mod ($> 80\%$)	0	0	0
		0	0	6
	Total Beneficiaries	0	0	130
		0	0	74



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PART I: SUMMARY OF CDBG RESOURCES

01 UNEXPENDED CDBG FUNDS AT END OF PREVIOUS PROGRAM YEAR	0.00
02 ENTITLEMENT GRANT	391,662.00
03 SURPLUS URBAN RENEWAL	0.00
04 SECTION 108 GUARANTEED LOAN FUNDS	0.00
05 CURRENT YEAR PROGRAM INCOME	0.00
05a CURRENT YEAR SECTION 108 PROGRAM INCOME (FOR SI TYPE)	0.00
06 FUNDS RETURNED TO THE LINE-OF-CREDIT	0.00
06a FUNDS RETURNED TO THE LOCAL CDBG ACCOUNT	0.00
07 ADJUSTMENT TO COMPUTE TOTAL AVAILABLE	0.00
08 TOTAL AVAILABLE (SUM, LINES 01-07)	391,662.00

PART II: SUMMARY OF CDBG EXPENDITURES

09 DISBURSEMENTS OTHER THAN SECTION 108 REPAYMENTS AND PLANNING/ADMINISTRATION	64,937.00
10 ADJUSTMENT TO COMPUTE TOTAL AMOUNT SUBJECT TO LOW/MOD BENEFIT	0.00
11 AMOUNT SUBJECT TO LOW/MOD BENEFIT (LINE 09 + LINE 10)	64,937.00
12 DISBURSED IN IDIS FOR PLANNING/ADMINISTRATION	65,295.00
13 DISBURSED IN IDIS FOR SECTION 108 REPAYMENTS	202,387.25
14 ADJUSTMENT TO COMPUTE TOTAL EXPENDITURES	0.00
15 TOTAL EXPENDITURES (SUM, LINES 11-14)	332,619.25
16 UNEXPENDED BALANCE (LINE 08 - LINE 15)	59,042.75

PART III: LOWMOD BENEFIT THIS REPORTING PERIOD

17 EXPENDED FOR LOW/MOD HOUSING IN SPECIAL AREAS	0.00
18 EXPENDED FOR LOW/MOD MULTI-UNIT HOUSING	0.00
19 DISBURSED FOR OTHER LOW/MOD ACTIVITIES	64,937.00
20 ADJUSTMENT TO COMPUTE TOTAL LOW/MOD CREDIT	0.00
21 TOTAL LOW/MOD CREDIT (SUM, LINES 17-20)	64,937.00
22 PERCENT LOW/MOD CREDIT (LINE 21/LINE 11)	100.00%

LOW/MOD BENEFIT FOR MULTI-YEAR CERTIFICATIONS

23 PROGRAM YEARS(PY) COVERED IN CERTIFICATION	PY: 2021 PY: PY:
24 CUMULATIVE NET EXPENDITURES SUBJECT TO LOW/MOD BENEFIT CALCULATION	0.00
25 CUMULATIVE EXPENDITURES BENEFITING LOW/MOD PERSONS	0.00
26 PERCENT BENEFIT TO LOW/MOD PERSONS (LINE 25/LINE 24)	0.00%

PART IV: PUBLIC SERVICE (PS) CAP CALCULATIONS

27 DISBURSED IN IDIS FOR PUBLIC SERVICES	57,896.00
28 PS UNLIQUIDATED OBLIGATIONS AT END OF CURRENT PROGRAM YEAR	0.00
29 PS UNLIQUIDATED OBLIGATIONS AT END OF PREVIOUS PROGRAM YEAR	0.00
30 ADJUSTMENT TO COMPUTE TOTAL PS OBLIGATIONS	0.00
31 TOTAL PS OBLIGATIONS (LINE 27 + LINE 28 - LINE 29 + LINE 30)	57,896.00
32 ENTITLEMENT GRANT	391,662.00
33 PRIOR YEAR PROGRAM INCOME	0.00
34 ADJUSTMENT TO COMPUTE TOTAL SUBJECT TO PS CAP	0.00
35 TOTAL SUBJECT TO PS CAP (SUM, LINES 32-34)	391,662.00
36 PERCENT FUNDS OBLIGATED FOR PS ACTIVITIES (LINE 31/LINE 35)	14.78%

PART V: PLANNING AND ADMINISTRATION (PA) CAP

37 DISBURSED IN IDIS FOR PLANNING/ADMINISTRATION	65,295.00
38 PA UNLIQUIDATED OBLIGATIONS AT END OF CURRENT PROGRAM YEAR	0.00
39 PA UNLIQUIDATED OBLIGATIONS AT END OF PREVIOUS PROGRAM YEAR	0.00
40 ADJUSTMENT TO COMPUTE TOTAL PA OBLIGATIONS	0.00
41 TOTAL PA OBLIGATIONS (LINE 37 + LINE 38 - LINE 39 +LINE 40)	65,295.00
42 ENTITLEMENT GRANT	391,662.00
43 CURRENT YEAR PROGRAM INCOME	0.00
44 ADJUSTMENT TO COMPUTE TOTAL SUBJECT TO PA CAP	0.00
45 TOTAL SUBJECT TO PA CAP (SUM, LINES 42-44)	391,662.00
46 PERCENT FUNDS OBLIGATED FOR PA ACTIVITIES (LINE 41/LINE 45)	16.67%



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LINE 17 DETAIL: ACTIVITIES TO CONSIDER IN DETERMINING THE AMOUNT TO ENTER ON LINE 17

Report returned no data.

LINE 18 DETAIL: ACTIVITIES TO CONSIDER IN DETERMINING THE AMOUNT TO ENTER ON LINE 18

Report returned no data.

LINE 19 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 19

Plan Year	IDIS Project	IDIS Activity	Voucher Number	Activity Name	Matrix Code	National Objective	Drawn Amount
2021	3	310	6606872	Age Well Senior Services	05A	LMC	\$7,500.00
2021	3	310	6674407	Age Well Senior Services	05A	LMC	\$22,500.00
					05A	Matrix Code	\$30,000.00
2021	4	311	6606872	City Motel Voucher Program	05Z	LMC	\$3,437.09
2021	4	311	6674407	City Motel Voucher Program	05Z	LMC	\$8,458.91
2021	4	312	6674407	Families Forward	05Z	LMC	\$16,000.00
					05Z	Matrix Code	\$27,896.00
2020	6	324	6674407	CDBG Small Business Assistance Program - Wallada Corp	18C	LMCMC	\$5,000.00
2020	8	323	6674407	CDBG-CV ED Grant - Heirloom LLC	18C	LMCMC	\$2,041.00
					18C	Matrix Code	\$7,041.00
Total							\$64,937.00

LINE 27 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 27

Plan Year	IDIS Project	IDIS Activity	Voucher Number	Activity to prevent, prepare for, and respond to Coronavirus	Activity Name	Grant Number	Fund Type	Matrix Code	National Objective	Drawn Amount
2021	3	310	6606872	No	Age Well Senior Services	B21MC060546	EN	05A	LMC	\$7,500.00
2021	3	310	6674407	No	Age Well Senior Services	B21MC060546	EN	05A	LMC	\$22,500.00
								05A	Matrix Code	\$30,000.00
2021	4	311	6606872	No	City Motel Voucher Program	B21MC060546	EN	05Z	LMC	\$3,437.09
2021	4	311	6674407	No	City Motel Voucher Program	B21MC060546	EN	05Z	LMC	\$8,458.91
2021	4	312	6674407	No	Families Forward	B21MC060546	EN	05Z	LMC	\$16,000.00
								05Z	Matrix Code	\$27,896.00
					No	Activity to prevent, prepare for, and respond to Coronavirus				\$57,896.00
Total										\$57,896.00

LINE 37 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 37

Plan Year	IDIS Project	IDIS Activity	Voucher Number	Activity Name	Matrix Code	National Objective	Drawn Amount
2021	1	308	6606872	CDBG Program Administration	21A		\$16,530.00
2021	1	308	6674407	CDBG Program Administration	21A		\$36,765.00
					21A	Matrix Code	\$53,295.00
2021	2	309	6606872	Fair Housing Services	21D		\$5,252.97
2021	2	309	6674407	Fair Housing Services	21D		\$6,747.03
					21D	Matrix Code	\$12,000.00
Total							\$65,295.00



PART I: SUMMARY OF CDBG-CV RESOURCES

01 CDBG-CV GRANT	960,403.00
02 FUNDS RETURNED TO THE LINE-OF-CREDIT	0.00
03 FUNDS RETURNED TO THE LOCAL CDBG ACCOUNT	0.00
04 TOTAL AVAILABLE (SUM, LINES 01-03)	960,403.00

PART II: SUMMARY OF CDBG-CV EXPENDITURES

05 DISBURSEMENTS OTHER THAN SECTION 108 REPAYMENTS AND PLANNING/ADMINISTRATION	175,459.00
06 DISBURSED IN IDIS FOR PLANNING/ADMINISTRATION	53,600.00
07 DISBURSED IN IDIS FOR SECTION 108 REPAYMENTS	0.00
08 TOTAL EXPENDITURES (SUM, LINES 05 - 07)	229,059.00
09 UNEXPENDED BALANCE (LINE 04 - LINE8)	731,344.00

PART III: LOWMOD BENEFIT FOR THE CDBG-CV GRANT

10 EXPENDED FOR LOW/MOD HOUSING IN SPECIAL AREAS	0.00
11 EXPENDED FOR LOW/MOD MULTI-UNIT HOUSING	0.00
12 DISBURSED FOR OTHER LOW/MOD ACTIVITIES	175,459.00
13 TOTAL LOW/MOD CREDIT (SUM, LINES 10 - 12)	175,459.00
14 AMOUNT SUBJECT TO LOW/MOD BENEFIT (LINE 05)	175,459.00
15 PERCENT LOW/MOD CREDIT (LINE 13/LINE 14)	100.00%

PART IV: PUBLIC SERVICE (PS) CALCULATIONS

16 DISBURSED IN IDIS FOR PUBLIC SERVICES	0.00
17 CDBG-CV GRANT	960,403.00
18 PERCENT OF FUNDS DISBURSED FOR PS ACTIVITIES (LINE 16/LINE 17)	0.00%

PART V: PLANNING AND ADMINISTRATION (PA) CAP

19 DISBURSED IN IDIS FOR PLANNING/ADMINISTRATION	53,600.00
20 CDBG-CV GRANT	960,403.00
21 PERCENT OF FUNDS DISBURSED FOR PA ACTIVITIES (LINE 19/LINE 20)	5.58%



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LINE 10 DETAIL: ACTIVITIES TO CONSIDER IN DETERMINING THE AMOUNT TO ENTER ON LINE 10

Report returned no data.

LINE 11 DETAIL: ACTIVITIES TO CONSIDER IN DETERMINING THE AMOUNT TO ENTER ON LINE 11

Report returned no data.

LINE 12 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 12

Plan Year	IDIS Project	IDIS Activity	Voucher Number	Activity Name	Matrix Code	National Objective	Drawn Amount
2020	8	287	6484856	CDBG-CV ED Grant - La Vita	18C	LMCMC	\$5,000.00
		288	6484856	CDBG-CV ED Grant - Nagisa	18A	LMJ	\$5,000.00
		289	6484856	CDBG-CV ED Grant - True Flow Yoga Inc.	18C	LMCMC	\$5,000.00
		290	6484856	CDBG-CV ED Grant - Coury & Buehler Physical Therapy - Newport, Inc.	18A	LMJ	\$7,500.00
		291	6484856	CDBG-CV ED Grant - Nail Salon Near Me	18C	LMCMC	\$5,000.00
		292	6484856	CDBG-CV ED Grant - Studio A	18C	LMCMC	\$5,000.00
		293	6484856	CDBG-CV ED Grant - CDM Blackbelt	18C	LMCMC	\$5,000.00
		294	6484856	CDBG-CV ED Grant - Bohemia Gals	18C	LMCMC	\$5,000.00
		295	6484856	CDBG-CV ED Grant - Rooted Soul	18C	LMCMC	\$5,000.00
		296	6484856	CDBG-CV ED Grant - Anthony Armijo	18C	LMCMC	\$5,000.00
		297	6484856	CDBG-CV ED Grant - Richer Growth Concepts, LLC.	18C	LMCMC	\$5,000.00
		298	6494685	CDBG-CV ED Grant - Boxing Lab	18A	LMJ	\$7,500.00
		299	6494685	CDBG-CV ED Grant - Bradley Reid (Cormier Auto)	18C	LMCMC	\$5,000.00
		300	6494685	CDBG-CV ED Grant - Jamgle Jam US	18A	LMJ	\$10,000.00
		301	6531018	CDBG-CV Small Business Assistance Program - Stanley Getty (Cafe Artys II)	18C	LMCMC	\$5,000.00
		302	6531018	CDBG-CV Small Business Assistance Program - Royal Thai	18C	LMCMC	\$5,000.00
		303	6531018	CDBG-CV Small Business Assistance Program - Boxing Haus	18A	LMJ	\$10,000.00
		304	6531018	CDBG-CV Small Business Assistance Program - Wig and Hair	18C	LMJ	\$5,000.00
		305	6531018	CDBG-CV Small Business Assistance Program - Minuteman Press	18C	LMCMC	\$5,000.00
		306	6531018	CDBG-CV Small Business Assistance Program - Nuzuna Corp	18A	LMJ	\$10,000.00
		307	6531018	CDBG-CV Small Business Assistance Program - 31 Marbles (Lashes on the Beach)	18C	LMCMC	\$5,000.00
		315	6606876	CDBG-CV Economic Development Assistance - Mr. Best Cleaners	18C	LMCMC	\$5,000.00
		316	6606876	CDBG-CV Economic Development Assistance - Sunrise Martial Arts	18C	LMCMC	\$5,000.00
		317	6606876	CDBG-CV Small Business Assistance Program - My Gym	18C	LMCMC	\$7,500.00
		318	6606876	CDBG-CV Economic Development Assistance - Stevie Sister	18C	LMCMC	\$7,500.00
		319	6606876	CDBG-CV Economic Development Assistance - First Cut CDM	18C	LMCMC	\$5,000.00
		320	6606876	CDBG-CV Economic Development Assistance - Roll It Sushi	18C	LMCMC	\$7,500.00
		321	6606876	CDBG-CV Economic Development Assistance - Janna Middel	18C	LMCMC	\$5,000.00
		322	6674400	CDBG-CV ED Grant - PKIM	18C	LMCMC	\$5,000.00
		323	6674400	CDBG-CV ED Grant - Heirloom LLC	18C	LMCMC	\$2,959.00
Total							\$175,459.00

LINE 16 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 16

Report returned no data.

LINE 19 DETAIL: ACTIVITIES INCLUDED IN THE COMPUTATION OF LINE 19

Plan Year	IDIS Project	IDIS Activity	Voucher Number	Activity Name	Matrix Code	National Objective	Drawn Amount
2020	7	286	6484856	CDBG-CV Program Administration	21A		\$6,150.00
			6494685	CDBG-CV Program Administration	21A		\$14,600.00
			6531018	CDBG-CV Program Administration	21A		\$4,750.00
			6606876	CDBG-CV Program Administration	21A		\$14,200.00
			6674400	CDBG-CV Program Administration	21A		\$13,900.00
Total							\$53,600.00