



CITY OF NEWPORT BEACH CITY COUNCIL AGENDA

JANUARY 24, 2023

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

STUDY SESSION – 4:00 P.M. (PUBLIC WELCOME)

CLOSED SESSION – FOLLOWS STUDY SESSION

REGULAR MEETING – 6:30 P.M.

**NOAH BLOM, Mayor
WILL O'NEILL, Mayor Pro Tem
BRAD AVERY, Council Member
ROBYN GRANT, Council Member
LAUREN KLEIMAN, Council Member
JOE STAPLETON, Council Member
ERIK WEIGAND, 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.

LEVINE ACT

Under the Levine Act, Section 84308 of the Government Code, a party to a proceeding before the City involving a contract (other than competitively bid, labor, or personal employment contracts), franchise, license, permit, or other entitlement for use, is required to disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party or the party's agent to any elected or appointed officer of the City. If you have made a qualifying contribution, please ensure to make this disclosure on the record.

PUBLIC HEARINGS

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

NOTICE TO THE PUBLIC

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

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

The City of Newport Beach's goal is to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, we will attempt to accommodate you in every reasonable manner. Please contact City Clerk Leilani Brown 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).

**NEWPORT BEACH CITY COUNCIL AGENDA
CITY COUNCIL CHAMBERS
100 CIVIC CENTER DRIVE, NEWPORT BEACH, CA 92660
JANUARY 24, 2023**

**STUDY SESSION – 4:00 P.M. (PUBLIC WELCOME)
CLOSED SESSION – FOLLOWS STUDY SESSION
REGULAR MEETING – 6:30 P.M.**

I. ROLL CALL – 4:00 p.m.

II. CURRENT BUSINESS

SS1. Clarification of Items on the Consent Calendar

SS2. Inclusionary Housing Ordinance

An inclusionary housing ordinance would set the minimum requirement for an applicant to provide affordable housing units when proposing a residential project. Staff will present an overview of the inclusionary housing ordinance, its basic requirements, and items to consider when drafting an ordinance.

III. PUBLIC COMMENTS

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

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

A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Government Code § 54956.8): 1 matter

Property: The American Legion Newport Harbor Post No. 291, located at 215 15th Street, Newport Beach California, 92663.

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

Negotiating Parties: Evin D. Planto.

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

B. CONFERENCE WITH LABOR NEGOTIATORS

(Government Code § 54957.6): 2 Matters

- 1. Agency Designated Representatives:** Grace K. Leung, City Manager, Barbara Salvini, Human Resources Director, and Charles Sakai, Esq.

Employee Organizations and Unrepresented Employees: Association of Newport Beach Ocean Lifeguards (ANBOL); Newport Beach Employee League (NBEL); Newport Beach Lifeguard Management Association (NBLMA); Newport Beach City Employees Association (NBCEA); Newport Beach Firefighters Association (NBFA); Newport Beach Fire Management Association (NBFMA); Newport Beach Police Association (NBPA); Newport Beach Police Management Association (NBPMA); Part Time Employees Association of Newport Beach (PTEANB); Newport Beach Professional and Technical Employee Association (NBPTA), and unrepresented employees not in positions designated as Key and Management.

2. **Agency Designated Representatives:** Noah Blom, Mayor, and William O'Neill, Mayor Pro Tem.

Unrepresented Employees: Grace Leung, City Manager, Aaron C. Harp, City Attorney, Leilani Brown, City Clerk, and unrepresented employees in positions designated as Key and Management.

**C. CONFERENCE WITH LEGAL COUNSEL
EXISTING LITIGATION - ANTICIPATED LITIGATION
(Government Code § 54956.9(d) (1) and (d) (4)): 2 matters**

SoCal Recovery, LLC, a California Limited Liability Company et al. v. City of Costa Mesa
United States District Court, Central District of California, Case No. 8:18-cv-01304-JVS-PJW
Ninth Circuit Court of Appeals, Case No. 20-55820

Raw Recovery, LLC, v. a California Limited Liability Company v. City of Costa Mesa
United States District Court, Central District of California, Case No. 8:18-cv-01080-JVS-PJW
Ninth Circuit Court of Appeals, Case No. 20-55870

(The reason for holding a closed session in regards to these matters is for the purpose of conferring with and/or receiving advice from the City's legal counsel and to receive direction from the City Council regarding the possible filing and/or participation in an amicus brief.)

- V. **RECESS**
- VI. **RECONVENE AT 6:30 P.M. FOR REGULAR MEETING**
- VII. **ROLL CALL**
- VIII. **CLOSED SESSION REPORT**
- IX. **INVOCATION**
- X. **PLEDGE OF ALLEGIANCE**
- 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 adopting a resolution modifying City Council Policy A-1 (*City Council*) to require that "Matters which a Council Member has asked to be placed on a Future Agenda" be primarily focused on issues that directly impact the finances, property, authority, policies, or interest of the City of Newport Beach and/or finances, property, or rights of the residents of the City of Newport Beach [O'Neill]

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 January 10, 2023 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. 2023-6: Supporting Efforts to Eliminate the Threat of Fentanyl to the Newport Beach Community

- 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. 2023-6, *A Resolution of the City Council of the City of Newport Beach, California, Supporting Efforts to Eliminate the Threat of Fentanyl to the Newport Beach Community.*

4. Resolution No. 2023-7: Big Canyon Habitat Restoration Project – Phase 3: Adoption of License Agreement and Design Plan

- a) Find this Project exempt from the California Environmental Quality Act ("CEQA") pursuant to California Public Resources Code Section 21080.56; and
- b) Adopt Resolution No. 2023-7, *A Resolution of the City Council of the City of Newport Beach, California, Approving the Big Canyon Habitat Restoration Project Phase 3, Approving a License Agreement and Memorandum of Understanding with the California Department of Fish and Wildlife, and Authorizing Submittal of an Application to the California Coastal Commission (PA2022-034).*

CONTRACTS AND AGREEMENTS

5. Newport Beach Mariners Library, Corona del Mar Lifeguard Substation, and Ben Carlson Lifeguard Headquarters Heating, Ventilation, and Air Conditioning Replacement Project – Award of Contract No. 8760-1 (22F02)

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Class 1 Section 15301(d) (maintenance of existing public facilities and mechanical equipment involving no expansion of existing use) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment;
- b) Approve the project plans and specifications;
- c) Award Contract No. 8760-1 to Western Allied Corporation for the bid price of \$427,497 for the Newport Beach Mariners Library, CdM Lifeguard Substation, and Ben Carlson Lifeguard Headquarters HVAC Replacement Project, and authorize the Mayor and City Clerk to execute the contract; and
- d) Establish a contingency of \$43,000 (approximately 10 percent of total bid) to cover the cost of unforeseen work not included in the original contract.

6. Goldenrod Pedestrian Bridge Improvements Project – Award of Contract No. 8871-1 (23R12)

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Class 1 Section 15301(d) (maintenance of existing public facilities involving no expansion of existing use) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment;
- b) Approve the project plans and specifications;
- c) Award Contract No. 8871-1 to Diamond Construction and Design for the bid price of \$158,223 for the Goldenrod Pedestrian Bridge Improvements Project, and authorize the Mayor and City Clerk to execute the contract; and
- d) Establish a contingency of \$23,000 (approximately 15 percent of total bid) to cover the cost of unforeseen work not included in the original contract.

7. Approval of On-Call Professional Services Agreements for Project Management Services

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Approve On-Call Professional Services Agreements with Ardurra Group, Inc., DMC Engineering, and Z&K Consultants, Inc. for professional project management services, with each agreement being for a term of three years and a total not-to-exceed amount of \$200,000, and authorize the Mayor and City Clerk to execute the agreements.

8. Award of On-Call Plumbing Maintenance and Repair Services Agreements with Pacific Plumbing of Southern California, Verne's Plumbing, Inc., and ACCO Engineered Systems

- 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 On-Call Maintenance and Repair Service Agreements with Verne's Plumbing Inc., Pacific Plumbing of Santa Ana (dba Pacific Plumbing of Southern California), and ACCO Engineered Systems Inc., with each agreement being for a term of three years and total not-to-exceed amount of \$200,000 per agreement, and authorize the Mayor and City Clerk to execute the agreements.

9. Amendment No. 8 to CAD/RMS Software Maintenance Agreement with Superior, LLC

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Approve Amendment No. 8 to the Software Maintenance Agreement with Superior, LLC of Lake Mary, Florida, for a not-to-exceed cost of \$1,424,012.47 over ten years, and authorize the Mayor and City Clerk to execute the Amendment.

10. Maintenance/Repair Services Agreement with C3 Office Solutions LLC dba C3 Tech for Copier Maintenance and Repair Services

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Approve the Maintenance/Repair Services Agreement with C3 Office Solutions LLC dba C3 Tech for copier maintenance services for a five-year term, ending January 25, 2028, and a total not-to-exceed amount of \$260,443.60, and authorize the Mayor and City Clerk to execute the agreement.

MISCELLANEOUS

11. Planning Commission Agenda for the January 19, 2023 Meeting

Receive and file.

12. Budget Amendment to Accept a Check from the California State Library for Literacy Services (CLLS) and Appropriate Funds to the Library's FY 2022-23 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 \$43,022 from the California State Library for Literacy Services (CLLS) and approve Budget Amendment No. 23-045 to increase expenditures by the same amount in the Literacy accounts.

13. Grants and Donations Report for the Quarter Ending December 31, 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.

14. Status on Planning Commission's Efforts Related to Fractional Homeownership (PA2022-0202)

Receive and file.

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 No. 2023-1 and Resolution Nos. 2023-4 and 2023-5: General Plan Amendment to Increase the Development Limit for Bay Island

- a) Conduct a public hearing;
- b) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 - Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment;

- c) Adopt Resolution No. 2023-4, *A Resolution of the City Council of the City of Newport Beach, California, Approving General Plan Amendment No. GP2022-001 to Change the Development Limit Specified for Bay Island from 23 Dwelling Units to 25 Maximum Dwelling Units (PA2022-087)*;
- d) Adopt Resolution No. 2023-5, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing the Submittal of Local Coastal Program Amendment No. LC2022-003 to Change the Development Limit Specified for Bay Island from 23 Dwelling Units to 25 Maximum Dwelling Units (PA2022-087)*; and
- e) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2023-1, *An Ordinance of the City Council of the City of Newport Beach, California, Approving Zoning Code Amendment No. CA2022-005 to Change the Development Limit Specified for Bay Island from 23 Dwelling Units to 25 Maximum Dwelling Units (PA2022-087)*, and pass to second reading on February 14, 2023.

16. Ordinance No. 2023-2: A Code Amendment Updating Accessory Dwelling Unit Regulations to Implement Council Policy K-4 and to Comply with State Law (PA2021-113)

- a) Conduct a public hearing;
- b) Find this project statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15282(h) of the CEQA Guidelines, which states that the adoption of an ordinance regarding second units to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code are exempt from the requirements of CEQA;
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2023-2, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Code Amendment No. CA2021-005 Amending Section 20.48.200 (Accessory Dwelling Units) of the Newport Beach Municipal Code to Implement Council Policy K-4 (Reducing the Barriers to the Creation of Housing) and New State Law Requirements Related to Accessory Dwelling Units (PA2021-113)*, and pass to second reading on February 14, 2023; and
- d) Adopt Resolution No. 2023-8, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of Local Coastal Program Amendment No. LC2021-003 to the California Coastal Commission to Amend Section 21.48.200 (Accessory Dwelling Units) of the Newport Beach Municipal Code to Implement Council Policy K-4 (Reducing the Barriers to the Creation of Housing) and New State Law Requirements Related to Accessory Dwelling Units (PA2019-248)*.

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.
The timer light will turn yellow when the speaker has one minute remaining.
The timer light will turn red when the speaker has 10 seconds remaining.

PLEASE TURN CELL PHONES OFF OR SET IN SILENT MODE

**City Council Meeting Minutes
Study Session and Regular Meeting
January 10, 2023**

I. ROLL CALL – 4:00 p.m.

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

II. CURRENT BUSINESS

SS1. Clarification of Items on the Consent Calendar – None

SS2. Presentation on the Newport Beach Local Housing Trust

Ed Selich, representing the Newport Beach Housing Trust (NBHT) Formation Group, and their consultant, Terry Watt, utilized a presentation to discuss NBHT, goals, structure, approach, initial Formation Group members, defined local housing trust, housing challenges, housing market expense statistics in the City, pace of wages, catalyzing new rental and ownership housing, the Housing Trust focus, targeted housing types, accomplishments, and next steps (www.newportbeachhousingtrust.org).

In response to Council Member Grant's questions, Ms. Watt discussed successful housing and community land trusts launched by a city or county that became independent, indicated that the NBHT Formation Group is not asking for City resources during the launch period, and highlighted the San Francisco Housing Accelerator revolving philanthropic loan funding.

In response to Council Member Stapleton's questions, Ms. Watt discussed a revolving \$20 million loan fund five-year goal, an opportunity to partner with the Orange County Housing Finance Authority for Accessory Dwelling Units (ADUs) and Junior ADUs, and a possible long-term affordable housing retention with the Irvine Community Land Trust.

Council Member Avery expressed the opinion that high interest exists among landowners with large lots for ADU development but are hesitant due to costs related to code requirements and stated he recognized the value of a land trust to provide funding to address this problem. Ms. Watt commended the work done by staff to streamline the ADU process and including ADUs in the Regional Housing Needs Assessment (RHNA) count for low- and moderate-income units by the California Department of Housing and Community Development (HCD). Mr. Selich relayed the idea of ADUs providing housing for caregivers so the elderly can remain in their homes.

In response to Council Member Kleiman's question, Mr. Selich indicated that fund allocation and project prioritization will be driven by need and appropriateness of the project.

Ms. Watt noted this is the time for huge transition and focus on ADUs and Junior ADUs, the pursuit of a loan and financing model, possibly utilizing church parking lots for housing, and a shorter project list.

Mayor Blom thanked the NBHT Formation Group.

III. PUBLIC COMMENTS – None

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

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

A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Government Code § 54956.8): 1 matter

Property: The American Legion Newport Harbor Post No. 291, located at 215 15th Street, Newport Beach California, 92663.

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

Negotiating Parties: Evin D. Planto.

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

V. RECESSED – 4:30 p.m.

VI. RECONVENED AT 5:04 P.M. FOR REGULAR MEETING

VII. ROLL CALL

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

VIII. CLOSED SESSION REPORT

City Attorney Harp announced that no reportable actions were taken.

IX. INVOCATION – Pastor David Manne, Calvary Chapel of Costa Mesa

X. PLEDGE OF ALLEGIANCE – Mayor Pro Tem O'Neill

XI. NOTICE TO THE PUBLIC

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

Council Member Stapleton:

- Announced the Finance Committee meeting

Council Member Weigand:

- Commended City staff for its children programs at the Community Youth Center (CYC)

Mayor Pro Tem O'Neill:

- Commended contributors of the Christmas Boat Parade
- Attended Senator Janet Nguyen's swearing-in, and the Patrick's Purpose Walk with Council Members Weigand and Stapleton
- Announced his position as Chair of the Transportation Corridor Agency (TCA) and its next meeting

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

- Consider adopting a resolution affirming the City's support of efforts to eliminate the threat of fentanyl by devoting resources to the interdiction of narcotics, holding accountable drug traffickers, and raising public awareness about the dangers of drug use [Stapleton]

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

XIV. PUBLIC COMMENTS ON CONSENT CALENDAR

Council Member Grant expressed concern regarding no public input included in Item 9 (Balboa Branch Library and Fire Station No. 1 Replacement Project). City Manager Leung noted that there is no intent to reduce the building size and public input will be part of the process.

Regarding Item 5 (Resolution No. 2023-3: Affirming that the City Council Stands in Solidarity with its Iranian-American Community Members), Hengameh "Henny" Abraham expressed thanks and relief for the item returning to the City Council and asked for a unanimous vote in support.

Pejman Biasi discussed the fight for justice, asked Council to condemn the Islamic Republic, and asked that Council demand those in higher power to cut ties with the Islamic Republic.

Biana Mansour discussed basic human rights, asked Council to call their local representatives and ask them to pass H.R. 9203 (MAHSA Act), and thanked Henny Abraham for bringing this to the community's attention.

Rose asked Council to vote "yes" on Item 5 and thanked Henny Abraham for her efforts.

Melissa Hashem asked Council to condemn the terrorist regime, stand with the prominent Iranian population in the City, move this cause to higher legislation to fight for the liberty and the pursuit of happiness for the people in Iran, and pass the resolution. Lastly, she thanked Henny Abraham for her efforts.

Tanios thanked Henny Abraham, noted the death toll in Iran, asked for support for a new secular democratic government, maximum pressure on affiliates of the Iranian regime, and a reintroduction of the MAHSA Act to Congress, and requested members of Council to leverage their platform, adopt and pass a resolution with strong language, and call on immediate and effective action.

Mahsa Townsend discussed the Islamic Republic and thanked Henny Abraham.

An unidentified speaker relayed that passing the resolution will provide hope and demonstrate compassion and love for humanity.

Mitra Mosallaie expressed gratitude to Council for placing Item 5 on the agenda, thanked Henny Abraham, and requested a unanimous Council vote. She displayed a video of victims of the Iranian regime.

Farhad Mofi thanked Council and Henny Abraham, and asked for support for condemning the Islamic Republic.

Jim Mosher expressed concern for an outreach plan and the architect selection rankings in Item 9, and suggested identifying the selection panel and ranking criteria. In response to his inquiry regarding the Environment Quality Affairs Committee (EQA) in the Annual Mayor Appointments (Item 12), Mayor Blom indicated that, as Chair of EQAC, he will assess the future of EQAC.

Bernie Svalstad, President of the Newport Beach Historical Society, also expressed concern for public involvement in Item 9, questioned the project timeline and breakdown of the library and fire station square footage, and requested 1,000 square feet be set aside for the Historical Society.

XV. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. Minutes for the December 13, 2022 City Council Meeting [100-2023]

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. 2023-1: Updating the List of Designated Employees for 2023 Under the City's Conflict of Interest Code [100-2023]

- 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. 2023-1, *A Resolution of the City Council of the City of Newport Beach, California, Updating the Appendix of Designated Employees and Appendix of Disclosure Categories of the City of Newport Beach Conflict of Interest Code.*

4. Resolution No. 2023-2: Amending City Council Policy E-1: Public Records Act Policy [100-2023]

- 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. 2023-2, *A Resolution of the City Council of the City of Newport Beach, California, Amending City Council Policy E-1 "Public Records Act Policy" to Comply with Recodification of the California Public Records Act.*

5. Resolution No. 2023-3: Affirming that the City Council Stands in Solidarity with its Iranian-American Community Members as their Relatives and Associates are Suffering through Current Human Rights Injustices in Iran [100-2023]

- 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. 2023-3, *A Resolution of the City Council of the City of Newport Beach, California, Affirming that the City Council Stands in Solidarity with its Iranian-American Community Members as their Relatives and Associates are Suffering through Current Human Rights Injustices in Iran.*

CONTRACTS AND AGREEMENTS

6. City Bridge Deck Maintenance (Project No. 21R13) – Notice of Completion for Contract No. 7679-2 [38/100-2023]

- 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 the Faithful Performance Bond one year after acceptance by the City Council.

- 7. Gateway Park Improvements – Award of Contract No. 8791-1 (23L01) [38/100-2023]**
 - a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Class 2 Section 15302(c) (replacement of existing public facilities involving negligible or no expansion of capacity) 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;
 - b) Approve the project plans and specifications;
 - c) Find the bid from Jon Gilmer Construction non-responsive due to lack of specified licensure;
 - c) Award Contract No. 8791-1 to Armstrong Cal Builders, Inc. for the bid price of \$540,233.50 for the Gateway Park Landscape Improvement project, and authorize the Mayor and City Clerk to execute the contract; and
 - d) Establish a contingency of \$54,000 (approximately 10% of total bid) to cover the cost of unforeseen work not included in the original contract.

- 8. Utilities Yard Office Remodel – Award of Contract No. 7908-1 (23F13) [38/100-2023]**
 - a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Class 2 Section 15301(a) (minor interior or exterior alterations involving such things as partitions and plumbing) of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment;
 - b) Approve the project plans and specifications;
 - c) Relieve OCLA Construction of their bid due to a clerical error;
 - d) Award Contract No. 7908-1 to JT Construction Group Inc. for the bid price of \$370,906 for the Utilities Yard Office Remodel project, and authorize the Mayor and City Clerk to execute the contract; and
 - e) Establish a contingency of \$55,600 (approximately 15% of total bid) to cover the cost of unforeseen work not included in the original contract.

- 9. Approval of Professional Services Agreement with COAR Design Group (Contract No. 8865-1) for Balboa Branch Library and Fire Station No. 1 Replacement Project (Project No. 23F12) [38/100-2023]**
 - 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 COAR of San Diego, CA, for design services of the Balboa Branch Library and Fire Station No. 1 Replacement Project for a total not-to-exceed amount of \$697,248, and authorize the Mayor and City Clerk to execute the Agreement.

- 10. Approval of Professional Services Agreement with Glenn Lukos Associates, Inc. (Contract No. 8020-9) for the Superior Avenue Pedestrian/Bicycle Bridge and Parking Lot Project (Project No. 15T09) [38/100-2023]**
 - 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 Professional Services Agreement with Glenn Lukos Associates, Inc. of Santa Ana, California, for Coastal Sage Scrub restoration and monitoring efforts related to the Superior Avenue Pedestrian/Bicycle Bridge and Parking Lot project for a not-to-exceed amount of \$176,530, and authorize the Mayor and City Clerk to execute the Agreement.

MISCELLANEOUS

- 11. Planning Commission Agenda for the January 5, 2023 meeting [100-2023]**

Receive and file.

- 12. Annual Mayor Appointments [100-2023]**

- 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 Noah Blom's appointments under City Council Policy A-2, as provided in the staff report.

Motion by Mayor Pro Tem O'Neill, seconded by Council Member Kleiman, to approve the Consent Calendar.

The motion carried unanimously.

XVI. ITEMS REMOVED FROM THE CONSENT CALENDAR – None

XVII. PUBLIC COMMENTS ON NON-AGENDA ITEMS – None

XVIII. PUBLIC HEARING

13. Ordinance No. 2023-1 and Resolution Nos. 2023-4 and 2023-5: General Plan Amendment to Increase the Development Limit for Bay Island [100-2023]

Community Development Director Jurjis and Senior Planner Crager reported that the amendment is meant to adjust and correct the density allowed on Bay Island to reflect 25 residential units and utilized a presentation to discuss the background, show before and after diagrams of unit counts, and next steps.

Mayor Blom opened the public hearing.

Coralee Newman, representing the applicant, stated that she has reviewed the documents, staff report and findings, and noted the Planning Commission unanimously approved the item and staff recommendation. She requested Council approve having 25 building sites on Bay Island, discussed Bay Island's ownership structure, property inclusions, cause of the unit count error in the 2006 General Plan, and noted the architectural standards and guidelines.

Michelle Dean, member of the Bay Island Club Board of Directors, supported the recommendations and asked for support of the amendment.

Jim Mosher expressed the opinion that the public should know how the City interprets Senate Bill 1439 regarding campaign contributions and recusals, noted the use of the caretaker residence, and relayed not having found a record to substantiate the 25 units at the October 23, 1997 Planning Commission meeting.

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

Motion by Mayor Pro Tem O'Neill, seconded by Council Member Avery, to a) find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 - Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment; b) adopt Resolution No. 2023-4, *A Resolution of the City Council of the City of Newport Beach, California, Approving General Plan Amendment No. GP2022-001 to Change the Development Limit Specified for Bay Island from 23 Dwelling Units to 25 Maximum Dwelling Units (PA2022-087)*; c) adopt Resolution No. 2023-5, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing the Submittal of Local Coastal Program Amendment No. LC2022-003 to Change the Development Limit Specified for Bay Island from 23 Dwelling Units to 25 Maximum Dwelling Units (PA2022-087)*; and d) waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2023-1, *An Ordinance of the City Council of the City of Newport Beach, California, Approving Zoning Code*

Amendment No. CA2022-005 to Change the Development Limit Specified for Bay Island from 23 Dwelling Units to 25 Maximum Dwelling Units (PA2022-087), and pass to second reading on January 24, 2023.

The motion carried unanimously.

XIX. MOTION FOR RECONSIDERATION – None

XX. ADJOURNMENT – Adjourned at 6:01 p.m. in memory of Tony Shaw.

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 January 5, 2023, at 4:00 p.m.

**Noah Blom
Mayor**

**Leilani I. Brown
City Clerk**



CITY OF

NEWPORT BEACH

City Council Staff Report

January 24, 2023
Agenda Item No. 3

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Joe Cartwright, Acting Chief of Police - 949-644-3701,
jcartwright@nbpd.org

PREPARED BY: Bryan Moore, Lieutenant, bmoore@nbpd.org
PHONE: 949-644-3710

TITLE: Resolution No. 2023-6: Supporting Efforts to Eliminate the Threat of Fentanyl to the Newport Beach Community

ABSTRACT:

At its January 10, 2023 meeting, the City Council voted unanimously, via a straw poll, in favor of staff returning with an item for the Council's consideration that would convey the City of Newport Beach's support of efforts to eliminate the threat of fentanyl. The increasing presence of fentanyl poses a considerable public health and safety risk to all communities including Newport Beach. As part of a countywide effort, the Newport Beach Police Department is dedicated to fighting the sale and trafficking of fentanyl, as well as raising public awareness of this illicit, dangerous, and potentially deadly drug.

RECOMMENDATIONS:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2023-6, *A Resolution of the City Council of the City of Newport Beach, California, Supporting Efforts to Eliminate the Threat of Fentanyl to the Newport Beach Community.*

DISCUSSION:

At the request of Council Member Joe Stapleton, at its January 10, 2023 meeting, the Council considered placing a resolution on a future agenda that, if adopted, would affirm the City's support of efforts to eliminate the threat of fentanyl by devoting resources to the interdiction of narcotics, holding drug traffickers accountable, and raising public awareness about the dangers of drug use. The Council voted 7-0, via a straw poll, in favor of staff bringing forward a resolution for its consideration.

Fentanyl is the single deadliest drug threat the nation has ever encountered. According to the Centers for Disease Control and Prevention (CDC), 107,622 people in the United

States died of drug overdoses and drug poisonings in 2021. Approximately 67% of those deaths involved synthetic opioids like fentanyl.

Some of these deaths were attributed to fentanyl mixed with other illicit drugs like cocaine, methamphetamine, and heroin, with many users unaware they were actually taking fentanyl. Only two milligrams of fentanyl is considered a potentially lethal dose. It is particularly dangerous for someone who does not have a tolerance to opioids.

In Orange County, fentanyl-related deaths have increased more than 1,000%, from 57 in 2017 to 636 in 2021. Along with local, state and federal partners, the Newport Beach Police Department has been dedicated to fighting the sale and trafficking of fentanyl.

Since January of 2020, the Newport Beach Police Department has begun investigating all fentanyl-related overdoses in order to progressively pursue arrests and successful prosecutions, at both the state and federal level, of known fentanyl dealers. On December 9, 2022, the Newport Beach Police Department arrested a suspected narcotics dealer and seized approximately 50,000 fentanyl pills, with an estimated street value of \$250,000.

The Orange County Sheriff's Department and Newport Beach Police Department have begun issuing advisements to all those arrested for selling narcotics, informing them that if a dealer sells, furnishes, or distributes drugs to someone, and that person dies as a result of using the drugs, the dealer can be charged with murder. The Orange County District Attorney's office has adopted a similar advisement for those convicted of certain drug-related charges.

In solidarity with our law enforcement partners, the Newport Beach Police Department is committed to taking aggressive enforcement measures to eliminate the threat of fentanyl and bring public awareness, through community outreach, to the dangerous and potentially deadly effects that this illicit drug poses to the Newport Beach community.

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. 2023-6

ATTACHMENT A

RESOLUTION NO. 2023-6

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, SUPPORTING EFFORTS TO ELIMINATE THE THREAT OF FENTANYL TO THE NEWPORT BEACH COMMUNITY

WHEREAS, fentanyl is the single deadliest drug threat the nation has ever encountered, and its increasing prevalence poses a considerable public health and safety risk to the Newport Beach community;

WHEREAS, according to the Centers for Disease Control and Prevention, 107,622 people in the United States died of drug overdoses and drug poisonings in 2021 and approximately 67 percent of those deaths involved synthetic opioids like fentanyl;

WHEREAS, in Orange County, fentanyl-related deaths have increased more than 1000 percent from 57 in 2017 to 636 in 2021;

WHEREAS, many of these deaths are the result of drug dealers selling counterfeit pills containing illicit fentanyl, concealing the presence of fentanyl from the user;

WHEREAS, on December 9, 2022, the Newport Beach Police Department arrested a suspected narcotics dealer and seized approximately 50,000 fentanyl pills, with an estimated street value of \$250,000;

WHEREAS, the seizure of fentanyl by the police saves lives by removing lethal doses of fentanyl from the streets;

WHEREAS, the Orange County Sheriff's Department and Newport Beach Police Department have begun issuing advisements to all those arrested for selling narcotics informing them that if a dealer sells, furnishes, or distributes drugs to someone, and that person dies because of using the drugs, they can be charged with murder;

WHEREAS, the Orange District Attorney's Office has adopted a policy to advise offenders convicted of certain drug-related charges that if they commit a drug-related crime again and someone dies as a result, they can be charged with murder; and

WHEREAS, the Newport Beach Police Department is committed to taking aggressive enforcement measures to eliminate the threat of fentanyl and bring public awareness, through community outreach, to the dangerous and potentially deadly effects that this illicit drug poses to the Newport Beach community.

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

Section 1: The City Council does hereby join with the Orange County law enforcement agencies, in its commitment to eliminate the threat of fentanyl to our community, by devoting resources to the interdiction of narcotics, holding accountable drug traffickers, and raising public awareness about the dangers of drug use.

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

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

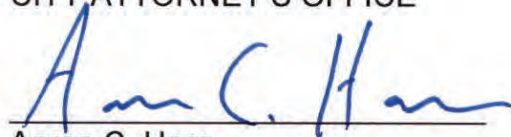
ADOPTED this 24th day of January, 2023.

NOAH BLOM
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

January 24, 2023
Agenda Item No. 4

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Makana Nova, Senior Planner, mnova@newportbeachca.gov

PHONE: 949-644-3249

TITLE: Resolution No. 2023-7: Big Canyon Habitat Restoration – Phase 3:
Adoption of License Agreement and Design Plan (PA2022-034)

ABSTRACT:

For the City Council's consideration is the approval of a resolution approving the Big Canyon Restoration Project and authorization of a license agreement and memorandum of understanding with the California Department of Fish and Wildlife (CDFW) to complete the final, Phase 3 of the Big Canyon Nature Park restoration efforts. The project is a coordinated habitat restoration effort with CDFW as property owner, the City of Newport Beach (City) as the lead agency for environmental clearance, and ongoing permit coordination with the Newport Bay Conservancy (Conservancy).

RECOMMENDATION:

- a) Find this project exempt from the California Environmental Quality Act ("CEQA") pursuant to California Public Resources Code Section 21080.56; and
- b) Adopt Resolution No. 2023-7, *A Resolution of the City Council of the City of Newport Beach, California, Approving the Big Canyon Habitat Restoration Project Phase 3, Approving a License Agreement and Memorandum of Understanding with the California Department of Fish and Wildlife, and Authorizing Submittal of an Application to the California Coastal Commission (PA2022-034).*

DISCUSSION:

Big Canyon Nature Park is the only natural, undeveloped portion of the Big Canyon watershed and the only significant remaining natural canyon on the east side of Newport Bay. The upper, 39-acre parcel of the Big Canyon Park, located west of Jamboree Road, is owned by the City. The majority of the lower, 15-acre portion of the Nature Park (the majority of Phase 3) is owned by the California Department of Fish and Wildlife and is a part of the Upper Newport Bay State Ecological Reserve. Surrounding parcels of the Phase 3 site area are owned by the City.

The lower reach of the Big Canyon watershed has been significantly altered over the past decades. As early as the 1950s, the lower reach of Big Canyon had been negatively impacted by the construction of salt evaporation ponds, historical placement of dredge and fill material, farming, and other human originating activities. Stockpiling of dredge fill during the 1950s and 1960s within Big Canyon Creek raised the elevations within the canyon and re-channelized the creek to the north.

In 2006, the City revised the Natural Resources Element of the General Plan to provide direction regarding the conservation, development and utilization of natural resources within its sphere of influence. General Plan Policy NR 16.2 (Big Canyon Creek Restoration Project) sets a policy to, “Coordinate the Big Canyon Creek Restoration Project so that its outcomes are consistent with goals for Upper Newport Bay established by Orange County and the Department of Fish and Game.”

Big Canyon Habitat Restoration Plan and Phasing

In 2008, high concentrations of selenium were found in Big Canyon Creek as well as within the Big Canyon freshwater lake adjacent to Back Bay Drive. Under the direction of the Santa Ana Regional Water Quality Control Board, a selenium-mitigation work plan for the canyon was developed in 2011. Under the plan, selenium mitigation and habitat restoration in the Nature Park would proceed in three phases, each of which addresses a different set of site constraints and challenges:

Figure 1: Phasing Plan



1. Phase 1. In July 2017, the Big Canyon Habitat Restoration - Phase 1 was completed following the approval of Coastal Development Permit No. 5-16-0059 on August 11, 2016. The six-acre project adjacent to Jamboree Road diverts high selenium concentration groundwater to the sanitary sewer and captures all stormwater flow from Jamboree Road in a bio-infiltration basin sized for a 100-year storm. The site was replanted with native vegetation and trails were added or improved per recommendations of the Resource and Recreation Management Plan (RRMP).
2. Phase 2. In fall of 2019, the City obtained a Coastal Development Permit No. 5-19-0213 and the Conservancy commenced construction of Big Canyon Habitat Restoration - Phase 2, completing the construction project within six months. The project improved the creek flow, replaced an invasive Pepper Tree grove with native trees and plants, addressed the pervasive infestation of the Polyphagous Shothole Borer (PSHB), and created public access improvements and informational signage. Long-term maintenance and monitoring of the new vegetation by a City-assigned maintenance contractor is currently underway for Phase 2.
3. Phase 3 (Proposed Project). The Phase 3 (Project) area measures approximately 14.3 acres of the larger 60-acre Big Canyon Nature Park. The Project involves removing the existing selenium impacted salt-water lake, eliminating invasive plants, and re-grading the site. The proposed grading will extend saltwater influence from the Back Bay into the Phase 3 site; the area will then be replanted with native plants to restore riparian and upland habitats. The Project restores historical salt marsh and establishes transitional wetlands that will allow for upslope migration and resiliency to long-term sea level rise (SLR). The Project will restore tidal marsh, which also further reduces selenium bioavailability found naturally within marine deposits in the watershed, maintains positive drainage during low flows, and addresses mosquito breeding habitat. The City will also incorporate fuel modification on the surrounding sloping parcels the City owns as part of the project scope to reduce fire risks to nearby homes. The Project's scope is the last phase in this ongoing restoration effort of Big Canyon Nature Park. Refer to the project plans provided as Exhibit "A" to Attachment A and Figure 2, shown on the following page:

Figure 2: Phase 3 Project Boundary and Ownership



License Agreement

The proposed license agreement and memorandum of understanding with the CDFW will provide CDFW access to City-owned parcels of the project site and delegate duties to hire agents, contractors, subcontractors and consultants to complete the scope of the Phase 3 habitat restoration.

Public Benefits

Big Canyon Nature Park is used by residents and visitors for passive recreation. This is an important destination for thousands of children participating in the Orange County Department of Education Inside the Outdoors program. The program provides watershed educational activities for grade school children throughout the county including disadvantaged communities. As the largest undeveloped canyon adjacent to Newport Bay, it has the potential to become an integral part of the Upper Newport Bay State Ecological Preserve and to provide unique opportunities for the public to learn about the diversity of biological resources and environmental protection. Along with the restoration of a mosaic of coastal riparian, alkaline marsh, salt marsh, transitional habitat, and coastal sage scrub, the existing and planned construction and operation of maintenance roads will provide incidental public benefits serving an ancillary function as trails around the perimeter of the restoration that will provide an enhanced experience of the different ecotones in a coastal watershed.

Parks, Beaches, and Recreation Commission Review

The Project was presented to the Parks, Beaches and Recreation Commission on October 4, 2022. The Commission recommended approval of the Project to the City Council. The minutes from this meeting are incorporated as Attachment B.

Local Coastal Program Compliance

The Project site is bisected by the Local Coastal Program jurisdictional boundaries between the City of Newport Beach and the California Coastal Commission. In accordance with Newport Beach Municipal Code Section 21.50.025 (Projects Bisected by Jurisdictional Boundaries), projects that are bisected may either: (1) process two separate coastal development permits for the portions of the project within the respective areas of jurisdiction; or (2) process a consolidated coastal development permit through the California Coastal Commission. In this case, it is recommended that a consolidated coastal development permit be processed through the California Coastal Commission to simplify the permitting review process. Following City Council adoption of the attached resolution, the Project will be submitted to the California Coastal Commission to obtain a coastal development permit.

FISCAL IMPACT:

There are no general funds required for this project. The Conservancy is currently leading the effort to secure grant funding for the construction of the Project and no City funds are required. Currently, the Conservancy has an active grant with the Ocean Protection Council (OPC) for \$779,000. The OPC grant, with other funding sources, will fund 100% restoration design construction drawings and specifications, environmental review, and permitting. The Conservancy has received an additional \$30,000 from a corporate donor for planning and design for the Project.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 21080.56 of the CEQA California Public Resources Code, Division 13, Chapter 2.6. In 2021, California Senate Bill (SB) 155 was signed into law, enacting Section 21080.56 of the California Public Resources Code which provides a new statutory exemption from CEQA for fish and wildlife restoration projects through 2025 that meet certain requirements. Projects that qualify for this new exemption from CEQA are projects that conserve, restore, protect, enhance and assist in the recovery of native fish, wildlife and natural habitat.

The Project proposes to replace existing degraded habitat by restoring historic salt marsh and freshwater/riparian habitat. Salt marsh was filled in the 1950s-1960s as a result of dredged material placement in Big Canyon. By restoring salt marsh habitat, this will provide habitat for a variety of California wildlife that utilize this habitat. Upland Coastal

Sage Scrub habitat enhancement will benefit the coastal California gnatcatcher, song sparrow, California towhee, and the wrenit, to name a few.

Additionally, the City has obtained a concurrence letter from the Director of CDFW that the exemption applies to the Project, in accordance with Section 21080.56(e) (Exhibit “C” to Attachment A).

Following City Council action, a Notice of Determination/Exemption will be subsequently recorded to memorialize this exemption. With recordation of the Notice of Determination/Exemption, the Conservancy, assisted by City staff, can submit permit applications to the regulatory agencies including the California Coastal Commission for approval of a Coastal Development Permit.

Tribal Consultation

In accordance with guidance provided for CEQA SERP Exception under Public Resources Code Section 21080.56, consultation with the appropriate tribes identified by the Native American Heritage Commission (NAHC) is encouraged. The City requested a list of tribal contacts from the NAHC. Three tribal contacts were provided notice regarding the proposed Project on September 1, 2022. An email request to consult was received from the Gabrieleno Band of Mission Indians-Kizh Nation on November 14, 2022. The representative, Mr. Andrew Salas, expressed his satisfaction with the Project and requested that a monitor oversee ground-disturbing construction work. Out of an abundance of caution, the agencies (CDFW, Conservancy, and the City) have agreed to retain a tribal monitor in the unlikely event any resources are found.

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 – City Council Resolution No. 2023-7

Attachment B – October 4, 2022, Parks, Beaches, and Recreation Commission Minutes

Attachment C – CEQA lead agency letter

ATTACHMENT A

RESOLUTION NO. 2023- 7

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING THE BIG CANYON HABITAT RESTORATION PROJECT PHASE 3, APPROVING A LICENSE AGREEMENT AND MEMORANDUM OF UNDERSTANDING WITH THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE AND AUTHORIZING SUBMITTAL OF AN APPLICATION TO THE CALIFORNIA COASTAL COMMISSION (PA2022-034)

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, Big Canyon Nature Park is an approximately sixty (60) acre park located between Jamboree Road to the east and Back Bay Drive to the west, and bounded by residential communities to the North and South along the creek bluffs, approximately one (1) mile north of Pacific Coast Highway, located within the City of Newport Beach ("Big Canyon");

WHEREAS, Big Canyon is a valuable natural resource, wildlife habitat, and recreational destination that includes coastal scrub, riparian scrub, riparian forest, alkali-saline wetland, and freshwater emergent wetland habitats native to Southern California and worthy of continuous protection, conservation, and management efforts to preserve it;

WHEREAS, large areas of the Big Canyon creek and native riparian habitat have been overtaken by non-native invasive species, and urbanization has resulted in the degradation of water quality due to upstream development and selenium laden groundwater seepage, upstream grazing and agricultural activities, year-round dry weather flows, invasive plants and insects, and decades old dredge and fill material placed within the lower canyon marsh plain and riparian areas resulting in the ponding of water and reduced floodplain connectivity;

WHEREAS, Big Canyon is listed as an impaired waterbody for selenium and is subject to a regulatory imposition of a total maximum daily load, and in 2009 the Central Orange County Integrated Regional and Coastal Watershed Management Plan listed restoration of Big Canyon as a key project for implementing restoration objectives in Upper Newport Bay;

WHEREAS, the Newport Bay Naturalists and Friends, a California non-profit public benefit corporation doing business as Newport Bay Conservancy ("Conservancy"), is the recipient of grants from, including but not necessarily limited to, the Ocean Protection Council and private corporate donor(s), which provides funds for the restoration of Big Canyon;

WHEREAS, the Conservancy has led ongoing restoration projects within Big Canyon with the cooperation of the City and the California Department of Fish and Wildlife ("CDFW");

WHEREAS, the restoration is being conducted in phases with the completion of Phase 1 taking place in July 2017 and the completion of Phase 2 in June of 2021;

WHEREAS, Phase 3 of the restoration in Big Canyon will remove existing selenium impacted saltwater, eliminate invasive plants, regrade the site to extend saltwater influence from the back bay, replant with native plants to restore riparian and upland habitats, restore historical salt marsh and establish transitional wetlands that will allow for upslope migration and resiliency to long term sea level rise, restore tidal marsh to further reduce selenium bioavailability found naturally within marine deposits in the watershed, maintain positive drainage during low flows, address mosquito breeding habitat, and incorporate fuel modification on surrounding sloping parcels to reduce fire risks to nearby homes ("Project");

WHEREAS, the Project will both conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend, and restore or provide habitat for California native fish and wildlife;

WHEREAS, the Conservancy has coordinated with the Wildlife Conservation Board, Ocean Protection Council, and the United States Fish & Wildlife Service/State Coastal Conservancy, with respect to the Project, all of whom have expressed support;

WHEREAS, the Project will be located at 1950 Back Bay Drive, Assessor's Parcel Numbers ("APN") 440-092-76, 440-092-77, 440-092-79, and 440-132-53 ("City Area"), and a portion of which is owned by CDFW, APN 440-092-75, and 440-132-27 ("CDFW Area");

WHEREAS, the Project will be conducted by CDFW, and will require access over and upon the City Area, and will require use of the City's Big Canyon access road off Jamboree Road;

WHEREAS, the City and CDFW desire to enter into a License Agreement and Memorandum of Understanding to authorize CDFW to enter upon the City Area, and to use the Big Canyon access road off Jamboree Road, to carry out the work required for the Project, and additionally, to establish the terms and conditions upon which CDFW will carry out the work;

WHEREAS, the plans for the Project are in conformance with the 2014 guidelines of the Big Canyon Resource and Recreation Management Plan and consistent with the requirements of the Natural Community Conservation Plan/Habitat Conservation Plan for the Central and Coastal sub-region of Orange County;

WHEREAS, the Project is located within the Open Space (OS) Zoning District and Coastal Zoning District and designated Open Space (OS) by the General Plan Land Use Element and Coastal Land Use Plan;

WHEREAS, the Project is consistent with the Open Space (OS) designation which provides areas to maintain and protect the community's natural open space resources;

WHEREAS, a public meeting was duly noticed and held by the City of Newport Beach Parks, Beaches, and Recreation Commission ("PBRC") on October 4, 2022, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public meeting was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act"). Evidence both written and oral, was presented to, and considered by, the PBRC;

WHEREAS, at the conclusion of the item, the PBRC recommended City Council approval of the Project;

WHEREAS, a public meeting was duly noticed and held by the City Council on January 24, 2023, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public meeting was given in accordance with the Ralph M. Brown Act. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing; and

WHEREAS, the Project site is bisected by jurisdictional boundaries between Newport Beach and the California Coastal Commission, and in accordance with Newport Beach Municipal Code Section 21.50.025 (Projects Bisected by Jurisdictional Boundaries), the City desires to assist in a consolidated application for a Coastal Development Permit to the California Coastal Commission for the Project.

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

Section 1: The City Council hereby approves the Big Canyon Habitat Restoration Project - Phase 3, as depicted in the plans attached hereto as Exhibit "A" and incorporated herein by this reference.

Section 2: The City Council hereby authorizes the City Manager to execute a License Agreement and Memorandum of Understanding with the CDFW, in substantial conformance with the agreement attached hereto as Exhibit "B" and incorporated herein by this reference, subject to approval as to form by the City Attorney, to authorize CDFW to enter upon the City's portion of the Project area and carry out the Project.

Section 3: The City Council hereby authorizes City staff to, as necessary or convenient, assist in the preparation of an application and serve as applicant or co-applicant for the issuance of a Coastal Development Permit from the California Coastal Commission for the Project.

Section 4: Pursuant to Section 15051(d) of the California Code of Regulations, Title 14, Division 6, Chapter 3 ("CEQA Guidelines"), the City is serving as the lead agency on the Project.

The City Council hereby finds that the Project is statutorily exempt under the California Environmental Quality Act ("CEQA") pursuant to Section 21080.56 of the California Public Resources Code and Sections 15307 and 15308 of the California Code of Regulations, Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). California Public Resources Code Section 21080.56 exempts projects that conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend; and projects that restore or provide habitat for California native fish and wildlife. The Project will replace existing degraded habitat and create long-term benefits to climate resiliency, biodiversity, and sensitive species recovery by restoring historic salt marsh and freshwater riparian habitat which had been filled in the 1950's and 1960's.

Additionally, the Project will restore the historic salt marsh and freshwater riparian habitat which will benefit a variety of California wildlife, including but not limited to, the California Gnatcatcher (*Polioptila californica*), yellow warbler (*Setophaga petechia*), Least Bell's vireo (*Vireo Bellii pusillus*), and the light-footed Ridgeways rail (*Rallus longirostris levipes*), Song Sparrow (*Melospiza melodia*), California Towhee (*Melozone crissalis*), and the Wrentit (*Chamaea fasciata*). As required by California Public Resources Code Section 21080.56(e), the City has obtained the written concurrence of the Director of CDFW by letter dated May 4, 2022, which is attached hereto as Exhibit "C" and incorporated herein by this reference.

Section 5: The City Council hereby directs City staff to file a Notice of Exemption for the Project in accordance with California Public Resources Code Section 21080.56(g).

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

Section 7: 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 8: 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 24th day of January, 2023.

Noah Blom
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachment(s): Exhibit "A" - Project Plans for Phase 3
 Exhibit "B" - License Agreement and Memorandum of
 Understanding
 Exhibit "C" - CEQA Exemption Concurrence Letter

Exhibit "A"
Project Plans for Phase 3

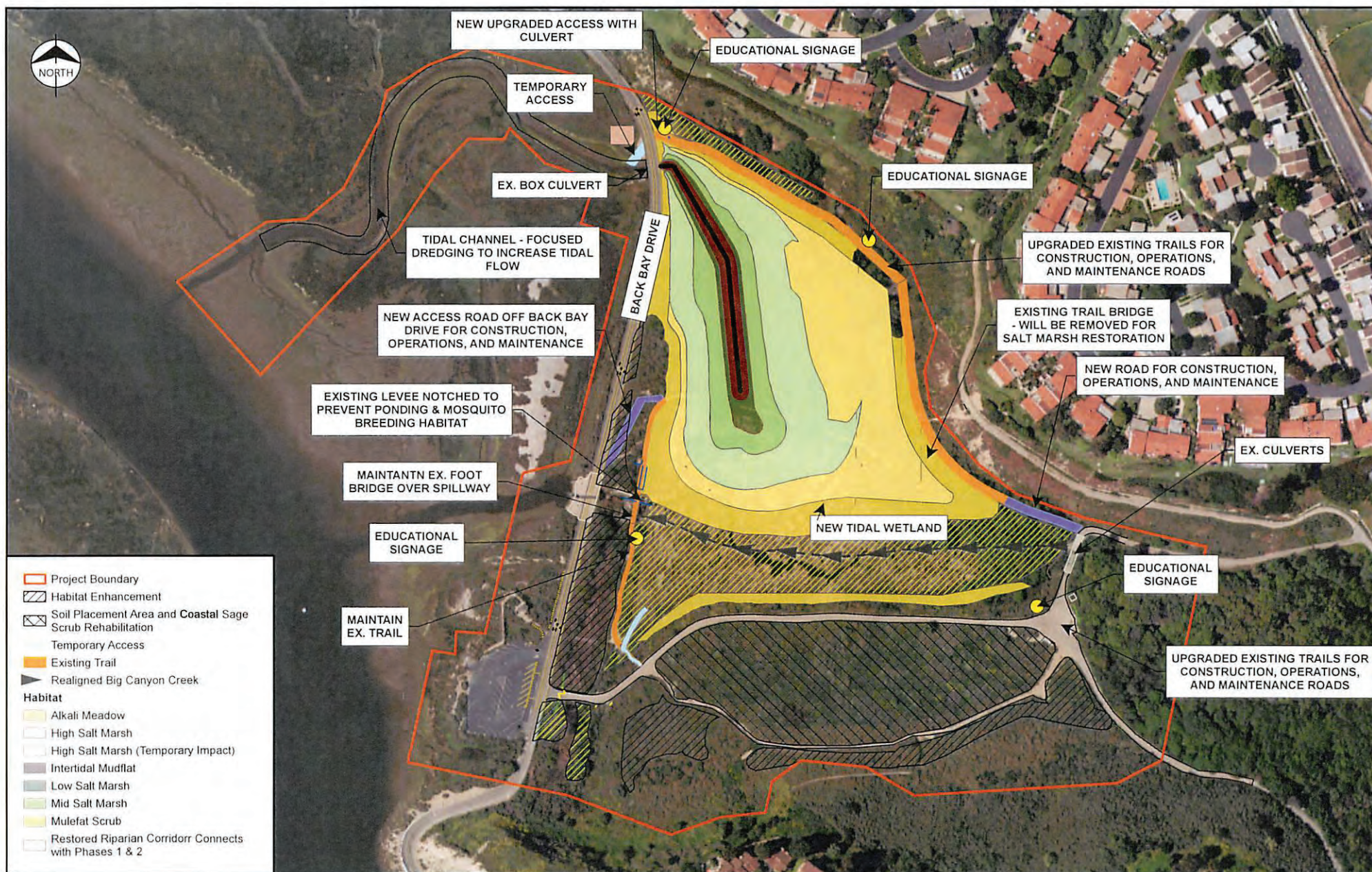


Exhibit "B"

License Agreement and Memorandum of Understanding

**LICENSE AGREEMENT AND MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF NEWPORT BEACH
AND THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
FOR THE BIG CANYON COASTAL HABITAT RESTORATION AND ADAPTATION
PROJECT - PHASE 3**

This License Agreement and Memorandum of Understanding ("Agreement") is made and entered into as of this _____ day of _____, 2023 ("Effective Date"), by and between the City of Newport Beach, a California municipal corporation and charter city ("City" or "Licensor"), and the California Department of Fish and Wildlife, a State agency under the California Natural Resources Agency ("CDFW" or "Licensee"), and is made with reference to the following:

RECITALS

- A. Big Canyon Nature Park is an approximately sixty (60) acre park located between Jamboree Road to the east and Back Bay Drive to the west, and bounded by residential communities to the North and South along the creek bluffs, approximately one (1) mile north of Pacific Coast Highway, located within the City of Newport Beach ("Big Canyon").
- B. Big Canyon is owned in part by the City, and owned in part by CDFW, as depicted on Exhibit "A" attached hereto and incorporated herein by this reference.
- C. Big Canyon is a valuable natural resource, wildlife habitat, and recreational destination that includes coastal scrub, riparian scrub, riparian forest, alkali-saline wetland, and freshwater emergent wetland habitats native to Southern California and worthy of continuous protection, conservation, and management efforts to preserve it.
- D. Large areas of the Big Canyon creek and native riparian habitat have been overtaken by non-native invasive species, urbanization has resulted in the degradation of water quality due to upstream development and selenium laden groundwater seepage, upstream grazing and agricultural activities, year-round dry weather flows, invasive plants and insects, and decades old dredge and fill material placed within the lower canyon marsh plain and riparian areas, resulting in the ponding of water and reduced floodplain connectivity.
- E. Big Canyon is listed as an impaired waterbody for selenium and is subject to a regulatory imposition of a total maximum daily load, and in 2009 the Central Orange County Integrated Regional and Coastal Watershed Management Plan listed restoration of Big Canyon as a key project for implementing restoration objectives in Upper Newport Bay.
- F. The Newport Bay Naturalists and Friends, a California non-profit public benefit corporation doing business as Newport Bay Conservancy ("Conservancy"), is the recipient of grants from, including but not necessarily limited to, the Ocean Protection

Council and private corporate donor(s), which provides funds for the restoration of Big Canyon ("Grant").

- G. The Conservancy has led an ongoing restoration project within Big Canyon, the Big Canyon Coastal Habitat Restoration and Adaptation Project, with the cooperation of the City and CDFW, with the restoration being conducted in phases, Phase 1 completed in July 2017, and Phase 2 completed in June of 2021.
- H. Restoring the historic salt marsh and freshwater riparian habitat will benefit a variety of California wildlife, including but not limited to, the California Gnatcatcher (*Poliophtila californica californica*), Song Sparrow (*Melospiza melodia*), California Towhee (*Melospiza crissalis*), and the Wrentit (*Chamaea fasciata*).
- I. The Big Canyon Coastal Habitat Restoration and Adaptation Project - Phase 3 ("Project"), will remove existing selenium impacted saltwater, eliminate invasive plants, regrade the site to extend saltwater influence from the back bay, replant with native plants to restore riparian and upland habitats, restore historical salt marsh and establish transitional wetlands that will allow for upslope migration and resiliency to long term sea level rise, restore tidal marsh to further reduce selenium bioavailability found naturally within marine deposits in the watershed, maintain positive drainage during low flows, address mosquito breeding habitat, and incorporate fuel modification on surrounding sloping parcels to reduce fire risks to nearby homes.
- J. The Project will be located at 1950 Back Bay Drive, Assessor's Parcel Numbers ("APN") 440-092-76, 440-092-77, 440-092-79, and 440-132-53 ("City Area"), and a portion of which is owned by CDFW, APN 440-092-75, and 440-132-27 ("CDFW Area"), as depicted on Exhibit "B" which is attached hereto and incorporated herein by reference.
- K. The Project will be conducted by CDFW, and will require access over and upon the City Area and use of the City's Big Canyon access road off of Jamboree Road ("License Area").
- L. The City and CDFW agree that the City will serve as the lead agency for the Project under the California Environmental Quality Act ("CEQA"), and that the City will assist with the application for a Coastal Development Permit from the California Coastal Commission either by serving as the applicant, co-applicant, or otherwise as may be necessary or desirable.
- M. In consideration of the mutual promises and obligations contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, City desires to grant CDFW permission to enter and use the License Area to carry out the Project in conformance with the terms of the Grant, and CDFW desires to accept the same and to carry out the Project in conformance with the terms of the Grant on the following terms and conditions.

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

1. LICENSE

1.1 For the duration of this Agreement, City hereby grants a revocable, non-exclusive license to CDFW, including its agents, contractors, subcontractors, and consultants when acting on behalf of CDFW, to enter upon, over and under and temporarily occupy and use the License Area in order to carry out the Project in accordance with the terms and conditions of the Grant and this Agreement ("License").

1.2 The License includes posting of signs, subject to approval of the City's License Administrator, as reasonably necessary or required to notify the public of the work, for safety purposes, as required by the terms of the Grant, or other such lawful purpose.

1.3 No grant of an easement or other interest in land is intended by this Agreement.

1.4 Nothing herein shall be construed to give CDFW any right to hold over or to continue possession of the License Area after the expiration or termination of this Agreement.

1.5 The License granted herein is subject to the terms, covenants and conditions hereinafter set forth, and CDFW covenants, as a material part of the consideration for this License, to keep and perform each term, covenant and condition of this Agreement.

2. TERM

Unless terminated earlier as set forth herein, the term of this Agreement shall commence on the Effective Date and shall continue until completion of the Project or December 31, 2024, whichever occurs first. The City shall have the option to extend the term of this Agreement for successive periods of one (1) year each as needed to allow for completion of the Project by providing written notice to CDFW.

3. THE PROJECT

3.1 CDFW shall undertake and diligently pursue to completion the Project, the Big Canyon Coastal Habitat Restoration and Resiliency Project - Phase 3, in substantial conformance with the plans approved by City, which are on file with the City and incorporated herein by this reference.

3.2 CDFW shall comply will all applicable federal and state laws regarding public works projects, including but not limited to, competitive bidding, bonding, and prevailing wages.

3.3 CDFW shall be solely responsible for cooperating with the Conservancy to ensure the Project is conducted in full compliance with the terms and conditions of the Grant, including but not limited to, bookkeeping, reporting, deliverables, deadlines, management, operations, and all other aspects of the Grant.

3.4 CDFW shall comply with all applicable federal and state contracting requirements. All expenditures made with federal award money, if any, including subcontracts, are subject to the Uniform Guidance, Title 2 in the Code of Federal Regulations, Subtitle A, Chapter II, part 200 (2 CFR 200). Additionally, non-federal entities are subject to 2 CFR 200.317, General Procurement Standards, through 2 CFR 200.327, Contract Provisions, when expending funds under a federal award.

4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Big Canyon restoration has been conducted in successive phases through the mutual cooperation of two public agencies, the City and CDFW, in concert with a non-profit, the Conservancy, providing Grant funding for the restoration work. Pursuant to Section 15051(d) of the CEQA Guidelines, 14 Cal Code Regs §§15000-15387, City and CDFW agree that the City shall serve as the lead agency on the Project for purposes of CEQA. Furthermore, City and CDFW agree that the City is additionally authorized to serve as the lead agency for the Project pursuant to Section 15051(b)(1) of the CEQA Guidelines which states that the lead agency will normally be the agency with general governmental powers, such as a city rather than an agency with a single or limited purpose, and Section 15051(c) of the CEQA Guidelines which states that the agency which will act first on the project in question will normally be the lead agency.

5. COASTAL DEVELOPMENT PERMIT

The Project site is bisected by jurisdictional boundaries between the City and the California Coastal Commission. In accordance with Newport Beach Municipal Code Section 21.50.025 (Projects Bisected by Jurisdictional Boundaries), the City desires to assist in a consolidated application for a Coastal Development Permit to the California Coastal Commission for the Project. The parties agree that the City shall assist in the preparation of an application for a Coastal Development Permit ("CDP") to the California Coastal Commission as may be required for the Project. The parties agree that the City may be the applicant or a co-applicant with CDFW and/or the Conservancy on the application for issuance of a CDP as may be necessary for issuance of the CDP.

6. INDEPENDENT ENTITIES

This Agreement forms no partnership, joint venture, or other association of any kind. CDFW and the City are not acting as the agent of the other in any respect, and each is an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement.

7. 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.

8. CONSIDERATION

The parties agree that CDFW shall be authorized to use the License Area for the purposes set forth herein at no cost. The parties agree that the benefit that will accrue to the citizens of the City through the Project performed in accordance with the Grant is commensurate with the value to CDFW's use of the License Area.

9. USE OF THE LICENSE AREA

9.1 CDFW and its agents, contractors, subcontractors, and consultants use of the License Area shall be limited to the terms and conditions of this Agreement.

9.2 CDFW shall submit its work schedule, including intended days and hours of operation within the License Area, to the City's License Administrator for approval, which approval shall not be unreasonably withheld. CDFW agrees that all of its activities shall be held solely during approved days and hours of operation, subject to exceptions made on a case-by-case basis upon the prior written approval of the City's License Administrator in his or her sole discretion.

9.3 CDFW agrees to accept the License Area in an "as is" condition, and that no representations with respect to the condition or improvements of the License Area have been made except as specifically set forth in this Agreement.

9.4 Use of the License Area by CDFW is non-exclusive and City may permit other persons or entities to utilize portions of the License Area, provided that such use does not interrupt or unreasonably interfere with the essential operation of the Project.

9.5 CDFW shall keep the City's License Administrator informed of CDFW's use of the License Area, and such use shall be subject to the approval of the City's License Administrator which approval shall not be unreasonably withheld.

10. PURPOSE OF LICENSE

The purpose of this Agreement is to provide for the entry and temporary use and occupation of the License Area to carry out the Project in compliance with the Project plans, the terms of the Grant, and this Agreement. Except as otherwise provided in this Agreement, use of any area outside the License Area will not be allowed unless prior permission is given in writing by the City. CDFW agrees to use the License Area only for

the activities described herein, and not to use or permit the use of the License Area for any other purpose without first obtaining the prior written consent of City, which consent may be withheld in City's sole discretion. Acceptable activities include any work necessary to perform the Project consistent with the Project plans and the terms of the Grant.

11. CONDITIONS OF LICENSE

CDFW shall comply with the following conditions:

11.1 CDFW shall be solely responsible for entering into an agreement with the Conservancy for allocation of Grant funds to pay for the costs of the Project.

11.2 CDFW may delegate its duties under this Agreement to the Conservancy, subcontractors, or other agents, as necessary or convenient, to the extent authorized by law. Any such delegation shall not constitute an assignment of this Agreement, and CDFW shall remain solely responsible for all duties, covenants, conditions, and performance of this Agreement, including the completion of the Project.

11.3 CDFW shall ensure that any and all required licenses, permits and certifications are obtained and maintained.

11.4 CDFW shall work with adjacent property owners to reach agreement over the use of land outside of the License Area if such use is needed.

11.5 CDFW shall coordinate use of the License Area to avoid conflict with any other activities that may be in operation at or within the License Area during the term of this Agreement.

11.6 CDFW shall obtain the prior written approval of the City's License Administrator before undertaking any modifications in the operation of the Project which may affect allocation of space, operating hours, or the relationship with other programs operating at the License Area.

11.7 No improvements to the License Area are permitted, other than those set forth in this Agreement.

11.8 CDFW shall be responsible for maintaining the License Area during the term of this Agreement, including, but not limited to, the routine removal of any foreign material, waste, and debris.

11.9 CDFW shall use best efforts to keep and maintain the License Area in good condition, and to not cause unnecessary damage or harm to the License Area, at its sole cost and expense.

11.10 CDFW agrees that the License Area shall not be used to promote, directly or indirectly, any political party, political candidate, or political activity, except as permitted by law.

11.11 CDFW shall report in writing to City immediately after discovery of the loss or theft of any items of capital equipment. For stolen items, CDFW shall contact the local law enforcement agency and submit a copy of the police report to City.

11.12 City may, but shall not be required to, enter upon the License Area at any time for any reason, including but not limited to, inspecting the License Area for compliance with the terms of this Agreement, the terms of the Grant, and with all applicable Federal, State and local (including those of the City) government regulations. Upon reasonable request, CDFW shall provide a representative to accompany City during inspections who shall have sufficient knowledge and authority to provide information and answer questions about CDFW's activities in the License Area.

11.13 CDFW's representatives shall meet with the City upon prior reasonable request to discuss operational issues concerning use of the License Area.

11.14 CDFW shall promptly pay, when due, all bills, debts, liabilities and obligations incurred by CDFW in connection with the Project and CDFW's occupation and use of the License Area.

11.15 CDFW shall comply with all of the terms and conditions of this Agreement.

12. TERMINATION

12.1 This Agreement may be terminated during the term in the following manner:

1) By CDFW: At any time, without cause, by giving at least thirty (30) days advance written notice of termination to City, provided that CDFW shall promptly restore the License Area to its condition prior to the commencement of any work caused by CDFW in the Subject Area in furtherance of the Project, or to the reasonable satisfaction of City;

2) By City: At any time, without cause, prior to the award of any public contract by CDFW to perform work in furtherance of the Project, by giving at least thirty (30) days advance written notice of termination to CDFW; or

3) By Default: If, after written notice of default to CDFW of any of the terms or conditions of this Agreement, CDFW or its agents, contractors, subcontractors or consultants fails to cure or correct any default of this Agreement within ten (10) business days of receipt of written notice, City may immediately terminate this Agreement by delivering written notice of termination to CDFW.

12.2 Subject to acceptance by the City, all improvements located upon the License Area shall become part of, included in, and appurtenant to the License Area.

12.3 At the expiration or termination of this Agreement, all of CDFW's equipment or materials remaining in the License Area shall be removed from the License Area at CDFW's sole cost. CDFW's equipment or materials that are not removed by CDFW within thirty (30) days of the expiration or termination of this Agreement may be removed by City

and disposed of by City without any compensation due to CDFW. CDFW shall be responsible for the cost of any removal and disposal and for any repairs to the License Area caused by such removal.

13. ADMINISTRATION

13.1 This Agreement will be administered by the City's Public Works Department. City's Public Works Director, or designee, shall have the authority to act for City under this Agreement ("City's License Administrator"). The City's License Administrator or their authorized representative shall represent City in all matters pertaining to this Agreement.

13.2 CDFW shall designate in writing to City representatives who shall be responsible for the day-to-day operation of the Project, and for maintenance, cleanliness, and general order of the License Area.

14. INDEMNITY AND LIABILITY

14.1 CDFW and its agents, contractors, subcontractors, and consultants shall use due care to protect the License Area and restore it to its original condition, or to the conditions required by this Agreement, to the reasonable satisfaction of the City when the License Area is not in use by CDFW.

14.2 CDFW shall be responsible for the security, repair, and maintenance of the License Area to the extent the License Area is utilized by CDFW or its agents.

14.3 CDFW and its agents, contractors, subcontractors, and consultants shall cause all construction and maintenance activities to be conducted in a good and workmanlike 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 work shall be performed by qualified and experienced personnel. Upon completion of work, CDFW shall provide City with evidence reasonably satisfactory to City of such completion. By delivery of completed work, CDFW certifies that the work conforms to the requirements of this Agreement, the terms of the Grant, all applicable federal, state and local laws, and legally recognized professional standards.

14.4 City shall not be responsible for any Project expenses, labor, equipment, supplies, work, liens, taxes, or any other cost of any nature whatsoever incurred in furtherance of, arising out of, related to, or in connection with the Project. CDFW shall fully reimburse and indemnify City for any such costs.

14.5 Except to the extent of the City's sole negligence or willful misconduct, City shall not be liable for any injury or damage arising out of, in connection with, or related to the Project or the Grant. CDFW shall be solely responsible for all loss or damage to the License Area and to any persons, property, equipment, materials or goods that is caused by, arises out of, or is in connection with or related to the Project whether completed by CDFW or its agents, contractors, subcontractors, and consultants. CDFW shall fully

compensate and indemnify City for any loss or damage suffered by City in proportion to the extent to which CDFW or its agents caused or contributed to the loss or damage.

14.6 City shall not be liable to CDFW for any injury or damage to CDFW arising out of or in connection with acts of god such as earthquakes, floods, fire, pandemic or disease, or other natural disaster.

14.7 CDFW, on behalf of itself and its employees, agents, contractors, subcontractors, and consultants, 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, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement by CDFW or its agents, or any work or services performed or provided by CDFW or its agents, including, without limitation, defects in workmanship or materials, or CDFW's or its agents' presence or activities that relate in any way to this Agreement (including the negligent and/or willful acts, errors and/or omissions of CDFW, employees, vendors, agents, suppliers, and anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). Notwithstanding the foregoing, nothing herein shall be construed to require CDFW 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 attorney's fees in any action on or to enforce the terms of this Agreement.

14.8 In addition to its indemnity obligations set forth herein, CDFW shall indemnify, defend, and hold harmless Indemnified Parties from and against any Claim seeking to attack, set aside, void, or annul the approval of this Agreement or the plan or approvals for the project (including without limitation any actions taken pursuant to CEQA with respect thereto), and any subsequent approval of any agreement or permit granted in furtherance of the Project. Said indemnity obligation shall include payment of reasonable attorney's fees, expert witness fees, City staff costs (including overhead), and court costs. City shall promptly notify CDFW of any such Claim and City shall cooperate with CDFW in the defense of such Claim. CDFW shall not be responsible to indemnify, defend, and hold City harmless from such Claim until CDFW is so notified, and if City fails to cooperate in the defense of a Claim CDFW 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 reasonable defense costs for its separate counsel shall be included in CDFW's indemnity obligation, provided that such counsel shall reasonably cooperate with CDFW in an effort to minimize the total litigation expenses incurred by CDFW. In the event either City or CDFW recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, CDFW shall be entitled to retain the same (provided it has fully

performed its indemnity obligations hereunder). No settlement of any Claim against Indemnified Parties shall be executed without the written consent of both the City and CDFW.

14.9 This duties in this Section shall apply to all claims and liability regardless of whether any insurance policies are applicable. Insurance policy limits shall not act as a limitation upon the amount of indemnification to be provided by CDFW.

15. INSURANCE

Without limiting CDFW's indemnification of City, and prior to commencement of work, CDFW and its agents, contractors, subcontractors, and consultants shall obtain 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.

16. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

This Agreement and the License granted herein shall not be assigned or transferred without the prior written approval of City which approval may be withheld in the City's sole discretion.

17. CONFLICT OF INTEREST

CDFW and its employees, agents, contractors, subcontractors, and consultants may be subject to the provisions of the California Political Reform Act of 1974 ("Act"), which (a) requires such persons to disclose any financial interest that may foreseeably be materially affected by the work performed under this Agreement, and (b) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest. If subject to the Act, CDFW and its employees, agents, contractors, subcontractors, and consultants shall conform to all requirements of the Act. Notwithstanding Section 9.1.3, failure to conform to the requirements of the Act constitutes a material breach and is grounds for immediate termination of this Agreement by City. CDFW shall indemnify and hold harmless City for any and all claims for damages resulting from a violation of this Section.

18. NOTICE

18.1 All notices, demands, requests or approvals 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. All notices, demands, requests or approvals from CDFW to City shall be addressed to City at:

Public Works Department
City of Newport Beach

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

18.2 All notices, demands, requests or approvals from City to CDFW shall be addressed to CDFW at:

California Department of Fish and Wildlife
Attn: Amanda Swanson, PhD,
Orange County Reserve Manager
600 Shell maker Road, Newport Beach, CA 92660

19. EQUAL OPPORTUNITY – NONDISCRIMINATION

CDFW and its agents, contractors, subcontractors, and consultants shall comply with Title VI and VII of the Civil Rights Act of 1964, as amended; the Age Discrimination Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended, California Government Code Section 12940(c), (h), (l), (i), and (j); and other applicable federal and state laws, as well as their implementing regulations, and any other law pertaining to Equal Employment Opportunity Affirmative Action and Discrimination as each may now exist or be hereafter amended. CDFW shall not discriminate against any employee, or applicant for employment and shall not withhold any services, benefits or facilities to any participant on the basis of an ethnic group identification, race, color, national origin or ancestry, religion, age, sex, marital status, political belief, religious creed, disability, or medical condition.

20. PREVAILING WAGES

Pursuant to the applicable provisions of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages including legal holidays and overtime work for each craft or type of workman needed to execute the Project contemplated under this Agreement shall be paid to all workmen employed on the Project to be done according to this Agreement by CDFW 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 Project is to be performed for each craft, classification, or type of workman or mechanic needed to execute this 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. CDFW is required to cause wage determinations from the Department of Industrial Relations to be posted at the job site listing the prevailing rate or per diem wages. It shall be the obligation of CDFW 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.

21. BONDING

For the duration of the Project, CDFW shall require the provision and maintenance of both of the following: (1) a Faithful Performance Bond in the amount of one hundred percent (100%) of the total amount to be paid for the Project; and (2) a Labor and Materials Payment Bond in the amount of one hundred percent (100%) of the total amount to be paid for the Project. The Faithful Performance Bond and Labor and Materials Payment Bond shall be issued by insurance organizations or sureties (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.

22. LIENS

CDFW shall not permit to be imposed, recorded or enforced against the License Area or any portion thereof or any structure or improvement thereon any mechanics, materialmen's, contractors or other liens arising from, or any claims for damages growing out of, any work or repair, construction or alteration of improvements in connection with this Agreement. In the event any lien or stop notice is imposed or recorded on the License Area, and such lien or stop notice arises out of, is related to or connected with, or based on, CDFW conduct, CDFW shall pay or cause to be paid all such liens, claims or demands before any action is brought to enforce the same against the License Area. Notwithstanding the foregoing, if CDFW in good faith contests the validity of any such lien, claim or demand, then CDFW may, at its sole expense, defend against such lien, claim or demand provided that CDFW provides City full defense and indemnity therefrom, and provided CDFW shall pay and satisfy any adverse judgment that may be rendered in connection therewith before any enforcement against City or the License Area.

23. HAZARDOUS SUBSTANCES

23.1 "Hazardous Substance" means: (i) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. "RCRA"); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; California Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste of Concern and Public Safety Act, Health and Safety Code Sections 25169.5 et seq.; California Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the Porter-Cologne Water Quality Control Act, Water

Code Sections 13000 et seq., all as they, from time-to-time may be amended or re-codified, (the above-cited statutes are here collectively referred to as the "Hazardous Substances Laws") or any other Federal, State or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect; (ii) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory, including but not limited to negligence, trespass, intentional tort, nuisance, waste or strict liability or under any reported decisions of a state or federal court; (iii) petroleum or crude oil; and (iv) asbestos.

23.2 CDFW and its agents, contractors, subcontractors, and consultants shall not use, occupy, or permit any portion of the License Area to be used or occupied in violation of any Hazardous Substance laws.

23.3 CDFW does not, and shall not, authorize any third party to use, generate, manufacture, maintain, permit, store, or dispose of any Hazardous Substances in violation of applicable laws on, under, about or within the License Area.

23.4 Notwithstanding the foregoing, CDFW is not responsible or liable for any Hazardous Substances that are brought on to the License Area, through migration or other means, by third-parties not associated with CDFW or CDFW's use of the License Area.

23.5 In addition to the indemnification duties of CDFW set forth elsewhere in this Agreement, CDFW shall indemnify, defend, and hold harmless the Indemnified Parties from and against any and all Claims, including, but not limited to, any repair, cleanup, detoxification, or preparation and implementation of any remedial, response, closure or other plan of any kind or nature which the City may sustain or incur, or which may be imposed upon it, arising from or attributable to CDFW and its agents storage or deposit of Hazardous Substances in violation of applicable laws. This section is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 USC Section 9607(e), and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify City for any claim pursuant to the Hazardous Substance laws or the common law.

23.6 Upon expiration or termination of this Agreement, CDFW shall deliver possession of the License Area in compliance with Hazardous Substance laws.

23.7 If during the term of this Agreement, CDFW becomes aware of (i) any actual or threatened release of any Hazardous Substances on, in, under, from, or about the License Area in violation of Hazardous Substance laws; or (ii) any inquiry, investigation, proceeding, or claim by any government agency or other person regarding the presence of any Hazardous Substances in violation of Hazardous Substance laws on, in, under, from or about the License Area, CDFW shall give City written notice of the release or inquiry within five (5) calendar days after CDFW becomes aware or first has reason to believe there has been a release or inquiry and shall simultaneously furnish to City copies

of any claims, notices of violation, reports, warning or other writings received by CDFW that concern the release or inquiry.

23.8 If the presence of any Hazardous Substances brought onto the License Area by CDFW or its agents, or generated by same during the Term of this Agreement, results in contamination of the License Area or adjacent properties in violation of Hazardous Substance laws, CDFW shall promptly take all necessary actions, at CDFW's sole expense, to remove or remediate such Hazardous Substances in full compliance with applicable laws. CDFW shall provide notice to City prior to performing any removal or remedial action. CDFW shall not propose nor agree to any covenant of use restriction as part of any removal or remediation required as a result of this provision without City's written consent. CDFW shall pay any costs City incurs in performing CDFW's obligation to clean-up contamination resulting from CDFW's operations or use of the License Area.

23.9 Should any clean-up of Hazardous Substances for which CDFW is responsible not be completed prior to the expiration or termination of this Agreement, then CDFW shall: (i) transfer the amounts required to complete clean-up into an escrow account, together with City-approved instructions for the disbursement of such amount in payment of the costs of any remaining clean-up as it is completed, and (ii) if the nature of the contamination or clean-up required of CDFW is of such a nature as to make the License Area un-usable for its intended purposes, then CDFW shall be liable to City as a holdover licensee until the clean-up has been sufficiently completed to make the License Area suitable for its intended purposes. The estimated cost of the clean-up shall require approval of the City.

23.10 If City determines, in its reasonable discretion, that CDFW does not have insurance or other financial resources sufficient to enable CDFW to fulfill its obligations under this provision, then CDFW shall, at the request of City, procure and thereafter maintain in full force and effect such environmental impairment liability and/or pollution liability insurance policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to City as is appropriate to assure that CDFW will be able to perform its duties and obligations hereunder.

24. STANDARD PROVISIONS

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

24.2 Compliance with all Laws. CDFW 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 CDFW shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator.

24.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed 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.

24.4 Integrated Agreement. 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.

24.5 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.

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

24.7 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.

24.8 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.

24.9 Taxes. CDFW acknowledges that the License granted herein may be subject to possessory interest taxes. CDFW shall have the sole obligation to pay any taxes, fees and assessments, plus applicable penalties and interest, which may be imposed by law and arise out of CDFW's License hereunder. CDFW shall indemnify, defend and hold harmless City against any and all such taxes, fees, penalties or interest assessed, or imposed against City hereunder.

24.10 No Third Party Rights. The parties do not intend to create rights in or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation or undertaking established herein.

24.11 No Attorneys' Fees. In the event of any dispute under the terms of this Agreement, the prevailing party shall not be entitled to attorneys' fees.

24.12 Survival. Sections 12, 14, and 23 of this Agreement shall survive the termination or expiration of this Agreement.

24.13 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 and the same instrument.

24.14 Authority. CDFW and CDFW's signatories represent that the signatories hold the positions set forth below their signatures and that the signatories are authorized to execute this Agreement on behalf of CDFW and to bind CDFW hereto.

[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: _____

CITY OF NEWPORT BEACH, a California
municipal corporation

Date: _____

By: _____
Aaron C. Harp
City Attorney

By: _____
Grace K. Leung
City Manager

ATTEST:

Date: _____

**CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE**

Date: _____

By: _____
Leilani I. Brown
City Clerk

By: _____
Amanda Swanson
Orange County Reserve Manager

ATTEST:

Date: _____

By: _____

**APPROVED AS TO FORM:
CDFW GENERAL COUNSEL**

Date: _____

By: _____

[END OF SIGNATURES]

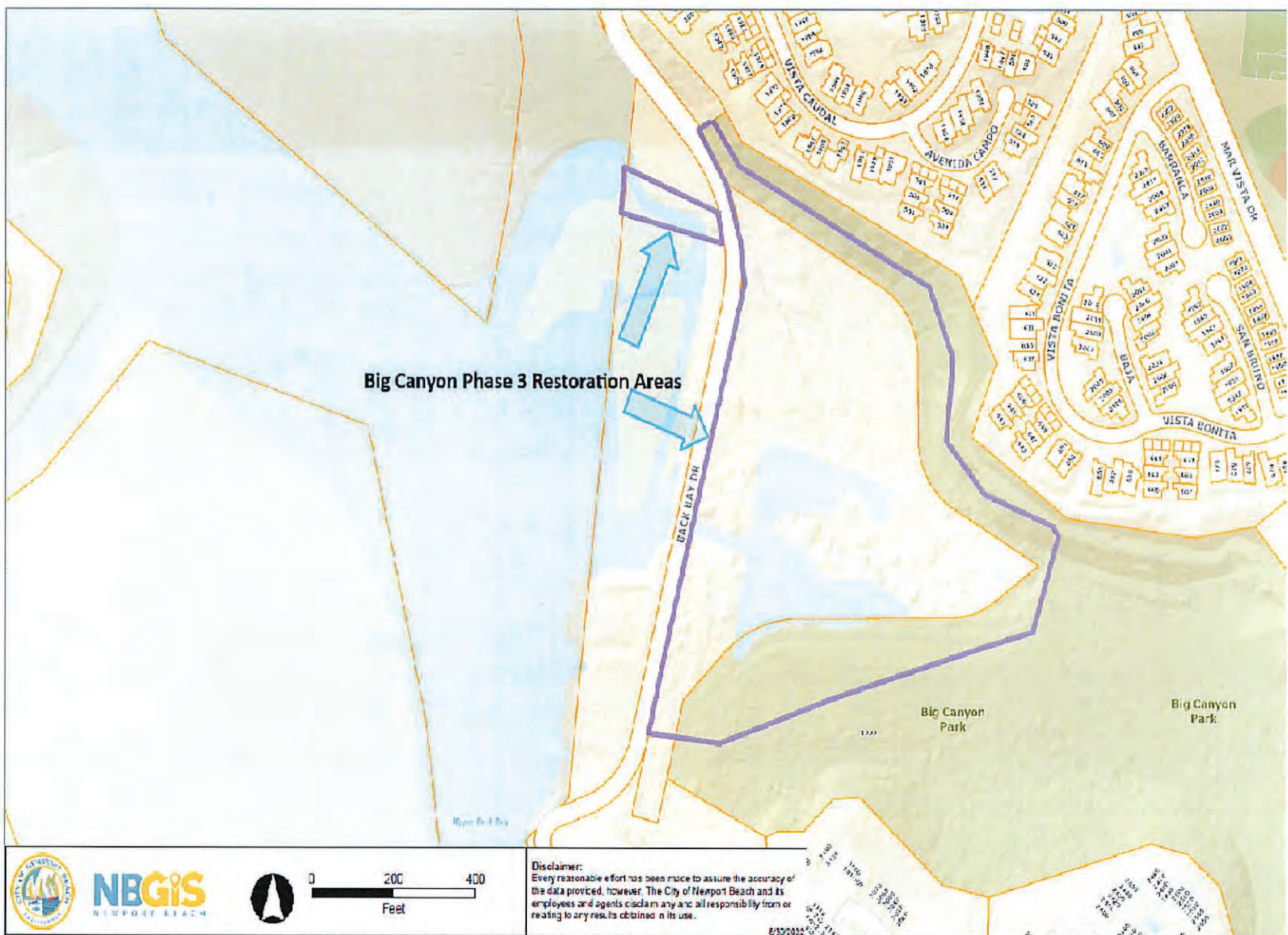
Attachments:	Exhibit A:	Depiction of Big Canyon
	Exhibit B:	Depiction of License Area
	Exhibit C:	Insurance Requirements

EXHIBIT A DEPICTION OF BIG CANYON



EXHIBIT B
DEPICTION OF LICENSE AREA





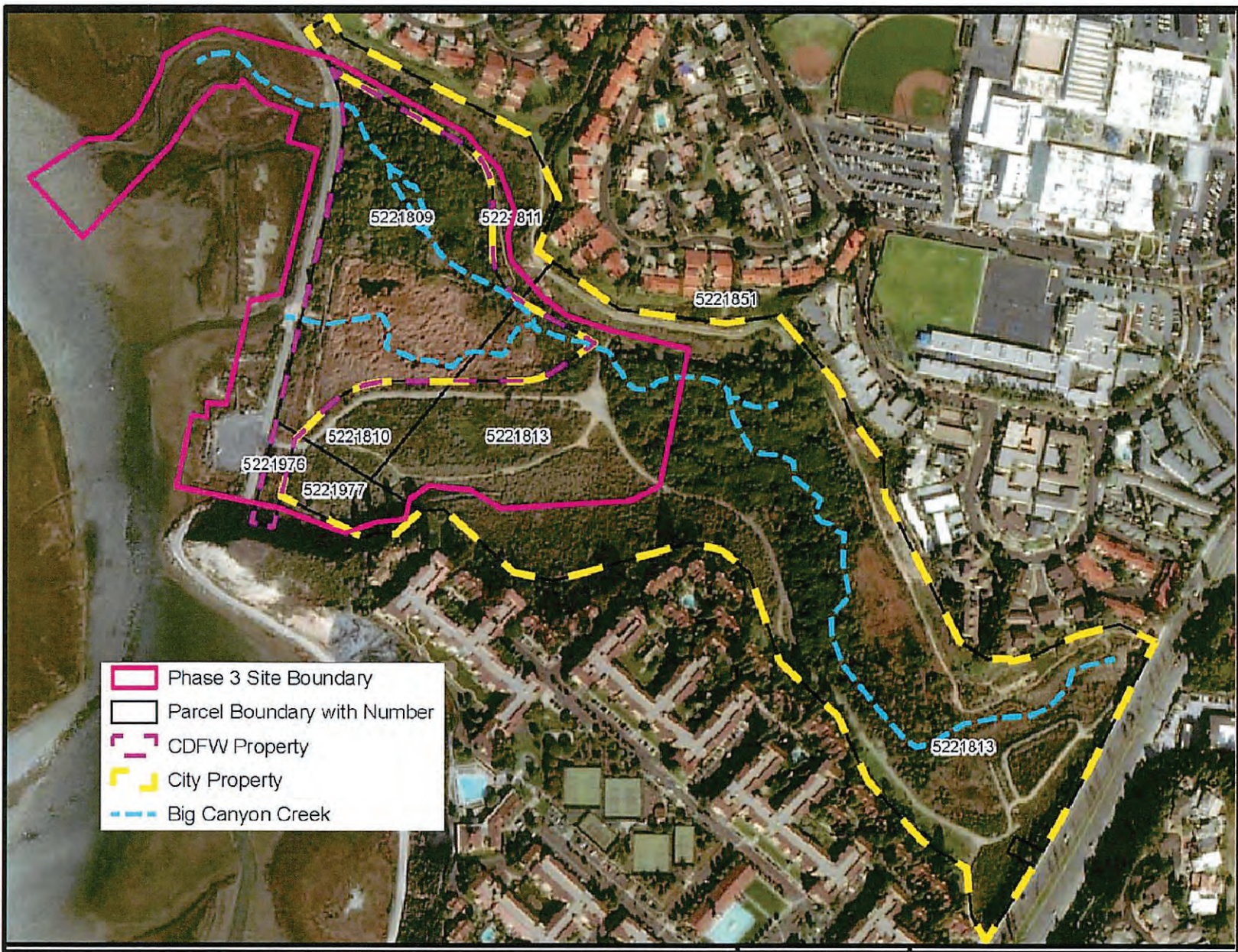


EXHIBIT C INSURANCE REQUIREMENTS

1. Provision of Insurance. Without limiting CDFW's indemnification of City, and prior to commencement of work, CDFW 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. CDFW agrees to provide insurance in accordance with requirements set forth here. If CDFW uses existing coverage to comply and that coverage does not meet these requirements, CDFW 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. CDFW 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.

CDFW shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.
 - C. General Liability Insurance. CDFW shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Work 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) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract. The commercial general liability insurance must include coverage for sexual abuse/molestation and corporal punishment.
 - D. Automobile Liability Insurance. CDFW shall maintain automobile insurance at least as broad as Insurance Work Office form CA 00 01 covering bodily injury and property damage for all activities of CDFW 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.

- E. Pollution Liability Insurance. CDFW shall maintain a policy providing contractor's pollution liability ("CPL") coverage with a total limit of liability of no less than \$5,000,000 per loss and \$5,000,000 in the aggregate per policy period. Claims-made policies require a 10-year extended reporting period. The CPL policy shall include coverage for cleanup costs, third-party bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by contracting operations. Coverage as required in this paragraph shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL shall also provide coverage for transportation and off-Site disposal of materials. The policy shall not contain any provision or exclusion (including any so-called "insured versus insured" exclusion or "cross-liability" exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy

4. Worker's Compensation 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 elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CDFW or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. CDFW hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.
- B. Additional Insured Status. All liability policies including general liability, excess liability and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City and its officers, officials, employees, and agents 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. CDFW 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. 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 CDFW sixty (60) calendar days advance written notice of such change.
- C. Enforcement of Agreement Provisions. CDFW acknowledges and agrees that any actual or alleged failure on the part of City to inform CDFW of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- D. 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.
- E. 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.
- F. City Remedies for Non-Compliance. If CDFW or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend CDFW's right to proceed until proper evidence of insurance is provided.

- G. Timely Notice of Claims. CDFW shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from CDFW's performance under this Contract, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- H. CDFW's Insurance. CDFW shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

Exhibit "C"

CEQA Exemption Concurrence Letter



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Director's Office
Post Office Box 944209
Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Figure 3: CEQA SERP Concurrence
Letter dated May 4, 2022

May 4, 2022

Makana Nova, Senior Planner
Planning Division
Community Development Department
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

**California Environmental Quality Act Statutory Exemption for Restoration Projects,
Big Canyon Coastal Habitat Restoration and Resiliency Project – Phase 3 (Request
No. 21080.56-2022-003-R5)**

Dear Ms. Nova:

I am pleased to inform you as the Director of the California Department of Fish and Wildlife (CDFW) that I concur with the Lead Agency determination by the City of Newport Beach that the Big Canyon Coastal Habitat Restoration and Resiliency Project – Phase 3 (Project) qualifies as a statutorily exempt restoration project under the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21080.56, subd. (e).) My concurrence as the CDFW Director is based on CDFW's independent review of the City of Newport Beach's request for concurrence, which CDFW received on March 24, 2022. In my opinion, informed by the best available science and described in the separate CDFW Concurrence, the Project meets all the qualifying criteria in Public Resources Code section 21080.56, subdivisions (a) to (d), inclusive.

This concurrence signifies the continued commitment by CDFW and its partners in advancing the "Cutting the Green Tape" initiative, which is a collaborative effort to increase the pace and scale of restoration projects in California in a way that protects the environment and results in long-term net benefits to climate resiliency, biodiversity, and sensitive species recovery. CDFW stands ready to continue this effort in coordination with the City of Newport Beach.

CDFW's Concurrence will be posted on our website as provided by Public Resources Code section 21080.56. If you have any related questions, please contact Brad Henderson, Cutting the Green Tape Program Manager, at (530) 351-5948, or by email at Brad.Henderson@wildlife.ca.gov.

Sincerely,

Charlton H. Bonham
Director

Makana Nova, Senior Planner
City of Newport Beach
May 4, 2022
Page 2

cc: Valerie Termini
Chief Deputy Director
California Department of Fish and Wildlife

Wendy Bogdan
General Counsel
Office of the General Counsel
California Department of Fish and Wildlife

Julie Vance
Acting Deputy Director
Ecosystem Conservation Division
California Department of Fish and Wildlife

Ed Pert
Regional Manager
South Coast Region (Region 5)
California Department of Fish and Wildlife

Christian Romberger
Senior Environmental Scientist
South Coast Region (Region 5)
California Department of Fish and Wildlife

Brad Henderson
Environmental Program Manager
Watershed Restoration Grants Branch
California Department of Fish and Wildlife

Alys Arenas
Restoration Manager
Newport Bay Conservancy

Attachment B

October 4, 2022, Parks, Beaches, and
Recreation Commission Minutes

CITY OF NEWPORT BEACH**Parks, Beaches & Recreation Commission
Regular Meeting October 4, 2022 – 5:00 p.m.**

I. CONVENE MEETING OF THE PARKS BEACHES & RECREATION COMMISSION TO ORDER – 5:00 p.m.**II. ROLL CALL**

Present: Hassan Archer, Chair
Kate Malouf, Vice Chair
David Granoff, Commissioner
Laird Hayes, Commissioner
Heather Ignatin, Commissioner
Keira Kirby, Commissioner

Excused: Diane Daruty, Commissioner

Staff: Sean Levin, Recreation & Senior Services Director
Justin Schmillen, Recreation & Senior Deputy Director
Micah Martin, Deputy Public Works Director
Kevin Pekar, Parks and Trees Superintendent
John Nelson, City Arborist
Mariah Stinson, Administrative Support Specialist
Arleem Diaz, Department Assistant

III. NOTICE TO THE PUBLIC**IV. PUBLIC COMMENTS ON CONSENT CALENDAR-None****V. CONSENT CALENDAR****A. Minutes of the Parks, Beaches and Recreation Commission Meeting of September 6, 2022**

Recommendation: Waive reading of subject minutes, approve and order filed.

Jim Mosher suggested the election dialog be edited on Page 1 of the draft minutes to reflect who made the nominations for Chair and Vice Chair. On Page 5, he recommended the word "university" be changed to "anniversary" and on Page 6, that OASIS be in all caps.

B. PW Activity Report

Recommendation: Receive/file Activity Report.

C. RSS Activity Report

Recommendation: Receive/file Activity Report of past and upcoming projects and events.

Motion by Chair Hassan Archer, seconded by Commissioner David Granoff, to approve V. CONSENT CALENDAR. The motion carried by unanimous vote.

VI. CURRENT BUSINESS

A. Community Service Award- Eric Tweit

Staff recommends that the Parks, Beaches and Recreation (PB&R) Commission approve the Community Service Award recognition of Eric Tweit to be awarded at a future Parks, Beaches and Recreation Commission meeting.

Recreation & Senior Services Director Levin reported the Ad Hoc Committee unanimously supported Vice Chair Malouf's request that Mr. Tweit receive the Community Service Award.

Motion by Commissioner Heather Ignatin, seconded by Commissioner Keira Kirby, to approve the Community Service Award recognition of Eric Tweit to be awarded at a future Parks, Beaches and Recreation Commission meeting. The motion carried by unanimous vote.

B. Big Canyon Habitat Restoration - Phase 3

Review the feasibility study, comment on the project concept plan, and recommend advancing the project to the City Council. This project is led by the Newport Bay Conservancy (Conservancy) in collaboration with the Department of Fish and Wildlife (CDFW) and the City of Newport Beach (City).

Recreation & Senior Services Director Levin introduced Senior Planner Makana Nova from the Department of Community Development and Heather Ceislak from Newport Bay Conservancy who presented the item to the Commission.

Senior Planner Nova gave an overview of the first two phases of the project, the proposed third phase, the California Environmental Quality Act (CEQA) exemption, the benefits of the project, and the project's timeline. Staff recommended that the Commission recommend approval of the project to the City Council.

Commissioner Kirby inquired about the proposed trail changes. Ms. Nova explained the goal was to improve the tidal wetland area and reconfigure the trail into a loop configuration.

Chair Archer wanted to understand more about the improved water flow of the site. Ms. Ceislak explained the upper stream channel would no longer be connect to the Arizona Crossing. This would improve tidal inflow to help the salt marsh habitats. The lower stream would be realigned to flow out closer to the Big Canyon parking lot to reduce standing water.

Commissioner Ignatin asked what percentage of the land in Phase 3 was owned by the State versus the City and the existing vegetation. Ms. Ceislak answered that 80 percent was owned by the California Department of Fish and Wildlife (CDFW) and 10 to 20

percent was owned by the City. She commented that much of the existing vegetation was invasive and was to be removed.

Chair Archer inquired about signage and Ms. Nova confirmed new educational signage would be installed.

Vice Chair Malouf believed notification would be sent out to residents to explain the proposed changes. Ms. Nova stated there was no requirement for notification and that any noticing would be voluntary. Ms. Ceislak added every Thursday Newport Bay Conservancy was on site and many residents were aware of the project.

Commissioner Hayes asked if staff anticipated that the Coastal Commission would approve the project and Ms. Ceislak answered yes.

Commissioner Kirby requested more details about the new signage. Ms. Ceislak explained there would be signage on the access road looking down on the project site and signage at the trailheads.

Commissioner Granoff asked if all the pepper trees were removed in Phase Two and Ms. Ceislak answered yes, those trees were all removed in Phase Two of the project.

Chair Archer opened public comment.

Jim Mosher recalled the Commission appointed a subcommittee that monitored Phase Two of the project and he inquired if Phase Two was fully complete. He suggested the vicinity map and the design plan be made clearer before the project goes to the Council.

Chair Archer closed the public comment.

Ms. Nova confirmed the main construction portion of Phase Two was complete and was undergoing vegetation monitoring. She confirmed that staff will update the exhibits as requested.

Motion by Chair Hassan Archer, seconded by Commissioner Heather Ignatin, to approve recommending the advancement of the project to the City Council. This project is led by the Newport Bay Conservancy (Conservancy) with collaboration with the Department of Fish and Wildlife (CDFW) and the City of Newport Beach (City). The motion carried by unanimous vote.

C. Marina Park Community and Sailing Center Presentation

Presented by Recreation Supervisor Danny Rice

Recreation Supervisor Rice gave an overview of the facilities, programs available and staff duties at Marina Park and programming on the Peninsula.

Commissioner Kirby shared that many folks have expressed their appreciation about the staff at Marina Park.

Chair Archer opened public comment; seeing none public comment was closed.

Chair Archer concurred with Commissioner Kirby's comment.

D. Review of Council Policy G-1 Notification Procedures

Presented by City Arborist John J. Nelson

City Arborist Nelson reported the Commission requested a review of the G-1 Policy's notification requirements at its September 6, 2022, meeting. He reviewed the administrative history of the policy and the updates made with respect to notification requirements.

Commissioner Granoff asked how complaints were handled for trees posted for removal and the how the calculation of support from adjacent homeowners was determined. Mr. Nelson confirmed there is an appeal process. The 60 percent of adjacent homeowners notified was calculated by the parcel numbers.

Commissioner Kirby understood the 60 percent of signatures that approved the removal of a tree was only required if the home was not in a Homeowners Association (HOA). Mr. Nelson confirmed that is correct and the City had no authority over how an HOA does its notifications. Deputy Public Works Director Martin added that the City does request that HOAs discuss the removal in their meeting and that the minutes of that meeting be provided to the City.

Commissioner Ignatin stated the G-1 Policy was silent on how an HOA notifies its residents and that was the issue. Mr. Nelson reconfirmed that the City does not have direct authority over notification procedures in an HOA.

Chair Archer opened public comment.

Jim Mosher understood the Municipal Operations Department draws a 500-foot radius circle for notification, but that was a different procedure than the Planning Department's notification process. He supported the Municipal Operation Department's method over the Planning Department's method. He commented that sending the Commission's decision about a tree to one Council Member defeated the purpose of having seven Council Members. The decision should be sent to all Council Members. He mentioned that Council recently discussed changing the G-1 Policy to allow a homeowner to replace a City tree if there were no objections from neighbors.

Chair Archer closed public comment.

VII. ANNOUNCEMENTS/FUTURE AGENDA ITEMS

PB&R Commission / staff announcements/ Ad Hoc Committee updates or matters which Commissioner members would like placed on future agendas for further discussion (this is a non-discussion item).

Recreation & Senior Services Director Levin announced the Halloween Spooktacular will be held on October 29, 2022, and that the Fostering Interest in Nature (FiiN) program has been a huge success.

John Salazer addressed the concerns about the current condition of the sand at the public beaches. He gave an overview of the changing conditions of the shoreline and how the City maintains the beaches.

Deputy Public Works Director Martin summarized the decision regarding the 938 Sandcastle reforestation request that was appealed to the City Council. The City Council voted to overturn the Commission's decision to deny the reforestation request. As part of the Council's discussion, they requested specific language changes with regard to reforestation of standard trees in the G-1 Policy. Staff will return to the Commission with those suggested changes.

Commissioner Hayes asked what the vote was at Council to overturn the decision and Deputy Public Works Director Martin replied 6-1.

Commissioner Kirby understood Council's decision was not based on the Commission misinterpreting the current policy. Deputy Public Works Director Martin confirmed the Council believed the policy should be changed. Commissioner Kirby stated that based on the available information, the Commission was following the policy to the best of its ability. Deputy Public Works Director Martin and Recreation & Senior Services Director Levin agreed.

Deputy Public Works Director Martin announced that John Nelson was nominated for the Dorothy Palin Employee of the Year Award. On October 13, 2022, an announcement will be made on who the Employee of the Year is.

Commissioner Ignatin requested Staff bring back at a future meeting how many "Tree City USA" signs are within the City, their location, and whether more should be installed.

Chair Archer opened public comment; seeing none public comment was closed.

VIII. 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 PB&R Commission. Speakers must limit comments to three (3) minutes. Before speaking, we invite, but do not require, you to state your name for the record. The Commission has the discretion to extend or shorten the speakers' time limit on non-agenda items, provided the time limit adjustment is applied equally to all speakers.

Al Gells, a resident, mentioned that Newport Beach Tennis and Pickleball Club was one of the largest clubs in the country. He requested information about what the City plans to do to replace and provide future sites for pickleball courts.

IX. ADJOURNMENT – 6:13 p.m.

Submitted by: *Mariah Stinson*
Mariah Stinson, Administrative Support Specialist

Approved by: *Hassan Archer*
Hassan Archer, Chair

Attachment C

CEQA Lead Agency Letter



CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, California 92660
949 644-3001 | 949 644-3020 FAX
newportbeachca.gov

January 24, 2022

David Mayer
Environmental Program Manager I
Department of Fish and Wildlife
South Coast Region
3883 Ruffin Road
San Diego, CA 92123

Re: Restoration in Big Canyon – CEQA Lead for Phase 3

Dear Mr. Mayer:

Per your request, the City of Newport Beach (City) is happy to assist the Department of Fish and Wildlife on the Big Canyon Phase 3 project and agrees to serve as the Lead Agency under the California Environmental Quality Act (CEQA), overseeing the preparation of environmental documents for the restoration project. Makana Nova, senior planner, has previously teamed on earlier phases of the Big Canyon Restoration project, and has been assigned to supervise the preparation of the Phase 3 CEQA documents. Please have your staff directly coordinate with her at 949-644-3249.

I look forward to successful implementation of this important project!

Sincerely,

A handwritten signature in black ink, appearing to read "Grace K. Leung".

Grace K. Leung
City Manager

cc: Seimone Jurjis, Community Development Department Director
James Campbell, Community Development Department Deputy Director
(Planning Division)
David Webb, Public Works Director
Heather Cieslak, Newport Bay Conservancy Operations Director



CITY OF

NEWPORT BEACH

City Council Staff Report

January 24, 2023
Agenda Item No. 5

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Tom Sandefur, Assistant City Engineer
tsandefur@newportbeachca.gov

PHONE: 949-644-3321

TITLE: Newport Beach Mariners Library, Corona del Mar Lifeguard Substation, and Ben Carlson Lifeguard Headquarters Heating, Ventilation, and Air Conditioning Replacement Project – Award of Contract No. 8760-1 (22F02)

ABSTRACT:

The City of Newport Beach (City) has received construction bids for the Newport Beach Mariners Library, Corona del Mar (CdM) Lifeguard Substation, and Ben Carlson Lifeguard Headquarters Heating Ventilation and Air Conditioning (HVAC) Replacement Project. The project will replace components of the HVAC systems at the Mariners Branch Library and the Ben Carlson Lifeguard Headquarters at Newport Pier. In addition, the project will add an HVAC system to the CdM Lifeguard Substation. Staff requests City Council approval to award the construction contract to Western Allied Corporation of Santa Fe Springs, California.

RECOMMENDATIONS:

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Class 1 Section 15301(d) (maintenance of existing public facilities and mechanical equipment involving no expansion of existing use) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment;
- b) Approve the project plans and specifications;
- c) Award Contract No. 8760-1 to Western Allied Corporation for the bid price of \$427,497 for the Newport Beach Mariners Library, CdM Lifeguard Substation, and Ben Carlson Lifeguard Headquarters HVAC Replacement Project, and authorize the Mayor and City Clerk to execute the contract; and
- d) Establish a contingency of \$43,000 (approximately 10 percent of total bid) to cover the cost of unforeseen work not included in the original contract.

DISCUSSION:

A review of the City's facilities and their respective HVAC components found certain deficiencies. Generally, these deficiencies were due to the age of the components as the components had reached the end of their expected service life and were ready for replacement.

In particular, the Mariners Branch Library requires a new evaporative condenser and replacement of all four water pumps, along with an upgrade to the building's HVAC control system. At the CdM Lifeguard Substation, the work involves installing an HVAC system in the facility where none currently exists. In addition, the project will reorient the adjacent restaurant's exhaust fan to prevent the system from drawing exhaust fumes from the kitchen hood into the lifeguard facility. The Ben Carlson Lifeguard Headquarters building at the Newport Pier recently suffered a failure of the HVAC heating and cooling unit on the roof and requires a replacement.

At 2 p.m. on December 20, 2022, the City Clerk opened and read the following bids for this project:

	BIDDER	TOTAL BID AMOUNT
Low	Western Allied Corporation	\$ 427,497.00
2nd	Bon Air, Inc.	\$ 565,000.00

The City received two bids for this project. The low bidder, Western Allied Corporation submitted a bid equaling Engineer's Estimate of \$427,000. Western Allied Corporation submitted all the necessary forms and possesses a Classification "B" and a "C-20" California State Contractors License as required by the project specifications. A check of the contractor's references indicates a satisfactory history of similar projects for other public agencies, including the City.

The limited number of proposers on this project is likely due to current high demand for skilled contractors, the complexity of the work, and the diverse nature of the individual components. However, the low bidder has a good history of work with the City and is capable of delivering the project.

The proposed project includes replacing the existing evaporative condenser and all four pumps and upgrading the building automation system at Mariners Branch Library; installing an outdoor heat pump unit, installing three fan coil systems, replacing and relocating the kitchen exhaust fan at CdM Lifeguard Substation; and installing a one-piece heating cooling unit at the Ben Carlson Lifeguard Headquarters at Newport Pier.

Pursuant to the contract specifications, the contractor will have 40 consecutive working days to complete the work. Work is scheduled to begin winter 2023.

The project plans and specifications will be available for review at the January 24, 2023 City Council meeting or upon request.

FISCAL IMPACT:

Sufficient funding is available from the Fiscal Year 2022-23 Capital Improvement Program (CIP) budget for completion of this contract. The funds are expensed from the Facilities Maintenance Master Plan Program (FMMP) Account in the Public Works Department, 57101-980000-22F02. The FMMP includes a comprehensive condition assessment of all City facilities and prioritizes capital repairs and/or major maintenance based on a variety of factors including current condition and age of facilities. This program funds a variety of capital repair and maintenance projects in an effort to keep City facilities in good condition. The FMMP is funded through the General Fund.

The following funds will be expended:

<u>Account Description</u>	<u>Account Number</u>		<u>Amount</u>
FMMP	57101-980000-22F02	\$	471,997.00
	Total:	\$	471,997.00

Proposed expenditures are as follows:

<u>Vendor</u>	<u>Purpose</u>		<u>Amount</u>
Western Allied Corporation	Construction Contract	\$	427,497.00
Western Allied Corporation	Construction Contingency	\$	43,000.00
Various	Printing and Incidentals	\$	1,500.00
	Total:	\$	471,997.00

Staff recommends establishing \$43,000 (approximately 10 percent) for contingency purposes to cover the cost of unforeseen conditions associated with construction.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this exempt from the California Environmental Quality Act (CEQA) pursuant to Class 1 Section 15301(d) (maintenance of existing public facilities and mechanical equipment involving no expansion of existing use) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment;

NOTICING:

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

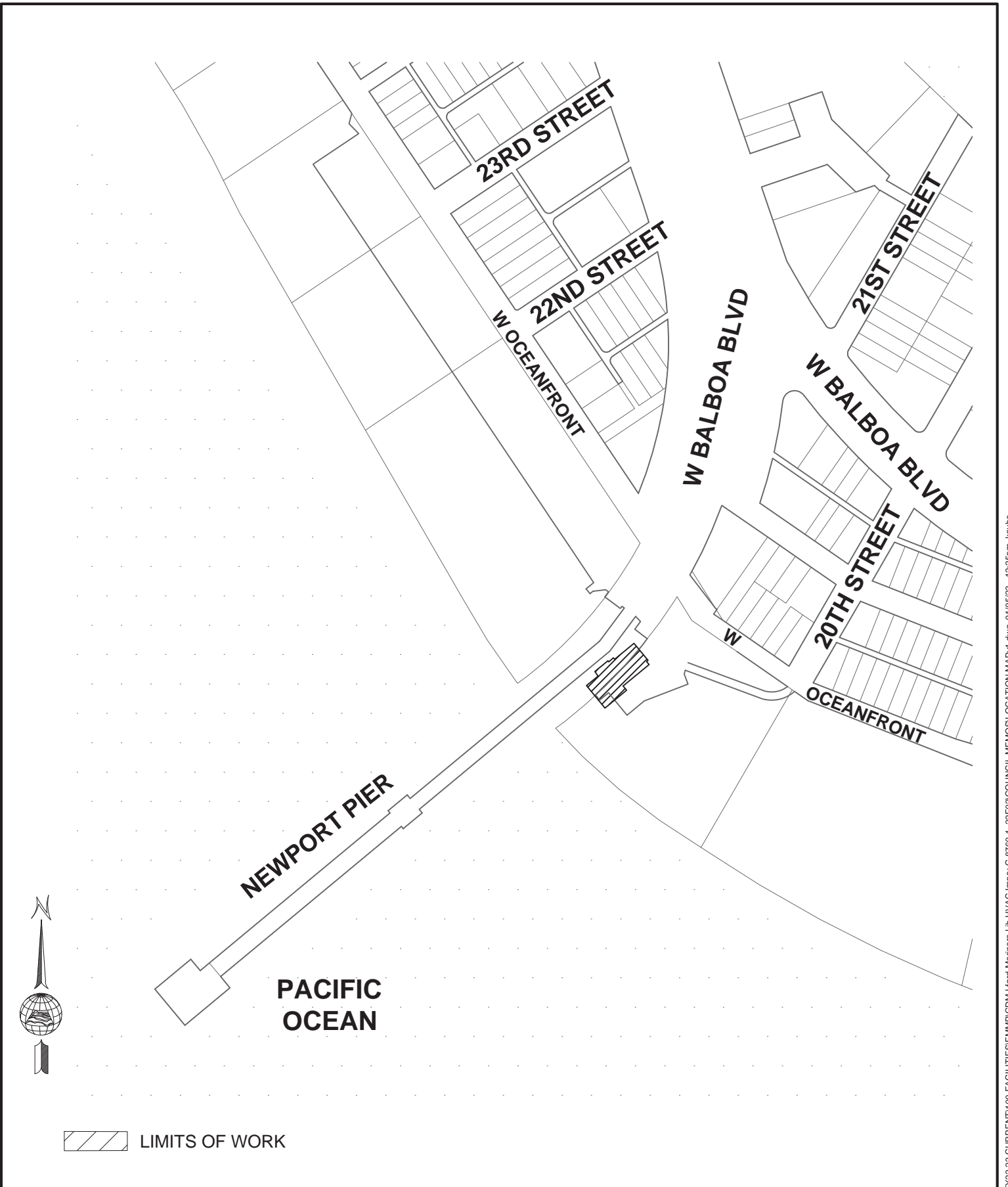
ATTACHMENT:

Attachment A – Location Maps

Attachment A

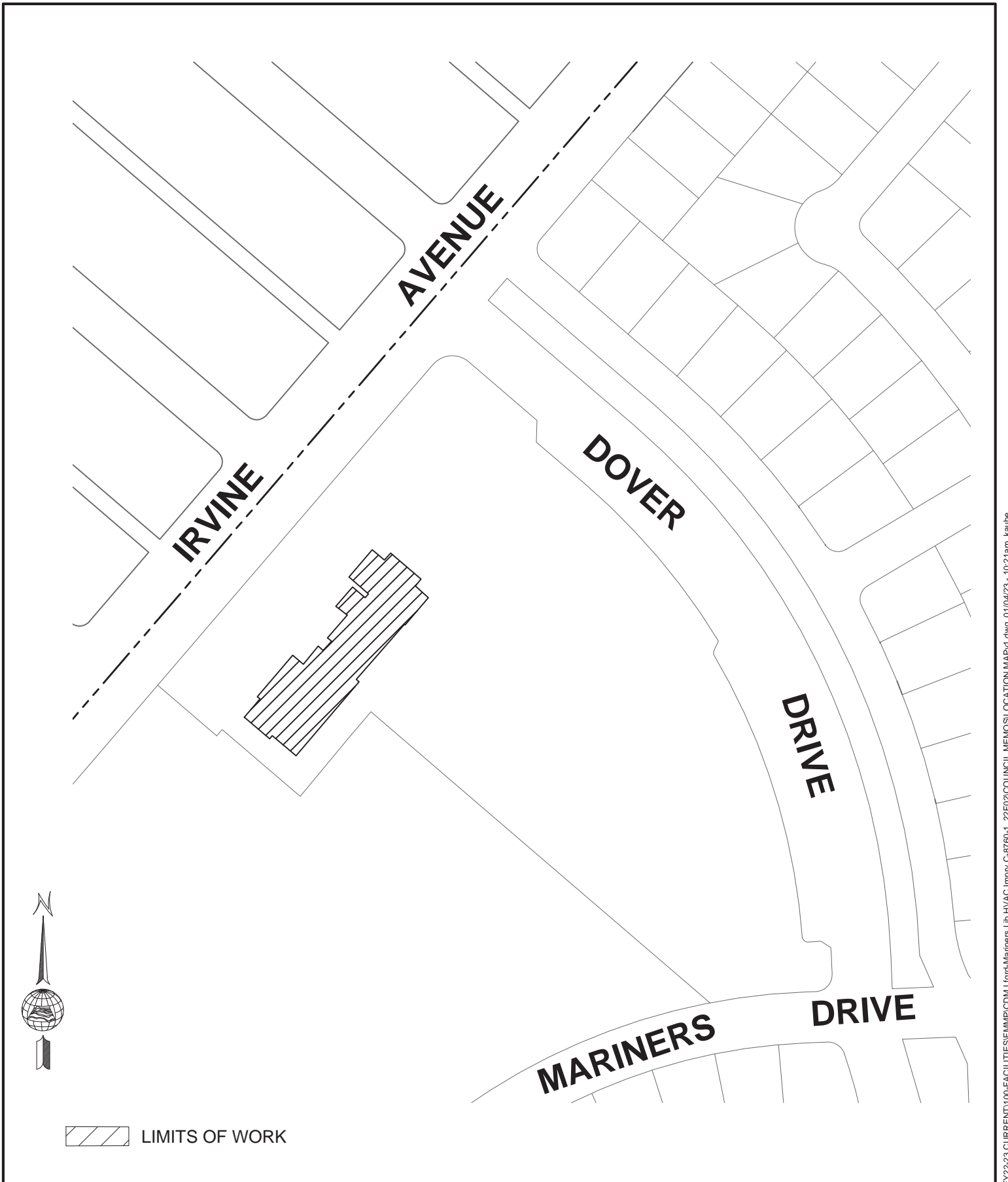
Location Maps

Newport Lifeguard HQ
Mariners Library
CdM Lifeguard HQ



NEWPORT BEACH LIFEGUARD HQ
LOCATION MAP

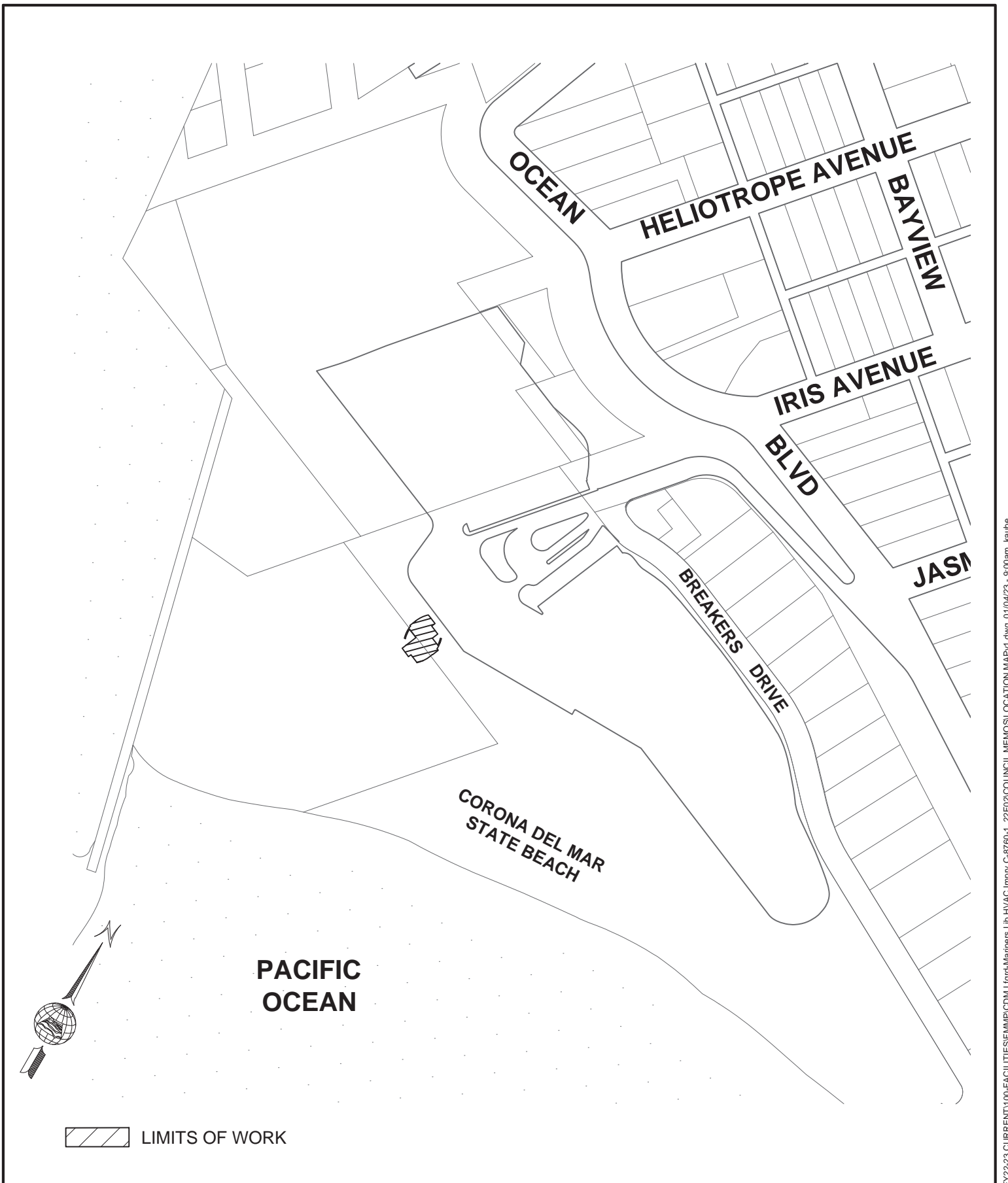
CITY OF NEWPORT BEACH PUBLIC WORKS DEPARTMENT		
C-8760-1	22F02	1/24/23



 LIMITS OF WORK

MARINERS LIBRARY LOCATION MAP

CITY OF NEWPORT BEACH PUBLIC WORKS DEPARTMENT		
C-8760-1	22F02	1/24/23



**CORONA DEL MAR LIFEGUARD HQ
LOCATION MAP**

CITY OF NEWPORT BEACH PUBLIC WORKS DEPARTMENT		
C-8760-1	22F02	1/24/23



CITY OF

NEWPORT BEACH

City Council Staff Report

January 24, 2023
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: Tom Sandefur, Assistant City Engineer
tsandefur@newportbeachca.gov

PHONE: 949-644-3321

TITLE: Goldenrod Pedestrian Bridge Improvements Project – Award of
Contract No. 8871-1 (23R12)

ABSTRACT:

The City of Newport Beach (City) has received construction bids for the Goldenrod Pedestrian Bridge Improvements Project. The project will replace the planters, irrigation, wooden arches, and lighting on the Goldenrod Pedestrian Bridge. Staff requests City Council approval to award the construction contract to Diamond Construction and Design of La Habra, California.

RECOMMENDATIONS:

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Class 1 Section 15301(d) (maintenance of existing public facilities involving no expansion of existing use) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment;
- b) Approve the project plans and specifications;
- c) Award Contract No. 8871-1 to Diamond Construction and Design for the bid price of \$158,223 for the Goldenrod Pedestrian Bridge Improvements Project, and authorize the Mayor and City Clerk to execute the contract; and
- d) Establish a contingency of \$23,000 (approximately 15 percent of total bid) to cover the cost of unforeseen work not included in the original contract.

DISCUSSION:

A review of the condition of the Goldenrod Pedestrian Bridge planters found that the planters have reached the end of their expected service life and are ready for replacement. The boards making up the planters are warped and there is evidence of termite infestation throughout the wooden planters and arches. In addition, the drainage system for the planters failed in some areas and is leaking onto the bridge structure, damaging the concrete.

The bridge itself was originally built in 1928 and has gone through several maintenance, retrofit and repair cycles during its lifetime including several replacements of the wooden planters.

Based on the review of the planters, staff prepared plans and specifications to replace the planters, the wooden arches, and the lighting on the bridge. The project will also include fixing the planter drainage system, making any necessary concrete repairs, and replacing the irrigation system.

At 10 a.m. on December 22, 2022, the City Clerk opened and read the following bids for this project:

	<u>BIDDER</u>	<u>TOTAL BID AMOUNT</u>
Low	Diamond Construction and Design	\$ 158,223.00
2nd	Harbor Coating and Restoration	\$ 181,250.00
3rd	Applied Restoration, Inc.	\$ 204,420.00
4th	Leonida Builders, Inc.	\$ 267,000.00
5th	MBC Enterprises, Inc.	\$ 272,407.00

The low bidder for this project, Diamond Construction and Design, submitted a bid 1% lower than the Engineer's Estimate of \$160,000. Diamond Construction and Design submitted all the necessary forms and possesses a Classification "A" and has provided a subcontractor with a "C-27" California State Contractors License as required by the project specifications. A check of the contractor's references indicates satisfactory history of similar projects for other public agencies.

The proposed project includes removing and replacing existing wooden planters, wooden arches, light fixtures, electrical conduit, irrigation lines, irrigation valves and controller, replacing the drainage system, and planting new flowers on the Goldenrod Pedestrian Bridge.

Pursuant to the contract specifications, the contractor will have 40 consecutive working days to complete the work. Work is scheduled to begin Winter 2023.

The project plans and specifications will be available for review at the January 24, 2023 City Council meeting or upon request.

FISCAL IMPACT:

Sufficient funding is available from the Fiscal Year 2022-23 Capital Improvement Program (CIP) budget for completion of this contract. The funds will be expended from the General Fund CIP Account in the Public Works Department, 01201927-980000-23R12.

The following funds will be expended:

<u>Account Description</u>	<u>Account Number</u>		<u>Amount</u>
General Fund CIP	01201927-980000-23R12	\$	182,223.00
	Total:	\$	182,223.00

Proposed expenditures are as follows:

<u>Vendor</u>	<u>Purpose</u>		<u>Amount</u>
Diamond Construction and Design	Construction Contract	\$	158,223.00
Diamond Construction and Design	Construction Contingency	\$	23,000.00
Various	Printing and Incidentals	\$	1,000.00
	Total:	\$	182,223.00

Staff recommends establishing \$23,000 (approximately 15 percent) for contingency purposes to cover the cost of unforeseen conditions associated with construction.

ENVIRONMENTAL REVIEW:

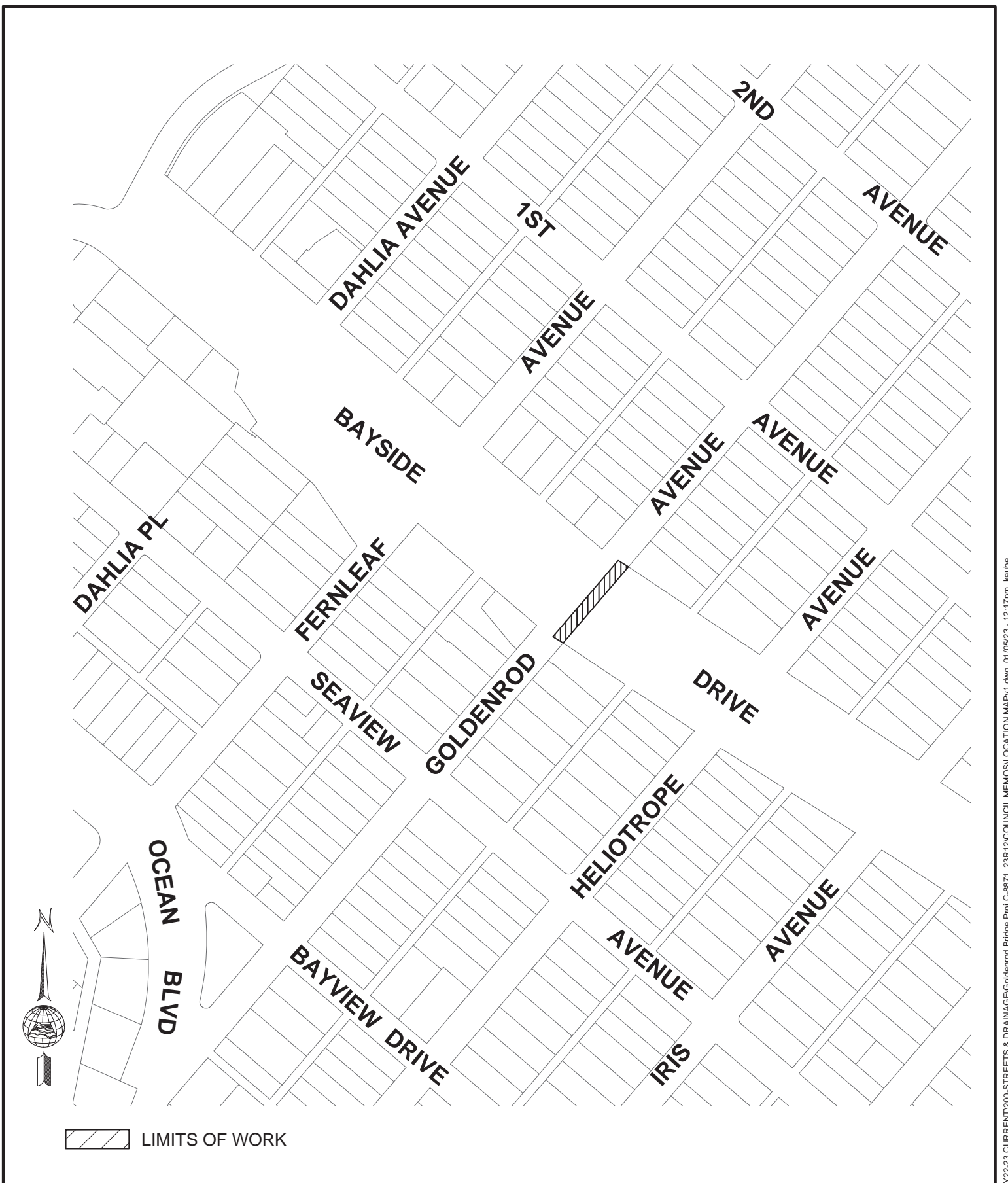
Staff recommends the City Council find this exempt from the California Environmental Quality Act (CEQA) pursuant to Class 1 Section 15301(d) (maintenance of existing public facilities involving no expansion of existing use) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment;

NOTICING:

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

ATTACHMENT:

Attachment A – Location Map



GOLDENROD PEDESTRIAN BRIDGE LOCATION MAP

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

C-8871-1

23R12

1/24/23



CITY OF

NEWPORT BEACH

City Council Staff Report

January 24, 2023
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: Tom Sandefur, Assistant City Engineer,
tsandefur@newportbeachca.gov

PHONE: 949-644-3321

TITLE: Approval of On-Call Professional Services Agreements for Project Management Services

ABSTRACT:

Capital improvement projects often require professional consulting services to provide design, planning, project management, and construction support for timely delivery. Upon completion of a recent release of a Request for Proposals (RFP) for On-Call Professional Project Management Services, City of Newport Beach (City) staff conducted a review and selection process and recommends awarding three on-call project management services contracts. Each contract would be for a term of three years and a total not-to-exceed amount of \$200,000.

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 On-Call Professional Services Agreements with Ardurra Group, Inc., DMC Engineering, and Z&K Consultants, Inc. for professional project management services, with each agreement being for a term of three years and a total not-to-exceed amount of \$200,000, and authorize the Mayor and City Clerk to execute the agreements.

DISCUSSION:

The City uses private-sector consultants to provide various project management, engineering, construction inspection, and other professional services associated with Public Works projects. The project management on-call services will be used on specialty facility maintenance projects that require supplementary expertise and coordination for delivery, such as the rehabilitation of various heating, cooling, electrical, and security systems at City facilities. The providers of the on-call services are expected to move their assigned project, under the direction and guidance of City staff, from concept to completion of construction.

To ensure staff has adequate resources to continue project delivery, the City issued a Request for Proposals (RFP) in November 2022 for On-Call Professional Project Management Services. The City's proposal review team consisted of three staff members from Public Works. Consultant qualifications were evaluated by the review team independently. Evaluations were based in accordance with each proposal's demonstration of the firm's abilities and expertise of the project team related to reference projects, qualifications and experience, a demonstrated understanding of the City's needs, and the ability to deploy appropriate resources. Evaluations also considered each firm's recent experience and project references in conducting work for public agencies of similar scope and complexity. The City received 14 responses to the RFP, 10 of which scored over 70 percent.

The scoring for the proposals is as follows:

PROPOSER	TOTAL SCORE (Out of 300)	OVERALL RANK
Ardurra Group, Inc.	293	1
Z&K Consultants, Inc.	258	2
DMC Engineering	241	3
Project Partners, Inc.	240	4
NV5 Inc.	232	5
Cumming Management Group, Inc.	230	6
Interwest Consulting Group	228	7
JOA Group	225	8
Griffin Structures, Inc.	216	9
Willdan Engineering	214	10

Staff requests approval of three separate on-call professional services agreements with Ardurra Group, Inc., DMC Engineering, and Z&K Consultants, Inc. for professional project management services. The term for each of these agreements is three years and they would expire on January 31, 2026. Projects will be assigned on a rotating basis to the on-call firms based on their expertise or depending on the City's requirements and the project type.

FISCAL IMPACT:

There is no direct fiscal impact related to this item as the award of the on-call contract does not create an obligation to expend funds. Funding for the work done under these on-call contracts will be expensed to individual projects within the City's approved Operating and Capital Improvement Program budgets.

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 – Professional Services Agreement with Ardurra Group, Inc.
Attachment B – Professional Services Agreement with DMC Engineering
Attachment C – Professional Services Agreement with Z&K Consultants, Inc.

ATTACHMENT A

ON-CALL PROFESSIONAL SERVICES AGREEMENT WITH ARDURRA GROUP, INC. FOR ON-CALL PROFESSIONAL PROJECT MANAGEMENT SERVICES

THIS ON-CALL PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 24th day of January, 2023 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and ARDURRA GROUP, INC., a Florida corporation ("Consultant"), whose address on file with the Secretary of State is 4921 Memorial Highway, Ste. 300, Tampa, Florida 33634, with a local address of 3737 Birch Street, Suite 250, Newport Beach, California 92660, 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 on-call professional project management services ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

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

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on January 31, 2026, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

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

2.1.1 A detailed description of the Services to be provided;

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

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

2.1.4 The time needed to finish the specific project.

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

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit A and the Letter Proposal. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A and the Letter Proposal, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, 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 Letter Proposal 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 **Two Hundred Thousand Dollars and 00/100 (\$200,000.00)**, 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 and the Letter Proposal 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 and the Letter Proposal.

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 Mark Lewis 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"), and which relate (directly or indirectly) to the negligence, recklessness, or willful misconduct of the Consultant or its principals, officers, agents, employees, vendors, suppliers, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them, and/or if it is subsequently determined that an employee of Consultant is not an independent contractor.

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

10. INDEPENDENT CONTRACTOR

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

10.2 Consultant agrees and acknowledges that no individual performing Services or Work pursuant to this Agreement shall: work full-time for more than six (6) months; work regular part-time service of at least an average of twenty (20) hours per week for one year or longer; work nine hundred sixty (960) hours in any fiscal year; or already be a CalPERS member.

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 and the Letter Proposal. 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 Computer Aided Design and Drafting ("CADD") data delivered to City shall include the professional stamp of the engineer or architect in charge of or responsible for the Work. City agrees that Consultant shall not be liable for claims, liabilities or losses arising out of, or connected with (a) the modification or misuse by City, or anyone authorized by City, of CADD data; or (b) any use by City, or anyone authorized by City, of CADD data for additions to this Project, for the completion of this Project by others, or for any other Project, excepting only such use as is authorized, in writing, by Consultant. By acceptance of CADD data, City agrees to indemnify Consultant for damages and liability resulting from the modification or misuse of such CADD data. All original drawings shall be submitted to City in the version of AutoCAD used by the City in .dwg file format, and should comply with the City's digital submission requirements for improvement plans available from the City's Public Works Department.

17.4 All improvement and/or construction plans shall be plotted on standard twenty-four inch (24") by thirty-six inch (36") paper size. Consultant shall provide to City digital 'As-Built' drawings in both AutoCAD and Adobe PDF file format within thirty (30) days after finalization of the Project.

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: Director of Public Works
Public Works
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: Mark Lewis
Ardurra Group, Inc.
3737 Birch Street, Suite 250
Newport Beach, CA 92660

26. CLAIMS

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

27. TERMINATION

27.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and

thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

27.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. STANDARD PROVISIONS

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

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

28.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

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

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

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

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

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

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

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

28.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

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

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 1/9/23

By: 

Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____

Noah Blom
Mayor

ATTEST:

Date: _____

CONSULTANT: Ardurra Group, Inc., a
Florida corporation

Date: _____

By: _____

Leilani I. Brown
City Clerk

By: _____

Lisa Penna
Vice President

Date: _____

By: _____

Catherine Cahill
Chief Financial Officer

[END OF SIGNATURES]

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

EXHIBIT A

SCOPE OF SERVICES

The following is a list of project management services that may be required:

Project management services shall include all management services required to complete the design and construction of City capital improvement and maintenance projects, including streets improvements, parks, facility improvements and rehabilitations, and other public infrastructure projects.

Consultant shall provide in-house services, or capacity to subconsult, for the following areas:

- Prepare a scope of work to be used to direct either in-house or consultant design after meeting with staff and operations teams for the facility.
- Provide public outreach services (i.e., town hall meetings, HOA meetings, City Council meetings, etc.)
- Provide scoping services for future improvements to the City's various master plans
- Administer project compliance with relevant permits and entitlements including Coastal Commission
- Interdepartmental coordination of facility improvements
- Provide prioritization of various program projects based on funding and criticality of the work
- Preparation of plans and specifications
- Provide bid support
- Provide construction management support and oversight, if required
- Other project management-related tasks, as necessary

EXHIBIT B

SCHEDULE OF BILLING RATES

Engineering Services	
Staff	Hourly Rate
Principal	\$235
QA/QC Manager	\$215
Project Manager IV	\$220
Project Manager III	\$210
Project Manager II	\$200
Project Manager I	\$190
Project Engineer IV	\$190
Project Engineer III	\$175
Project Engineer II	\$160
Project Engineer I	\$145
Project Designer III*	\$135
Project Designer II*	\$125
Project Designer I*	\$115
CADD Drafter III*	\$150
CADD Drafter II*	\$130
CADD Drafter I*	\$115
Public Works Technician I*	\$110
Administrative Assistant	\$110

Municipal Services	
Staff	Hourly Rate
Principal	\$235
Project Exec./Management Consultant	\$210
Senior Program Manager	\$215
Program Manager	\$200
Project Manager III	\$200
Project Manager II	\$190
Project Manager I	\$180
Plan Check Engineer IV	\$195
Plan Check Engineer III	\$185
Plan Check Engineer II	\$170
Plan Check Engineer I	\$155
Public Works Technician III*	\$125
Public Works Technician II*	\$115
Public Works Technician I*	\$105
Senior Code Enforcement Officer/Mgr*	\$105
Code Enforcement Officer II*	\$90
Code Enforcement Officer I*	\$80

Project and Construction Management and Inspection Services	
Staff	Rate
Principal	\$235
Project Executive, QA/QC Manager	\$225
Sr. Program Manager	\$215
Program Manager	\$200
Sr. Project Manager	\$205
Project Manager	\$200
Asst. Project Manager	\$180
Sr. Construction Manager	\$205
Construction Manager	\$195
Asst. Construction Manager	\$180
Structures Representative	\$205
Project Controls Engineer	\$155
Labor Compliance, Documents Control, Administration	\$135

Community Relations	
Staff	Hourly Rate
Strategic Advisor	\$265
Project Manager	\$245
Assistant Project Manager	\$215
Sr. Community Relations Specialist	\$195
Communications Specialist	\$175
Media Relations Specialist	\$165
Environmental Outreach Specialist	\$195
Graphic Designer	\$155
Integrated Marketing Specialist	\$165
Project Administrative Support	\$115
Project Coordinator	\$135

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.

ATTACHMENT B

ON-CALL PROFESSIONAL SERVICES AGREEMENT WITH DEREK J. MCGREGOR, INC. DBA DMC ENGINEERING FOR ON-CALL PROFESSIONAL PROJECT MANAGEMENT SERVICES

THIS ON-CALL PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 24th day of January, 2023 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and DEREK J. MCGREGOR, INC. DBA DMC ENGINEERING, a California corporation ("Consultant"), whose address is 18 Technology Drive, Suite 100, 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 on-call professional project management services ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

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

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on January 31, 2026, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

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

2.1.1 A detailed description of the Services to be provided;

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

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

2.1.4 The time needed to finish the specific project.

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

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit A and the Letter Proposal. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A and the Letter Proposal, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, 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 Letter Proposal 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 **Two Hundred Thousand Dollars and 00/100 (\$200,000.00)**, 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 and the Letter Proposal 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 and the Letter Proposal.

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 Derek J. McGregor 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 Department. City's Public Works 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"), and which relate (directly or indirectly) to the negligence, recklessness, or willful misconduct of the Consultant or its principals, officers, agents, employees, vendors, suppliers, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them, and/or if it is subsequently determined that an employee of Consultant is not an independent contractor.

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence, active negligence or willful misconduct of the Indemnified Parties. Nothing in

this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

10. INDEPENDENT CONTRACTOR

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

10.2 Consultant agrees and acknowledges that no individual performing Services or Work pursuant to this Agreement shall: work full-time for more than six (6) months; work regular part-time service of at least an average of twenty (20) hours per week for one year or longer; work nine hundred sixty (960) hours in any fiscal year; or already be a CalPERS member.

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 and the Letter Proposal. 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 Computer Aided Design and Drafting ("CADD") data delivered to City shall include the professional stamp of the engineer or architect in charge of or responsible for the Work. City agrees that Consultant shall not be liable for claims, liabilities or losses arising out of, or connected with (a) the modification or misuse by City, or anyone authorized by City, of CADD data; or (b) any use by City, or anyone authorized by City, of CADD data for additions to this Project, for the completion of this Project by others, or for any other Project, excepting only such use as is authorized, in writing, by Consultant. By acceptance of CADD data, City agrees to indemnify Consultant for damages and liability resulting from the modification or misuse of such CADD data. All original drawings shall be submitted to City in the version of AutoCAD used by the City in .dwg file format, and should comply with the City's digital submission requirements for improvement plans available from the City's Public Works Department.

17.4 All improvement and/or construction plans shall be plotted on standard twenty-four inch (24") by thirty-six inch (36") paper size. Consultant shall provide to City digital 'As-Built' drawings in both AutoCAD and Adobe PDF file format within thirty (30) days after finalization of the Project.

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: Public Works Director
Public Works 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: Derek J. McGregor
Derek J. McGregor, Inc. DBA DMC Engineering
18 Technology Drive, Suite 100
Irvine, CA 92618

26. CLAIMS

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

27. TERMINATION

27.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and

thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

27.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. STANDARD PROVISIONS

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

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

28.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

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

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

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

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

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

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

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

28.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

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

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

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

Date: 1/19/23

By: 

for Aaron C. Harp *1/19/23 DG*
City Attorney

ATTEST:

Date: _____

By: _____

Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____

Noah Blom
Mayor

CONSULTANT: Derek J. McGregor, Inc.
DBA DMC Engineering, a California
corporation

Date: _____

By: _____

Derek J. McGregor
Chief Executive Officer / Secretary

[END OF SIGNATURES]

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

EXHIBIT A

SCOPE OF SERVICES

The following is a list of project management services that may be required:

Project management services shall include all management services required to complete the design and construction of City capital improvement and maintenance projects, including streets improvements, parks, facility improvements and rehabilitations, and other public infrastructure projects.

Consultant shall provide in-house services, or capacity to subconsult, for the following areas:

- Prepare a scope of work to be used to direct either in-house or consultant design after meeting with staff and operations teams for the facility.
- Provide public outreach services (i.e., town hall meetings, HOA meetings, City Council meetings, etc.)
- Provide scoping services for future improvements to the City's various master plans
- Administer project compliance with relevant permits and entitlements including Coastal Commission
- Interdepartmental coordination of facility improvements
- Provide prioritization of various program projects based on funding and criticality of the work
- Preparation of plans and specifications
- Provide bid support
- Provide construction management support and oversight, if required
- Other project management-related tasks, as necessary

EXHIBIT B

SCHEDULE OF BILLING RATES

OFFICE PERSONNEL

Principal.....	\$220.00
Construction Manager.....	\$180.00
Project Manager.....	\$180.00
Project Surveyor.....	\$160.00
Senior Engineer.....	\$140.00
Associate Engineer.....	\$120.00
Administration.....	\$100.00

FIELD SURVEY

Survey Crew.....	\$220.00
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REIMBURSABLE FEE SCHEDULE

Plan Plotting/Copies (B&W).....	\$ 1.00 / sq ft.
Plan Plotting/Copies (Color).....	\$ 5.00 / sq ft.
Copies (8 ½ x 11 – B&W).....	\$ 0.10/copy
Copies (8 ½ x 11 – Color).....	\$ 0.10/copy
Deliveries.....	TBD

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.

ATTACHMENT C

ON-CALL PROFESSIONAL SERVICES AGREEMENT WITH Z & K CONSULTANTS, INC. FOR ON-CALL PROFESSIONAL PROJECT MANAGEMENT SERVICES

THIS ON-CALL PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 24th day of January, 2023 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and Z & K CONSULTANTS, INC., a California corporation ("Consultant"), whose address is 22295 Jessamine Way, Corona, California 92883, 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 on-call professional project management services ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

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

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on January 31, 2026, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

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

2.1.1 A detailed description of the Services to be provided;

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

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

2.1.4 The time needed to finish the specific project.

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

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit A and the Letter Proposal. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A and the Letter Proposal, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, 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 Letter Proposal 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 **Two Hundred Thousand Dollars and 00/100 (\$200,000.00)**, 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 and the Letter Proposal 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 and the Letter Proposal.

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 Crystal Fraire 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"), and which relate (directly or indirectly) to the negligence, recklessness, or willful misconduct of the Consultant or its principals, officers, agents, employees, vendors, suppliers, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them, and/or if it is subsequently determined that an employee of Consultant is not an independent contractor.

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence, active negligence or willful misconduct of the Indemnified Parties. Nothing in

this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

10. INDEPENDENT CONTRACTOR

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

10.2 Consultant agrees and acknowledges that no individual performing Services or Work pursuant to this Agreement shall: work full-time for more than six (6) months; work regular part-time service of at least an average of twenty (20) hours per week for one year or longer; work nine hundred sixty (960) hours in any fiscal year; or already be a CalPERS member.

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 and the Letter Proposal. 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 Computer Aided Design and Drafting ("CADD") data delivered to City shall include the professional stamp of the engineer or architect in charge of or responsible for the Work. City agrees that Consultant shall not be liable for claims, liabilities or losses arising out of, or connected with (a) the modification or misuse by City, or anyone authorized by City, of CADD data; or (b) any use by City, or anyone authorized by City, of CADD data for additions to this Project, for the completion of this Project by others, or for any other Project, excepting only such use as is authorized, in writing, by Consultant. By acceptance of CADD data, City agrees to indemnify Consultant for damages and liability resulting from the modification or misuse of such CADD data. All original drawings shall be submitted to City in the version of AutoCAD used by the City in .dwg file format, and should comply with the City's digital submission requirements for improvement plans available from the City's Public Works Department.

17.4 All improvement and/or construction plans shall be plotted on standard twenty-four inch (24") by thirty-six inch (36") paper size. Consultant shall provide to City digital 'As-Built' drawings in both AutoCAD and Adobe PDF file format within thirty (30) days after finalization of the Project.

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: Director of Public Works
Public Works
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: Crystal Fraire
Z & K Consultants, Inc.
473 E. Carnegie Drive, Suite 200
San Bernardino, CA 92400

26. CLAIMS

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

27. TERMINATION

27.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and

thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

27.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. STANDARD PROVISIONS

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

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

28.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

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

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

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

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

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

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

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

28.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

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

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

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

Date: 1/9/23

By: 

for Aaron C. Harp 1/9/23 DG
City Attorney

ATTEST:

Date: _____

By: _____

Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____

Noah Blom
Mayor

CONSULTANT: Z & K Consultants, Inc.,
a California corporation

Date: _____

By: _____

Crystal Faqih
Chief Executive Officer

Date: _____

By: _____

Zack Faqih
Chief Financial Officer

[END OF SIGNATURES]

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

EXHIBIT A

SCOPE OF SERVICES

The following is a list of project management services that may be required:

Project management services shall include all management services required to complete the design and construction of City capital improvement and maintenance projects, including streets improvements, parks, facility improvements and rehabilitations, and other public infrastructure projects.

Consultant shall provide in-house services, or capacity to subconsult, for the following areas:

- Prepare a scope of work to be used to direct either in-house or consultant design after meeting with staff and operations teams for the facility.
- Provide public outreach services (i.e., town hall meetings, HOA meetings, City Council meetings, etc.)
- Provide scoping services for future improvements to the City's various master plans
- Administer project compliance with relevant permits and entitlements including Coastal Commission
- Interdepartmental coordination of facility improvements
- Provide prioritization of various program projects based on funding and criticality of the work
- Preparation of plans and specifications
- Provide bid support
- Provide construction management support and oversight, if required
- Other project management-related tasks, as necessary

EXHIBIT B

SCHEDULE OF BILLING RATES

BILLING RATES

Title	Rate
Senior Project Manager	\$148.00
Project Manager	\$142.00

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

January 24, 2023
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: Kyle Brodowski, Fleet and Facilities Superintendent,
kbrodowski@newportbeachca.gov

PHONE: 949-718-3464

TITLE: Award of On-Call Plumbing Maintenance and Repair Services
Agreements with Pacific Plumbing of Southern California, Verne's
Plumbing, Inc., and ACCO Engineered Systems

ABSTRACT:

The Public Works Department is responsible for the maintenance and repair of public buildings and facilities citywide, including standalone restroom buildings at City of Newport Beach (City) parks and beaches. Although the City's two current on-call agreements will not expire until February 1, 2024, the contract not-to-exceed amount of \$155,000 per agreement will very likely be exceeded before then. Therefore, staff published a recent Request for Proposals (RFP) and selected three plumbing contractors. Staff recommends approving three on-call agreements with contractors to ensure emergency plumbing needs are met, while also providing routine maintenance and repairs.

RECOMMENDATIONS:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Approve On-Call Maintenance and Repair Service Agreements with Verne's Plumbing Inc., Pacific Plumbing of Santa Ana (dba Pacific Plumbing of Southern California), and ACCO Engineered Systems Inc., with each agreement being for a term of three years and total not-to-exceed amount of \$200,000 per agreement, and authorize the Mayor and City Clerk to execute the agreements.

DISCUSSION:

The Public Works Department is responsible for the maintenance and repair of various plumbing systems and public restrooms located in buildings citywide, including park and beach buildings. Most public restrooms in the city (approximately 26) are open 24 hours a day and receive frequent, high use.

Broken pipes and clogged drains are a common occurrence, especially at the park and beach restrooms. During seasonal peaks, emergency repairs are often requested at multiple locations throughout the City. To ensure quick response and repair, staff requests agreements with three on-call plumbing contractors. Plumbing contractors will provide the following services: Repair and replacement of plumbing fixtures, detection and repair of water leaks, and the clearing of clogged drains and sewer lateral lines. The City's two current on-call agreements with Verne's Plumbing Inc., and PHA Professional Services expire February 1, 2024, however, not-to-exceed spending limits are very near capacity and contractual spending limits will not be sufficient to provide plumbing services for the remainder of each term.

RFP No. 23-44 was published on December 6, 2022, and the City received seven proposals. A committee of four evaluators from the Public Works, Recreation and Senior Services (RSS), Fire, and Utilities Departments reviewed the proposals. Evaluators reviewed technical expertise based on responsiveness and experience, overall cost based upon labor rates for a varied range of skilled workers, and rates for afterhours and holiday services. Two of the seven proposals received less than a score of 70 and were removed from consideration. Of the five remaining, pricing was comparable as well as technical ability. The top three rated proposers have been deemed most qualified and competitive.

In an effort to provide services and streamline the bidding process citywide, these plumbing agreements will also serve multiple departments including Fire, Utilities, Police, and RSS. Therefore, staff recommends approving three separate agreements with the top three plumbing contractors to provide staff with options and flexibility in providing responsive and adequate service to these departments and the general public.

RANK	PROPOSER	Technical Review (Out of 60)	Cost Ratio (Out of 40)	Aggregate Score (Out of 100)
1	Verne's Plumbing Inc.	60.00	40.00	100.00
2	Pacific Plumbing of Santa Ana	60.00	38.46	98.46
3	ACCO Engineered Systems	53.00	33.56	86.56
4	Pro Craft Construction	50.00	30.00	80.00
5	GM Plumbing	55.00	21.16	76.16

Upon completion of this review and ranking, staff requests approval to enter three separate On-Call Plumbing Services Agreements. The first is with Verne's Plumbing, Inc., (Attachment A), the second is with Pacific Plumbing of Santa Ana (dba Pacific Plumbing of Southern California), (Attachment B) and the third is with ACCO Engineered Systems, Inc., (Attachment C). The agreements have three-year terms and a total not-to-exceed amount of \$200,000 per agreement.

Expenses for as-needed maintenance and repair plumbing services during the previous contract term have averaged \$144,000 per year, but only included public restrooms at the City parks and beaches, the restrooms and kitchenettes at the Public Works Corporation Yard, the Utilities Yard, and the Civic Center. Other City facilities for the Library, Police, Fire and RSS Departments were not included in the prior overall on-call contract scope of services. There are also several known upcoming replacement and repair projects that include plumbing fixtures at the Lifeguard Headquarters and Central Library, main line piping repairs at the Balboa Yacht Basin, and renovation of outdoor showers at Corona del Mar State Beach. Considering these on-call plumbing services will also now serve multiple Departments, which staff estimates to be \$50,000 annually (based upon the previous spending records), staff anticipates future annually plumbing expenditures to increase and now is requesting three agreements for a total of \$200,000 per year for the next three years.

FISCAL IMPACT:

Funding for the work done under these on-call contracts will be primarily expensed to the Maintenance & Repair Building account in the Public Works Department, 0108041-851016, and to the respective maintenance accounts of other Departments requesting plumbing services from these contractors.

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 – Agreement with Verne's Plumbing
Attachment B – Agreement with Pacific Plumbing
Attachment C – Agreement with ACCO Engineered Systems

ATTACHMENT A

ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH VERNE'S PLUMBING, INC. FOR PLUMBING SERVICES

THIS ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 24th day of January, 2023 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and Verne's Plumbing, Inc., a California corporation ("Contractor"), whose address is 8561 Whitaker Street, Buena Park, California 90621, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Contractor to perform on-call plumbing maintenance and/or repair services for City ("Project").
- C. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the maintenance and/or repair services described in this Agreement.
- D. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by City for the Project, is familiar with all conditions relevant to the performance of services, and has committed to perform all work required for the compensation specified in this Agreement.

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

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on January 31, 2026, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

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

- 2.1.1 A detailed description of the Services to be provided;

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

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

2.1.4 The time needed to finish the specific project.

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

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Contractor shall perform the Services in accordance with the schedule included in Exhibit A and the Letter Proposal. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Contractor to strictly adhere to the schedule set forth in Exhibit A and the Letter Proposal, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Contractor shall not be responsible for delays due to causes beyond Contractor's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Contractor shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein, not later than two (2) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Contractor's control.

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

4. COMPENSATION TO CONTRACTOR

4.1 City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Two Hundred Thousand Dollars and 00/100 (\$200,000.00)**, without prior written amendment to the Agreement.

4.2 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name and/or classification of employee who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Contractor no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

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

4.4 Contractor shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with Exhibit B and the Letter Proposal.

5. PROJECT MANAGER

5.1 Contractor shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Contractor has designated Lawrence J. Verne to be its Project Manager. Contractor shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Contractor, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the Public Works. City's Facilities Maintenance Supervisor or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Contractor in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Contractor, one copy of all existing

relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Contractor's Work schedule.

8. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

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

8.2 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Contractor certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws and legally recognized professional standards.

8.3 Contractor represents and warrants to City that it has, shall obtain and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Contractor to practice its profession. Contractor shall maintain a City of Newport Beach business license during the term of this Agreement.

8.4 Contractor shall not be responsible for delay, nor shall Contractor be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Contractor's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. RESPONSIBILITY FOR DAMAGES OR INJURY

9.1 City and all officers, employees and representatives thereof shall not be responsible in any manner for any loss or damage to any of the materials or other things used or employed in performing the Project or for injury to or death of any person as a result of Contractor's performance of the Services required hereunder; or for damage to property from any cause arising from the performance of the Project by Contractor, or its subcontractors, or its workers, or anyone employed by either of them.

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

9.3 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents,

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

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

9.5 Contractor shall perform all Work in a manner to minimize public inconvenience and possible hazard, to restore other work areas to their original condition and former usefulness as soon as possible, and to protect public and private property. Contractor shall be liable for any private or public property damaged during the performance of the Work by Contractor or its agents.

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

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

10. INDEPENDENT CONTRACTOR

It is understood that City retains Contractor on an independent contractor basis and Contractor is not an agent or employee of City. The manner and means of conducting the Work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Contractor or its employees. Nothing in this Agreement shall be deemed to constitute approval for Contractor or any of Contractor's employees or agents, to be the agents or employees of City. Contractor shall have the responsibility for and control over the means of performing the Work, provided that Contractor is in compliance with the terms of this Agreement. Anything in

this Agreement that may appear to give City the right to direct Contractor as to the details of the performance of the Work or to exercise a measure of control over Contractor shall mean only that Contractor shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

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

12. CITY POLICY

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

13. PROGRESS

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

14. INSURANCE

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

15. BONDING

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

15.2 The Labor and Materials Payment Bond and Faithful Performance Bond shall be issued by an insurance organization or surety (1) currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, (2)

listed as an acceptable surety in the latest revision of the Federal Register Circular 570, and (3) assigned a Policyholders' Rating A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide: Property-Casualty.

15.3 Contractor shall deliver, concurrently with City's approval of any Letter Proposal over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), the Labor and Materials Payment Bond and Faithful Performance Bond, a certified copy of the "Certificate of Authority" of the Insurer or Surety issued by the Insurance Commissioner, which authorizes the Insurer or Surety to transact surety insurance in the State of California.

16. PREVAILING WAGES

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

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

17. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Contractor is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of

Contractor. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

18. SUBCONTRACTING

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

19. OWNERSHIP OF DOCUMENTS

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Contractor, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Contractor or any other party. Contractor shall, at Contractor's expense, provide such Documents to City upon prior written request.

20. CONFIDENTIALITY

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

21. RECORDS

Contractor shall keep records and invoices in connection with the Services to be performed under this Agreement. Contractor shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such records and invoices shall be clearly identifiable. Contractor shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Contractor shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Contractor under this Agreement.

22. WITHHOLDINGS

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

23. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

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

24. CONFLICTS OF INTEREST

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

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

25. NOTICES

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

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

Attn: Facilities Maintenance Supervisor
Public Works
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 Contractor shall be addressed to Contractor at:

Attn: Lawrence J. Verne
Verne's Plumbing, Inc.
8561 Whitaker St.
Buena Park, CA 90621

26. CLAIMS

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

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

27. TERMINATION

27.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

27.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Contractor. In the

event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred up to the effective date of termination for which Contractor has not been previously paid. On the effective date of termination, Contractor shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. LABOR

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

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

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

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

29. STANDARD PROVISIONS

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

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

29.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

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

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

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

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

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

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

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

29.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

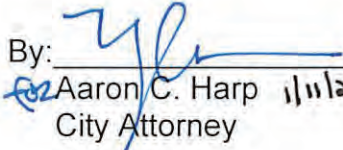
29.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

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

Date: 1/11/23

By: 
for Aaron C. Harp 1/11/23 DG
City Attorney

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Noah Blom
Mayor

**CONTRACTOR: Verne's Plumbing,
Inc., a California corporation**

Date: _____

By: _____
Lawrence J. Verne, Sr.
Chief Executive Officer / President

[END OF SIGNATURES]

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

EXHIBIT A

SCOPE OF SERVICES

A. DESCRIPTION OF PROJECT

Contractor will provide on-call plumbing services as needed at City Facilities, and furnish all labor, equipment, and supervision to perform plumbing repair services as described herein including but not limited to the following:

- i. Detection of leaks; underground piping with ground penetrating radar for sandy soil.
- ii. Inspection and testing of backflow device.
- iii. Inspection and repair of drains to include building sewer mainline to City connection.
- iv. Inspection and repair of fire suppression systems.
- v. Tankless heater installations, inspections, troubleshooting and repairs.
- vi. Building gas supply lines, repairs, and installations.
- vii. Copper and Pex re-piping.
- viii. Tap and die cutting of threaded pipe and couplings as needed.
- ix. Welding, brazing, and soldering as necessary.
- x. Boiler repairs and installation.
- xi. Repair, removal and installation of common plumbing fixtures, sinks, toilets, supply valves and so on.
- xii. Clearing drains of clogs and obstructions, to include debris and tree roots.

B. LICENSING REQUIREMENTS

- i. For the duration of the contract term, Contractor shall furnish and maintain a C-36 license issued by the California State License Board. Contractor must also possess a valid CA Department of Industrial Relations (DIR) Registration Number at the time of RFP submittal and for the duration of the agreement term.

C. WORKING HOURS

- i. Normal working hours shall be between the hours of 7:00 a.m. and 5:00 p.m. Normal working days are Monday through Friday excluding holidays.

D. WORKMANSHIP AND SUPERVISION

- i. The work force shall include a thoroughly skilled, experienced, and competent supervisor who shall be responsible for adherence to the specifications. All supervisory personnel must be able to communicate effectively in English (both orally and in writing). Any order given to supervisory personnel shall be deemed delivered to the Contractor. The supervisor assigned must be identified by name to ensure coordination and continuity.
- ii. All materials furnished by Contractor shall be new, high grade and free from defects and imperfections. Workmanship shall be in accordance with the highest industry standards.
- iii. Both materials and workmanship shall be subject to inspection and approval by project administrator.
- iv. Work shall be performed by competent and experienced workers.
- v. All personnel working at the outlined areas shall be neat in appearance and in uniforms as approved by the Project Administrator. All personnel shall wear identification badges or patches, and employees working adjacent to traffic lanes must wear safety vests.
- vi. Persons employed by the Contractor who are found not to be satisfactory by the City shall be discharged or reassigned by the Contractor on fifteen (15) days' notice from the City.

E. SUPERVISION OF CONTRACT

- i. Contractor shall designate a Project Manager to serve as the main contact for the Contractor throughout the project. The Project Manager shall have the authority to handle and resolve any contract disputes with the City and be experienced in supervising the requested services.

F. CONTRACTOR'S OFFICE

- i. Contractor is required to maintain an office within a 30 minute response time of the job site and provide the office with phone service during normal working hours. During all other times, a

telephone answering service shall be utilized and the answering service shall be capable of contacting the Contractor by cell phone or pager. Contractor shall have a maximum response time of thirty (30) minutes to all emergencies. There will be no on-site storage of equipment or materials. Contractor will have full responsibility for maintaining an office and on-site storage of equipment or materials.

G. SPECIFICATIONS

- i. These specifications are intended to cover all labor, material and standards of installation to be employed in the work called for in these specifications or reasonably implied by terms of same. Work or materials of a minor nature which may not be specifically mentioned, but which may be reasonably assumed as necessary for the completion of this work, shall be performed by the Contractor as if described in the specifications.
- ii. Any specific problem area which does not meet the conditions of the specifications set forth herein shall be called to the attention of the Contractor and if not corrected, payment to the Contractor will not be made until condition is corrected in a satisfactory manner as set forth in the specifications.

H. PROVISIONS FOR EXTRAS

- i. No new work of any kind shall be considered an extra unless a separate estimate is given for said work and the estimate is approved in writing by the City before the work is commenced. The Contractor will be required to provide before and after photographs of safety items or emergency repairs which were made without prior City approval. Documentation of contract compliance may be required on some occasions.
- ii. Should a change or extra work be found necessary by the City, all changes and extra work shall be performed at the same unit price of any proposal item listed. If the work is not listed as a proposal item, the Contractor shall submit a fair cost for the work to be performed. A change order authorization will be issued by the City.
- iii. The City reserves the right to increase or decrease the quantity of any item(s) or portion(s) of the work described in the specifications or the proposal form or to omit portions of the work so described as may be deemed necessary or expedient by the Project Administrator or designated representative and the Contractor shall agree not to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any kind of work to be done. The City shall reduce the price accordingly.

Alterations, modifications or deviations from the work described in the scope of services by Contractor shall be subject to the prior written approval of the City. Any price adjustments shall be made by mutual consent of the parties in that case.

I. RECORDS

- i. The Contractor shall keep accurate records concerning all of his/her employees or agents. The Contractor shall provide this information in an organizational chart as changes in staffing occur.
- ii. The Contractor shall complete a work completion report indicating work performed and submit this completed report to the Project Administrator. This report should also contain a description, including staff-hours, equipment, and materials breakdowns and costs used to accomplish any additional work which the Contractor deems to be beyond the scope of the contract, and which has been approved by the City in accordance with the Agreement. Payment for any extra work will not be authorized unless the additional work and costs thereof are first approved in writing by the City in accordance with the Agreement.
- iii. The Contractor shall permit the City to inspect and audit its books and records regarding City-provided services during regular business hours.

J. BONDING/GUARANTEES

- i. If defective material or workmanship is discovered by the City in the work proposed within the contract, and this defective material or workmanship requires repairs to be made under this guarantee, all such repair work shall be done by and at the expense of the Contractor. Should the Contractor fail to repair such damage within five (5) working days thereafter, the City may be the necessary repairs and charge the Contractor with the immediate attention, the City shall have the right to repair the defect or damage and charge the Contractor with the actual cost of all labor and material required.

K. EMERGENCY SERVICES

- i. The Contractor will provide the City with the telephone number that can be called by City representatives when emergency repair services are required outside of normal working hours. The Contractor shall respond to said emergency within sixty (60) minutes from receiving notification.

L. SAFETY REQUIREMENTS

- i. All work performed under this contract shall be performed in such a manner as to provide maximum safety to the public and where applicable comply with all safety standards required by CAL-OSHA. The City reserves the right to issue restraint, or cease and desist orders to the Contractor when unsafe or harmful acts are observed or reported relative to the performance under this contract. All contractor employees shall have access to a W.A.T.C.H. (Work Area Traffic Control Handbook) at all times.
- ii. The Contractor shall maintain all work sites free of hazards to persons and/or property resulting from his/her operations. Any hazardous condition noted by the Contractor, which is not a result of his/her operations, shall be immediately reported to the City.
- iii. Warning signs, lights, and devices shall be installed and displayed in conformity with "The California Manual on Uniform Traffic Devices" for use in performance of work upon highways issued by the State of California, Department of Transportation.

M. BACKGROUND CHECK REQUIREMENTS

- i. Any personnel assigned to perform work at the City's Police Department Headquarters shall be required to undergo a Department of Justice (DOJ) background and fingerprint screening process. This shall be completed at the sole expense of the Contractor.

EXHIBIT B
SCHEDULE OF BILLING RATES

Normal Time: (Monday – Friday 5am-4pm)	\$125.00
Overtime: (Monday – Friday 4pm-5am, Saturday – Sunday)	\$187.50
Double Time: (All Holidays)	\$250.00
Minimum Hours:	2 Hours
Parts Markup:	15%

EXHIBIT C

INSURANCE REQUIREMENTS – MAINTENANCE/REPAIR/JANITORIAL SERVICES

1. Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.
 - B. General Liability Insurance. Contractor shall maintain commercial general liability insurance and, if necessary, umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than 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, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
 - C. Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented

vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
 - A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.
 - B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess liability, pollution liability, and automobile liability, if required, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.
 - C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
 - D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
 - A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of

insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

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

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

EXHIBIT D

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

WHEREAS, the City of Newport Beach, State of California, has awarded to _____ hereinafter designated as the "Principal," an agreement for on-call plumbing maintenance and/or repair services, in the City of Newport Beach, in strict conformity with the Agreement on file with the office of the City Clerk of the City of Newport Beach, which is incorporated herein by this reference.

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

NOW, THEREFORE, We the undersigned Principal, and, _____ duly authorized to transact business under the laws of the State of California, as Surety, (referred to herein as "Surety") are held and firmly bound unto the City of Newport Beach, in the sum of _____ Dollars (_____), lawful money of the United States of America, said sum being equal to 100% of the amount of any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), payable by the City of Newport Beach under the terms of the Agreement; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, or assigns, jointly and severally, firmly by these present.

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

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

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

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

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

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

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

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

By: _____
Aaron C. Harp
City Attorney

**NOTARY ACKNOWLEDGMENTS OF CONTRACTOR AND SURETY MUST BE
ATTACHED**

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

EXHIBIT E

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

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

WHEREAS, the City of Newport Beach, State of California, has awarded to _____ hereinafter designated as the "Principal," an agreement for on-call plumbing maintenance and/or repair services in the City of Newport Beach, in strict conformity with the Agreement on file with the office of the City Clerk of the City of Newport Beach, which is incorporated herein by this reference.

WHEREAS, Principal has executed or is about to execute the Agreement and the terms thereof require the furnishing of a Bond for the faithful performance of the Agreement.

NOW, THEREFORE, we, the Principal, and _____, duly authorized to transact business under the laws of the State of California as Surety (hereinafter "Surety"), are held and firmly bound unto the City of Newport Beach, in the sum of _____ (_____) lawful money of the United States of America, said sum being equal to 100% of the amount of any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), to be paid to the City of Newport Beach, its successors, and assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, or assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal, or the Principal's heirs, executors, administrators, successors, or assigns, fail to abide by, and well and truly keep and perform any or all the Work, covenants, conditions, and agreements in the Agreement and any alteration thereof made as therein provided on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to its true intent and meaning, or fails to indemnify, defend, and save harmless the City of Newport Beach, its officers, employees and agents, as therein stipulated, then, Surety will faithfully perform the same, in an amount not exceeding the sum specified in this Bond; otherwise this obligation shall become null and void.

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

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

notice of any such change, extension of time, alterations or additions of the Agreement or to the Work or to the specifications.

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

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

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

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

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

Date: _____

By: _____
Aaron C. Harp
City Attorney

**NOTARY ACKNOWLEDGMENTS OF
CONTRACTOR AND SURETY MUST BE ATTACHED**

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ATTACHMENT B

ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH PACIFIC PLUMBING COMPANY OF SANTA ANA DBA PACIFIC PLUMBING OF SOUTHERN CALIFORNIA FOR PLUMBING SERVICES

THIS ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 24th day of January, 2023 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and Pacific Plumbing Company of Santa Ana DBA Pacific Plumbing of Southern California, a California corporation ("Contractor"), whose address is 615 E. Washington Avenue, Santa Ana, California 92701, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Contractor to perform on-call plumbing maintenance and/or repair services for City ("Project").
- C. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the maintenance and/or repair services described in this Agreement.
- D. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by City for the Project, is familiar with all conditions relevant to the performance of services, and has committed to perform all work required for the compensation specified in this Agreement.

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

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on January 31, 2026, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

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

- 2.1.1 A detailed description of the Services to be provided;

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

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

2.1.4 The time needed to finish the specific project.

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

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Contractor shall perform the Services in accordance with the schedule included in Exhibit A and the Letter Proposal. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Contractor to strictly adhere to the schedule set forth in Exhibit A and the Letter Proposal, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Contractor shall not be responsible for delays due to causes beyond Contractor's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Contractor shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein, not later than two (2) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Contractor's control.

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

4. COMPENSATION TO CONTRACTOR

4.1 City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Two Hundred Thousand Dollars and 00/100 (\$200,000.00)**, without prior written amendment to the Agreement.

4.2 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name and/or classification of employee who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Contractor no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

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

4.4 Contractor shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with Exhibit B and the Letter Proposal.

5. PROJECT MANAGER

5.1 Contractor shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Contractor has designated Jenna Zech to be its Project Manager. Contractor shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Contractor, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the Public Works. City's Facilities Maintenance Supervisor or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Contractor in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Contractor, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Contractor's Work schedule.

8. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

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

8.2 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Contractor certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws and legally recognized professional standards.

8.3 Contractor represents and warrants to City that it has, shall obtain and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Contractor to practice its profession. Contractor shall maintain a City of Newport Beach business license during the term of this Agreement.

8.4 Contractor shall not be responsible for delay, nor shall Contractor be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Contractor's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. RESPONSIBILITY FOR DAMAGES OR INJURY

9.1 City and all officers, employees and representatives thereof shall not be responsible in any manner for any loss or damage to any of the materials or other things used or employed in performing the Project or for injury to or death of any person as a result of Contractor's performance of the Services required hereunder; or for damage to property from any cause arising from the performance of the Project by Contractor, or its subcontractors, or its workers, or anyone employed by either of them.

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

9.3 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever

(individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Contractor's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

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

9.5 Contractor shall perform all Work in a manner to minimize public inconvenience and possible hazard, to restore other work areas to their original condition and former usefulness as soon as possible, and to protect public and private property. Contractor shall be liable for any private or public property damaged during the performance of the Work by Contractor or its agents.

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

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

10. INDEPENDENT CONTRACTOR

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

11. COOPERATION

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

12. CITY POLICY

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

13. PROGRESS

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

14. INSURANCE

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

15. BONDING

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

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

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

Materials Payment Bond and Faithful Performance Bond, a certified copy of the "Certificate of Authority" of the Insurer or Surety issued by the Insurance Commissioner, which authorizes the Insurer or Surety to transact surety insurance in the State of California.

16. PREVAILING WAGES

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

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

17. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

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

18. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A and the Letter Proposal. Contractor shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create

any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

19. OWNERSHIP OF DOCUMENTS

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Contractor, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Contractor or any other party. Contractor shall, at Contractor's expense, provide such Documents to City upon prior written request.

20. CONFIDENTIALITY

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

21. RECORDS

Contractor shall keep records and invoices in connection with the Services to be performed under this Agreement. Contractor shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such records and invoices shall be clearly identifiable. Contractor shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Contractor shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Contractor under this Agreement.

22. WITHHOLDINGS

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

23. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

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

24. CONFLICTS OF INTEREST

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

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

25. NOTICES

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

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

Attn: Facilities Maintenance Supervisor
Public Works
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 Contractor shall be addressed to Contractor at:

Attn: Jenna Zech
Pacific Plumbing Company of Santa Ana DBA Pacific Plumbing of Southern California
615 E. Washington Ave.
Santa Ana, CA 92701

26. CLAIMS

26.1 Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Contractor shall submit to City,

in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. Contractor and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Contractor shall be required to file any claim Contractor may have against City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

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

27. TERMINATION

27.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

27.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred up to the effective date of termination for which Contractor has not been previously paid. On the effective date of termination, Contractor shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. LABOR

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

28.2 Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement,

Contractor shall immediately give written notice to City, and provide all relevant information.

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

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

29. STANDARD PROVISIONS

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

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

29.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

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

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

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

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

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

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

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

29.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.


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

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

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

Date: 1/11/23

By: 
~~for~~ Aaron C. Harp 1/11/23 du
City Attorney

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Noah Blom
Mayor

**CONTRACTOR: Pacific Plumbing
Company of Santa Ana DBA Pacific
Plumbing of Southern California, a
California corporation**

Date: _____

By: _____
Jenna Zech
Marketing Manager

[END OF SIGNATURES]

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

EXHIBIT A

SCOPE OF SERVICES

A. DESCRIPTION OF PROJECT

Contractor will provide on-call plumbing services as needed at City Facilities, and furnish all labor, equipment, and supervision to perform plumbing repair services as described herein including but not limited to the following:

- i. Detection of leaks; underground piping with ground penetrating radar for sandy soil.
- ii. Inspection and testing of backflow device.
- iii. Inspection and repair of drains to include building sewer mainline to City connection.
- iv. Inspection and repair of fire suppression systems.
- v. Tankless heater installations, inspections, troubleshooting and repairs.
- vi. Building gas supply lines, repairs, and installations.
- vii. Copper and Pex re-piping.
- viii. Tap and die cutting of threaded pipe and couplings as needed.
- ix. Welding, brazing, and soldering as necessary.
- x. Boiler repairs and installation.
- xi. Repair, removal and installation of common plumbing fixtures, sinks, toilets, supply valves and so on.
- xii. Clearing drains of clogs and obstructions, to include debris and tree roots.

B. LICENSING REQUIREMENTS

- i. For the duration of the contract term, Contractor shall furnish and maintain a C-36 license issued by the California State License Board. Contractor must also possess a valid CA Department of Industrial Relations (DIR) Registration Number at the time of RFP submittal and for the duration of the agreement term.

C. WORKING HOURS

- i. Normal working hours shall be between the hours of 7:00 a.m. and 5:00 p.m. Normal working days are Monday through Friday excluding holidays.

D. WORKMANSHIP AND SUPERVISION

- i. The work force shall include a thoroughly skilled, experienced, and competent supervisor who shall be responsible for adherence to the specifications. All supervisory personnel must be able to communicate effectively in English (both orally and in writing). Any order given to supervisory personnel shall be deemed delivered to the Contractor. The supervisor assigned must be identified by name to ensure coordination and continuity.
- ii. All materials furnished by Contractor shall be new, high grade and free from defects and imperfections. Workmanship shall be in accordance with the highest industry standards.
- iii. Both materials and workmanship shall be subject to inspection and approval by project administrator.
- iv. Work shall be performed by competent and experienced workers.
- v. All personnel working at the outlined areas shall be neat in appearance and in uniforms as approved by the Project Administrator. All personnel shall wear identification badges or patches, and employees working adjacent to traffic lanes must wear safety vests.
- vi. Persons employed by the Contractor who are found not to be satisfactory by the City shall be discharged or reassigned by the Contractor on fifteen (15) days' notice from the City.

E. SUPERVISION OF CONTRACT

- i. Contractor shall designate a Project Manager to serve as the main contact for the Contractor throughout the project. The Project Manager shall have the authority to handle and resolve any contract disputes with the City and be experienced in supervising the requested services.

F. CONTRACTOR'S OFFICE

- i. Contractor is required to maintain an office within a 30 minute response time of the job site and provide the office with phone service during normal working hours. During all other times, a

telephone answering service shall be utilized and the answering service shall be capable of contacting the Contractor by cell phone or pager. Contractor shall have a maximum response time of thirty (30) minutes to all emergencies. There will be no on-site storage of equipment or materials. Contractor will have full responsibility for maintaining an office and on-site storage of equipment or materials.

G. SPECIFICATIONS

- i. These specifications are intended to cover all labor, material and standards of installation to be employed in the work called for in these specifications or reasonably implied by terms of same. Work or materials of a minor nature which may not be specifically mentioned, but which may be reasonably assumed as necessary for the completion of this work, shall be performed by the Contractor as if described in the specifications.
- ii. Any specific problem area which does not meet the conditions of the specifications set forth herein shall be called to the attention of the Contractor and if not corrected, payment to the Contractor will not be made until condition is corrected in a satisfactory manner as set forth in the specifications.

H. PROVISIONS FOR EXTRAS

- i. No new work of any kind shall be considered an extra unless a separate estimate is given for said work and the estimate is approved in writing by the City before the work is commenced. The Contractor will be required to provide before and after photographs of safety items or emergency repairs which were made without prior City approval. Documentation of contract compliance may be required on some occasions.
- ii. Should a change or extra work be found necessary by the City, all changes and extra work shall be performed at the same unit price of any proposal item listed. If the work is not listed as a proposal item, the Contractor shall submit a fair cost for the work to be performed. A change order authorization will be issued by the City.
- iii. The City reserves the right to increase or decrease the quantity of any item(s) or portion(s) of the work described in the specifications or the proposal form or to omit portions of the work so described as may be deemed necessary or expedient by the Project Administrator or designated representative and the Contractor shall agree not to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any kind of work to be done. The City shall reduce the price accordingly.

Alterations, modifications or deviations from the work described in the scope of services by Contractor shall be subject to the prior written approval of the City. Any price adjustments shall be made by mutual consent of the parties in that case.

I. RECORDS

- i. The Contractor shall keep accurate records concerning all of his/her employees or agents. The Contractor shall provide this information in an organizational chart as changes in staffing occur.
- ii. The Contractor shall complete a work completion report indicating work performed and submit this completed report to the Project Administrator. This report should also contain a description, including staff-hours, equipment, and materials breakdowns and costs used to accomplish any additional work which the Contractor deems to be beyond the scope of the contract, and which has been approved by the City in accordance with the Agreement. Payment for any extra work will not be authorized unless the additional work and costs thereof are first approved in writing by the City in accordance with the Agreement.
- iii. The Contractor shall permit the City to inspect and audit its books and records regarding City-provided services during regular business hours.

J. BONDING/GUARANTEES

- i. If defective material or workmanship is discovered by the City in the work proposed within the contract, and this defective material or workmanship requires repairs to be made under this guarantee, all such repair work shall be done by and at the expense of the Contractor. Should the Contractor fail to repair such damage within five (5) working days thereafter, the City may be the necessary repairs and charge the Contractor with the immediate attention, the City shall have the right to repair the defect or damage and charge the Contractor with the actual cost of all labor and material required.

K. EMERGENCY SERVICES

- i. The Contractor will provide the City with the telephone number that can be called by City representatives when emergency repair services are required outside of normal working hours. The Contractor shall respond to said emergency within sixty (60) minutes from receiving notification.

L. SAFETY REQUIREMENTS

- i. All work performed under this contract shall be performed in such a manner as to provide maximum safety to the public and where applicable comply with all safety standards required by CAL-OSHA. The City reserves the right to issue restraint, or cease and desist orders to the Contract when unsafe or harmful acts are observed or reported relative to the performance under this contract. All contractor employees shall have access to a W.A.T.C.H. (Work Area Traffic Control Handbook) at all times.
- ii. The Contractor shall maintain all work sites free of hazards to persons and/or property resulting from his/her operations. Any hazardous condition noted by the Contractor, which is not a result of his/her operations, shall be immediately reported to the City.
- iii. Warning signs, lights, and devices shall be installed and displayed in conformity with "The California Manual on Uniform Traffic Devices" for use in performance of work upon highways issued by the State of California, Department of Transportation.

M. BACKGROUND CHECK REQUIREMENTS

- i. Any personnel assigned to perform work at the City's Police Department Headquarters shall be required to undergo a Department of Justice (DOJ) background and fingerprint screening process. This shall be completed at the sole expense of the Contractor.

EXHIBIT B
SCHEDULE OF BILLING RATES

Normal Time: (Monday – Friday 5am-4pm)	\$130.00
Overtime: (Monday – Friday 4pm-5am, Saturday – Sunday)	\$195.00
Double Time: (All Holidays)	\$195.00
Minimum Hours:	2 Hours
Parts Markup:	15%

EXHIBIT C

INSURANCE REQUIREMENTS – MAINTENANCE/REPAIR/JANITORIAL SERVICES

1. Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.
 - B. General Liability Insurance. Contractor shall maintain commercial general liability insurance and, if necessary, umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than 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, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
 - C. Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented

vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
 - A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.
 - B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess liability, pollution liability, and automobile liability, if required, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.
 - C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
 - D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
 - A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of

insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

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

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

EXHIBIT D

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

WHEREAS, the City of Newport Beach, State of California, has awarded to _____ hereinafter designated as the "Principal," an agreement for on-call plumbing maintenance and/or repair services, in the City of Newport Beach, in strict conformity with the Agreement on file with the office of the City Clerk of the City of Newport Beach, which is incorporated herein by this reference.

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

NOW, THEREFORE, We the undersigned Principal, and, _____ duly authorized to transact business under the laws of the State of California, as Surety, (referred to herein as "Surety") are held and firmly bound unto the City of Newport Beach, in the sum of _____ Dollars (_____), lawful money of the United States of America, said sum being equal to 100% of the amount of any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), payable by the City of Newport Beach under the terms of the Agreement; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, or assigns, jointly and severally, firmly by these present.

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

The Bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Section 9100 of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this Bond, as required by and in accordance with the provisions of Sections 9500 *et seq.* of the Civil Code of the State of California.

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

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

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

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

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

Date: _____

By: _____
Aaron C. Harp
City Attorney

**NOTARY ACKNOWLEDGMENTS OF CONTRACTOR AND SURETY MUST BE
ATTACHED**

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

EXHIBIT E

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

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

WHEREAS, the City of Newport Beach, State of California, has awarded to _____ hereinafter designated as the "Principal," an agreement for on-call plumbing maintenance and/or repair services in the City of Newport Beach, in strict conformity with the Agreement on file with the office of the City Clerk of the City of Newport Beach, which is incorporated herein by this reference.

WHEREAS, Principal has executed or is about to execute the Agreement and the terms thereof require the furnishing of a Bond for the faithful performance of the Agreement.

NOW, THEREFORE, we, the Principal, and _____, duly authorized to transact business under the laws of the State of California as Surety (hereinafter "Surety"), are held and firmly bound unto the City of Newport Beach, in the sum of _____ (_____) lawful money of the United States of America, said sum being equal to 100% of the amount of any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), to be paid to the City of Newport Beach, its successors, and assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, or assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal, or the Principal's heirs, executors, administrators, successors, or assigns, fail to abide by, and well and truly keep and perform any or all the Work, covenants, conditions, and agreements in the Agreement and any alteration thereof made as therein provided on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to its true intent and meaning, or fails to indemnify, defend, and save harmless the City of Newport Beach, its officers, employees and agents, as therein stipulated, then, Surety will faithfully perform the same, in an amount not exceeding the sum specified in this Bond; otherwise this obligation shall become null and void.

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

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

Pacific Plumbing Company of Santa Ana DBA Pacific Plumbing of Southern California

thereunder shall in any way affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alterations or additions of the Agreement or to the Work or to the specifications.

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

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

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

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

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

Date: _____

By: _____

Aaron C. Harp
City Attorney

*NOTARY ACKNOWLEDGMENTS OF
CONTRACTOR AND SURETY MUST BE ATTACHED*

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ATTACHMENT C

ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH ACCO ENGINEERED SYSTEMS, INC. FOR PLUMBING SERVICES

THIS ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 24th day of January, 2023 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and ACCO Engineered Systems, Inc., a California corporation ("Contractor"), whose address on file with the Secretary of State is 888 East Walnut Street, Pasadena, California 91101, with a local address of 265 McCormick Avenue, Costa Mesa, California 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. City desires to engage Contractor to perform on-call plumbing maintenance and/or repair services for City ("Project").
- C. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the maintenance and/or repair services described in this Agreement.
- D. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by City for the Project, is familiar with all conditions relevant to the performance of services, and has committed to perform all work required for the compensation specified in this Agreement.

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

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on January 31, 2026, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

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

- 2.1.1 A detailed description of the Services to be provided;

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

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

2.1.4 The time needed to finish the specific project.

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

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Contractor shall perform the Services in accordance with the schedule included in Exhibit A and the Letter Proposal. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Contractor to strictly adhere to the schedule set forth in Exhibit A and the Letter Proposal, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Contractor shall not be responsible for delays due to causes beyond Contractor's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Contractor shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein, not later than two (2) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Contractor's control.

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

4. COMPENSATION TO CONTRACTOR

4.1 City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Two Hundred Thousand Dollars and 00/100 (\$200,000.00)**, without prior written amendment to the Agreement.

4.2 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name and/or classification of employee who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Contractor no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

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

4.4 Contractor shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with Exhibit B and the Letter Proposal.

5. PROJECT MANAGER

5.1 Contractor shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Contractor has designated Andrew Reyes to be its Project Manager. Contractor shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Contractor, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the Public Works. City's Facilities Maintenance Supervisor or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Contractor in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Contractor, one copy of all existing

relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Contractor's Work schedule.

8. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

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

8.2 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Contractor certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws and legally recognized professional standards.

8.3 Contractor represents and warrants to City that it has, shall obtain and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Contractor to practice its profession. Contractor shall maintain a City of Newport Beach business license during the term of this Agreement.

8.4 Contractor shall not be responsible for delay, nor shall Contractor be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Contractor's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. RESPONSIBILITY FOR DAMAGES OR INJURY

9.1 City and all officers, employees and representatives thereof shall not be responsible in any manner for any loss or damage to any of the materials or other things used or employed in performing the Project or for injury to or death of any person as a result of Contractor's performance of the Services required hereunder; or for damage to property from any cause arising from the performance of the Project by Contractor, or its subcontractors, or its workers, or anyone employed by either of them.

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

9.3 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents,

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

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

9.5 Contractor shall perform all Work in a manner to minimize public inconvenience and possible hazard, to restore other work areas to their original condition and former usefulness as soon as possible, and to protect public and private property. Contractor shall be liable for any private or public property damaged during the performance of the Work by Contractor or its agents.

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

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

10. INDEPENDENT CONTRACTOR

It is understood that City retains Contractor on an independent contractor basis and Contractor is not an agent or employee of City. The manner and means of conducting the Work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Contractor or its employees. Nothing in this Agreement shall be deemed to constitute approval for Contractor or any of Contractor's employees or agents, to be the agents or employees of City. Contractor shall have the responsibility for and control over the means of performing the Work, provided that Contractor is in compliance with the terms of this Agreement. Anything in

this Agreement that may appear to give City the right to direct Contractor as to the details of the performance of the Work or to exercise a measure of control over Contractor shall mean only that Contractor shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

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

12. CITY POLICY

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

13. PROGRESS

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

14. INSURANCE

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

15. BONDING

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

15.2 The Labor and Materials Payment Bond and Faithful Performance Bond shall be issued by an insurance organization or surety (1) currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, (2)

listed as an acceptable surety in the latest revision of the Federal Register Circular 570, and (3) assigned a Policyholders' Rating A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide: Property-Casualty.

15.3 Contractor shall deliver, concurrently with City's approval of any Letter Proposal over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), the Labor and Materials Payment Bond and Faithful Performance Bond, a certified copy of the "Certificate of Authority" of the Insurer or Surety issued by the Insurance Commissioner, which authorizes the Insurer or Surety to transact surety insurance in the State of California.

16. PREVAILING WAGES

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

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

17. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Contractor is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of

Contractor. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

18. SUBCONTRACTING

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

19. OWNERSHIP OF DOCUMENTS

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Contractor, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Contractor or any other party. Contractor shall, at Contractor's expense, provide such Documents to City upon prior written request.

20. CONFIDENTIALITY

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

21. RECORDS

Contractor shall keep records and invoices in connection with the Services to be performed under this Agreement. Contractor shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such records and invoices shall be clearly identifiable. Contractor shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Contractor shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Contractor under this Agreement.

22. WITHHOLDINGS

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

23. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

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

24. CONFLICTS OF INTEREST

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

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

25. NOTICES

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

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

Attn: Facilities Maintenance Supervisor
Public Works
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 Contractor shall be addressed to Contractor at:

Attn: Andrew Reyes
ACCO Engineered Systems, Inc.
265 McCormick Ave
Costa Mesa, CA 92626

26. CLAIMS

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

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

27. TERMINATION

27.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

27.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Contractor. In the

event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred up to the effective date of termination for which Contractor has not been previously paid. On the effective date of termination, Contractor shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. LABOR

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

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

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

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

29. STANDARD PROVISIONS

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

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

29.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

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

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

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

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

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

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

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

29.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

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

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 1/11/23

By: 
Aaron C. Harp 1/11/23 DG
City Attorney

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Noah Blom
Mayor

CONTRACTOR: ACCO Engineered
Systems, Inc., a California corporation

Date: _____

By: _____
Frank Silva
Regional Sales Manager

[END OF SIGNATURES]

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

EXHIBIT A

SCOPE OF SERVICES

A. DESCRIPTION OF PROJECT

Contractor will provide on-call plumbing services as needed at City Facilities, and furnish all labor, equipment, and supervision to perform plumbing repair services as described herein including but not limited to the following:

- i. Detection of leaks; underground piping with ground penetrating radar for sandy soil.
- ii. Inspection and testing of backflow device.
- iii. Inspection and repair of drains to include building sewer mainline to City connection.
- iv. Inspection and repair of fire suppression systems.
- v. Tankless heater installations, inspections, troubleshooting and repairs.
- vi. Building gas supply lines, repairs, and installations.
- vii. Copper and Pex re-piping.
- viii. Tap and die cutting of threaded pipe and couplings as needed.
- ix. Welding, brazing, and soldering as necessary.
- x. Boiler repairs and installation.
- xi. Repair, removal and installation of common plumbing fixtures, sinks, toilets, supply valves and so on.
- xii. Clearing drains of clogs and obstructions, to include debris and tree roots.

B. LICENSING REQUIREMENTS

- i. For the duration of the contract term, Contractor shall furnish and maintain a C-36 license issued by the California State License Board. Contractor must also possess a valid CA Department of Industrial Relations (DIR) Registration Number at the time of RFP submittal and for the duration of the agreement term.

C. WORKING HOURS

- i. Normal working hours shall be between the hours of 7:00 a.m. and 5:00 p.m. Normal working days are Monday through Friday excluding holidays.

D. WORKMANSHIP AND SUPERVISION

- i. The work force shall include a thoroughly skilled, experienced, and competent supervisor who shall be responsible for adherence to the specifications. All supervisory personnel must be able to communicate effectively in English (both orally and in writing). Any order given to supervisory personnel shall be deemed delivered to the Contractor. The supervisor assigned must be identified by name to ensure coordination and continuity.
- ii. All materials furnished by Contractor shall be new, high grade and free from defects and imperfections. Workmanship shall be in accordance with the highest industry standards.
- iii. Both materials and workmanship shall be subject to inspection and approval by project administrator.
- iv. Work shall be performed by competent and experienced workers.
- v. All personnel working at the outlined areas shall be neat in appearance and in uniforms as approved by the Project Administrator. All personnel shall wear identification badges or patches, and employees working adjacent to traffic lanes must wear safety vests.
- vi. Persons employed by the Contractor who are found not to be satisfactory by the City shall be discharged or reassigned by the Contractor on fifteen (15) days' notice from the City.

E. SUPERVISION OF CONTRACT

- i. Contractor shall designate a Project Manager to serve as the main contact for the Contractor throughout the project. The Project Manager shall have the authority to handle and resolve any contract disputes with the City and be experienced in supervising the requested services.

F. CONTRACTOR'S OFFICE

- i. Contractor is required to maintain an office within a 30 minute response time of the job site and provide the office with phone service during normal working hours. During all other times, a

telephone answering service shall be utilized and the answering service shall be capable of contacting the Contractor by cell phone or pager. Contractor shall have a maximum response time of thirty (30) minutes to all emergencies. There will be no on-site storage of equipment or materials. Contractor will have full responsibility for maintaining an office and on-site storage of equipment or materials.

G. SPECIFICATIONS

- i. These specifications are intended to cover all labor, material and standards of installation to be employed in the work called for in these specifications or reasonably implied by terms of same. Work or materials of a minor nature which may not be specifically mentioned, but which may be reasonably assumed as necessary for the completion of this work, shall be performed by the Contractor as if described in the specifications.
- ii. Any specific problem area which does not meet the conditions of the specifications set forth herein shall be called to the attention of the Contractor and if not corrected, payment to the Contractor will not be made until condition is corrected in a satisfactory manner as set forth in the specifications.

H. PROVISIONS FOR EXTRAS

- i. No new work of any kind shall be considered an extra unless a separate estimate is given for said work and the estimate is approved in writing by the City before the work is commenced. The Contractor will be required to provide before and after photographs of safety items or emergency repairs which were made without prior City approval. Documentation of contract compliance may be required on some occasions.
- ii. Should a change or extra work be found necessary by the City, all changes and extra work shall be performed at the same unit price of any proposal item listed. If the work is not listed as a proposal item, the Contractor shall submit a fair cost for the work to be performed. A change order authorization will be issued by the City.
- iii. The City reserves the right to increase or decrease the quantity of any item(s) or portion(s) of the work described in the specifications or the proposal form or to omit portions of the work so described as may be deemed necessary or expedient by the Project Administrator or designated representative and the Contractor shall agree not to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any kind of work to be done. The City shall reduce the price accordingly.

Alterations, modifications or deviations from the work described in the scope of services by Contractor shall be subject to the prior written approval of the City. Any price adjustments shall be made by mutual consent of the parties in that case.

I. RECORDS

- i. The Contractor shall keep accurate records concerning all of his/her employees or agents. The Contractor shall provide this information in an organizational chart as changes in staffing occur.
- ii. The Contractor shall complete a work completion report indicating work performed and submit this completed report to the Project Administrator. This report should also contain a description, including staff-hours, equipment, and materials breakdowns and costs used to accomplish any additional work which the Contractor deems to be beyond the scope of the contract, and which has been approved by the City in accordance with the Agreement. Payment for any extra work will not be authorized unless the additional work and costs thereof are first approved in writing by the City in accordance with the Agreement.
- iii. The Contractor shall permit the City to inspect and audit its books and records regarding City-provided services during regular business hours.

J. BONDING/GUARANTEES

- i. If defective material or workmanship is discovered by the City in the work proposed within the contract, and this defective material or workmanship requires repairs to be made under this guarantee, all such repair work shall be done by and at the expense of the Contractor. Should the Contractor fail to repair such damage within five (5) working days thereafter, the City may be the necessary repairs and charge the Contractor with the immediate attention, the City shall have the right to repair the defect or damage and charge the Contractor with the actual cost of all labor and material required.

K. EMERGENCY SERVICES

- i. The Contractor will provide the City with the telephone number that can be called by City representatives when emergency repair services are required outside of normal working hours. The Contractor shall respond to said emergency within sixty (60) minutes from receiving notification.

L. SAFETY REQUIREMENTS

- i. All work performed under this contract shall be performed in such a manner as to provide maximum safety to the public and where applicable comply with all safety standards required by CAL-OSHA. The City reserves the right to issue restraint, or cease and desist orders to the Contract when unsafe or harmful acts are observed or reported relative to the performance under this contract. All contractor employees shall have access to a W.A.T.C.H. (Work Area Traffic Control Handbook) at all times.
- ii. The Contractor shall maintain all work sites free of hazards to persons and/or property resulting from his/her operations. Any hazardous condition noted by the Contractor, which is not a result of his/her operations, shall be immediately reported to the City.
- iii. Warning signs, lights, and devices shall be installed and displayed in conformity with "The California Manual on Uniform Traffic Devices" for use in performance of work upon highways issued by the State of California, Department of Transportation.

M. BACKGROUND CHECK REQUIREMENTS

- i. Any personnel assigned to perform work at the City's Police Department Headquarters shall be required to undergo a Department of Justice (DOJ) background and fingerprint screening process. This shall be completed at the sole expense of the Contractor.

EXHIBIT B

SCHEDULE OF BILLING RATES

Normal Time: (Monday – Friday 5am-4pm)	\$149.00
Overtime: (Monday – Friday 4pm-5am, Saturday – Sunday)	\$198.00
Double Time: (All Holidays)	\$298.00
Minimum Hours:	1 Hour
Parts Markup:	15%

EXHIBIT C

INSURANCE REQUIREMENTS – MAINTENANCE/REPAIR/JANITORIAL SERVICES

1. Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and, in a form, satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.
 - B. General Liability Insurance. Contractor shall maintain commercial general liability insurance and, if necessary, umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than 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, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
 - C. Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented

vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
 - A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.
 - B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess liability, pollution liability, and automobile liability, if required, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.
 - C. Primary and Non-Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
 - D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
 - A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of

insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

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

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

EXHIBIT D

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

WHEREAS, the City of Newport Beach, State of California, has awarded to _____ hereinafter designated as the "Principal," an agreement for on-call plumbing maintenance and/or repair services, in the City of Newport Beach, in strict conformity with the Agreement on file with the office of the City Clerk of the City of Newport Beach, which is incorporated herein by this reference.

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

NOW, THEREFORE, We the undersigned Principal, and, _____ duly authorized to transact business under the laws of the State of California, as Surety, (referred to herein as "Surety") are held and firmly bound unto the City of Newport Beach, in the sum of _____ Dollars (_____), lawful money of the United States of America, said sum being equal to 100% of the amount of any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), payable by the City of Newport Beach under the terms of the Agreement; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, or assigns, jointly and severally, firmly by these present.

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

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

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

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

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

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

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

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

Date: _____

By: _____
Aaron C. Harp
City Attorney

**NOTARY ACKNOWLEDGMENTS OF CONTRACTOR AND SURETY MUST BE
ATTACHED**

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

EXHIBIT E

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

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

WHEREAS, the City of Newport Beach, State of California, has awarded to _____ hereinafter designated as the "Principal," an agreement for on-call plumbing maintenance and/or repair services in the City of Newport Beach, in strict conformity with the Agreement on file with the office of the City Clerk of the City of Newport Beach, which is incorporated herein by this reference.

WHEREAS, Principal has executed or is about to execute the Agreement and the terms thereof require the furnishing of a Bond for the faithful performance of the Agreement.

NOW, THEREFORE, we, the Principal, and _____, duly authorized to transact business under the laws of the State of California as Surety (hereinafter "Surety"), are held and firmly bound unto the City of Newport Beach, in the sum of _____ (_____) lawful money of the United States of America, said sum being equal to 100% of the amount of any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), to be paid to the City of Newport Beach, its successors, and assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, or assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal, or the Principal's heirs, executors, administrators, successors, or assigns, fail to abide by, and well and truly keep and perform any or all the Work, covenants, conditions, and agreements in the Agreement and any alteration thereof made as therein provided on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to its true intent and meaning, or fails to indemnify, defend, and save harmless the City of Newport Beach, its officers, employees and agents, as therein stipulated, then, Surety will faithfully perform the same, in an amount not exceeding the sum specified in this Bond; otherwise this obligation shall become null and void.

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

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

notice of any such change, extension of time, alterations or additions of the Agreement or to the Work or to the specifications.

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

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

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

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

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

Date: _____

By: _____

Aaron C. Harp
City Attorney

*NOTARY ACKNOWLEDGMENTS OF
CONTRACTOR AND SURETY MUST BE ATTACHED*

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

Notary Public, personally appeared _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

Notary Public, personally appeared _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)



CITY OF

NEWPORT BEACH

City Council Staff Report

January 24, 2023
Agenda Item No. 9

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Joe Cartwright, Acting Chief of Police - 949-644-3701,
jcartwright@nbpd.org

PREPARED BY: Jonathan Stafford, Deputy Director, jstafford@nbpd.org
PHONE: 949-644-3650

TITLE: Amendment No. 8 to CAD/RMS Software Maintenance Agreement
with Superion, LLC

ABSTRACT:

The Police Department requests City Council approval to amend the existing Software Maintenance Agreement with Superion to add contract authority to pay annual computer-aided dispatch and records management system (CAD/RMS) maintenance invoices over the next 10 years. CAD/RMS is critical to providing responsive and efficient service to the public by the Police Department and by Lifeguard Operations.

RECOMMENDATIONS:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Approve Amendment No. 8 to the Software Maintenance Agreement with Superion, LLC of Lake Mary, Florida, for a not-to-exceed cost of \$1,424,012.47 over ten years, and authorize the Mayor and City Clerk to execute the Amendment.

DISCUSSION:

The Police Department uses Superion's Central Square OneSolution CAD/RMS to manage police calls for service, crime reports, mobile computers, evidence and several types of related processes and records. The system was implemented in 2014 and has been continuously maintained and updated in excellent functioning condition. The annual maintenance cost for the current fiscal year is \$134,597.76 and is an excellent value compared to similar enterprise-level software systems. The proposed amendment's not-to-exceed amount of \$1,424,012.47 provides contract authority for 10 years of annual maintenance and includes an annual cost escalation of three percent (3%). Cost escalation corresponds to the increase in the Consumer Price Index (CPI) but cannot exceed 3% per year. The expected service life of the system is through 2029, notwithstanding major changes by the vendor or the Police Department.

The City of Newport Beach Lifeguard Operations Division also uses OneSolution CAD and mobile computers to manage calls for service and field activity. The ongoing maintenance cost for the Lifeguard CAD and mobile system is included in the not-to-exceed cost of the amendment.

FISCAL IMPACT:

The adopted budget includes sufficient funding for this amendment. It will be expensed to the Software License Renewal account in the Police Department, 0103522-871017. The annual maintenance costs are determined at the end of each fiscal year with cost increases limited by the original agreement. Escalation of costs are fixed as the lesser of three percent (3%) or the increase in the Consumer Price Index (CPI-U) over the prior 12 months. These negotiated cost increases for the amendment are addressed annually in the budget preparation process and are reflected in the requested not-to-exceed cost of the amendment.

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. 8

ATTACHMENT A

AMENDMENT NO. EIGHT TO SOFTWARE LICENSE AND SERVICES AGREEMENT AND SOFTWARE MAINTENANCE AGREEMENT WITH SUPERION, LLC

THIS AMENDMENT NO. EIGHT TO THE SOFTWARE LICENSE AND SERVICES AGREEMENT ("Amendment No. Seven") is made and entered into as of this 24th day of January, 2023 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and SUPERION, LLC, a Delaware corporation ("Consultant"), whose address is 1000 Business Center Drive, Lake Mary, FL 32746, and is made with reference to the following:

RECITALS

- A. On June 28, 2013, City and SunGard Public Sector, LLC ("SunGard") entered into a Software License and Services Agreement and a Software Maintenance Agreement ("Agreements") for Consultant to provide maintenance, enhancements, and licensing ("Services") for Computer Aided Dispatch/Records Management System ("CAD/RMS"), new releases of Baseline software, and custom modifications as defined and identified in Exhibit 1 within the Agreements ("Project").
- B. On August 15, 2014, City and SunGard entered into Amendment No. One to the Agreements ("Amendment No. One") to reflect additional, deleted, and modified services not previously included in the Agreements, and to increase the total compensation.
- C. On November 21, 2014, City and SunGard entered into Amendment No. Two to the Agreements ("Amendment No. Two") to reflect additional, deleted, and modified services not previously included in the Agreements, as amended, and to increase the total compensation.
- D. On August 14, 2015, City and SunGard entered into Amendment No. Three to the Agreements ("Amendment No. Three") to reflect additional services not previously included in the Agreements, as amended, and to increase the total compensation.
- E. On June 28, 2016, City and SunGard entered into Amendment No. Four to the Agreements ("Amendment No. Four") to reflect additional services not included in the Agreements, as amended, and to increase the total compensation.
- F. On January 23, 2017, City and SunGard entered into Amendment No. Five to the Agreements ("Amendment No. Five") to reflect additional services not included in the Agreements, as amended, and to increase the total compensation.
- G. On August 14, 2017, City and Consultant entered into an Assignment Agreement that assigned all rights, title and interest in and obligations under the Agreements from SunGard to Consultant.

- H. On March 26, 2018, City and Consultant entered into Amendment No. Six to the Agreements ("Amendment No. Six") to reflect additional and deleted services not previously included in the Agreements, as amended, and to adjust the total compensation under the Agreements.
- I. On May 8, 2018, City and Consultant enter into Amendment No. Seven to reflect additional services not previously included in the Agreements, as amended, and to adjust the total compensation available under the Agreements to not exceed One Million Eight Hundred Sixty Six Thousand Six Hundred Fifty Dollars and 00/100 (\$1,866,650.00).
- J. As of 2022, the total compensation available for Services under the Agreements was exhausted, and Consultant continued to provide Services as requested by City, with the amount in arrears for Services rendered as of the end of year 2022 being a total of One Hundred Thirty Four Thousand Five Hundred Ninety Seven Dollars and 76/100 (\$134,597.76), to which the City paid Consultant via purchase order One Hundred Nineteen Thousand Dollars and 00/100 (\$119,000.00), leaving a remaining balance in arrears of Fifteen Thousand Five Hundred Ninety Seven Dollars and 76/100 (\$15,597.76).
- K. All costs for licensing under the Agreements having been fully paid, the City desires to continue to utilize Consultant's maintenance Services pursuant to the Agreements through the year 2031, by increasing the total compensation available under the Agreements for prospective Services by an additional One Million Four Hundred Twenty Four Thousand Twelve Dollars and 47/100 (\$1,424,012.47), for a revised total not to exceed amount of Three Million Two Hundred Ninety Thousand Six Hundred Sixty Two Dollars and 47/100 (\$3,290,662.47).
- L. The parties now desire to enter into this Amendment No. Eight to compensate Consultant for the remaining amount in arrears for Services rendered through end of year 2022, and additionally, to increase the compensation available under the Agreements for prospective maintenance Services through the year 2031.

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

1. COMPENSATION TO CONSULTANT

Consultant acknowledges that all licensing has been fully paid, and that only ongoing annual maintenance Services continue. Consultant's annual compensation is hereby amended and modified as set forth in the table below to provide additional compensation for the amount in arrears for Services rendered through the end of year 2022, and additionally, to increase the total compensation available under the Agreements for all Services to be performed prospectively in accordance with the Agreements, including all reimbursable items and subconsultant fees, in an amount not to exceed the amounts set forth below, without prior written authorization from City.

Year	Total Not to Exceed:
2022 (arrears balance)	\$15,597.76
2023	\$138,635.69
2024	\$142,794.76
2025	\$147,078.61
2026	\$151,490.96
2027	\$156,035.69
2028	\$160,716.76
2029	\$165,538.27
2030	\$170,504.42
2031	\$175,619.55
TOTAL:	\$1,424,012.47

This Amendment reflects additional compensation in a total amount not to exceed **One Million Four Hundred Twenty Four Thousand Twelve Dollars and 47/100 (\$1,424,012.47)**.

The total compensation available under the Agreements for all Services, including the additional compensation set forth in this Amendment, shall not exceed **Three Million Two Hundred Ninety Thousand Six Hundred Sixty Two Dollars and 47/100 (\$3,290,662.47)**.

2. INTEGRATED CONTRACT

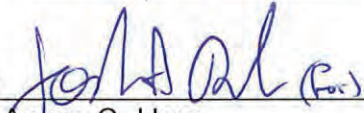
Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

[SIGNATURES ON NEXT PAGE]

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

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

Date: 1/17/23

By: 
Aaron C. Harp
City Attorney

01.17.23
ama

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Noah Blom
Mayor

CONSULTANT: Superion, LLC, a
Delaware corporation

Date: _____

By: _____
Ron A. Anderson
VP of Sales

Date: _____

By: _____
Barry Medintz
General Counsel and Corporate
Secretary

[END OF SIGNATURES]



CITY OF

NEWPORT BEACH

City Council Staff Report

January 24, 2023
Agenda Item No. 10

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Tara Finnigan, Assistant City Manager - 949-644-3001,
tfinnigan@newportbeachca.gov

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

PHONE: 949-644-3028

TITLE: Maintenance/Repair Services Agreement with C3 Office Solutions
LLC dba C3 Tech for Copier Maintenance and Repair Services

ABSTRACT:

Staff recommends the City of Newport Beach (City) enter into a professional services agreement with C3 Office Solutions LLC dba C3 Tech for copier maintenance and repair services. The firm was selected after a detailed Request for Proposals process. The recommended agreement is for a five-year term for a total not-to-exceed cost of \$260,443.60.

RECOMMENDATIONS:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Approve the Maintenance/Repair Services Agreement with C3 Office Solutions LLC dba C3 Tech for copier maintenance services for a five-year term, ending January 25, 2028, and a total not-to-exceed amount of \$260,443.60, and authorize the Mayor and City Clerk to execute the agreement.

DISCUSSION:

Background

The City owns 26 copiers located throughout the following facilities: the Civic Center, Police Department Headquarters, Lifeguard Headquarters, OASIS Senior Center, Central Library, Utilities Department, Marina Park and Municipal Operations' Corporate Yard. The Information Technology (IT) Division oversees the maintenance and operations of the City's IT infrastructure, including the networking and general management of the City's copier inventory. The copiers require proactive maintenance and, on an as-needed basis, repairs. This service has been contracted out for over 10 years.

Request for Proposals and Evaluation

Staff developed a Request for Proposals (RFP) solicitation containing requirements and a scope of services detailing a need for maintenance and repair services related to the 26 copiers owned and operated by the City. The RFP was published September 14, 2022, when it was posted on the City's electronic public procurement platform, PlanetBids, and distributed directly to known consultants providing these services. The RFP submission deadline was October 3, 2022, and the process yielded two proposals.

This RFP was evaluated by a panel consisting of staff from the City's Information Technology Division, reviewing each proposal and rating them on the following technical factors:

- Qualifications and experience of the proposer;
- Demonstrated experience and subject matter expertise in providing the requested services; and
- Ability to deploy and perform requested services.

Cost Ratio Analysis

	C3 Office Solutions LLC dba C3 Tech	Sema Inc dba Cell Business Equipment
Black/White (per copy)	\$0.0045	\$0.006
Color (per copy)	\$0.045	\$0.045
Total	\$0.0495	\$0.051
Average Print Volume Black/White	\$567.11	\$756.15
Average Print Volume Color	\$2,945.57	\$2,945.57
Average Print Volume Total	\$3,512.68	\$3,701.72

In order to calculate the average print volume sample pricing, the Finance Department's Purchasing Division multiplied the provided rate by the average monthly volume for the City's copiers. The average figure is 126,025 for black/white copies and 65,457 for color copies.

Overall Scoring

Proposer	C3 Office Solutions LLC dba C3 Tech	Sema Inc dba Cell Business Equipment
Technical Score <i>Maximum 70.00</i>	64.67	63.00
Cost Ratio Score <i>Maximum 30.00</i>	30.00	28.47
Aggregate Score <i>Maximum 100.00</i>	94.67	91.47
Overall Rank	1	2

C3 Office Solutions LLC dba C3 Tech was ranked by the evaluation panel as the top-rated proposer for copier maintenance and repair services. This firm has previously serviced the City's copiers and is capable of servicing the various different copier brands and models.

Conclusion

Given the expertise and experience that C3 Office Solutions LLC dba C3 Tech can provide to support the City's copiers, staff recommends the approval of the five-year maintenance and repair agreement in the not-to-exceed amount of \$260,443.60.

FISCAL IMPACT:

The adopted budget includes sufficient funding for this purchase. It will be expensed to the Maintenance Copiers account in the Information Technology Operations Division, 76420203-851011.

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 – Maintenance/Repair Services Agreement

ATTACHMENT A

MAINTENANCE/REPAIR SERVICES AGREEMENT WITH C3 OFFICE SOLUTIONS LLC DBA C3 TECH FOR COPIER MAINTENANCE AND REPAIR SERVICES

THIS MAINTENANCE/REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 24th day of January, 2023 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and C3 Office Solutions LLC, a California limited liability company, doing business as ("DBA") C3 Tech ("Contractor"), whose address is 1536 E. Warner Avenue, Santa Ana, California 92705, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Contractor to perform maintenance and/or repair services for City ("Project").
- C. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the maintenance and/or repair services described in this Agreement.
- D. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by City for the Project, is familiar with all conditions relevant to the performance of services, and has committed to perform all work required for the compensation specified in this Agreement.

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

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on January 23, 2028, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

2.1 Contractor 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"). As a material inducement to City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and Contractor is experienced in performing the Work contemplated herein and, in light of such status and experience, Contractor covenants that it shall follow community professional standards with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances, in performing the Work required hereunder, and that all materials will be of good quality.

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

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Contractor shall perform the Services in accordance with the schedule included in Exhibit A. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Contractor to strictly adhere to the schedule set forth in Exhibit A, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Contractor shall not be responsible for delays due to causes beyond Contractor's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Contractor shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein, not later than two (2) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Contractor's control.

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

4. COMPENSATION TO CONTRACTOR

4.1 City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Two Hundred Sixty Thousand Four Hundred Forty Three Dollars and 60/100 (\$260,443.60)**, without prior written amendment to the Agreement.

4.2 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name and/or classification of employee who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Contractor no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Contractor 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 Contractor shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with Exhibit B.

5. PROJECT MANAGER

5.1 Contractor shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Contractor has designated Samantha Sanchez to be its Project Manager. Contractor shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Contractor, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the City Manager's Office. City's Information Technology Manager or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Contractor in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Contractor, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Contractor's Work schedule.

8. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

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

8.2 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the personnel required to perform

the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Contractor certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws and legally recognized professional standards.

8.3 Contractor represents and warrants to City that it has, shall obtain and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Contractor to practice its profession. Contractor shall maintain a City of Newport Beach business license during the term of this Agreement.

8.4 Contractor shall not be responsible for delay, nor shall Contractor be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Contractor's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. RESPONSIBILITY FOR DAMAGES OR INJURY

9.1 City and all officers, employees and representatives thereof shall not be responsible in any manner for any loss or damage to any of the materials or other things used or employed in performing the Project or for injury to or death of any person as a result of Contractor's performance of the Services required hereunder; or for damage to property from any cause arising from the performance of the Project by Contractor, or its subcontractors, or its workers, or anyone employed by either of them.

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

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

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

9.5 Contractor shall perform all Work in a manner to minimize public inconvenience and possible hazard, to restore other work areas to their original condition and former usefulness as soon as possible, and to protect public and private property. Contractor shall be liable for any private or public property damaged during the performance of the Work by Contractor or its agents.

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

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

10. INDEPENDENT CONTRACTOR

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

11. COOPERATION

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

12. CITY POLICY

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

13. PROGRESS

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

14. INSURANCE

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

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

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

16. SUBCONTRACTING

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

17. OWNERSHIP OF DOCUMENTS

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Contractor, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Contractor or any other party. Contractor shall, at Contractor's expense, provide such Documents to City upon prior written request.

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. RECORDS

Contractor shall keep records and invoices in connection with the Services to be performed under this Agreement. Contractor shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such records and invoices shall be clearly identifiable. Contractor shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Contractor shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Contractor under this Agreement.

20. WITHHOLDINGS

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

21. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

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

22. CONFLICTS OF INTEREST

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

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

23. NOTICES

23.1 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.

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

Attn: Information Technology Manager
City Manager's Office
City of Newport Beach
100 Civic Center Drive
PO Box 1768
Newport Beach, CA 92658

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

Attn: Tricia Sanchez
C3 Office Solutions LLC dba C3 Tech
1536 E. Warner Avenue
Santa Ana, CA 92705

24. CLAIMS

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

25. TERMINATION

25.1 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.

25.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred up to the effective date of termination for which Contractor has not been previously paid. On the effective date of termination, Contractor shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

26. LABOR

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

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

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

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

27. STANDARD PROVISIONS

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

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

27.3 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.

27.4 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.

27.5 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.

27.6 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.

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

27.8 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.

27.9 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.

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

27.11 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.

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

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

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

Date: 12/20/22

for By: 
Aaron C. Harp
City Attorney 12/20/22 DC

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Noah Blom
Mayor

**CONTRACTOR: C3 Office Solutions
LLC dba C3 Tech**, a California limited
liability company

Date: _____

By: _____
Jose Antonio Sanchez
Chief Executive Officer

Date: _____

By: _____
Tricia Sanchez
Managing Member

[END OF SIGNATURES]

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

EXHIBIT A

SCOPE OF SERVICES

Objective:

Contractor will provide maintenance and repair services related to the approximately twenty-six (26) copiers owned and operated by the City. These services shall support copiers located at the Civic Center, Library, Recreation, Utilities, Fire, Police and Public Works facilities.

Description:

PROJECT OVERVIEW

The City owns 26 copiers ("Equipment") throughout the following locations: Civic Center, Police Department Headquarters, Lifeguard Headquarters, OASIS Senior Center, Central Library, Utilities Department, Marina Park and Municipal Operations Corporate Yard. These units require proactive maintenance and, on an as-needed basis, repairs. The City's IT staff maintains the City's technology infrastructure, including the networking and general management of copiers but a contractor is needed to provide the maintenance and repair services on the units.

The Equipment list, attached hereto, includes the latest meter counts for all copier units. Since the meter counts have run higher than originally anticipated, the City reserves the right to replace copier units as-needed and with any make/model that best suits the City's needs.

Contractor Responsibilities

Contractor shall provide preventative maintenance on Equipment. Maintenance shall be performed on-site at the City location of each unit in accordance with manufacturer's specifications and recommendations for each respective unit.

Contractor shall guarantee a one (1)-hour return on service calls, providing an estimated time of arrival ("ETA") for a technician, not to exceed four (4) hours after the initial service call response.

Contractor shall provide customized billing as directed by the City. Billing may be segregated by department, accounting codes, or any other methodology cited by the Project Manager.

Contractor shall proactively monitor Equipment and provide for the automatic shipment and replenishment of toner supplies when levels reach 25%.

Contractor shall remotely log in to the City's network with granted access over firewall to support designated City staff on an as-needed basis.

Contractor shall provide emergency loaner units for any Equipment that cannot be repaired within two (2) business days.

Contractor shall only use original equipment manufacturer parts and toner when servicing or repairing Equipment.

Contractor shall provide quarterly reviews to monitor Equipment performance and City satisfaction and serviceability.

Contractor shall configure Equipment for the appropriate network or PC environments based upon the network discovery performed.

Contractor shall train City Information Technology ("IT") staff member(s) of the City's designation on server setup and configuration.

Contractor shall train City IT staff member(s) of the City's designation on workstation printer setup and configuration.

Contractor shall train City IT staff member(s) of the City's designation on the use of the print driver in a "train-the-trainer" format

Contractor shall generate server and workstation printer test pages.

Contractor agrees that any and all information viewed through and during the performance of Services in accordance with this Agreement is confidential and may not be disclosed without City consent unless ordered by law.

City Responsibilities

City shall provide Contractor with a list of all Equipment covered under this Agreement, including primary contacts associated with each piece of Equipment. City shall endeavor to notify Contractor in the event there are changes to the Equipment or contact list.

City shall be responsible for any and all staple and paper supplies.

City shall ensure clear and unobstructed access for Contractor's personnel to all Equipment covered in this Agreement.

City shall grant firewall access to the Contractor for purposes of remote log in to support designated City staff on an as-needed basis.

ATTACHMENTS

1. List of the all the City Owned Copiers

#	Location	Address	Department/Floor	Main Contact	Telephone	Email	Equipment Model	Serial No.	Installation Date	Mono Pages (Avg. Monthly Vol.)	Color Pages (Avg. Monthly Vol.)
CIVIC CENTER											
1	Customer Service Center	100 Civic Center Drive	Bay 1A	Mike Wojciechowski	949-644-3088	mwoj@newportbeachca.gov	SHARP MX-6070V	8510020Y00	05/07/2019	7,965	2,132
2	Community Development (Planning)	100 Civic Center Drive	Bay 1B	Mike Wojciechowski	949-644-3088	mwoj@newportbeachca.gov	TOSHI BA E-STUDIO 6506AC	CHGG20329	10/20/2017	10,462	4,166
3	Emergency Operations Center	100 Civic Center Drive	Basement	Mike Wojciechowski	949-644-3088	mwoj@newportbeachca.gov	SHARP MX-5071	1506750Y00	05/18/2022	100	200
4	Community Development	100 Civic Center Drive	Bay 1C	Mike Wojciechowski	949-644-3088	mwoj@newportbeachca.gov	SHARP MX-6070V	95129261	03/01/2019	7,931	4,203
5	Community Development (Permits)	100 Civic Center Drive	Bay 1C	Mike Wojciechowski	949-644-3088	mwoj@newportbeachca.gov	RICOH MP 5055	C336R01367	04/25/2017	6,255	N/A
6	Community Development Lobby	100 Civic Center Drive	Bay 1C	Mike Wojciechowski	949-644-3088	mwoj@newportbeachca.gov	SHARP MX-5071V	15090448	11/05/2021	200	100
7	Community Development (Building)	100 Civic Center Drive	Bay 1D	Mike Wojciechowski	949-644-3088	mwoj@newportbeachca.gov	TOSHI BA E-STUDIO 6506AC	2513527Y00	10/27/2017	9,845	3,822
8	IT Services	100 Civic Center Drive	Bay 1E	Mike Wojciechowski	949-644-3088	mwoj@newportbeachca.gov	SHARP MX-6070V	8510020Y00	02/06/2018	1,181	2,007
9	Human Resources Department	100 Civic Center Drive	Bay 2A	Mike Wojciechowski	949-644-3088	mwoj@newportbeachca.gov	TOSHI BA E-STUDIO 6506AC	CHFG10718	07/27/2017	9,014	2,935
10	Fire Department	100 Civic Center Drive	Bay 2B	Mike Wojciechowski	949-644-3088	mwoj@newportbeachca.gov	SHARP MX-6070V	8512162600	06/18/2018	5,511	5,522
11	Finance Department	100 Civic Center Drive	Bay 2C	Mike Wojciechowski	949-644-3088	mwoj@newportbeachca.gov	TOSHI BA E-STUDIO 6506AC	CHFG18715	07/20/2017	5,464	2,162
12	Public Works Department	100 Civic Center Drive	Bay 2D	Mike Wojciechowski	949-644-3088	mwoj@newportbeachca.gov	TOSHI BA E-STUDIO 6506AC	CHBG16327	04/10/2017	8,200	4,800
13	Executive Offices (City Manager / Attorney)	100 Civic Center Drive	Bay 2E	Mike Wojciechowski	949-644-3088	mwoj@newportbeachca.gov	TOSHI BA E-STUDIO 6506AC	CHHG21172	11/17/2017	8,838	3,602
14	Executive Offices (City Clerk)	100 Civic Center Drive	Bay 2E	Mike Wojciechowski	949-644-3088	mwoj@newportbeachca.gov	TOSHI BA E-STUDIO 5506AC	CHBG19072	04/10/2017	7,816	2,154
15	Council Chambers	100 Civic Center Drive	Council Chambers	Mike Wojciechowski	949-644-3088	mwoj@newportbeachca.gov	SHARP MX-5071S	1506737Y00	05/04/2022	100	200
LIFEGUARD HEADQUARTERS											
16	Lifeguard Headquarters	70 Newport Pier	Admin Office	Michael Halphide	949-644-3047	mhalphide@nbfld.net	SHARP MX-5071V	9503106900	11/05/2019	1,029	1,030
OASIS SENIOR CENTER											
17	OASIS Senior Center	801 Narcissus	Admin Office	Jessica Battoli	949-644-3245	jbattoli@newportbeachca.gov	SHARP MX-5070V	8513367700	10/24/2018	1,866	3,622
CENTRAL LIBRARY											
18	Central Library	1000 Avocado Ave.	Admin Office	Francine Jacome	949-717-3809	fjacome@newportbeachca.gov	SHARP MX-5070V	8512836100	04/11/2018	6,071	5,732
PUBLIC WORKS - CORPORATE YARD											
19	Municipal Operations General Services Yard	582 Superior Ave.	Admin Office (Building A)	Marie Lindeman	949-644-3061	mlindeman@newportbeachca.gov	SHARP MX-5071	95141517	09/10/2019	1,932	3,817
UTILITIES DEPARTMENT											
20	Utilities Department Headquarters	949 W. 16th Street	Admin Office	Kristen Burger	944-644-3012	kburger@newportbeachca.gov	SHARP MX-6070N	7507284200	04/17/2017	3,738	2384
MARINA PARK											
21	Marina Park	1600 W. Balboa Blvd.	Admin Office (Building A)	Racquel Valdez	949-644-3158	rvaldez@newportbeachca.gov	SHARP MX-5071S	1506586Y00	05/12/2022	754	1,679
22	Marina Park	1600 W. Balboa Blvd.	Admin Office (Building B)	Racquel Valdez	949-644-3158	rvaldez@newportbeachca.gov	SHARP MX-5071S	1506667Y00	05/12/2022	1,169	2,734
POLICE DEPARTMENT											
23	Police Department Headquarters	870 Santa Barbara Drive	Traffic Office	Brain Dakin	949-644-3793	bdakin@nbpd.org	TOSHI BA E-STUDIO AC500S	SCNIGH31823	10/30/2018	281	727
24	Police Department Headquarters	870 Santa Barbara Drive	Detectives Office	Brain Dakin	949-644-3793	bdakin@nbpd.org	TOSHI BA E-STUDIO AC500S	SCNHH37849	10/30/2018	3,743	3,544
25	Police Department Headquarters	870 Santa Barbara Drive	Records Office	Brain Dakin	949-644-3793	bdakin@nbpd.org	TOSHI BA E-STUDIO AC500S	SCFCH45992	07/19/2018	11,733	2,071
26	Police Department Headquarters	870 Santa Barbara Drive	Support Services Office	Brain Dakin	949-644-3793	bdakin@nbpd.org	TOSHI BA E-STUDIO AC500S	SCFG63958	07/19/2018	5,937	2,122

EXHIBIT B

SCHEDULE OF BILLING RATES

Black & White Copies

	Copy Rate (per copy)	Average Monthly Volume	Black & White Yearly Total
Year 1	0.0045	90,000	\$4,860.00
Year 2	0.0050	90,000	\$5,346.00
Year 3	0.0054	90,000	\$5,880.60
Year 4	0.0060	90,000	\$6,468.66
Year 5	0.0066	90,000	\$7,115.53

Color Copies

	Copy Rate (per copy)	Average Monthly Volume	Color Yearly Total
Year 1	0.045	70,000	\$37,800.00
Year 2	0.0495	70,000	\$41,580.00
Year 3	0.0545	70,000	\$45,738.00
Year 4	0.0599	70,000	\$50,311.80
Year 5	0.0659	70,000	\$55,342.98

Totals

	Black & White Yearly	Color Yearly	Total
Year 1	\$4,860.00	\$37,800.00	\$42,660.00
Year 2	\$5,346.00	\$41,580.00	\$46,926.00
Year 3	\$5,880.60	\$45,738.00	\$51,618.60
Year 4	\$6,468.66	\$50,311.80	\$56,780.46
Year 5	\$7,115.53	\$55,342.98	\$62,458.51
Contract NTE			\$260,443.60

Pricing includes any and all labor; materials; equipment; supervision; travel and expenses; and insurance to provide the contractual services.

EXHIBIT C

INSURANCE REQUIREMENTS – MAINTENANCE/REPAIR/JANITORIAL SERVICES

1. Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.
 - B. General Liability Insurance. Contractor shall maintain commercial general liability insurance and, if necessary, umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than 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, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
 - C. Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Contractor arising out of or in connection with Work to be performed under this

Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
 - A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.
 - B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess liability, pollution liability, and automobile liability, if required, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.
 - C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
 - D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
 - A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice

of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

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

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



CITY OF

NEWPORT BEACH

City Council Staff Report

January 24, 2023
Agenda Item No. 11

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Jim Campbell, Deputy Community Development Director, jcampbell@newportbeachca.gov

PHONE: 949-644-3210

TITLE: Planning Commission Agenda Report for January 19, 2023

ITEM NO. 1 MINUTES OF JANUARY 5, 2023

SUMMARY: Draft minutes from the January 5, 2023, meeting of the Planning Commission.

The Planning Commission considered the draft minutes and approved the draft minutes with minor edits by the following vote:

AYES: Ellmore, Harris, Klaustermeier, Lowrey, and Rosene
NOES: None
ABSENT: None
ABSTAIN: None

ACTION: Approved as amended

PUBLIC HEARING ITEMS:

ITEM NO. 2 RICHARDSON RESIDENCE VARIANCE (PA2021-119)
Site Location 361 Newport Glen Court

SUMMARY: A request to construct an addition of approximately 665 square feet to an existing 3,740-square-foot single-family residence that would encroach up to 10 feet into the required 20-foot rear setback. The proposed addition would be constructed within the footprint of an existing raised deck that encroaches approximately 10 feet. The raised deck would be replaced above the new addition area and would maintain the same 10-foot encroachment into the rear setback. The project complies with all other development standards such as lot coverage, height, and parking, and no other deviations are requested.

The Planning Commission conducted a public hearing and approved the project as recommended by the following vote.

AYES: Ellmore, Harris, Klaustermeier, Lowrey, and Rosene
NOES: None
ABSENT: None
ABSTAIN: None

ACTION: Approved as recommended

ITEM NO. 3

DAY RESIDENCE (PA2020-350)

Site Location: 704 East Ocean Front, Units A and B

Summary:

Day Residence - A request for a coastal development permit to demolish an existing two (2)-story duplex and construct a new three (3)-story 2,972-square-foot duplex with an attached 397-square-foot two (2)-car garage and a two (2)-car carport. Additionally, the applicant requests the following deviations from the residential development standards of the Newport Beach Municipal Code (NBMC):

a. Variance: Request to encroach three (3) feet into the required 3-foot right side setback area; and

b. Major Site Development Review: Request to increase the allowed height from a base height limit of 24 feet for flat roofs and 29 feet for sloping roofs to a maximum height limit of 28 feet for flat roofs and 33 feet for sloping roofs.

The Planning Commission conducted a public hearing and approved the project as recommended by the following vote:

AYES:	Ellmore, Harris, Klaustermeier, and Lowrey
NOES:	Rosene
ABSENT:	None
ABSTAIN:	None
RECUSAL:	None

ACTION:

Approved as recommended

**NEWPORT BEACH PLANNING COMMISSION AGENDA
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, JANUARY 19, 2023
REGULAR MEETING – 6:30 P.M.**

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. PUBLIC COMMENTS

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

V. REQUEST FOR CONTINUANCES

VI. CONSENT ITEMS

ITEM NO. 1 MINUTES OF JANUARY 5, 2023

Recommended Action: Approve and file

VII. PUBLIC HEARING ITEMS

Speakers must limit comments to three (3) minutes on all items. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

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

**ITEM NO. 2 RICHARDSON RESIDENCE VARIANCE (PA2021-119)
Site Location: 361 Newport Glen Court**

Summary:

A request to construct an addition of approximately 665 square feet to an existing 3,740-square-foot single-family residence that would encroach up to 10 feet into the required 20-foot rear setback. The proposed addition would be constructed within the footprint of an existing raised deck. The project complies with all other development standards such as lot coverage, height, and parking, and no other deviations are requested.

Recommended Action:

1. Conduct a public hearing; and
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
3. Adopt Resolution PC2023-006 approving PA2021-119 for a variance to construct a residential addition.

ITEM NO. 3 DAY RESIDENCE (PA2020-350)
Site Location: 704 East Ocean Front, Units A and B

Summary:

A request for a coastal development permit to demolish an existing two (2)-story duplex and construct a new three (3)-story 2,972-square-foot duplex with an attached 397-square-foot two (2)-car garage and a two (2)-car carport. Additionally, the applicant requests the following deviations from the residential development standards of the Newport Beach Municipal Code (NBMC):

- a. Variance: Request to encroach three (3) feet into the required 3-foot right side setback area; and
- b. Major Site Development Review: Request to increase the allowed height from a base height limit of 24 feet for flat roofs and 29 feet for sloping roofs to a maximum height limit of 28 feet for flat roofs and 33 feet for sloping roofs.

Recommended Action:

1. Conduct a public hearing; and
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 under Class 4 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
3. Adopt Resolution PC2023-007 approving PA2020-350 for a variance, major site development review, and coastal development permit to construct a duplex.

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 4 MOTION FOR RECONSIDERATION

ITEM NO. 5 REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE PLACED ON A FUTURE AGENDA

ITEM NO. 6 REQUESTS FOR EXCUSED ABSENCES

IX. ADJOURNMENT



CITY OF

NEWPORT BEACH

City Council Staff Report

January 24, 2023
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: Rebecca Lightfoot, Adult Services Coordinator,
rlightfoot@newportbeachca.gov

PHONE: 949-717-3852

TITLE: Budget Amendment to Accept a Check from the California State Library for Literacy Services (CLLS) and Appropriate Funds to the Library's FY 2022-23 Budget

ABSTRACT:

The Newport Beach Public Library's (Library's) literacy program is funded by the City of Newport Beach General Fund and grants, donations and the fundraising efforts of Project Adult Literacy. One of the major funding resources is through the California State Library Literacy Services' annual grant program. Staff requests approval of a budget amendment to accept a check from the California State Library for Literacy Services (CLLS) to support the Library's Literacy Program.

RECOMMENDATIONS:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Accept a check in the amount of \$43,022 from the California State Library for Literacy Services (CLLS) and approve Budget Amendment No. 23-045 to increase expenditures by the same amount in the Literacy accounts.

DISCUSSION:

The Library's literacy program has offered one-on-one tutoring and small group classes to patrons with low literacy skills for nearly 35 years. These services currently support over 100 learners and make a significant difference in the lives of the participants, both learners and volunteers. One of the goals of the program is to assist the participants in becoming more engaged citizens and active members in the community.

The grant funds will be used toward staffing to ensure that the high-quality program that the community has come to expect continues.

The Fiscal Year 2022-23 City contribution for the literacy program is \$80,973. Program expenses are augmented by the CLLS annual grant program, and through private donations and other grants. The CLLS grant funds literacy programs on an annual basis based on an application submitted in August.

There are three parts to the funding formula:

- Each approved California literacy program receives a base grant amount of \$20,000;
- A per capita amount per adult learner served; and
- Additional funding based on local funds raised and expended for adult literacy services.

Based on the above measures, the Library's literacy program received a total award of \$47,802. Ninety percent of the award, \$43,022, is given upfront, in November. The remaining 10 percent is eligible for distribution after the literacy program has completed mid-year reporting to CLLS and spent 75 percent of the total award.

FISCAL IMPACT:

The budget amendment appropriates \$43,022 in additional revenue from CLLS and \$43,022 in increased expenditure appropriations with no impact on fund balance. The revenue will be posted to the California Literacy Campaign account in the Library Services Department, 01060005-431070, and the purchases will be expensed to the following Library Services Literacy accounts:

Salaries P/T	01060604-711003	\$40,784.85
Medicare	01060604-727016	\$ 623.82
Retirement Part-Time/Temp	01060604-723004	\$ 1,613.33
TOTAL		\$43,022.00

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



STATE OF CALIFORNIA

WARRANT NUMBER

63-169705

H THE TREASURER OF THE STATE WILL PAY OUT OF THE
IDENTIFICATION NO.

0000011771

FUND NO.

8087

FUND NAME

FISCAL CONSOLIDATED PMT

MO. DAY YR.

12 09 2022

90-1342/1211

63169705

TO: 169705

CITY OF NEWPORT BEACH

PUBLIC LIBRARY

1000 AVOCADO AVE

NEWPORT BEACH CA 92660-7915

DOLLARS	CENTS
\$***43022	.00

BETTY T. YEE

CALIFORNIA STATE CONTROLLER

01211134230 631697058

DETACH ON DOTTED LINE
KEEP THIS PORTION FOR YOUR RECORDS

63-169705

ISSUE DATE: 12/09/2022

CA STATE LIBRARY

900 N STREET ROOM 155

SACRAMENTO CA 95814

FOR QUESTIONS CONTACT ACCOUNTING DEPARTMENT AT 916/654-0022

VENDOR NAME

VENDOR ID

CITY OF NEWPORT BEACH

0000011771

VOUCHER ID

INVOICE ID

PO ID

00016617

CLLS22-54-01

0000005303

AMOUNT PAID

\$43022.00

PAYMENT MESSAGE

GRANT AWARD CLLS22-54

ADDITIONAL PAYMENT MESSAGE



City of Newport Beach

BUDGET AMENDMENT

2022-23

BA#: 23-045

Department: LibraryRequestor: Rebecca LightfootONE TIME: ☒ Yes ☐ No☐ CITY MANAGER'S APPROVAL ONLY☒ COUNCIL APPROVAL REQUIRED**Approvals**Finance Director: [Signature]Date 12/15/22

City Clerk: _____

Date _____

EXPLANATION FOR REQUEST:

To increase revenue estimates and expenditure appropriations from the California State Library Literacy Services (CLS).
Funds will be allocated to various Library Literacy Services accounts.

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

REVENUES

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
010	01060005	431070		LIBRARY ADMIN - CALIF LITERACY CAMPAIGN	43,022.00
				-	
				-	
				-	
				-	
				-	
Subtotal					\$ 43,022.00

EXPENDITURES

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
010	01060604	711003		LITERACY SERVICES - SALARIES PART TIME	40,784.85
010	01060604	727016		LITERACY SERVICES - MEDICARE FRINGES	623.82
010	01060604	723004		LITERACY SERVICES - RETIREMENT PART TIME/TEMP	1,613.33
Subtotal					\$ 43,022.00

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

January 24, 2023
Agenda Item No. 13

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Jason Al-Imam, Finance Director/Treasurer –
949-644-3126, jalimam@newportbeachca.gov

PREPARED BY: Eric Wilson, Budget Analyst,
ewilson@newportbeachca.gov

PHONE: 949-644-3122

TITLE: Grants and Donations Report for the Quarter Ending December 31,
2022

ABSTRACT:

City Council Policy F-3, Budget Adoption and Administration, requires quarterly reporting to the City Council of any grants or donations accepted by the city manager.

RECOMMENDATIONS:

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

DISCUSSION:

Per City Council Policy F-3, the city manager accepted \$18,765.00 during the quarter ending December 31, 2022:

Source	Date	Amount	Use
Emergency Management Performance Grant (EMPG)	11/09/22	\$4,265.00	Provides funding for local emergency management programs. The funding will be used to support overtime for emergency management staff.
Literacy Service Special Deposit	11/22/22	\$2,500.00	To cover expenses for the literacy program.
Help Your Harbor	12/21/22	\$12,000.00	Purchase of marina trash skimmer.

FISCAL IMPACT:

These grants and donations reduce the burden on the City's General Fund for needed expenditures, providing a positive fiscal impact.

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).



CITY OF

NEWPORT BEACH

City Council Staff Report

January 24, 2023
Agenda Item No. 14

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Jaime Murillo, Principal Planner, jmurillo@newportbeachca.gov
PHONE: 949-644-3209

TITLE: Status on Planning Commission's Efforts Related to Fractional Homeownership (PA2022-0202)

ABSTRACT:

At the October 25, 2022 City Council meeting, the City Council requested the Planning Commission consider making changes to the Newport Beach Municipal Code to address fractional homeownership. In response to the direction, the Planning Commission formed an ad hoc committee to review the issue. This agenda item is a report on the status of the Planning Commission's efforts to date and its plan to make recommendation to the City Council at its February 23, 2023 meeting.

RECOMMENDATION:

Receive and file.

DISCUSSION:

On September 13, 2022, the City Council held a study session on fractional homeownership. At the conclusion of the study session, the City Council directed staff to work with the Planning Commission to develop recommendations for the regulation of fractional homeownership.

The Planning Commission conducted a study session on October 6, 2022 on fractional homeownership. Due to the complexity of the issue, the Commission expressed the desire to form an ad hoc committee and work closely with staff to formulate appropriate regulations. On October 20, 2022, the Planning Commission formed an ad hoc committee consisting of Commissioners Lee Lowery, Mark Rosene and former Commissioner Erik Weigand. The expectation was to have the ad hoc committee meet as necessary to assist staff with the creation of regulations that would then be presented to the Planning Commission at a future public hearing for consideration and to make a recommendation to the City Council.

On October 25, 2022, the City Council, at the request of Councilmember Diane Dixon, unanimously concurred to direct the Planning Commission to make a recommendation regarding the regulation of fractional homeownership at the January 5, 2023, Planning Commission meeting. The recommendation would then be presented by staff to the City Council for its review and consideration at a subsequent meeting date.

Ad Hoc Committee Efforts and Status of Recommendation

Given the nature of the issues, the ad hoc committee was not prepared to provide specific recommendations for Planning Commission consideration on January 5, 2023. However, the ad hoc committee has made significant progress over the past few months meeting a total of six times, including meeting with representatives from Pacaso as well as concerned residents. Currently, the ad hoc committee is in the process of finalizing its recommendations and is scheduled to return to the Planning Commission with recommendations on February 23, 2023.

FISCAL IMPACT:

There is no fiscal impact related to this item.

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).



CITY OF

NEWPORT BEACH

City Council Staff Report

January 24, 2023
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: Chelsea Crager, Senior Planner, ccrager@newportbeachca.gov

PHONE: 949-644-3227

TITLE: Ordinance No. 2023-1 and Resolution Nos. 2023-4 and 2023-5: General Plan Amendment to Increase the Development Limit for Bay Island (PA2022-087)

ABSTRACT:

For the City Council's reconsideration are amendments to the General Plan, Zoning Map, and Coastal Zoning Map for Bay Island. The amendments increase the maximum development limits from 23 dwelling units to 25 dwelling units and include correcting the land use maps. The amendments were initiated by Bay Island Club, Inc., which seeks to return development rights, consistent with Use Permit No. UP3618.

This item was previously heard and approved at the January 10, 2023 City Council meeting; however, the agenda item was required to be re-noticed to ensure compliance with the requirements of the Newport Beach Municipal Code.

RECOMMENDATIONS:

- a) Conduct a public hearing;
- b) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 – Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment;
- c) Adopt Resolution No. 2023-4, *A Resolution of the City Council of the City of Newport Beach, California, Approving General Plan Amendment No. GP2022-001 to Change the Development Limit Specified for Bay Island from 23 Dwelling Units to 25 Maximum Dwelling Units (PA2022-087);*
- d) Adopt Resolution No. 2023-5, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing the Submittal of Local Coastal Program Amendment No. LC2022-003 to Change the Development Limit Specified for Bay Island from 23 Dwelling Units to 25 Maximum Dwelling Units (PA2022-087); and*

- e) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2023-1, *An Ordinance of the City Council of the City of Newport Beach, California, Approving Zoning Code Amendment No. CA2022-005 to Change the Development Limit Specified for Bay Island from 23 Dwelling Units to 25 Maximum Dwelling Units (PA2022-087)*, and pass to second reading on February 14, 2023.

DISCUSSION:

This agenda item was previously heard at the January 10, 2023, City Council meeting, where the proposed amendments were unanimously approved. However, subsequent to that meeting, it was discovered that the public noticing for the meeting did not meet the minimum 10-day posting and mailing requirements prior to the date of the meeting. Therefore, the item has been properly re-noticed consistent with the provisions of the Newport Beach Municipal Code.

The City Council is required to reconsider the item and hold a new public hearing. The complete January 10, 2023 City Council staff report, including attachments, is provided as Attachment D for reference.

FISCAL IMPACT:

There is no fiscal impact related to this item.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council 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, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

Class 3 exempts the construction of up to three single-family residences. The project would authorize the future development of up to two additional single-family residences at Bay Island and therefore qualifies within this exemption. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

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 Newport Beach Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website in accordance with the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Resolution No. 2023-4

Attachment B – Resolution No. 2023-5

Attachment C – Ordinance No. 2023-1

Attachment D – January 10, 2023 Staff Report

Attachment A

Resolution No. 2023-4

RESOLUTION NO. 2023-4

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT NO. GP2022-001 TO CHANGE THE DEVELOPMENT LIMIT SPECIFIED FOR BAY ISLAND FROM 23 DWELLING UNITS TO 25 MAXIMUM DWELLING UNITS (PA2022-087)

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, on April 20, 2022, an application was filed by Bay Island Club, Inc., ("Applicant") with respect to Bay Island, as shown on the official map of Bay Island ("Property") which is attached hereto as Exhibit "A" and incorporated herein by reference;

WHEREAS, Bay Island is a 5.5-acre legal lot in Newport Harbor that is currently developed with 23 single-family homes, shared open space, recreational areas, and a caretaker's unit, which currently functions as a clubhouse;

WHEREAS, Bay Island is accessible by a pedestrian bridge with no vehicular access;

WHEREAS, on November 24, 1997, the City Council approved Use Permit No. UP3618 to implement a Planned Residential Development Overlay District, which modified the Multi-Family Residential (MFR) zoning and development regulations for Bay Island and created a development plan authorizing a maximum of 25 residential units (24 single-family building sites plus one residential caretaker site) and off-site parking;

WHEREAS, the purpose of Use Permit No. UP3618 is to ensure that future development maintains the single-family detached character of Bay Island;

WHEREAS, on July 25, 2006, the City Council approved Resolution No. 2006-76 adopting a comprehensive 2006 General Plan Update ("General Plan Update") wherein the density of Bay Island was inadvertently decreased to a maximum of 23 residential dwelling units based on the number of dwellings that existed on Bay Island at that time;

WHEREAS, the Applicant is requesting approval to correct the maximum density allowed on Bay Island from 23 to 25 dwelling units, consistent with Use Permit No. UP3618 ("Project");

WHEREAS, the following approvals are requested or required from the City to implement the Project:

- General Plan Amendment No. GP2022-001 – An amendment to the Land Use Element of the General Plan to correct the development limit specified for Bay Island from 23 dwelling units to 25 maximum dwelling units;
- Local Coastal Program Amendment No. LC2022-003 – An amendment to Title 21 (Local Coastal Program Implementation Plan) of the NBMC to correct the development limit specified for Bay Island from 23 dwelling units to 25 maximum dwelling units; and
- Zoning Code Amendment No. CA2022-005 – An amendment to Title 20 (Planning and Zoning) of the NBMC to correct the development limit specified for Bay Island from 23 dwelling units to 25 maximum dwelling units;

WHEREAS, the Property is located within the Multiple Residential (RM) Zoning District and the General Plan Land Use Element category is Multiple Residential Detached (RM-D);

WHEREAS, the Property is located within the coastal zone with a Coastal Land Use Plan category of Multiple-Unit Residential – 10.0 – 19.9 DU/AC (RM-C) and the Coastal Zoning District of Multiple Residential (RM);

WHEREAS, the Planning Commission held a public hearing on September 8, 2022 in the 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") and Chapters 20.62 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. PC2022-023 by a majority vote (6 ayes, 1 absent) recommending City Council approval of General Plan Amendment No. GP2022-001, Local Coastal Program Amendment No. LC2022-003 and Zoning Code Amendment No. CA2022-005; and

WHEREAS, the City Council held a public hearing on January 24, 2023 in the 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 20.62 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 hereby approves General Plan Amendment No. GP2022-001 amending the General Plan of the City of Newport Beach to correct the development limit specified for Bay Island from 23 dwelling units to a maximum of 25 dwelling units as depicted in Exhibit "B," which is attached hereto and incorporated herein by reference. This approval is contingent upon the certification of Local Coastal Program Amendment No. LC2022-003 by the California Coastal Commission.

Section 2: 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:

The Project is located within Statistical Area D3 with no general plan amendments over the last 10 years. Charter Section 423 is not triggered because the maximum number of dwelling units on Bay Island was inadvertently revised to reflect the number of dwelling units at that time as opposed to what was authorized by Use Permit No. UP3618.

Additionally, even assuming the Project was not merely correcting an error, increasing the number of dwelling units by two units has no effect on the non-residential floor area and would result in an overall increase of 1.4 a.m. peak hour trips and 1.9 p.m. peak hour trips based on the residential trip rates reflected in Council Policy A-18. Since none of the three thresholds specified by Charter Section 423 are exceeded, no vote of the electorate is required

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 General Plan Amendment No. GP2022-001 is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 15303, Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3. Class 3 exempts the construction of up to three single-family residences. General Plan Amendment No. GP2022-001 would authorize the future development of up to two additional single-family residences at Bay Island and therefore qualifies within this exemption.

Section 6: This resolution shall take effect upon the certification of Local Coastal Program Amendment No. LC2022-003 by the California Coastal Commission.


ADOPTED this 24th day of January, 2023.

Noah Blom
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachments: Exhibit A - Bay Island Map
 Exhibit B - General Plan Amendment No. GP2022-001

EXHIBIT "A"
Bay Island Map

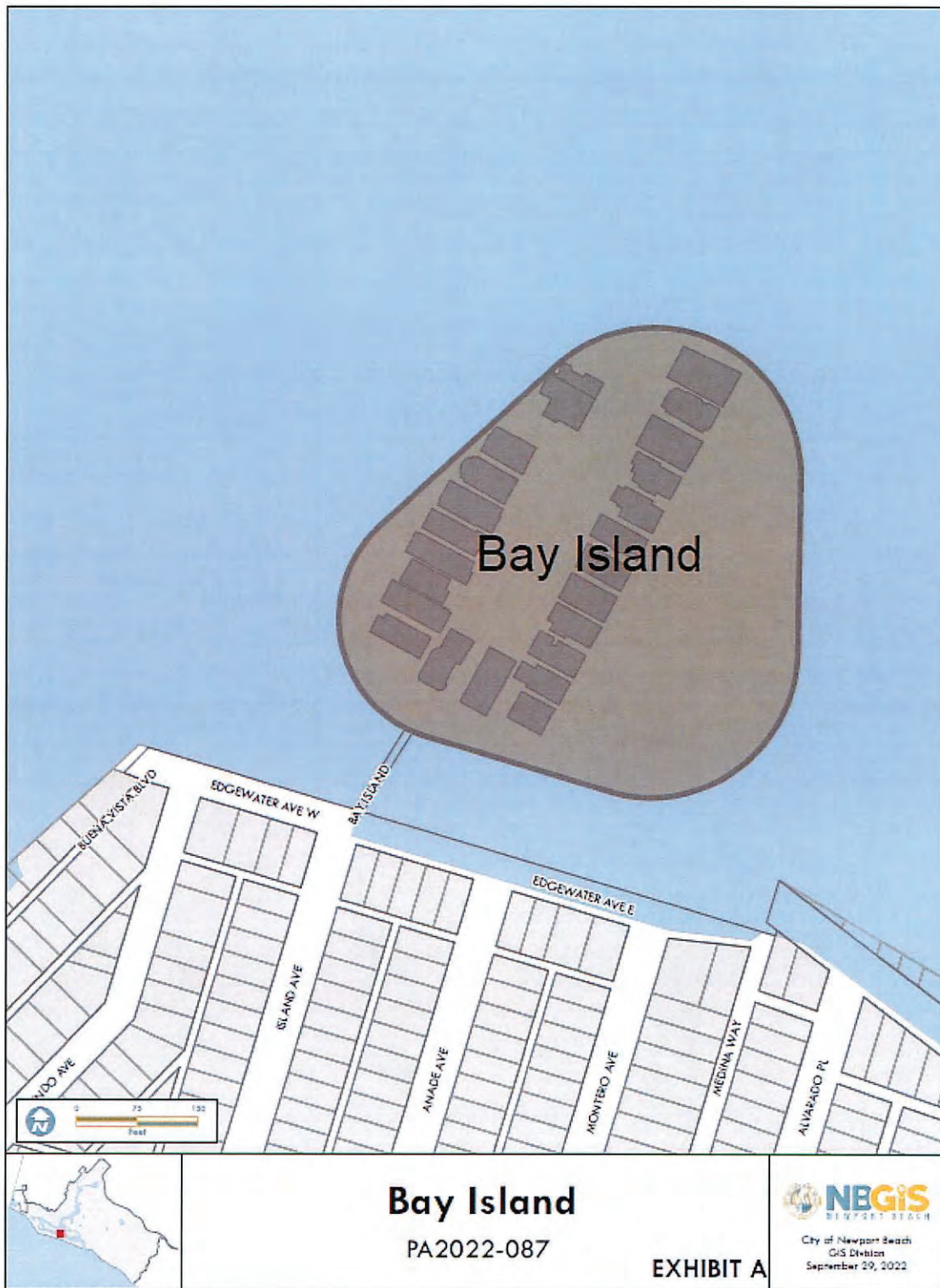
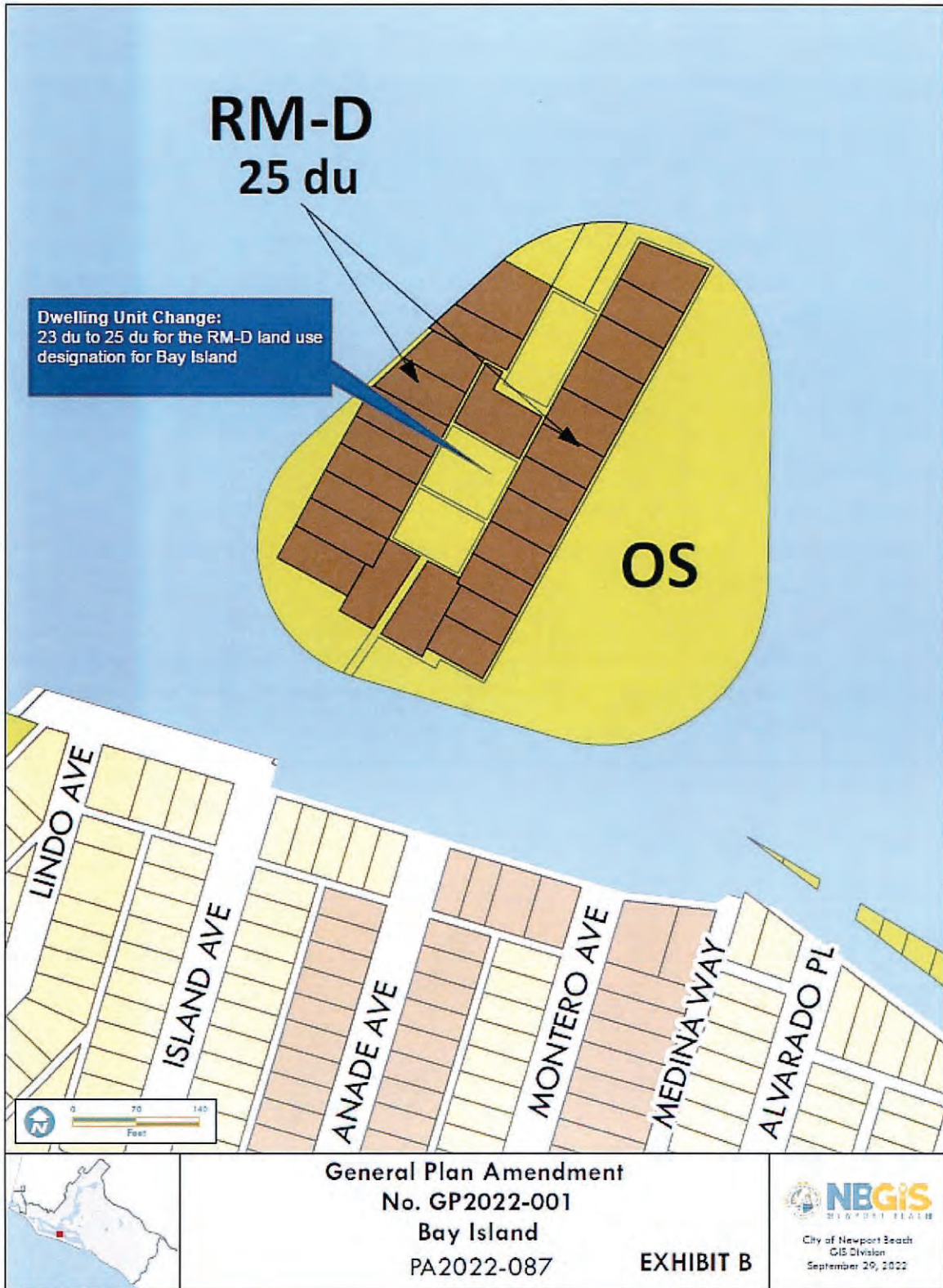


EXHIBIT "B"
General Plan Amendment No. GP2022-001



Attachment B

Resolution No. 2023-5

RESOLUTION NO. 2023-5

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AUTHORIZING THE SUBMITTAL OF LOCAL COASTAL PROGRAM AMENDMENT NO. LC2022-003 TO CHANGE THE DEVELOPMENT LIMIT SPECIFIED FOR BAY ISLAND FROM 23 DWELLING UNITS TO 25 MAXIMUM DWELLING UNITS (PA2022-087)

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, on April 20, 2022, an application was filed by Bay Island Club, Inc., ("Applicant") with respect to Bay Island, as shown on the official map of Bay Island ("Property") which is attached here as Exhibit "A" and incorporated herein by reference;

WHEREAS, Bay Island is a 5.5-acre legal lot in Newport Harbor that is currently developed with 23 single-family homes, shared open space, recreational areas, and a caretaker's unit, which currently functions as a clubhouse;

WHEREAS, Bay Island is accessible by a pedestrian bridge with no vehicular access;

WHEREAS, on November 24, 1997, the City Council approved Use Permit No. UP3618 to implement a Planned Residential Development Overlay District, which modified the Multi-Family Residential (MFR) zoning and development regulations for Bay Island and created a development plan that authorized a maximum of 25 residential units (24 single-family building sites plus one residential caretaker site) and off-site parking;

WHEREAS, the purpose of Use Permit No. UP3618 is to ensure that future development maintains the single-family detached character of Bay Island;

WHEREAS, on July 25, 2006, the City Council approved Resolution No. 2006-76 adopting a comprehensive 2006 General Plan Update ("General Plan Update") wherein the density of Bay Island was inadvertently decreased to a maximum of 23 residential dwelling units based on the number of dwellings that existed on Bay Island at that time;

WHEREAS, on November 22, 2016, the City Council adopted Ordinance No. 2016-19, adding Title 21 (Local Coastal Program Implementation Plan) to the Newport Beach Municipal Code ("NBMC") with the maximum density of 23 residential dwelling units inadvertently carried over to Title 21;

WHEREAS, the Applicant is requesting approval to correct the maximum density allowed on Bay Island from 23 to 25 dwelling units, consistent with Use Permit No. UP3618 ("Project");

WHEREAS, the following approvals are requested or required from the City of Newport Beach ("City") to implement the Project:

- General Plan Amendment No. GP2022-001 – An amendment to the Land Use Element of the General Plan to correct the development limit specified for Bay Island from 23 dwelling units to 25 maximum dwelling units;
- Local Coastal Program Amendment No. LC2022-003 – An amendment to Title 21 (Local Coastal Program Implementation Plan) of the NBMC to correct the development limit specified for Bay Island from 23 dwelling units to 25 maximum dwelling units; and
- Zoning Code Amendment No. CA2022-005 – An amendment to Title 20 (Planning and Zoning) of the NBMC to correct the development limit specified for Bay Island from 23 dwelling units to 25 maximum dwelling units;

WHEREAS, the Property is located within the Multiple Residential (RM) Zoning District and the General Plan Land Use Element category is Multiple Residential Detached (RM-D);

WHEREAS, the Property is located within the coastal zone with a Coastal Land Use Plan category of Multiple-Unit Residential – 10.0 – 19.9 DU/AC (RM-C) and the Coastal Zoning District of Multiple Residential (RM);

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. LC2022-003 were made available and a Notice of Availability was distributed a minimum of six weeks prior the City Council public hearing;

WHEREAS, the Planning Commission held a public hearing on September 8, 2022 in the 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 California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapters 20.62 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. PC2022-023 by a majority vote (6 ayes, 1 absent) recommending City Council approval of General Plan Amendment No. GP2022-001, Local Coastal Program Amendment No. LC2022-003 and Zoning Code Amendment No. CA2022-005; and

WHEREAS, the City Council held a public hearing on January 24, 2023 in the 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 20.62 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 hereby authorizes staff to submit Local Coastal Program Amendment No. LC2022-003 to the California Coastal Commission for review and approval as set forth in Exhibits "B" and "C," which are attached hereto and incorporated herein by reference.

Section 2: Local Coastal Program Amendment No. LC2022-003 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: Local Coastal Program Land Use Plan and Title 21 (Local Coastal Program Implementation Plan), including Local Coastal Program Amendment No. LC2022-003, will be carried out fully in conformity with the California Coastal Act.

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: Local Coastal Program Amendment No. LC2022-003 is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 15303, Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3. Class 3 exempts the construction of up to three single-family residences. Local Coastal Program Amendment No. LC2022-003 would authorize the future development of up to two additional single-family residences at Bay Island and therefore qualifies within this exemption.

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.

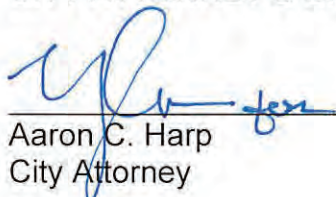
ADOPTED this 24th day of January, 2023.

Noah Blom
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachments: Exhibit A - Bay Island Map
 Exhibit B - Local Coastal Program Amendment No. LC2022-003
 Amending Title 21 of the NBMC
 Exhibit C - Local Coastal Program Amendment No. LC2022-003
 Amending the Coastal Land Use Plan

EXHIBIT "A"
Bay Island Map

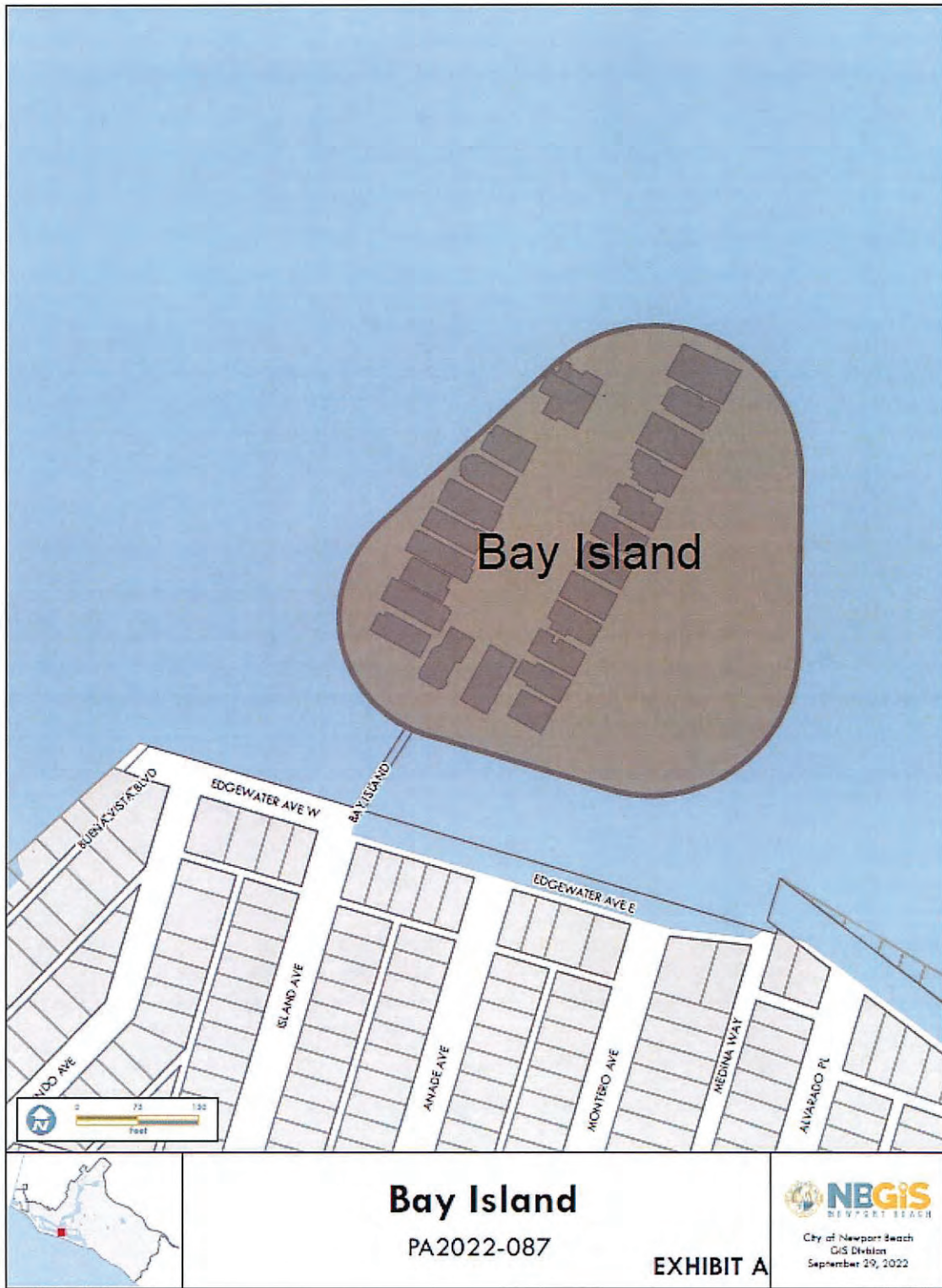


EXHIBIT "B"
Local Coastal Program Amendment No. LC2022-003
Amending Title 21 of the NBMC

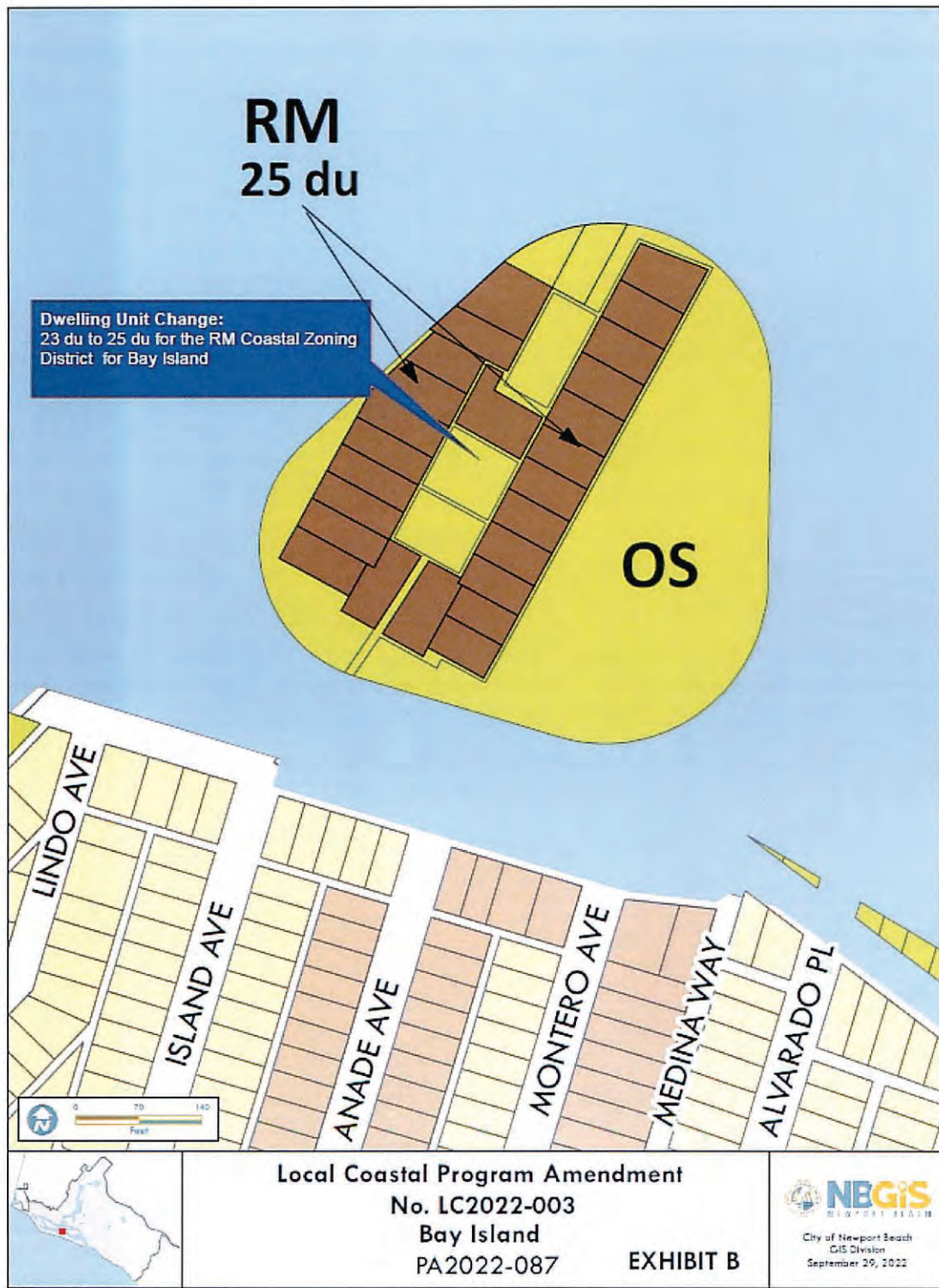
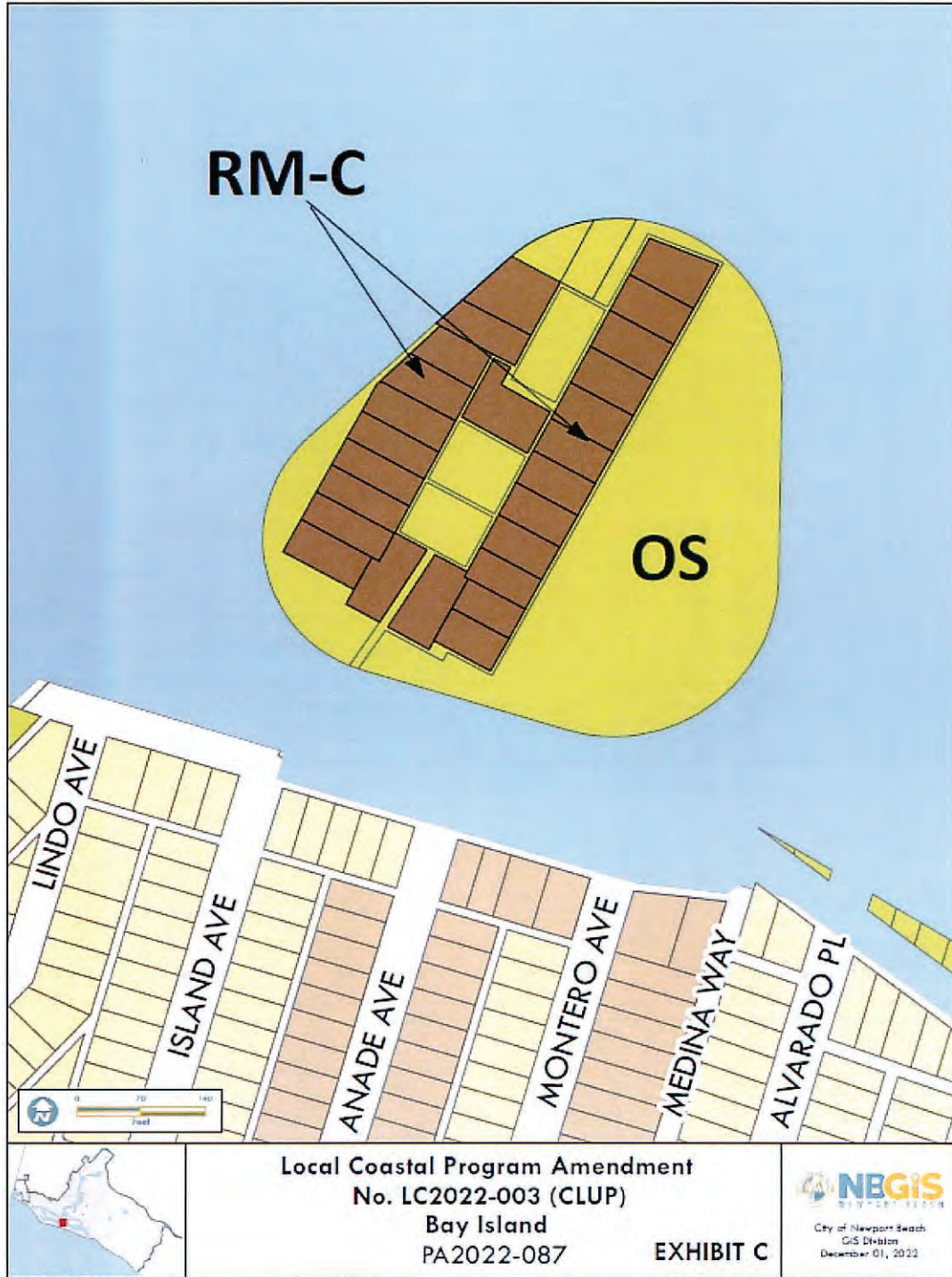


EXHIBIT "C"
Local Coastal Program Amendment No. LC2022-003
Amending the Coastal Land Use Plan



Attachment C

Ordinance No. 2023-1

ORDINANCE NO. 2023-1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING ZONING CODE AMENDMENT NO. CA2022-005 TO CHANGE THE DEVELOPMENT LIMIT SPECIFIED FOR BAY ISLAND FROM 23 DWELLING UNITS TO 25 MAXIMUM DWELLING UNITS (PA2022-087)

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, on April 20, 2022, an application was filed by Bay Island Club, Inc., ("Applicant") with respect to Bay Island, as shown on the official map of Bay Island ("Property") which is attached hereto as Exhibit "A" and incorporated herein by reference;

WHEREAS, Bay Island is a 5.5-acre legal lot in Newport Harbor that is currently developed with 23 single-family homes, shared open space, recreational areas, and a caretaker's unit, which currently functions as a clubhouse;

WHEREAS, Bay Island is accessible by a pedestrian bridge with no vehicular access;

WHEREAS, on November 24, 1997, the City Council approved Use Permit No. UP3618 to implement a Planned Residential Development Overlay District, which modified the Multi-Family Residential (MFR) zoning and development regulations for Bay Island and created a development plan authorizing a maximum of 25 residential units (24 single-family building sites plus one residential caretaker site) and off-site parking;

WHEREAS, the purpose of Use Permit No. UP3618 is to ensure that future development maintains the single-family detached character of Bay Island;

WHEREAS, on July 25, 2006, the City Council approved Resolution No. 2006-76 adopting a comprehensive 2006 General Plan Update ("General Plan Update") wherein the density of Bay Island was inadvertently decreased to a maximum of 23 residential dwelling units based on the number of dwellings that existed on Bay Island at that time;

WHEREAS, on October 25, 2010, the City Council adopted a comprehensive update to Title 20 (Planning and Zoning) of the Newport Beach Municipal Code ("NBMC") which inadvertently set the maximum density of Bay Island to 23 residential dwelling units;

WHEREAS, the Applicant is requesting approval to correct the maximum density allowed on Bay Island from 23 to 25 dwelling units, consistent with Use Permit No. UP3618 ("Project");

WHEREAS, the following approvals are requested or required from the City to implement the Project:

- General Plan Amendment No. GP2022-001 – An amendment to the Land Use Element of the General Plan to correct the development limit specified for Bay Island from 23 dwelling units to 25 maximum dwelling units;
- Local Coastal Program Amendment No. LC2022-003 – An amendment to Title 21 (Local Coastal Program Implementation Plan) of the NBMC to correct the development limit specified for Bay Island from 23 dwelling units to 25 maximum dwelling units; and
- Zoning Code Amendment No. CA2022-005 – An amendment to Title 20 (Planning and Zoning) of the NBMC to correct the development limit specified for Bay Island from 23 dwelling units to 25 maximum dwelling units;

WHEREAS, the Property is located within the Multiple Residential (RM) Zoning District and the General Plan Land Use Element category is Multiple Residential Detached (RM-D);

WHEREAS, the Property is located within the coastal zone with a Coastal Land Use Plan category of Multiple-Unit Residential – 10.0 – 19.9 DU/AC (RM-C) and the Coastal Zoning District of Multiple Residential (RM);

WHEREAS, the Planning Commission held a public hearing on September 8, 2022 in the 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") and Chapters 20.62 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. PC2022-023 by a majority vote (6 ayes, 1 absent) recommending City Council approval of General Plan Amendment No. GP2022-001, Local Coastal Program Amendment No. LC2022-003 and Zoning Code Amendment No. CA2022-005; and

WHEREAS, the City Council held a public hearing on January 24, 2023 in the 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 20.62 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 hereby approves Zoning Code Amendment No. CA2022-005 to correct the development limit specified for Bay Island from 23 dwelling units to a maximum of 25 dwelling units, as depicted in Exhibit "B" which is attached hereto and incorporated herein. This approval is contingent upon the certification of Local Coastal Program Amendment No. LC2022-003 by the California Coastal Commission.

Section 2: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 3: 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 4: The City Council finds Zoning Code Amendment No. CA2022-005 is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 15303, Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3. Class 3 exempts the construction of up to three single-family residences. Zoning Code Amendment No. CA2022-005 would authorize the future development of up to two additional single-family residences at Bay Island and therefore qualifies within this exemption.

Section 5: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the NBMC shall remain unchanged and shall be in full force and effect.

Section 6: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. This ordinance shall take effect upon certification of Local Coastal Program Amendment No. LC2022-003 by California Coastal Commission. 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 24th day of January, 2023, and adopted on the 14th day of February, 2023, by the following vote, to-wit:

AYES: _____

NAYS: _____


ABSENT: _____

NOAH BLOM, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

Attachments: Exhibit A - Bay Island Map
 Exhibit B - Zoning Code Amendment No. CA2022-005

Exhibit "A"
Bay Island Map

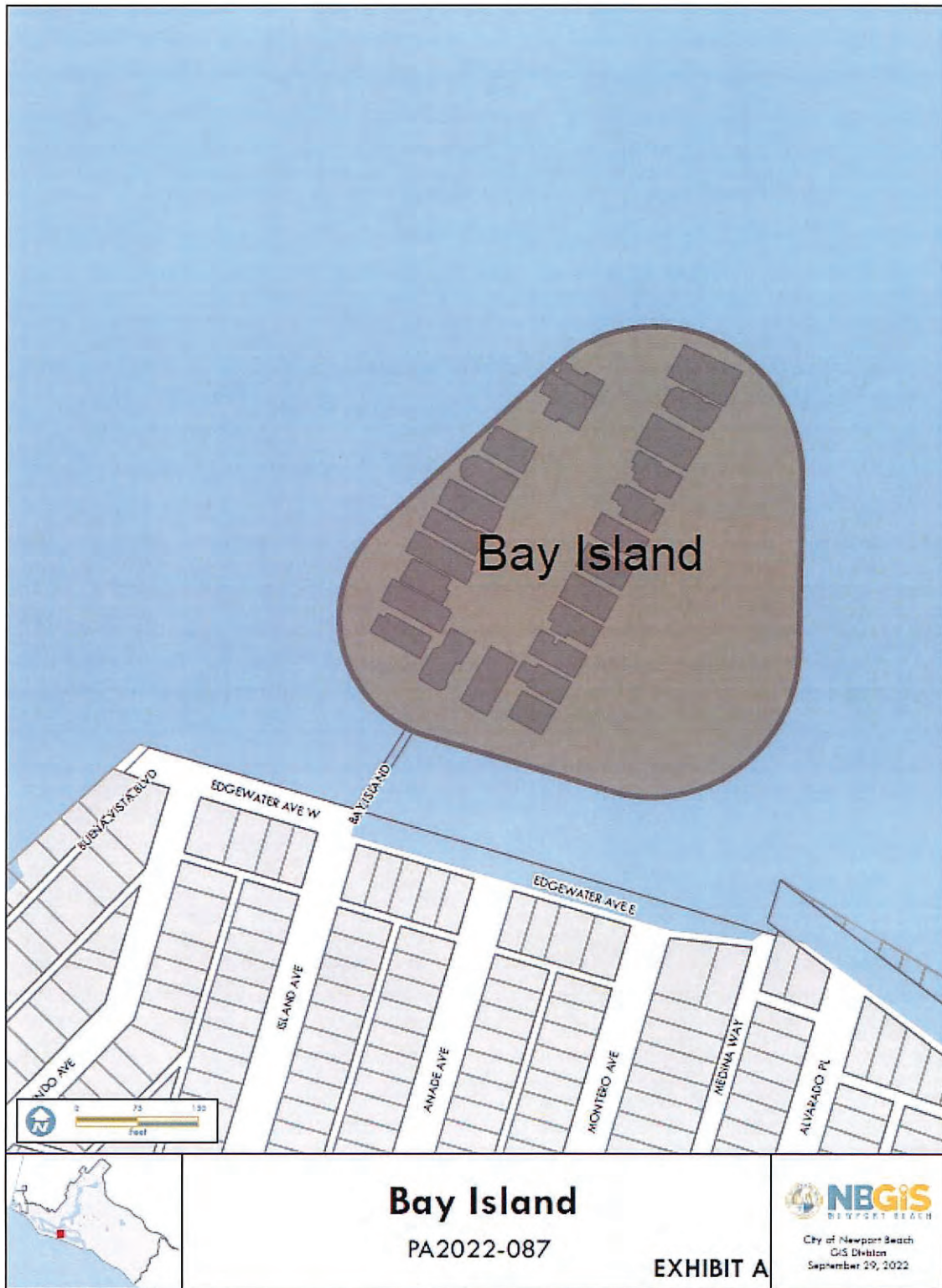
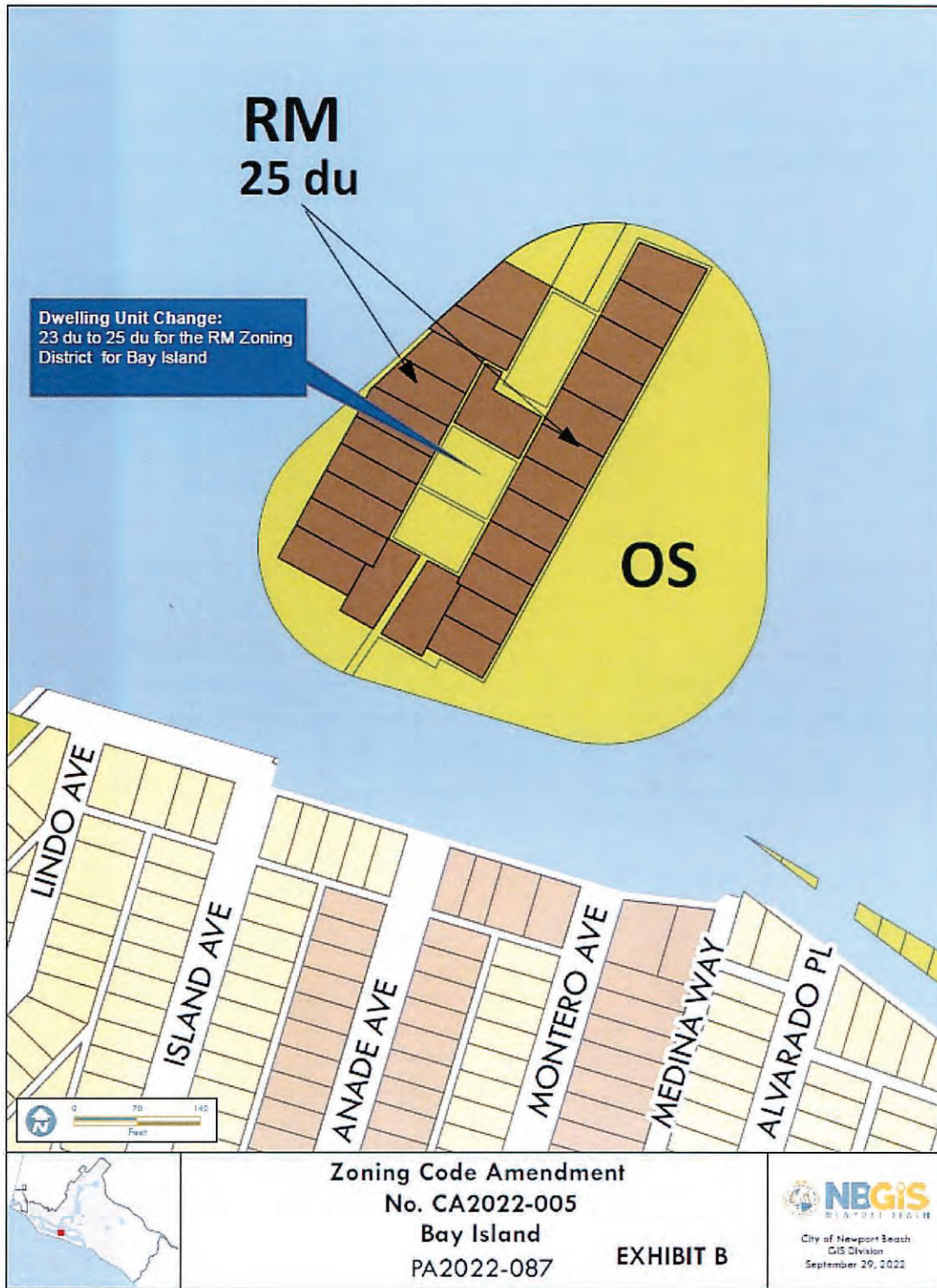


Exhibit "B"
Zoning Code Amendment No. CA2022-005



Attachment D

City Council Staff Report with Attachments, dated January 10, 2023

Attached via link due to bulk:

[https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2848933&dbid=0&repo=CNB
&cr=1](https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=2848933&dbid=0&repo=CNB&cr=1)



CITY OF

NEWPORT BEACH

City Council Staff Report

January 24, 2023
Agenda Item No. 16

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Jaime Murillo, Principal Planner, jmurillo@newportbeachca.gov

PHONE: 949-644-3209

TITLE: Ordinance No. 2023-2: A Code Amendment Updating Accessory Dwelling Unit Regulations to Implement Council Policy K-4 and to Comply with State Law (PA2021-113)

ABSTRACT:

For the City Council's consideration are amendments to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code revising regulations pertaining to Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU). The update will conform with revisions to State law that went into effect on January 1, 2023. The amendments also include revisions recommended by the Planning Commission Ad Hoc Committee to incentivize ADU production consistent with Council Policy K-4.

RECOMMENDATIONS:

- a) Conduct a public hearing;
- b) Find this project statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15282(h) of the CEQA Guidelines, which states that the adoption of an ordinance regarding second units to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code are exempt from the requirements of CEQA;
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2023-2, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Code Amendment No. CA2021-005 Amending Section 20.48.200 (Accessory Dwelling Units) of the Newport Beach Municipal Code to Implement Council Policy K-4 (Reducing the Barriers to the Creation Of Housing) and New State Law Requirements Related to Accessory Dwelling Units (PA2021-113)*, and pass to second reading on February 14, 2023; and
- d) Adopt Resolution No. 2023-8, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of Local Coastal Program Amendment No. LC2021-003 to the California Coastal Commission to Amend Section 21.48.200 (Accessory Dwelling Units) of the Newport Beach Municipal Code to Implement Council Policy K-4 (Reducing the Barriers to the Creation of Housing) and New State Law Requirements Related to Accessory Dwelling Units (PA2019-248)*.

DISCUSSION:

In 2022, the State of California adopted another group of housing bills aimed at addressing the housing crisis. The Legislature approved, and the Governor signed, [SB 897 \(Chapter 6664, Statutes of 2021\)](#) and [AB 2221 \(Chapter 650, Statutes of 2021\)](#) into law that amended Government Code Sections 65852.2 and 65852.22 to impose new limits on the City's ability to regulate ADUs and JADUs. These changes are discussed in more detail in Table 1 of this report. In adopting these new regulations, the State Legislature determined that these changes are a matter of statewide concern, rather than a municipal affair, and mandates that charter cities, such as the City of Newport Beach, implement the new ADU laws. The State Legislature intends to further reduce regulatory barriers and costs, streamline the approval process, and expand the potential capacity for ADUs in response to California's housing shortage.

City Efforts to Incentivize ADU Production

On March 9, 2021, the City Council adopted Resolution No. 2021-18 to add City Council Policy K-4, Reducing the Barriers of the Creation of Housing. Council Policy K-4 encourages the development of ADUs as an important strategy to accommodate future growth and is an integral strategy to help meet the City's Regional Housing Needs Assessment (RHNA) allocation. ADUs allow for a dispersion of density citywide and avoid the need for excessive rezoning and high infrastructure costs associated with new, higher-density developments. Since ADUs tend to be relatively small with modest amenities, they provide more affordable housing options for select groups, such as students, seniors, caretakers and people with disabilities.

On May 25, 2021, the City Council adopted Resolution 2021-43, initiating the subject Code Amendment and Local Coastal Program (LCP) Amendment directing staff to modify regulations related to the development of ADUs.

On September 9, 2021, the Planning Commission formed an Ad Hoc Committee to evaluate potential code amendments related to encouraging new ADU development within the City. The Ad Hoc Committee met a total of five times and developed recommendations that were shared with the Planning Commission at a study session on July 7, 2022. However, due to new ADU legislation that was pending, the Planning Commission directed staff to delay the amendments, monitor the pending legislation, and incorporate any necessary code revisions needed to comply with new legislation.

On September 13, 2022, the City Council adopted the 6th Cycle Housing Element Update for the 2021-2029 planning period. Housing Element Policy Actions 1H (Accessory Dwelling Unit Construction) and 1I (Accessory Dwelling Unit Monitoring Program) establish a target of permitting at least 30 ADUs annually, for a total of at least 240 ADUs constructed by the end of the planning period. The two policy actions also require the City to analyze methods to aggressively support and accommodate ADU construction within 12 months of Housing Element adoption and establish a program within 24 months of adoption. This amendment would help serve to implement these two policy actions.

Comparison of Existing and Proposed Regulations

ADUs and JADUs are both independent living units with an exterior entrance into the unit; however, JADUs are limited to no more than 500 square feet. Additionally, JADUs are permitted an efficiency size kitchen with only a hot plate, can have an internal access to the primary dwelling unit, and can share sanitary facilities (bathrooms) with the primary unit. Conversely, ADUs can be up to 1,000 square feet and are fully self-contained (including full kitchen and sanitation facilities), and they may not include internal access to the primary dwelling unit.

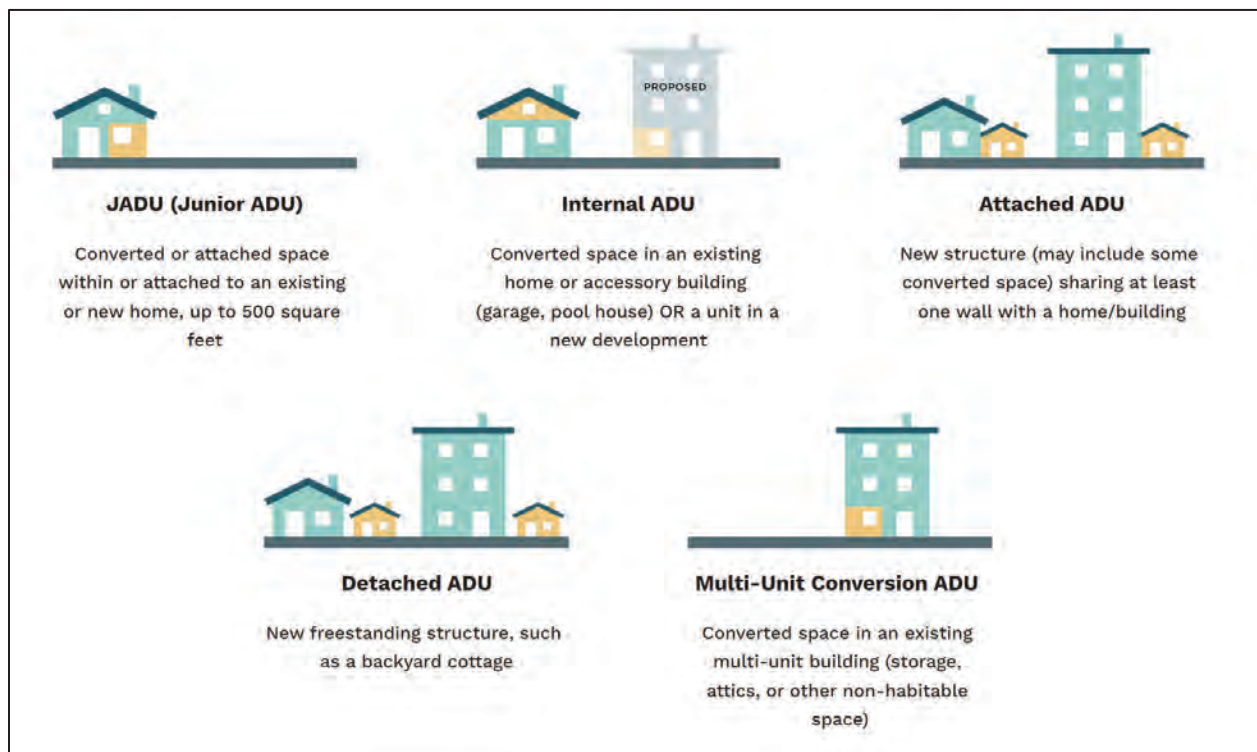


Figure 1- Different ADU/JADU Types

Due to the complexity of State ADU and JADU law, and the different standards that apply depending on the proposed type (i.e., internal, conversion, attached, or detached), the City's local regulations are also complex. To help better explain and communicate the different standards that apply depending on ADU or JADU type, staff has developed two development matrixes that help illustrate the differences. Attachment C includes a matrix of development standards under *current* standards and Attachment D includes a matrix of developments standards under the *proposed* amendments. A redline/strikeout version of both the Title 20 and Title 21 amendments is included as Attachment E.

Summary of Major Revisions Due to State Law Changes

Table 1 – Major State Law Changes in ADU/JADU Unit Development Standards	
Standard	Proposed Code Change
Nonconforming Conditions	Clarification that the City can't require the correction of nonconforming conditions, building code violations, or unpermitted structures that do not pose a threat to public health and safety and that are not affected by the construction or permitting of the ADU or JADU. However, this does not preclude the City from requiring correction as a separate action.
Objective Standards	Prohibits the application of subjective development standards. Therefore, the City's existing requirement that an ADU/JADU be designed similar to the principal unit with respect to architectural style, roof pitch, color and materials cannot be enforced and as such, it is proposed to be deleted. This provision would also pose a potential barrier for a property owner choosing to utilize the City's forthcoming pre-approved ADU plans and that does not match the architectural style of every principal unit.
Fire Sprinklers	Clarifies that ADU/JADU cannot trigger a requirement for fire sprinklers to be installed in the existing single-unit or multi-unit dwelling, even when it results in a building code change in occupancy.
800 sf ADU Exemption	Adds <i>front setbacks</i> to the list of standards that the City is precluded from applying when the application of development standards in combination with existing development precludes the development of an 800 sf ADU. Specifically, in the case where the floor area, lot coverage, or front setbacks of existing development doesn't allow the development of an 800 sf ADU and no other compliant alternatives exist, then the ADU may exceed the floor area or lot coverage limits, and/or encroach into the front setback to the minimum extent necessary to accommodate the 800 sf ADU provided it meets all other applicable standards.
Height Limits	State law increases the allowed height for detached ADUs from 16 feet to 18 feet when: 1) located within ½ mile walking distance to a major transit stop of high-quality transit corridor (Attachment F). An additional 2-foot height increase permitted when needed to accommodate a roof pitch that aligns with roof pitch of principal unit); or 2) when located on a lot with a multi-story, multi-unit dwelling.

	<p>To reduce variability within an already complex code and changes in transit, it is recommended that the height limit for detached ADUs be changed to the following simple standard: 18 feet for flat roofs and 20 feet for sloping roofs (min. 3:12 pitch). This will capture the mandatory changes in State law and result in a simpler code for staff and property owners and the development community to understand and implement. The minor increase in building bulk isn't significant in staff's opinion.</p>
Parking Exception	<p>The law adds to the list of circumstances when parking is waived. When an ADU is created as part of a new single-unit dwelling or multi-unit dwelling, no additional parking is required for the ADU itself. Effectively, one parking space can only be required for attached or detached ADUs constructed in conjunction with <i>existing</i> development and when not located within ½ mile walking distance to a bus stop. However, due to public access concerns and the impacts to the availability of public on-street parking in the coastal zone, staff is recommending that this new parking waiver not be applicable in the coastal zone (Attachment G). California Coastal Commission staff has been consulted and is supportive of this limitation.</p>
Increases number of detached ADUs allowed with Multi-Unit Dwellings	<p>Allows up to two detached ADUs constructed in conjunction with an existing or new multi-unit dwelling. Previously only one detached ADU was allowed when constructed in conjunction with a new multi-unit dwelling.</p>
Owner Occupancy	<p>State law now restricts the City from imposing an owner-occupancy requirement for ADUs constructed with multi-unit dwellings. The City remains able to impose owner-occupancy for JADUs and ADUs constructed with single-unit dwellings; however, the owner-occupancy requirement for ADUs remains suspended until January 2025.</p> <p>The owner-occupancy requirement is typically resisted by property owners and developers. The restriction clouds title and reduces flexibility in use and sales. To eliminate these barriers and to simplify implementation, staff is recommending eliminating the owner-occupancy requirement for ADUs constructed with single-unit dwellings. Owner-occupancy requirements for JADUs are recommended to remain.</p>

Process	State law restricts the ability of the City to require a zoning clearance to review and process ADUs and JADUs. Code revisions will clarify ADUs and JADUs shall processed ministerially through a building permit. Projects within the coastal zone will remain subject to the processing of a coastal development permit if it is required.
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Summary of Recommended Changes by Planning Commission Ad Hoc Committee

The Ad Hoc Committee studied several options to incentivize ADU production; however, ultimately decided to proceed carefully and only recommend changes that did not result in added building bulk. It was recognized that while ADUs help address the City's RHNA production goals, ADUs alone won't solve the housing need. It would also be difficult to undo code revisions that later resulted in unintended consequences due to recent changes in State law (Housing Crisis Act of 2019) that temporarily prohibits the adoption of code amendments that limit or restrict development standards. Therefore, despite recommendations from the development community during community outreach meetings requesting increased floor area above maximum floor area limits in exchange for incorporating ADUs as part of new single-unit and multi-unit developments, the Ad Hoc Committee only recommends excluding ADUs from the floor area limits when incorporated into subterranean basements with limited daylighting access.

Table 2 – Ad Hoc Committee Recommended Changes	
Standard	Proposed Code Change
Walkout Basement Floor Area Limit Exception	The City's current definition of gross floor area excludes subterranean basements from the floor area calculations because they are not visible, but includes daylight basements due to visibility. In order to use subterranean basements for ADU purposes and still provide exterior access, some limited excavation and daylighting of the basement is needed. Therefore, a floor area exception is recommended for ADUs and JADUs predominately designed as a subterranean with certain criteria that allows excavation of a side yard (60 feet max), not visible from a public right-of-way, and that provides safe emergency access passageway (8-foot vertical clearance and 3-foot-wide). All other daylighting basements will remain included in floor area calculations. See Figures 2 and 3 below.

**Attached ADU
Size Limit
Simplification**

Current regulations limit the size of attached and detached ADUs to 850 square feet for studios and 1-bedroom units and 1,000 square feet for 2+ bedroom units. However, attached ADUs are subject to an additional size limit equal to no more than 50% of the principal dwelling. For example, a 1,400-sf principal dwelling x 50% = 700 sf attached ADU. This 50% sf limitation is rarely triggered due to the small size of principal unit needed to have impact and it only serves to further complicate the regulations. Therefore, it was recommended the 50% limitation be eliminated.

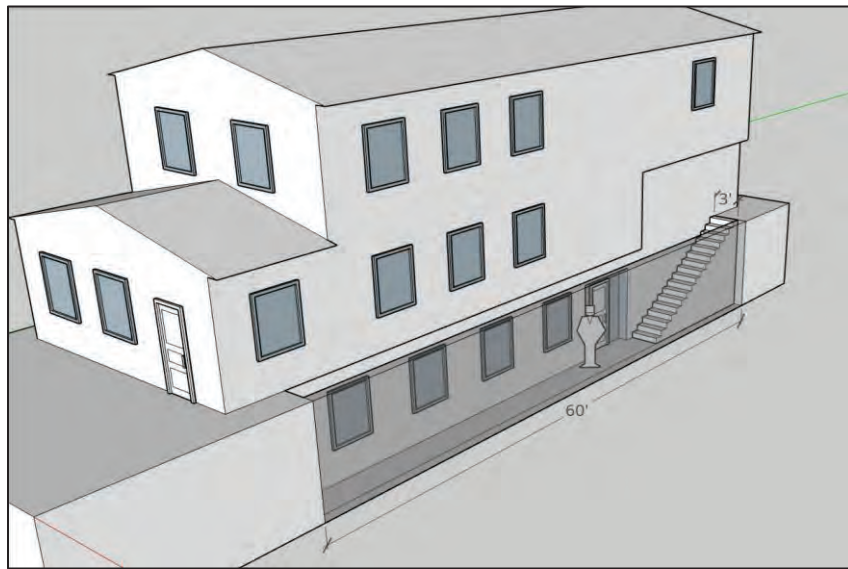


Figure 2- Proposed Daylight Basement Exception for ADUs/JADUs

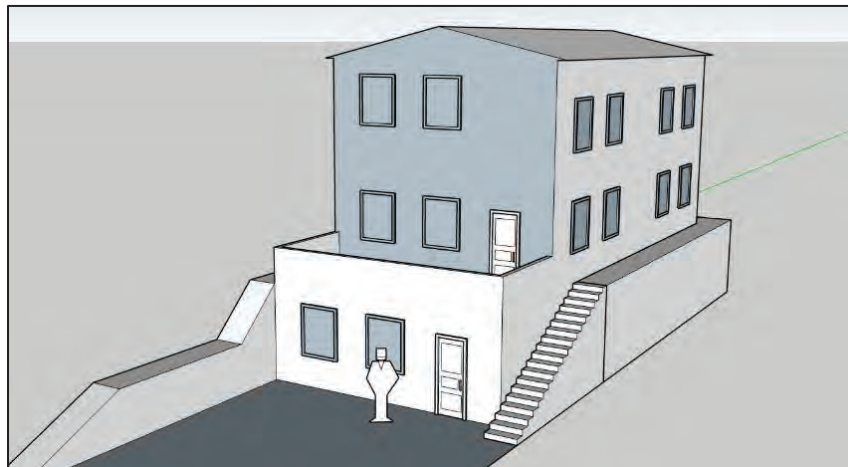


Figure 3- Typical Daylight Basement – No Exclusion Proposed

Planning Commission Recommendation

On January 5, 2023, the Planning Commission considered the proposed amendments and adopted Resolution Nos. PC2023-004 and PC2023-005 (Attachments H and I), recommending approval of Code Amendment No. CA2021-005 to the City Council and recommending the City Council authorize submittal of Local Coastal Program Amendment No. LC2021-003 to the California Coastal Commission.

State Department of Housing and Community Development Review

Per State law, the City is required to submit the ordinance to the State Department of Housing and Community Development (HCD) within 60 days of adoption. Should the City Council approve the proposed ordinance to amend Title 20, staff will forward the ordinance to HCD for review. If HCD finds the ordinance does not comply with the new ADU laws, HCD will notify the City. Should this occur, the City would have 30 days to either amend the ordinance or adopt additional findings that explain the reason the ordinance complies with the statute. Since the amendment to Title 21 requires Coastal Commission approval, the ordinance amending Title 21 will also be submitted to HCD *after* the Coastal Commission process is complete. Staff will coordinate with both State agencies with the goal to ensure that Coastal Commission modifications, if any, will be found acceptable to HCD and the City.

Local Coastal Plan

Similar to the Title 20, Title 21 currently regulates ADUs inconsistent with State law. Therefore, subsequent to City Council adoption of this Zoning Code Amendment, staff will submit corresponding amendments (Attachment B) to the Local Coastal Program (LCP) for review and approval of the California Coastal Commission.

Alternatives

The City Council may recommend revisions to the draft ordinance provided the revisions are consistent with State law and are not more restrictive than the State's allowance.

FISCAL IMPACT:

There is no fiscal impact related to this item.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), which states that the adoption of an ordinance regarding second units in a single-family or multifamily zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code are exempt from the requirements of CEQA. Similarly, the ministerial approval of ADUs would not be a project for CEQA purposes, and environmental review would not be required prior to approving individual applications.

NOTICING:

Pursuant to Section 13515 of the California Code of Regulations, a review draft of the LCP Amendment was made available, and a Notice of Availability was distributed on November 16, 2022, to all persons and agencies on the Notice of Availability mailing list. In addition, notice of this amendment was published in the Daily Pilot as an eighth-page advertisement, consistent with the provisions of the Municipal Code and State law. The item also appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

ATTACHMENTS:

Attachment A – Ordinance No. 2023-2 (Title 20 Amendment)
Attachment B – Resolution No. 2023-8 (Title 21 Amendment)
Attachment C – Matrix of Current ADU/JADU Development Standards
Attachment D – Matrix of Proposed ADU/JADU Development Standards
Attachment E – Redline/Strikeouts Version of Title 20 and Title 21 Amendments
Attachment F – Map of Major Transit Stops and High-Quality Transit Corridors
Attachment G – Map of Coastal Zone
Attachment H – Planning Commission Resolution No. PC2023-004
Attachment I – Planning Commission Resolution No. PC2023-005

Attachment A

Ordinance No. 2023-2

ORDINANCE NO. 2023-2

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADOPTING CODE AMENDMENT NO. CA2021-005 AMENDING SECTION 20.48.200 (ACCESSORY DWELLING UNITS) OF THE NEWPORT BEACH MUNICIPAL CODE TO IMPLEMENT COUNCIL POLICY K-4 (REDUCING THE BARRIERS TO THE CREATION OF HOUSING) AND NEW STATE LAW REQUIREMENTS RELATED TO ACCESSORY DWELLING UNITS (PA2021-113)

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, on March 9, 2021, the City Council adopted Resolution No. 2021-18 to add City Council Policy K-4 (Reducing the Barriers of the Creation of Housing), which encourages the development of accessory dwelling units (“ADU”) as an important strategy to accommodate future growth and is an integral strategy to help meet the City’s Regional Housing Needs Allocation (“RHNA”);

WHEREAS, on May 25, 2021, the City Council adopted Resolution No. 2021-43, initiating a code amendment to Title 20 (Planning and Zoning) to modify regulations relating to the development of ADU and junior accessory dwelling units (“JADU”);

WHEREAS, on October 7, 2021, the Planning Commission formed an Ad Hoc Committee to evaluate potential code amendments related to encouraging new ADU development within the City;

WHEREAS, in 2022, the California Legislature adopted SB 897 and AB 2221, amending California Government Code Sections 65852.2 and 65852.22 to impose new limits on a city’s ability to regulate ADUs and JADUs;

WHEREAS, the City desires to amend its local regulatory scheme for the construction of ADUs and JADUs to comply with the amended provisions of Government Code Sections 65852.2 and 65852.22 (“Code Amendment No. CA2021-005”), and to incorporate the recommendations of the Ad Hoc Committee;

WHEREAS, a public hearing was held by the Planning Commission on January 5, 2023, in the 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 the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

WHEREAS, at the conclusion of the public hearing, the Planning Commission adopted Resolution No. PC2023-004 by a unanimous vote (5 ayes – 0 nays), recommending approval of Code Amendment No. CA2021-005 to the City Council; and

WHEREAS, a duly noticed public hearing was held by the City Council on January 24, 2023, in the 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 the Ralph M. Brown Act and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

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

Section 1: The City Council does hereby approve Code Amendment No. CA2021-005 to amend Chapter 20.48 (Accessory Dwelling Units) of the NBMC as set forth in Exhibit "A," and based upon the Findings in Exhibit "B", both of which are attached hereto and incorporated herein by reference.

Section 2: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 3: 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 4: The City Council finds the introduction and adoption of this ordinance is statutorily and categorically exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 21080.17 of the California Public Resources Code and Section 15282(h) of the California Code of Regulations, Title 14, Division 6, Chapter 3 ("CEQA Guidelines") which exempts from the requirements of CEQA, the adoption of an ordinance regarding second units to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code. Similarly, the ministerial approval of accessory dwelling units is not a project for CEQA purposes, and environmental review is not required prior to approving individual applications.

Section 5: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 6: 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 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 24th day of January, 2023, and adopted on the 14th day of February, 2023, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

NOAH BLOM, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

Attachment(s): Exhibit A - Code Amendment No. CA2021-005
 Exhibit B - Findings in Support of Code Amendment No.
 CA2021-005

EXHIBIT "A"

ZONING CODE AMENDMENT NO. CA2021-005

Section 20.48.200 (Accessory Dwelling Units) of the Newport Beach Municipal Code is amended in its entirety to read as follows:

20.48.200 Accessory Dwelling Units.

A. **Purpose.** The purpose of this section is to establish the procedures for the creation of accessory dwelling units and junior accessory dwelling units, as defined in Part 7 (Definitions) of this title and in California Government Code Sections 65852.2 and 65852.22, or any successor statute, in areas designated for residential use, including as part of a planned community development plan or specific plan, and to provide development standards to ensure the orderly development of these units in appropriate areas of the City.

B. **Effect of Conforming.** An accessory dwelling unit or junior accessory dwelling unit that conforms to the requirements in this section shall not be:

1. Deemed to be inconsistent with the General Plan and zoning district designation for the lot on which the accessory dwelling unit or junior accessory dwelling unit is located;
2. Deemed to exceed the allowable density for the lot on which the accessory dwelling unit or junior accessory dwelling unit is located;
3. Considered in the application of any ordinance, policy, or program to limit residential growth; or
4. Required to correct legally established nonconforming zoning condition(s), building code violation(s), and/or unpermitted structure(s) that do/does not present a threat to public health and safety and is/are not affected by the construction of the accessory dwelling unit or junior accessory dwelling unit. This does not prevent the City from enforcing compliance with applicable building standards in accordance with California Health and Safety Code Section 17980.12.

C. **Review Authority.** Accessory dwelling units and junior accessory dwelling units shall be approved in any residential or mixed-use zoning district, subject to issuance of a building permit and the following conditions:

1. There is an existing or proposed dwelling unit on the lot;
2. The dwelling conforms to the development standards and requirements for accessory dwelling units and/or junior accessory dwelling units as provided in this section; and

3. The building permit shall be considered and approved ministerially, without discretionary review or a hearing, within sixty (60) days from the date that the City determines an application to be complete, unless either:

- a. The applicant requests a delay, in which case the sixty (60) day time period is tolled for the period of the requested delay, or
- b. In the case of an application for an accessory dwelling unit and/or junior accessory dwelling unit submitted with an application to create a new single-unit dwelling on the lot, the City may delay acting on the accessory dwelling unit and/or junior accessory dwelling application until the City renders a decision on the new single-unit dwelling application.

D. Maximum Number of Accessory Dwelling Units Allowed. The following is the maximum number of accessory dwelling units allowed on any residential lot. For purposes of this section, multi-unit dwelling means a structure or development containing two (2) or more dwelling units. Only one (1) of the categories described below in this subsection may be used per lot.

1. Internal to a Single-Unit or Multi-Unit Dwelling Category. Only one (1) accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling, subject to the following:

- a. The accessory dwelling unit is proposed:
 - i. Within the space of a proposed single-unit or multi-unit dwelling;
 - ii. Within the existing space of an existing single-unit or multi-unit dwelling; or
 - iii. Within the existing space of an existing accessory structure, plus an addition beyond the physical dimensions of the existing structure of up to one hundred fifty (150) square feet if the expansion is limited to accommodating ingress and egress.
- b. The accessory dwelling unit shall have independent exterior access from the single-unit dwelling.
- c. Side and rear setbacks comply with Title 9 (Fire Code) and Title 15 (Buildings and Construction).

2. Attached on Lot with Single-Unit or Multi-Unit Dwelling Category. Only one (1) attached, new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling.

3. Detached on Lot with Single-Unit or Multi-Unit Dwelling Category. Only one (1) detached new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling. Up to two (2) detached new-construction accessory dwelling units may be constructed on a lot that has an

existing or proposed multi-unit dwelling. For purposes of this section, a multi-unit development approved and built as a single complex shall be considered one (1) lot, regardless of the number of parcels.

4. Conversion of Multi-Unit Dwelling Category. Multiple accessory dwelling units may be permitted on lots with existing multi-unit dwellings subject to the following:

a. The number of accessory dwelling units shall not exceed twenty-five (25) percent of the existing multi-unit dwellings on the lot. For the purpose of calculating the number of allowable accessory dwelling units, the following shall apply:

i. Previously approved accessory dwelling units shall not count towards the number of existing multi-unit dwellings;

ii. Fractions shall be rounded down to the next lower number of dwelling units, except that at least one accessory dwelling unit shall be allowed; and

iii. For the purposes of this section, multi-unit developments approved and built as a single complex shall be considered one (1) lot, regardless of the number of parcels.

b. The portion of the existing multi-unit dwelling that is to be converted to an accessory dwelling unit is not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages.

E. Maximum Number of Junior Accessory Dwelling Units Allowed. One (1) junior accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling, subject to the following:

1. The junior accessory dwelling unit is proposed to be attached to, or within the space of, a proposed or existing single-unit dwelling.

2. The junior accessory dwelling unit shall have independent exterior access from the single-unit dwelling and may provide interior access to the single-unit dwelling.

3. Side and rear setbacks comply with Title 9 (Fire Code) and Title 15 (Buildings and Construction).

4. The junior accessory dwelling unit may be constructed in addition to an accessory dwelling unit on the lot with a proposed or existing single-unit dwelling. A junior accessory dwelling unit is not permitted on a lot with a proposed or existing multi-unit dwelling.

F. Development Standards. Except as modified by this subsection, an accessory dwelling unit and/or junior accessory dwelling unit shall conform to all objective standards of the underlying residential zoning district, any applicable overlay district,

and all other applicable provisions of Title 20 (Planning and Zoning), including but not limited to height, setback, site coverage, floor area limit, and residential development standards and design criteria.

1. **Minimum Lot Area.** There shall be no minimum lot area required to establish an accessory dwelling unit and/or junior accessory dwelling unit.

2. **Setback Requirements.** Accessory dwelling units and junior accessory dwelling units shall comply with the setback requirements applicable to the zoning district, except as noted below:

a. For conversion of existing enclosed floor area, garage, or carport, no additional setback is required, beyond the existing provided setback.

b. For replacement of an existing enclosed structure, garage, or carport, no existing setback is required, beyond the existing setback provided. This provision shall only apply to accessory dwelling units and junior accessory dwelling units that are replacing existing structures within the same footprint and do not exceed the existing structure's size and/or height. For an accessory dwelling unit that will replace a detached garage, the building and demolition permits shall be reviewed and issued concurrently.

c. Attached and detached accessory dwelling units shall provide a minimum setback of four (4) feet from all side property lines and rear property lines not abutting an alley unless the setback requirements of the underlying zoning district are less restrictive.

3. **Building Height.** Detached accessory dwelling units shall not exceed a height of eighteen (18) feet for structures with flat roofs and twenty (20) feet for structures with sloped roofs (minimum 3/12 pitch). Notwithstanding the foregoing, an accessory dwelling unit constructed above a detached garage shall not exceed two (2) stories and the maximum allowable height of the underlying zoning district, provided all the following criteria are met:

a. The accessory dwelling unit meets the minimum setbacks, as required by underlying zoning district; and

b. The principal dwelling unit complies with parking standards set forth in Section 20.40.040.

4. **Unit Size.**

a. The maximum size of a detached or attached accessory dwelling unit is eight hundred fifty (850) square feet for a studio or one-bedroom unit and one thousand (1,000) square feet for a two (2) or more bedroom unit.

b. Application of size limitations set forth in subsection (F)(4)(a) of this section, shall not apply to an accessory dwelling unit that is converted as part of a

proposed or existing space of a principal residence or existing accessory structure.

c. Application of development standards, such as floor area limit or site coverage, may further limit the size of the accessory dwelling unit, but in no case shall the front setback, floor area limit, open space, or site coverage requirement reduce the accessory dwelling unit to less than eight hundred (800) square feet where there is no other alternative to comply, and only to the extent necessary to construct the accessory dwelling unit.

d. The maximum size of a junior accessory dwelling unit shall be five hundred (500) square feet.

e. The minimum size of an accessory dwelling unit or junior accessory dwelling unit shall be at least that of an efficiency unit.

5. Walkout Basement Floor Area Limit Exception. The gross floor area of an accessory dwelling unit or junior accessory dwelling shall be excluded from the allowable floor area limit when located below grade within a basement. Daylighting of the basement shall only be permitted where excavation is necessary to provide exterior access to the main surface level and in compliance with the following:

a. The access passageway, inclusive of any necessary shoring, may encroach into a side setback area;

b. The passageway shall be free of obstructions from the ground level to a height of eight (8) feet; and

c. The access passageway shall measure a minimum of thirty-six (36) inches in width, measure a maximum of sixty (60) feet in length, and shall not be located within a yard fronting a public right-of-way.

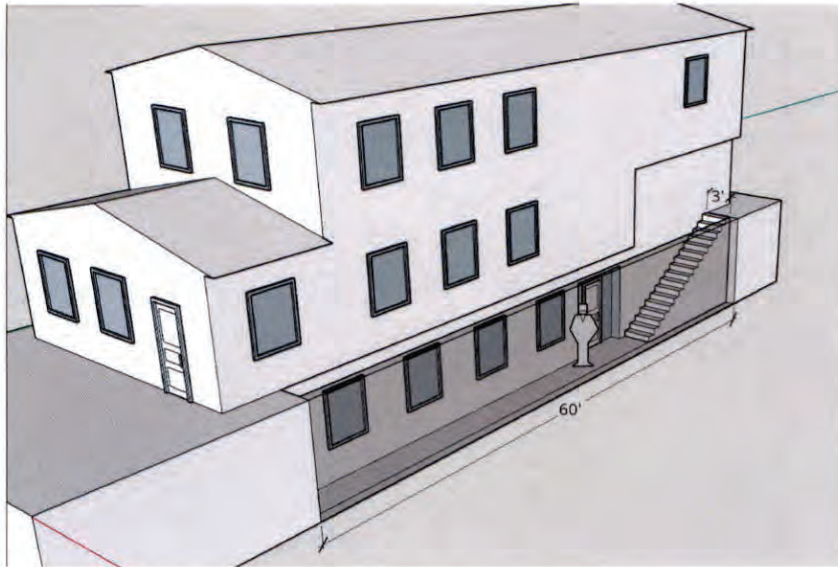


Figure 3-7

Walkout Basement Floor Area Limit Exception

6. **Fire Sprinklers.** An accessory dwelling unit and/or junior accessory dwelling unit shall not require fire sprinklers so long as fire sprinklers are not required for the principal residence, nor shall the construction of an accessory dwelling unit and/or junior accessory dwelling unit require fire sprinklers to be installed in the existing single-unit or multi-unit dwelling.
7. **Passageway.** No passageway shall be required in conjunction with the construction of an accessory dwelling unit and/or junior accessory dwelling unit. For the purposes of this section, “passageway” means a pathway that is unobstructed clear to the sky and extends from the street to one entrance of the accessory dwelling unit.
8. **Parking.** Parking shall comply with requirements of Chapter 20.40 (Off-Street Parking) except as modified below:
 - a. No additional parking shall be required for junior accessory dwelling units.
 - b. A maximum of one (1) parking space shall be required for each accessory dwelling unit.
 - c. When additional parking is required, the parking may be provided as tandem parking and/or located on an existing driveway; however, in no case shall parking be allowed in a rear setback abutting an alley or within the front setback, unless the driveway in the front setback has a minimum depth of twenty (20) feet.
 - d. No additional parking shall be required for:

- i. An accessory dwelling unit internal to a proposed principal residence or converted from existing space of a principal residence or existing accessory structure;
 - ii. An accessory dwelling unit located within one-half-mile walking distance of a public transit. For the purposes of this section "public transit" shall include a bus stop where the public may access buses that charge set fares, run on fixed routes, and are available to the public;
 - iii. An accessory dwelling unit located within an architecturally and historically significant historic district;
 - iv. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit; or
 - v. When there is a car-share vehicle located within one block of the accessory dwelling unit. For the purposes of this section, "car-share vehicle" shall mean part of an established program intended to remain in effect at a fixed location for at least ten (10) years and available to the public.
 - vi. Outside the coastal zone, when an accessory dwelling unit is constructed in conjunction with a new single-unit or multi-unit dwelling on the same lot.
- e. No Replacement Parking Necessary. Outside the coastal zone, when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit at the same location or converted to an accessory dwelling unit, those off-street parking spaces are not required to be replaced. Accessory dwelling units shall not displace required uncovered parking spaces. Refer to Section 21.48.200(G)(8)(e) for replacement parking in the coastal zone.

G. Utility Connection.

- 1. Connection Required. All accessory dwelling units and junior accessory dwelling units shall connect to public utilities (or their equivalent), including water, electric, and sewer services.
- 2. Except as provided in subsection (G)(3) of this section, the City may require the installation of a new or separate utility connections between the accessory dwelling unit, junior accessory dwelling unit and the utilities.
- 3. Conversion. No separate connection between the accessory dwelling unit and the utility shall be required for units created within a single-unit or multi-unit dwelling(s), unless the accessory dwelling unit is being constructed in connection with a new single-unit dwelling.

4. **Septic Systems.** If the principal dwelling unit is currently connected to an on-site wastewater treatment system and is unable to connect to a sewer system, accessory dwelling units and junior accessory dwelling units may connect to the on-site wastewater treatment system. However, the owner must include with the application a percolation test completed within the last five years or, if the percolation test has been recertified, within the last ten (10) years.

H. Additional Requirements for All Accessory Dwelling Units and Junior Accessory Dwelling Units.

1. **No Separate Conveyance.** An accessory dwelling unit or junior accessory dwelling unit may be rented, but no accessory dwelling unit or junior accessory dwelling unit may be sold or otherwise conveyed separately from the lot and the principal dwelling (in the case of a single-unit dwelling) or from the lot and all of the dwellings (in the case of a multi-unit dwelling).

2. **Short-Term Lodging.** The accessory dwelling unit and/or junior accessory dwelling unit shall not be rented for periods of thirty (30) days or less.

3. **Owner-Occupancy for Junior Accessory Dwelling Units.** A natural person with legal or equitable title to the lot must reside in either the principal single-unit dwelling unit or the junior accessory dwelling unit as the person's legal domicile and permanent residence. However, this owner-occupancy requirement shall not apply to any junior accessory dwelling unit owned by a governmental agency, land trust, or housing organization.

I. Deed Restriction and Recordation Required. Prior to the issuance of a building and/or grading permit for an accessory dwelling unit and/or junior accessory dwelling unit, the property owner shall record a deed restriction with the County Recorder's Office, the form and content of which is satisfactory to the City Attorney. The deed restriction document shall notify future owners of the owner occupancy requirements, prohibition on the separate conveyance, the approved size and attributes of the unit, and restrictions on short-term rentals. This deed restriction shall remain in effect so long as the accessory dwelling unit and/or junior accessory dwelling unit exists on the lot.

J. Historic Resources. Accessory dwelling units and/or junior accessory dwelling units proposed on residential or mixed-use properties that are determined to be historic shall be approved ministerially, in conformance with California Government Code Sections 65852.2 and 65852.22. However, any accessory dwelling unit or junior accessory dwelling unit that is listed on the California Register of Historic Resources shall meet all Secretary of the Interior Standards, as applicable.

EXHIBIT "B"

FINDINGS IN SUPPORT OF ZONING CODE AMENDMENT NO. CA2021-005

1. Zoning Code Amendment No. CA2021-005 is consistent with and implements California Government Code Sections 65852.2 and 65852.22.
2. Adopting an ordinance consistent with Government Code Sections 65852.2 and 65852.22 ensures that the character of the City is preserved to the maximum extent possible and that the City's regulation regarding ADUs and JADUs continue to promote the health, safety, and welfare of the community.
3. As permitted by California Government Code Section 65852.2, the City finds that maintaining the prohibition of parking in rear alley setbacks is essential to preserve vehicular maneuverability for residents and fire and life safety personnel traveling through the City's narrow alleyways. Also, prohibiting parking in front setbacks, unless located on a driveway a minimum 20 feet in depth, is also essential to ensure that driveways are of sufficient depth to accommodate a vehicle entirely on-site without protruding into the public right-of-way and blocking pedestrian, bicyclist, and vehicular traffic creating a life safety condition.
4. The City is a coastal community with numerous coastal resources that attract over seven million annual visitors. This includes public beaches, Newport Harbor, Balboa Peninsula, Balboa Island, and Newport Bay. The number of annual visitors, coupled with historic development patterns of the City, has created a significant impact on the limited parking supply. The loss of off-street parking on residential lots would exacerbate the continual public parking problems in the Coastal Zone, as it shifts residential parking from on-site to on-street. Government Code Section 65852.2(a)(1)(D)(xi) notes that off-street parking shall not be required to be replaced when a garage, carport, or other covered parking is converted to an ADU or JADU. Notwithstanding this, Government Code Section 65852.2(l) notes, "Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976..."
5. The elimination of off-street parking in residential properties within the Coastal Zone would create a significant impact to public parking and limit visitor access to coastal resources. To preserve the limited parking supply and ensure this amendment is consistent with the California Coastal Act, this amendment maintains and clarifies that the requirement for replacement parking is needed when existing parking is displaced by a ADU or JADU. The amendment also requires parking to provide for an ADU constructed in conjunction with a new single-unit or multi-unit development when not located within ½ mile walking distance to a bus stop.
6. Zoning Code Amendment No. CA2021-005 would serve to implement Housing Element Policy Action 1H (Accessory Dwelling Unit Construction) of the 2021-2029 Housing Element. Policy Action 1 requires the City to analyze methods to

aggressively support and accommodate ADU construction within 12 months of Housing Element adoption and establish a program within 24 months of adoption.

Attachment B

Resolution No. 2023-8

RESOLUTION NO. 2023-8

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AUTHORIZING SUBMITTAL OF LOCAL COASTAL PROGRAM AMENDMENT NO. LC2021-003 TO THE CALIFORNIA COASTAL COMMISSION TO AMEND SECTION 21.48.200 (ACCESSORY DWELLING UNITS) OF THE NEWPORT BEACH MUNICIPAL CODE TO IMPLEMENT COUNCIL POLICY K-4 (REDUCING THE BARRIERS TO THE CREATION OF HOUSING) AND NEW STATE LAW REQUIREMENTS RELATED TO ACCESSORY DWELLING UNITS (PA2019-248)

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, Section 30500 of the California Public Resources Code requires each county and city to prepare a Local Coastal Program (“LCP”) for that portion of the coastal zone within its jurisdiction;

WHEREAS, in 2005, the City adopted the City of Newport Beach Local Coastal Program Coastal Land Use Plan, as amended from time to time;

WHEREAS, the California Coastal Commission effectively certified the City’s Local Coastal Program Implementation Plan on January 13, 2017, and the City added Title 21 (Local Coastal Program Implementation Plan) (“Title 21”) to the City of Newport Beach Municipal Code (“NBMC”) whereby the City assumed coastal development permit-issuing authority on January 30, 2017;

WHEREAS, on March 9, 2021, the City Council adopted Resolution No. 2021-18 to add City Council Policy K-4 (Reducing the Barriers of the Creation of Housing), which encourages the development of accessory dwelling units (“ADU”) as an important strategy to accommodate future growth and is an integral strategy to help meet the City’s Regional Housing Needs Allocation (“RHNA”) allocation;

WHEREAS, on May 25, 2021, the City Council adopted Resolution No. 2021-43, initiating a code amendment to Title 21 to modify regulations relating to the development of ADUs and junior accessory dwelling units ("JADU");

WHEREAS, on October 7, 2021, the Planning Commission formed an Ad Hoc Committee to evaluate potential code amendments related to encouraging new ADU development within the City;

WHEREAS, in 2022, the California Legislature adopted SB 897 and AB 2221, amending California Government Code Sections 65852.2 and 65852.22 to impose new limits on a city's ability to regulate ADUs and JADUs;

WHEREAS, the City desires to amend its local regulatory scheme for the construction of ADUs and JADUs to comply with the amended provisions of Government Code Sections 65852.2 and 65852.22 ("LCP Amendment No. LC2021-003"), and to incorporate the recommendations of the Ad Hoc Committee;

WHEREAS, pursuant to Section 13515 (Public Participation and Agency Coordination Procedures) of the California Code of Regulations Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 5 (Public Participation) ("Section 13515"), drafts of LCP Amendment No. LC2021-003 were made available and a Notice of Availability was distributed at least six weeks prior to the anticipated final action date;

WHEREAS, a public hearing was held by the Planning Commission on January 5, 2023, in the 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 the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act"), Chapter 21.62 (Public Hearings) of the NBMC, and Section 13515. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

WHEREAS, at the conclusion of the public hearing, the Planning Commission adopted Resolution No. PC2023-005 by a unanimous vote (5 ayes – 0 nays), recommending approval of LCP Amendment No. LC2021-003 to the City Council; and

WHEREAS, a duly noticed public hearing was held by the City Council on January 24, 2023, 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 the Ralph M. Brown Act and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

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

Section 1: The City Council authorizes staff to submit Local Coastal Program Amendment No. LC2021-003 to amend Chapter 21.48 (Accessory Dwelling Units) of the NBMC as set forth in Exhibit "A," and based upon the Findings in Exhibit "B", both of which are attached hereto and incorporated by reference, to the California Coastal Commission.

Section 2: LCP Amendment No. LC2021-003 shall not become effective until approval by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution and/or ordinance of the City Council of the City of Newport Beach.

Section 3: The LCP, including LCP Amendment No. LC2021-003, will be carried out fully in conformity with the California Coastal Act.

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 statutorily and categorically exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 21080.17 of the California Public Resources Code and Section 15282(h) of the California Code of Regulations, Title 14, Division 6, Chapter 3 ("CEQA Guidelines") which exempts from the requirements of CEQA, the adoption of an ordinance regarding second units to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code. Similarly, the ministerial approval of accessory dwelling units is not a project for CEQA purposes, and environmental review is not required prior to approving individual applications.

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.

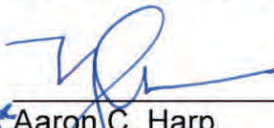
ADOPTED this 24th day of January, 2023.

NOAH BLOM
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 Coast Program Amendment No. LC2021-003
 Exhibit B – Findings in Support of LCP Amendment No. LC2021-003

EXHIBIT "A"

LOCAL COASTAL PLAN AMENDMENT NO. LC2021-003

Section 21.48.200 (Accessory Dwelling Units) of the Newport Beach Municipal Code is amended in its entirety to read as follows:

21.48.200 Accessory Dwelling Units.

A. **Purpose.** The purpose of this section is to establish the procedures for the creation of accessory dwelling units and junior accessory dwelling units, as defined in Part 7 (Definitions) of this title and in California Government Code Sections 65852.2 and 65852.22, or any successor statute, in areas designated for residential use, including as part of a planned community development plan or specific plan, and to provide development standards to ensure the orderly development of these units in appropriate areas of the City.

B. **Effect of Conforming.** An accessory dwelling unit or junior accessory dwelling unit that conforms to the requirements in this section shall not be:

1. Deemed to be inconsistent with the Coastal Land Use Plan and coastal zoning district designation for the lot on which the accessory dwelling unit or junior accessory dwelling unit is located;
2. Deemed to exceed the allowable density for the lot on which the accessory dwelling unit or junior accessory dwelling unit is located;
3. Considered in the application of any ordinance, policy, or program to limit residential growth; or
4. Required to correct legally established nonconforming zoning condition(s), building code violation(s), and/or unpermitted structure(s) that do/does not present a threat to public health and safety and is/are not affected by the construction of the accessory dwelling unit or junior accessory dwelling unit. This does not prevent the City from enforcing compliance with applicable building standards in accordance with California Health and Safety Code Section 17980.12.

C. **Review Authority.** Accessory dwelling units and junior accessory dwelling units shall be approved in any residential or mixed-use zoning district, subject to issuance of a building permit and the following conditions:

1. There is an existing or proposed dwelling unit on the lot;
2. The dwelling conforms to the development standards and requirements for accessory dwelling units and/or junior accessory dwelling units as provided in this section;

3. The dwelling conforms to the coastal resource protection development regulations of Section 21.28.040 (Bluff (B) Overlay District), Section 21.28.050 (Canyon (C) Overlay District), Section 21.30.100 (Scenic and Visual Quality Protection), or Chapter 21.30B (Habitat Protection); and

4. The building permit shall be considered and approved ministerially, without discretionary review or a hearing, within sixty (60) days from the date that the City determines an application to be complete, unless either:

a. The applicant requests a delay, in which case the sixty (60) day time period is tolled for the period of the requested delay, or

b. In the case of an application for an accessory dwelling unit and/or junior accessory dwelling unit submitted with an application to create a new single-unit dwelling on the lot, the City may delay acting on the accessory dwelling unit and/or junior accessory dwelling application until the City renders a decision on the new single-unit dwelling application.

D. Coastal Development Permits.

1. **Application.** The applicant shall obtain a coastal development permit, pursuant to Chapter 21.52 (Coastal Development Review Procedures), unless otherwise exempt or excluded from the coastal development permit process pursuant to Section 21.52.035 (Projects Exempt from Coastal Development Permit Requirements) or Section 21.52.045 (Categorical Exclusions).

2. **Hearing Exemption.** All of the provisions of Chapter 21.52 (Coastal Development Review Procedures) regarding the review and approval of coastal development permits in relation to accessory dwelling units are applicable, except that a public hearing as required by Chapter 21.62 (Public Hearings) shall not be required. Public notice shall be provided as required in Section 21.62.020, except the requirements of Section 21.62.020(A) shall be replaced with a statement that no local public hearing will be held and that written comments on the proposed development may be submitted. Written comments received shall be reviewed by the review authority.

3. **Appeal Exemption.** Notwithstanding the local appeal provisions of Chapter 21.64 (Appeals and Calls for Review), coastal development permits for accessory dwelling units that are defined as "appealable development" pursuant to Section 21.64.035(A) may be directly appealed to the Coastal Commission in accordance with the provisions of Section 21.64.035 without a discretionary hearing by the Planning Commission or City Council.

E. Maximum Number of Accessory Dwelling Units Allowed. The following is the maximum number of accessory dwelling units allowed on any residential lot. For purposes of this section, "multi-unit dwelling" means a structure or development containing two (2) or more dwelling units. Only one (1) of the categories described below in this subsection may be used per lot.

1. Internal to a Single-Unit or Multi-Unit Dwelling Category. Only one (1) accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling, subject to the following:

a. The accessory dwelling unit is proposed:

- i. Within the space of a proposed single-unit or multi-unit dwelling; or
- ii. Within the existing space of an existing single-unit or multi-unit dwelling; or
- iii. Within the existing space of an existing accessory structure, plus an addition beyond the physical dimensions of the existing structure of up to one hundred fifty (150) square feet if the expansion is limited to accommodating ingress and egress.

b. The accessory dwelling unit shall have independent exterior access from the single-unit dwelling.

c. Side and rear setbacks comply with Title 9 (Fire Code) and Title 15 (Buildings and Construction).

2. Attached on Lot with Single-Unit or Multi-Unit Dwelling Category. Only one (1) attached, new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling.

3. Detached on Lot with Single-Unit or Multi-Unit Dwelling Category. Only one (1) detached new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling. Up to two (2) detached new-construction accessory dwelling units may be constructed on a lot that has an existing or proposed multi-unit dwelling. For purposes of this section, a multi-unit development approved and built as a single complex shall be considered one (1) lot, regardless of the number of parcels.

4. Conversion of Multi-Unit Dwelling Category. Multiple accessory dwelling units may be permitted on lots with existing multi-unit dwellings subject to the following:

a. The number of accessory dwelling units shall not exceed twenty-five (25) percent of the existing multi-unit dwellings on the lot. For the purpose of calculating the number of allowable accessory dwelling units, the following shall apply:

- i. Previously approved accessory dwelling units shall not count towards the number of existing multi-unit dwellings;
- ii. Fractions shall be rounded down to the next lower number of dwelling units, except that at least one accessory dwelling unit shall be allowed; and

iii. For the purposes of this section, multi-unit developments approved and built as a single complex shall be considered one (1) lot, regardless of the number of parcels.

b. The portion of the existing multi-unit dwelling that is to be converted to an accessory dwelling unit is not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages.

F. **Maximum Number of Junior Accessory Dwelling Units Allowed.** One (1) junior accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling, subject to the following:

1. The junior accessory dwelling unit is proposed to be attached to, or within the space of, a proposed or existing single-unit dwelling.

2. The junior accessory dwelling unit shall have independent exterior access from the single-unit dwelling and may provide interior access to the single-unit dwelling.

3. Side and rear setbacks comply with Title 9 (Fire Code) and Title 15 (Buildings and Construction).

4. The junior accessory dwelling unit may be constructed in addition to an accessory dwelling unit on the lot with a proposed or existing single-unit dwelling. A junior accessory dwelling unit is not permitted on a lot with a proposed or existing multi-unit dwelling.

G. **Development Standards.** Except as modified by this subsection, an accessory dwelling unit and/or junior accessory dwelling unit shall conform to all requirements of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions of Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan), including but not limited to height, setback, site coverage, floor area limit, and residential development standards and design criteria.

1. **Minimum Lot Area.** There shall be no minimum lot area required to establish an accessory dwelling unit and/or junior accessory dwelling unit.

2. **Setback Requirements.** Accessory dwelling units and junior accessory dwelling units shall comply with the setback requirements applicable to the zoning district, except as noted below:

a. For conversion of existing enclosed floor area, garage, or carport, no additional setback is required, beyond the existing provided setback, unless a greater setback is needed to comply with subsection (C)(3) of this section.

b. For replacement of an existing enclosed structure, garage, or carport, no existing setback is required, beyond the existing setback provided, unless a greater setback is needed to comply with subsection (C)(3) of this section. This provision shall only apply to accessory dwelling units and junior

accessory dwelling units that are replacing existing structures within the same footprint and do not exceed the existing structure's size and/or height. For an accessory dwelling unit that will replace a detached garage, the building and demolition permits shall be reviewed and issued concurrently.

c. Attached and detached accessory dwelling units shall provide a minimum setback of four (4) feet from all side property lines and rear property lines not abutting an alley unless the setback requirements of the underlying zoning district are less restrictive.

3. **Building Height.** Detached accessory dwelling units shall not exceed a height of eighteen (18) feet for structures with flat roofs and twenty (20) feet for structures with sloped roofs (minimum 3/12 pitch). Notwithstanding the foregoing, an accessory dwelling unit constructed above a detached garage shall not exceed two (2) stories and the maximum allowable height of the underlying zoning district, provided all the following criteria are met:

a. The accessory dwelling unit meets the minimum setbacks, as required by underlying zoning district; and

b. The principal dwelling unit complies with parking standards set forth in Section 21.40.040.

4. **Unit Size.**

a. The maximum size of a detached or attached accessory dwelling unit is eight hundred fifty (850) square feet for a studio or one-bedroom unit and one thousand (1,000) square feet for a two (2) or more bedroom unit.

b. Application of the size limitations set forth in subsection (G)(4)(a) of this section shall not apply to an accessory dwelling unit that is converted as part of a proposed or existing space of a principal residence or existing accessory structure.

c. Application of development standards, such as floor area limit or site coverage, may further limit the size of the accessory dwelling unit, but in no case shall the front setbacks, floor area limit, open space, or site coverage requirement reduce the accessory dwelling unit to less than eight hundred (800) square feet where there is no other alternative to comply, and only to the extent necessary to construct the accessory dwelling unit.

d. The maximum size of a junior accessory dwelling unit shall be five hundred (500) square feet.

e. The minimum size of an accessory dwelling unit or junior accessory dwelling unit shall be at least that of an efficiency unit.

5. Walkout Basement Floor Area Limit Exception. The gross floor area of an accessory dwelling unit or junior accessory dwelling shall be excluded from the allowable floor area limit when located below grade within a basement. Daylighting of the basement shall only be permitted where excavation is necessary to provide exterior access to the main surface level and in compliance with the following:
- a. The access passageway, inclusive of any necessary shoring, may encroach into a side setback area;
 - b. The passageway shall be free of obstructions from the ground level to a height of eight (8) feet; and
 - c. The access passageway shall measure a minimum of thirty-six (36) inches in width, measure a maximum of sixty (60) feet in length, and shall not be located within a yard fronting a public right-of-way.

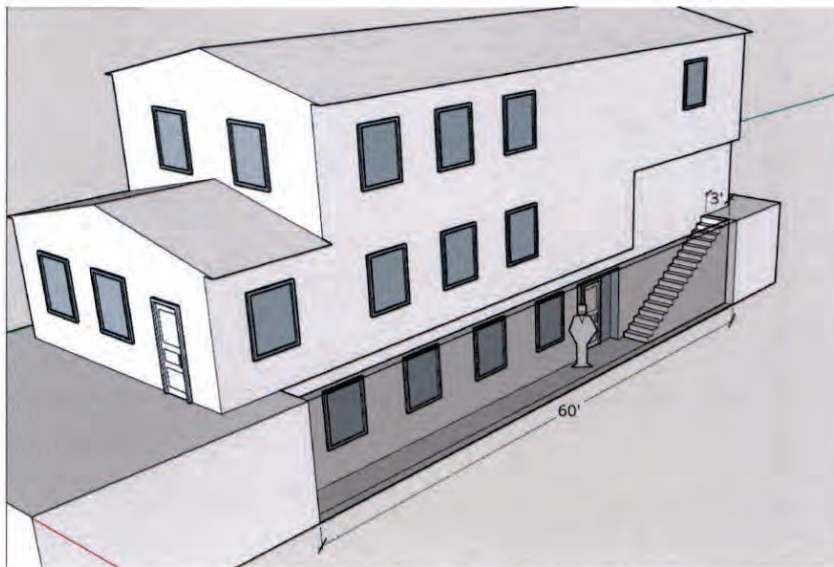


Figure 3-7

Walkout Basement Floor Area Limit Exception

6. Fire Sprinklers. An accessory dwelling unit and/or junior accessory dwelling unit shall not require fire sprinklers so long as fire sprinklers are not required for the principal residence, nor shall the construction of an accessory dwelling unit and/or junior accessory dwelling unit require fire sprinklers to be installed in the existing single-unit or multi-unit dwelling.
7. Passageway. No passageway shall be required in conjunction with the construction of an accessory dwelling unit and/or junior accessory dwelling unit. For the purposes of this section, "passageway" means a pathway that is unobstructed clear to the sky and extends from the street to one entrance of the accessory dwelling unit.

8. Parking. Parking shall comply with requirements of Chapter 21.40 (Off-Street Parking) except as modified below:

- a. No additional parking shall be required for junior accessory dwelling units.
- b. A maximum of one (1) parking space shall be required for each accessory dwelling unit.
- c. When additional parking is required, the parking may be provided as tandem parking and/or located on an existing driveway; however, in no case shall parking be allowed in a rear setback abutting an alley or within the front setback, unless the driveway in the front setback has a minimum depth of twenty (20) feet.
- d. No parking shall be required for:
 - i. An accessory dwelling unit internal to a proposed principal residence or converted from existing space of principal residence or existing accessory structure;
 - ii. An accessory dwelling unit located within one-half mile walking distance of public transit. For the purposes of this section "public transit" shall include a bus stop where the public may access buses that charge set fares, run on fixed routes, and are available to the public;
 - iii. An accessory dwelling unit located within an architecturally and historically significant historic district;
 - iv. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit; or
 - v. When there is a car-share vehicle located within one block of the accessory dwelling unit. For the purposes of this section, "car-share vehicle" shall mean part of an established program intended to remain in effect at a fixed location for at least ten (10) years and available to the public.
- e. Replacement Parking Necessary. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit at the same location or converted to an accessory dwelling unit, replacement parking shall be provided. Replacement parking may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. Accessory dwelling units shall not displace required uncovered parking spaces.

9. Waterfront Development and Flood Hazard Areas.

a. The minimum top of slab elevation for new interior living areas, including areas converted from nonliving areas, shall comply with the flood hazard and sea level rise protection standards of Section 21.30.015(D).

b. Any development in shoreline hazardous areas shall comply with Section 21.30.015(E)(2).

H. Utility Connection.

1. **Connection Required.** All accessory dwelling units and junior accessory dwelling units shall connect to public utilities (or their equivalent), including water, electric, and sewer services.

2. Except as provided in subsection (H)(3) of this section, the City may require the installation of a new or separate utility connection between the accessory dwelling unit, junior accessory dwelling unit and the utilities.

3. **Conversion.** No separate connection between the accessory dwelling unit and the utility shall be required for units created within a single-unit or multi-unit dwelling(s), unless the accessory dwelling unit is being constructed in connection with a new single-unit dwelling or multi-unit dwellings.

4. **Septic Systems.** If the principal dwelling unit is currently connected to an on-site wastewater treatment system and is unable to connect to a sewer system, accessory dwelling units and junior accessory dwelling units may connect to the on-site wastewater treatment system. However, the owner must include with the application a percolation test completed within the last five years or, if the percolation test has been recertified, within the last ten (10) years.

I. Additional Requirements for All Accessory Dwelling Units and Junior Accessory Dwelling Units.

1. **No Separate Conveyance.** An accessory dwelling unit or junior accessory dwelling unit may be rented, but no accessory dwelling unit or junior accessory dwelling unit may be sold or otherwise conveyed separately from the lot and the principal dwelling (in the case of a single-unit dwelling) or from the lot and all of the dwellings (in the case of a multi-unit dwelling).

2. **Short-Term Lodging.** The accessory dwelling unit and/or junior accessory dwelling unit shall not be rented for periods of thirty (30) days or less.

3. **Owner-Occupancy for Junior Accessory Dwelling Units.** A natural person with legal or equitable title to the lot must reside in either the principal single-unit dwelling unit or the junior accessory dwelling unit as the person's legal domicile and permanent residence. However, this owner-occupancy requirement shall not apply to any junior accessory dwelling unit owned by a governmental agency, land trust, or housing organization.

J. Deed Restriction and Recordation Required.

1. Prior to the issuance of a building and/or grading permit for an accessory dwelling unit and/or junior accessory dwelling unit, the property owner shall record a deed restriction with the County Recorder's Office, the form and content of which is satisfactory to the City Attorney. The deed restriction document shall notify future owners of the owner-occupancy requirements, prohibition on the separate conveyance, the approved size and attributes of the unit, and restrictions on short-term rentals. This deed restriction shall remain in effect so long as the accessory dwelling unit and/or junior accessory dwelling unit exists on the lot.

2. For properties in flood hazard areas, deed restriction shall also include notice to future owners that the unit is located within an area that may be subject to flooding or future flooding.

3. For properties located in low lying shoreline areas that may be subject to future sea level rise, the property owner shall also record a waiver of future protection in compliance with Section 21.30.015(E)(5).

K. Historic Resources. Accessory dwelling units and/or junior accessory dwelling units proposed on residential or mixed-use properties that are determined to be historic shall be approved ministerially, in conformance with California Government Code Sections 65852.2 and 65852.22. However, any accessory dwelling unit or junior accessory dwelling unit that is listed on the California Register of Historic Resources shall meet all Secretary of the Interior standards, as applicable.

EXHIBIT "B"

FINDINGS IN SUPPORT OF LOCAL COASTAL PLAN AMENDMENT NO. LC2021-003

1. LCP Amendment No. LC2021-003 is consistent with and implements California Government Code Sections 65852.2 and 65852.22.
2. Adopting an ordinance consistent with Government Code Sections 65852.2 and 65852.22 ensures that the character of the City is preserved to the maximum extent possible and that the City's regulation regarding ADUs and JADUs continue to promote the health, safety, and welfare of the community.
3. As permitted by California Government Code Section 65852.2, the City finds that maintaining the prohibition of parking in rear alley setbacks is essential to preserve vehicular maneuverability for residents and fire and life safety personnel traveling through the City's narrow alleyways. Also, prohibiting parking in front setbacks, unless located on a driveway a minimum 20 feet in depth, is also essential to ensure that driveways are of sufficient depth to accommodate a vehicle entirely on-site without protruding into the public right-of-way and blocking pedestrian, bicyclist, and vehicular traffic creating a life safety condition.
4. The City is a coastal community with numerous coastal resources that attract over seven million annual visitors. This includes public beaches, Newport Harbor, Balboa Peninsula, Balboa Island, and Newport Bay. The number of annual visitors, coupled with historic development patterns of the City, has created a significant impact on the limited parking supply. The loss of off-street parking on residential lots would exacerbate the continual public parking problems in the Coastal Zone, as it shifts residential parking from on-site to on-street. Government Code Section 65852.2(a)(1)(D)(xi) notes that off-street parking shall not be required to be replaced when a garage, carport, or other covered parking is converted to an ADU or JADU. Notwithstanding this, Government Code Section 65852.2(l) notes, "Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976..."

The elimination of off-street parking in residential properties within the Coastal Zone would create a significant impact to public parking and limit visitor access to coastal resources. To preserve the limited parking supply and ensure this amendment is consistent with the Coastal Act, this amendment maintains and clarifies that the requirement for replacement parking is needed when existing parking is displaced by a ADU or JADU. The amendment also requires parking to provide for an ADU constructed in conjunction with a new single-unit or multi-unit development when not located within ½ mile walking distance to a bus stop.







5. LCP Amendment No. LC2021-003 would serve to implement Housing Element Policy Action 1H (Accessory Dwelling Unit Construction) of the 2021-2029 Housing Element. Policy Action 1 requires the City to analyze methods to aggressively support and

accommodate ADU construction within 12 months of Housing Element adoption and establish a program within 24 months of adoption.

Attachment C

Matrix of Current ADU/JADU Development
Standards

Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU) are regulated by Newport Beach Municipal Code Sections [20.48.200](#) and [21.48.200](#). Ministerial review of all ADUs and JADUs will occur through a Zoning Clearance within 60-days of receiving a complete application. A Coastal Development Permit may also be required for properties within the Coastal Zone. *Please consult with a planner prior to submitting an ADU/JADU project*

	JADU	ADU WITH SINGLE- OR MULTI-UNIT DEVELOPMENT			ADU WITH MULTI-UNIT DEVELOPMENT	
ADU Type	 JADU <i>Conversion¹ of an interior portion of an existing single-unit dwelling; or new construction within a proposed single-unit dwelling</i>	 INTERNAL^{1,2} <i>Conversion of an interior portion of an existing single-unit or multi-unit dwelling, or an existing detached accessory building; or new construction within a proposed single-unit or multi-unit (2+) development</i>	 ATTACHED¹ Construction of a new ADU <i>attached</i> to an existing or proposed single-unit or multi-unit dwelling	 DETACHED Construction of a new ADU as a <i>detached</i> accessory building	 CONVERSION <i>Conversion of an existing non-habitable (e.g., storage rooms, boiler rooms, passageways, attics, basements, or garages) portion of a multi-unit (2+) development</i>	 DETACHED Construction of a <i>new</i> ADU as a <i>detached</i> accessory building
Zoning	Allowed on all residential and mixed zoned properties that are improved with a single-unit dwelling	Allowed on all residential and mixed zoned properties that are improved with a single-unit or multi-unit dwelling			Allowed on all residential and mixed zoned properties that are improved with <i>existing</i> multi-unit dwellings	
Number of Units	One	One			At least one and no more than 25% of the existing unit count in the multi-unit development	Two
Allowed with Other ADU ³	May also provide single-unit ADU	May also provide JADU as part of a <u>single-unit dwelling</u>			No	
Minimum Lot Size	None					
Minimum Size	Must meet minimum efficiency unit requirements of 220 square feet					
Maximum Size (Square Feet)	500	No limit	Studio/One-Bedroom = 850 Two Bedroom = 1,000 Can be no more than 50% of existing primary dwelling (for attached only)		No limit	Studio and One-Bedroom = 850 Two Bedroom = 1,000
Maximum Size Exception	None	None	Application of floor area limit or site coverage shall not reduce an ADU below 800 square feet and a height limit of 16 feet ⁴		None	Application of floor area limit or site coverage shall not reduce ADU below 800 square feet and a height limit of 16 feet ⁴
Maximum Height	Per base zone	Per base zone	Per base zone	16 feet (Exception: Base zone for an ADU constructed above a garage that complies with setbacks and principal unit complies with parking)	N/A	16 feet (Exception: Base zone for an ADU constructed above a garage that complies with setbacks and principal unit complies with parking)

ADU Type	JADU	ADU WITH SINGLE- OR MULTI-UNIT DEVELOPMENT			ADU WITH MULTI-UNIT DEVELOPMENT	
	JADU	INTERNAL	ATTACHED	DETACHED	CONVERSION	DETACHED
Front Setback ⁵	Per base zone					
Side Setback ⁵	Per base zone	Per base zone	4 feet or base zone, whichever is less		Per Base Zone	4 feet or base zone, whichever is less
Rear Setback ⁵	Per base zone	Per base zone	4 feet (not abutting alley) or base zone, whichever is less		Per Base Zone	4 feet (not abutting alley) or base zone, whichever is less
Access	Exterior entrance required in all cases. JADUs may provide internal connection.					
Bathroom	May share with primary dwelling unit	Bathroom is required				
Kitchen	Efficiency ⁶	Full kitchen, including fixed cooking appliance with outside exhaust.				
Parking	None	None	One		None	One per unit
Parking Exception	N/A	Parking waived for the ADU if the property is: 1) within ½ mile walking distance to transit (including ferry); 2) within an architecturally or historically significant district; 3) on-street parking permits are required and not provided to the occupant of the ADU; or 4) within one block of a car-share vehicle pick-up/drop-off location				
Garage Conversion	Allowed; Replacement parking required citywide	Allowed; Replacement parking required in the Coastal Zone	N/A		Allowed; Replacement parking required in the Coastal Zone	N/A
Deed Restriction	Prior to issuance of building permit, owner must record deed restriction (prepared by the City) noting the size of the unit, description of unit, prohibition on short term rentals, prohibiting the sale of the ADU/JADU, and specifying owner-occupancy requirement. Additional restrictions required in the Coastal zone.					
Owner-Occupancy	Owner shall live in either unit	Owner-occupancy is not required for units built between January 1, 2020 and January 1, 2025				
Short-Term Lodging	Short-term lodging is prohibited.					
Utility Connection	A separate utility connection is not required	The City may require a separate utility connection. (See Utilities Director 1/9/21 Memorandum for single water and sewer service allowances)				
Fire Sprinklers	Only required if fire sprinklers required and provided on primary unit. (See State Fire Marshall Informational Bulletin 21-005 for exceptions)					
Separate Conveyance	ADUs and JADUs may not be sold separately					
Design	Shall have a similar style to the principal dwelling, including architectural style, roof pitch, color, and materials					

¹ Internal is either: 1) conversion of existing floor area within the envelope of an existing single-unit dwelling (including garage); or 2) development of an ADU within the footprint of a proposed single-unit or multi-unit dwelling (excluding garage) that complies with all applicable development standards. Construction of a new ADU that extends beyond the envelope of an existing single-unit or multi-unit dwelling or beyond the footprint of a proposed single-unit or multi-unit dwelling shall comply with the standards applicable to *Attached ADUs*.

² Conversions of existing accessory structures are permitted a 150 sq. ft. addition to accommodate ingress/egress. Conversions within principal structure not entitled to 150 sf addition.

³ Current adopted code is out of date. AB3182, effective January 1, 2021, allows an ADU and a JADU on the same lot with a proposed or existing single-family dwelling, regardless if the ADU is detached, attached, or internal. This change will be incorporated into future Title 20 and Title 21 amendments.

⁴ An ADU constructed concurrently with a new development shall comply with the total maximum allowed floor area or lot coverage limits applicable to the property. In the case where the floor area or lot coverage of existing development doesn't allow the development of an 800 sf ADU, then the ADU may exceed floor area or lot coverage limits to the minimum extent necessary to accommodate the 800 sf ADU provided it meets the 16-foot height limit and 4-foot setback requirements.






⁵ For conversion of existing enclosed floor area, garage, or carport, no additional setback required. For replacement of an existing enclosed structure, garage, or carport, no additional setback is required beyond the existing setback. Additional setback maybe required for coastal resource protection per IP.

⁶ An efficiency kitchen may include a basic plug-in cooking appliance such as hot plate or microwave. A sink, food preparation counter and storage cabinets of reasonable size required.

Attachment D

Matrix of Proposed ADU/JADU
Development Standards

Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU) are regulated by Newport Beach Municipal Code Sections [20.48.200](#) and [21.48.200](#). Ministerial review of all ADUs and JADUs will occur through building permit plan check. A Coastal Development Permit may also be required for properties within the Coastal Zone. An ADU/JADU unit must include basic elements of sleeping facilities, food preparation, sanitation, and separate exterior access. *Please consult with a planner prior to submitting an ADU/JADU project*

	JADU	ADU WITH SINGLE- OR MULTI-UNIT DEVELOPMENT			ADU WITH EXISTING MULTI-UNIT DEVELOPMENT
ADU Type	 JADU¹ <i>Conversion of an interior portion of an existing single-unit dwelling; or new construction within a proposed single-unit dwelling; or attached to an existing or proposed single-unit dwelling</i>	 INTERNAL^{1,2} <i>Conversion of an interior portion of an existing single-unit or multi-unit dwelling, or an existing detached accessory building; or new construction within a proposed single-unit or multi-unit (2+) development</i>	 ATTACHED¹ <i>Construction of a new ADU attached to an existing or proposed single-unit or multi-unit dwelling</i>	 DETACHED <i>Construction of a new ADU as a detached accessory building</i>	 CONVERSION <i>Conversion of an existing non-habitable (e.g., storage rooms, boiler rooms, passageways, attics, basements, or garages) portion of a multi-unit (2+) development</i>
Zoning	Allowed on all residential and mixed zoned properties that are improved with a single-unit dwelling	Allowed on all residential and mixed-use zoned properties that are improved with a single-unit or multi-unit dwelling			Allowed on all residential and mixed zoned properties that are improved with <i>existing</i> multi-unit dwellings
Number of Units	One	One	Single-unit Development: One Multi-unit Development: Two		At least one and no more than 25% of the existing unit count in the multi-unit development
Allowed with Other ADU	May also provide single-unit ADU	May provide an ADU and a JADU on the same lot with a proposed or existing single-family dwelling, regardless if the ADU is detached, attached, or internal.			No
Minimum Lot Size	None				
Minimum Unit Size	Shall comply with California Building Code Section 1208 (Interior Space Dimensions)				
Maximum Unit Size (Square Feet)	500	No limit	Studio/One-Bedroom = 850 Two Bedroom = 1,000		No limit
Maximum Height	Per base zone	Per base zone	Per base zone	18 feet flat roof 20 feet sloped roof (min 3/12 pitch) ³	N/A
Front Setback ⁴	Per base zone				
Side Setback ⁴	Per base zone	Per base zone	4 feet or base zone, whichever is less		Per Base Zone
Rear Setback ⁴	Per base zone	Per base zone	4 feet (not abutting alley) or base zone, whichever is less		Per Base Zone
800 sf ADU Exception for Existing Development ⁵	N/A		Application of floor area limit, site coverage limit, or front setback shall not reduce an ADU below 800 square feet (additions only)		N/A

ADU Type	JADU	ADU WITH SINGLE- OR MULTI-UNIT DEVELOPMENT			ADU WITH EXISTING MULTI-UNIT DEVELOPMENT
	JADU	INTERNAL ^{1,2}	ATTACHED ¹	DETACHED	CONVERSION
Walkout Basement FAL Exception	Floor area of ADU/JADU may be excluded from the allowable floor area limit when located below grade within a basement and specific criteria is met. See Section 20.48.200(F)(5) and 21.48.200(F)(5)				
Access	Exterior entrance required in all cases. JADUs may provide internal connection.				
Bathroom	May share with primary dwelling unit	Bathroom is required			
Kitchen	Efficiency ⁶	Full kitchen, including fixed cooking appliance with outside exhaust.			
Parking	None	None	One per unit		None
Parking Exception	N/A		Parking waived for the ADU if the property is: 1) within ½ mile walking distance to transit; 2) within an architecturally or historically significant district; 3) on-street parking permits are required and not provided to the occupant of the ADU; 4) within one block of a car-share vehicle pick-up/drop-off location; or 5) when ADU is constructed in conjunction with a new single-unit or multi-unit dwelling not located in the coastal zone.		N/A
Garage/Carport Conversion	Allowed; Replacement parking required citywide	Allowed; Replacement parking required in the Coastal Zone	N/A		Allowed; Replacement parking required in the Coastal Zone
Deed Restriction	Prior to issuance of building permit, owner must record deed restriction (prepared by the City) noting the size of the unit, description of unit, prohibition on short term rentals, prohibiting the sale of the ADU/JADU, and specifying owner-occupancy requirement for JADU. Additional restrictions required in the Coastal zone.				
Owner-Occupancy	Owner shall live in either unit	N/A			
Short-Term Lodging	Short-term lodging is prohibited.				
Utility Connection	A separate utility connection is not required	The City may require a separate utility connection. (See Utilities Director 1/9/21 Memorandum for single water and sewer service allowances)			
Fire Sprinklers	Only required if fire sprinklers required and provided on primary unit. (See State Fire Marshall Informational Bulletin 21-005 for exceptions)				
Separate Conveyance	ADUs and JADUs may not be sold separately				

¹ Internal is either: 1) conversion of existing floor area within the envelope of an existing single-unit dwelling (including garage); or 2) development of an ADU within the footprint of a proposed single-unit or multi-unit dwelling (excluding garage) that complies with all applicable development standards. Construction of a new ADU that extends beyond the envelope of an existing single-unit or multi-unit dwelling or beyond the footprint of a proposed single-unit or multi-unit dwelling shall comply with the standards applicable to *Attached ADUs*.

² Conversions of existing accessory structures are permitted a 150 sq. ft. addition to accommodate ingress/egress. Conversions within principal structure not entitled to 150 sf addition.

³ Exception: Base zone height limit applies for an ADU constructed above a garage that complies with setbacks and principal unit complies with parking.

⁴ For conversion of existing enclosed floor area, garage, or carport, no additional setback required. For replacement of an existing enclosed structure, garage, or carport, no additional setback is required beyond the existing setback. Additional setback maybe required for coastal resource protection per IP.

⁵ An ADU constructed concurrently with a new development shall comply with the total maximum allowed floor area limits, lot coverage limits, and front setbacks applicable to the property. In the case where the floor area, lot coverage, or front setbacks of existing development doesn't allow the development of an 800 sf ADU and no other compliant alternatives exist, then the ADU may exceed the floor area or lot coverage limits, and/or encroach into the front setback to the minimum extent necessary to accommodate the 800 sf ADU provided it meets all other applicable standards.

⁶ An efficiency kitchen may include a basic plug-in cooking appliance such as hot plate or microwave. A sink, food preparation counter and storage cabinets of reasonable size required.

Attachment E

Redline/Strikeouts Version of Title 20 and
Title 21 Amendments

ADU Code and LCP Amendment Implementing 2023 State Law Changes and Planning Commission Ad-Hoc Committee Recommendations

- State Law revisions required by AB 2221 (Quirk-Silva) and SB 897 (Wieckowski) and effective January 1, 2023, are shown in red.
- Planning Commission Ad-Hoc Committee Recommendations shown in Green text.
- Staff recommended edits for clarity or simplicity shown in Purple text.

20.48.200 Accessory Dwelling Units.

A. Purpose. The purpose of this section is to establish the procedures for the creation of accessory dwelling units and junior accessory dwelling units, as defined in Part 7 (Definitions) of this title and in California Government Code Sections 65852.2 and 65852.22, or any successor statute, in areas designated for residential use, including as part of a planned community development plan or specific plan, and to provide development standards to ensure the orderly development of these units in appropriate areas of the City.

B. Effect of Conforming. An accessory dwelling unit or junior accessory dwelling unit that conforms to the requirements in this section shall not be:

1. Deemed to be inconsistent with the General Plan and zoning district designation for the lot on which the accessory dwelling unit or junior accessory dwelling unit is located;
2. Deemed to exceed the allowable density for the lot on which the accessory dwelling unit or junior accessory dwelling unit is located;
3. Considered in the application of any ordinance, policy, or program to limit residential growth; or
4. Required to correct a legally established nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit or junior accessory dwelling unit. This does not prevent the City from enforcing compliance with applicable building standards in accordance with California Health and Safety Code Section 17980.12.

C. Review Authority. Accessory dwelling units and junior accessory dwelling units shall be approved in any residential or mixed-use zoning district, subject to a building permit zoning clearance provided by the Director and the following conditions:

1. There is an existing or proposed dwelling unit on the lot;
2. The dwelling conforms to the development standards and requirements for accessory dwelling units and/or junior accessory dwelling units as provided in this section; and
3. Zoning clearance The building permit shall be considered and approved ministerially, without discretionary review or a hearing, within sixty (60) days from the date that the City determines an application to be complete, unless either:
 - a. The applicant requests a delay, in which case the sixty (60) day time period is tolled for the period of the requested delay, or

b. In the case of an application for an accessory dwelling unit and/or junior accessory dwelling unit submitted with an application to create a new single-unit dwelling on the lot, the City may delay acting on the accessory dwelling unit and/or junior accessory dwelling application until the City renders a decision on the new single-unit dwelling application.

D. Maximum Number of Accessory Dwelling Units Allowed. The following is the maximum number of accessory dwelling units ~~and/or junior accessory dwelling units~~ allowed on any residential lot. For the purposes of this section, multi-unit dwelling means a structure or development containing two or more dwelling units. ~~Unless otherwise specified below, o~~Only one of the categories described below in this subsection may be used per lot.

1. Internal to a Single-Unit or Multi-Unit Dwelling Category. Only one accessory dwelling unit ~~or one junior accessory dwelling unit~~ may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling, subject to the following:

a. The accessory dwelling unit is proposed:

- i. Within the space of a proposed single-unit or multi-unit dwelling;
- ii. Within the existing space of an existing single-unit or multi-unit dwelling; or
- iii. Within the existing space of an existing accessory structure, plus an addition beyond the physical dimensions of the existing structure of up to one hundred fifty (150) square feet if the expansion is limited to accommodating ingress and egress.

~~b. The junior accessory dwelling unit is proposed:~~

- ~~i. Within the space of a proposed single-unit dwelling; or~~
- ~~ii. Within the existing space of an existing single-unit dwelling.~~

~~eb.~~ The accessory dwelling unit ~~or junior accessory dwelling unit will~~ shall have independent exterior access from the single-unit dwelling.

~~dc.~~ Side and rear setbacks comply with Title 9 (Fire Code) and Title 15 (Buildings and Construction).

~~2. Detached/Attached on Lot with Single-Unit or Multi-Unit Dwelling Category. One detached or one attached, new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling. A detached, new-construction accessory dwelling unit may also be permitted in addition to any junior accessory dwelling unit that might otherwise be established on the lot under subsection (D)(1)(b) of this section.~~

2. Attached on Lot with Single-Unit or Multi-Unit Dwelling Category. Only one attached, new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling.

3. Detached on Lot with Single-Unit or Multi-Unit Dwelling Category. Only one detached new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling. Up to two detached new-construction accessory dwelling units may be constructed on a lot that has an existing or proposed multi-unit dwelling. For the

purposes of this section, a multi-unit development approved and built as a single complex shall be considered one lot, regardless of the number of parcels.

~~3~~ 4. Conversion of Multi-Unit Dwelling Category. Multiple accessory dwelling units may be permitted on lots with existing multi-unit dwellings subject to the following:

- a. The number of accessory dwelling units shall not exceed twenty-five (25) percent of the existing multi-unit dwellings on the lot. For the purpose of calculating the number of allowable accessory dwelling units, the following shall apply:
 - i. Previously approved accessory dwelling units shall not count towards the number of existing multi-unit dwellings;
 - ii. Fractions shall be rounded down to the next lower number of dwelling units, except that at least one accessory dwelling unit shall be allowed; and
 - iii. For the purposes of this section, multi-unit developments approved and built as a single complex shall be considered one lot, regardless of the number of parcels.
- b. The portion of the existing multi-unit dwelling that is to be converted to an accessory dwelling unit is not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages.

~~4.—Detached on Multi-Unit Lot Category. Up to two detached accessory dwelling units may be constructed on a lot that has an existing multi-unit dwelling. For the purposes of this section, multi-unit developments approved and built as a single complex shall be considered one lot, regardless of the number of parcels.~~

E. Maximum Number of Junior Accessory Dwelling Units Allowed. One (1) junior accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling, subject to the following:

1. The junior accessory dwelling unit is proposed to be attached to, or within the space of, a proposed or existing single-unit dwelling.
2. The junior accessory dwelling unit shall have independent exterior access from the single-unit dwelling and may provide interior access to the single-unit dwelling.
3. Side and rear setbacks comply with Title 9 (Fire Code) and Title 15 (Buildings and Construction).
4. The junior accessory dwelling unit may be constructed in addition to an accessory dwelling unit on the lot with a proposed or existing single-unit dwelling. A junior accessory dwelling unit shall not be allowed on the lot with a proposed or existing multi-unit dwelling.

~~FE.~~ Development Standards. Except as modified by this subsection, an accessory dwelling unit and/or junior accessory dwelling unit shall conform to all objective standards requirements of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions of Title 20 (Planning and Zoning), including but not limited to height, setback, site coverage, floor area limit, and residential development standards and design criteria.

1. Minimum Lot Area. There shall be no minimum lot area required ~~in order~~ to establish an accessory dwelling unit and/or junior accessory dwelling unit.

2. Setback Requirements. Accessory dwelling units and junior accessory dwelling units shall comply with the setback requirements applicable to the zoning district, except as noted below:

- a. For conversion of existing enclosed floor area, garage, or carport, no additional setback is required, beyond the existing provided setback.
- b. For replacement of an existing enclosed structure, garage, or carport, no existing setback is required, beyond the existing setback provided. This provision shall only apply to accessory dwelling units and junior accessory dwelling units that are replacing existing structures within the same footprint and do not exceed the existing structure's size and/or height. For an accessory dwelling unit that will replace a detached garage, the building and demolition permits shall be reviewed and issued concurrently.
- c. Attached and detached accessory dwelling units may shall provide a minimum setback of four feet from all side property lines and rear property lines not abutting an alley unless the setback requirements of the underlying zoning district are less restrictive.

3. Building Height. Detached accessory dwelling units shall not exceed ~~one-story and~~ a height of ~~sixteen (16) feet~~ eighteen (18) feet for structures with flat roofs and twenty (20) feet for structures with sloped roofs (minimum 3/12 pitch). Notwithstanding the foregoing, an accessory dwelling unit constructed above a detached garage shall not exceed two stories and the maximum allowable height of the underlying zoning district, provided all the following criteria are met:

- a. The accessory dwelling unit meets the minimum setbacks, as required by underlying zoning district; and
- b. The principal dwelling unit complies with parking standards set forth in Section 20.40.040.

4. Unit Size.

- a. The maximum size of a detached or attached accessory dwelling unit is eight hundred fifty (850) square feet for a studio or one-bedroom unit and one thousand (1,000) square feet for a two or more bedroom unit.

~~b. An attached accessory dwelling unit that is created on a lot with an existing single-unit dwelling is further limited to fifty (50) percent of the floor area of the existing dwelling.~~

~~be.~~ Application of size limitations set forth in subsections ~~(FE)(4)(a)~~ and ~~(FE)(4)(b)~~ of this section, shall not apply to an accessory dwelling units that is are converted as part of a proposed or existing space of a principal residence or existing accessory structure.

~~cd.~~ Application of ~~size limitations set forth in subsection (FE)(4)(b) of this section, or other~~ development standards, such as floor area limit or site coverage, may further limit the size of the accessory dwelling unit, but in no case shall the front setback, floor area limit, open space, or site coverage requirement reduce the accessory dwelling unit to less than 800 square feet where there is no other alternative to comply and only to the extent necessary to construct the accessory dwelling unit and the ADU shall not exceed a height of 16 feet measured from the finished grade as determined by the Director.

~~de.~~ The maximum size of a junior accessory dwelling unit shall be 500 square feet.

~~ef.~~ The minimum size of an accessory dwelling unit or junior accessory dwelling unit shall be at least that of an efficiency unit.

~~5.—Design. An accessory dwelling unit and/or junior accessory dwelling unit shall be similar to the principal dwelling with respect to architectural style, roof pitch, color, and materials.~~

5. Walkout Basement Floor Area Limit Exception. The gross floor area of an accessory dwelling unit or junior accessory dwelling shall be excluded from the allowable floor area limit when located below grade within a basement. Daylighting of the basement shall only be permitted where excavation is necessary to provide exterior access to the main surface level and in compliance with the following:

- a. The access passageway, inclusive of any necessary shoring, may encroach into a side setback area;
- b. The passageway shall be free of obstructions from the ground level to a height of eight feet; and
- c. The access passageway shall measure a minimum of thirty-six (36) inches clear in width, measure no longer than 60 feet in length, and shall not be located within a yard fronting a public right-of-way.

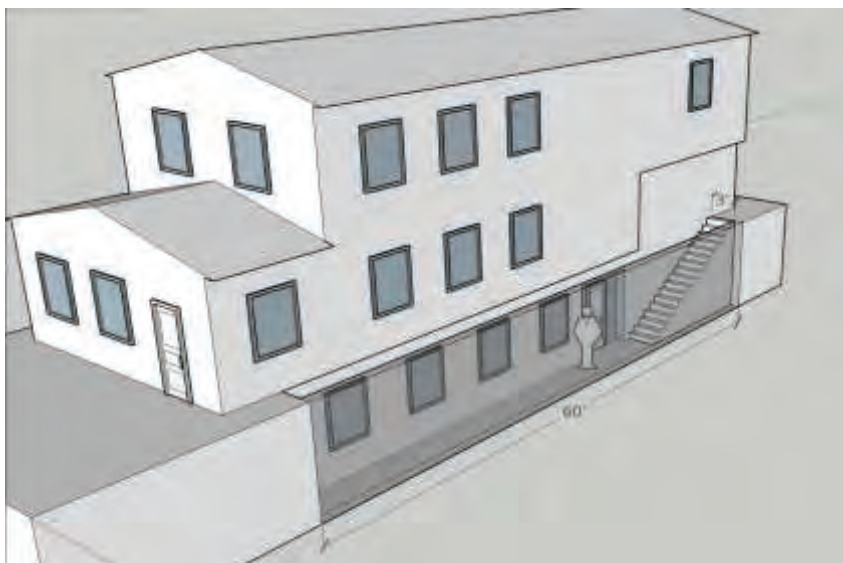


Figure 3-7

Walkout Basement Floor Area Limit Exception

6. Fire Sprinklers. An accessory dwelling unit and/or junior accessory dwelling unit shall not require fire sprinklers so long as fire sprinklers are not required for the principal residence; ~~however, fire sprinklers are encouraged, nor shall the construction of an~~

accessory dwelling unit and/or junior accessory dwelling unit require fire sprinklers to be installed in the existing single-unit or multi-unit dwelling.

7. Passageway. No passageway shall be required in conjunction with the construction of an accessory dwelling unit and/or junior accessory dwelling unit. For the purposes of this section, "passageway" means a pathway that is unobstructed clear to the sky and extends from the street to one entrance of the accessory dwelling unit.

8. Parking. Parking shall comply with requirements of Chapter 20.40 (Off-Street Parking) except as modified below:

- a. No additional parking shall be required for junior accessory dwelling units.
- b. A maximum of one parking space shall be required for each accessory dwelling unit.
- c. When additional parking is required, the parking may be provided as tandem parking and/or located on an existing driveway; however, in no case shall parking be allowed in a rear setback abutting an alley or within the front setback, unless the driveway in the front setback has a minimum depth of twenty (20) feet.
- d. No additional parking shall be required for:
 - i. An Aaccessory dwelling unit internal to a proposed principal residence or converted from existing space of a principal residence or existing accessory structure;
 - ii. An Aaccessory dwelling units located within one-half-mile walking distance of a public transit. For the purposes of this section "public transit" shall include a bus stop where the public may access buses that charge set fares, run on fixed routes, and are available to the public;
 - iii. An Aaccessory dwelling units located within an architecturally and historically significant historic district;
 - iv. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit; or
 - v. When there is a car-share vehicle located within one block of the accessory dwelling unit. For the purposes of this section, "car-share vehicle" shall mean part of an established program intended to remain in effect at a fixed location for at least ten (10) years and available to the public.
 - vi. Outside the coastal zone, when an accessory dwelling unit is constructed in conjunction with a new single-unit or multi-unit dwelling on the same lot.
- e. No Replacement Parking Necessary. Outside the coastal zone, when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit at the same location or converted to an accessory dwelling unit, those off-street parking spaces are not required to be replaced. Accessory dwelling units shall not displace required uncovered parking spaces. Refer to Section 21.48.200(F)(8)(e)* for replacement parking in the coastal zone.

GF. Utility Connection.

1. Connection Required. All accessory dwelling units and junior accessory dwelling units shall connect to public utilities (or their equivalent), including water, electric, and sewer services.
2. Except as provided in subsection (GF)(3) of this section, the City may require the installation of a new or separate utility connections between the accessory dwelling unit, junior accessory dwelling unit and the utilities.
3. Conversion. No separate connection between the accessory dwelling unit and the utility shall be required for units created within a single-unit or multi-unit dwelling(s), unless the accessory dwelling unit is being constructed in connection with a new single-unit dwelling.
4. Septic Systems. If the principal dwelling unit is currently connected to an on-site wastewater treatment system and is unable to connect to a sewer system, accessory dwelling units and junior accessory dwelling units may connect to the on-site wastewater treatment system. However, the owner must include with the application a percolation test completed within the last five years or, if the percolation test has been recertified, within the last ten (10) years.

HG. Additional Requirements for All Accessory Dwelling Units and Junior Accessory Dwelling Units.

1. No Separate Conveyance. An accessory dwelling unit or junior accessory dwelling unit may be rented, but no accessory dwelling unit or junior accessory dwelling unit may be sold or otherwise conveyed separately from the lot and the principal dwelling (in the case of a single-unit dwelling) or from the lot and all of the dwellings (in the case of a multi-unit dwelling).
2. Short-Term Lodging. The accessory dwelling unit and/or junior accessory dwelling unit shall not be rented for periods of thirty (30) days or less.
3. Owner-Occupancy for Junior Accessory Dwelling Units.

~~a.—Accessory Dwelling Units. A natural person with legal or equitable title to the lot must reside in either the principal dwelling unit or the accessory dwelling unit as the person's legal domicile and permanent residence. However, this owner-occupancy requirement shall not apply to any accessory dwelling unit that is permitted in accordance with this section between January 1, 2020, and January 1, 2025.~~

~~b.—Junior Accessory Dwelling Units. A natural person with legal or equitable title to the lot must reside in either the principal single-unit dwelling unit or the junior accessory dwelling unit as the person's legal domicile and permanent residence. However, this owner-occupancy requirement shall not apply to any junior accessory dwelling unit owned by a governmental agency, land trust, or housing organization.~~

I.H. Deed Restriction and Recordation Required. Prior to the issuance of a building and/or grading permit for an accessory dwelling unit and/or junior accessory dwelling unit, the property owner shall record a deed restriction with the County Recorder's Office, the form and content of which is satisfactory to the City Attorney. The deed restriction document shall notify future owners of the owner occupancy requirements, prohibition on the separate conveyance, the approved size and attributes of the unit, and restrictions on short-term rentals. This deed restriction shall remain in effect so long as the accessory dwelling unit and/or junior accessory dwelling unit exists on the lot.

J. Historic Resources. Accessory dwelling units and/or junior accessory dwelling units proposed on residential or mixed-use properties that are determined to be historic shall be approved ministerially, in conformance with California Government Code Sections 65852.2 and 65852.22. However, any accessory dwelling unit or junior accessory dwelling unit that is listed on the California Register of Historic Resources shall meet all Secretary of the Interior Standards, as applicable.

TITLE 21 REVISIONS

21.48.200 Accessory Dwelling Units.

A. Purpose. The purpose of this section is to establish the procedures for the creation of accessory dwelling units and junior accessory dwelling units, as defined in Part 7 (Definitions) of this title and in California Government Code Sections 65852.2 and 65852.22, or any successor statute, in areas designated for residential use, including as part of a planned community development plan or specific plan, and to provide development standards to ensure the orderly development of these units in appropriate areas of the City.

B. Effect of Conforming. An accessory dwelling unit or junior accessory dwelling unit that conforms to the requirements in this section shall not be:

1. Deemed to be inconsistent with the Coastal Land Use Plan and coastal zoning district designation for the lot on which the accessory dwelling unit or junior accessory dwelling unit is located;
2. Deemed to exceed the allowable density for the lot on which the accessory dwelling unit or junior accessory dwelling unit is located;
3. Considered in the application of any ordinance, policy, or program to limit residential growth; or
4. Required to correct ~~a~~ legally established nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit or junior accessory dwelling unit. This does not prevent the City from enforcing compliance with applicable building standards in accordance with California Health and Safety Code Section 17980.12.

C. Review Authority. Accessory dwelling units and junior accessory dwelling units shall be approved in any residential or mixed-use zoning district, subject to a ~~zoning clearance~~ building permit provided by the Director and the following conditions:

1. There is an existing or proposed dwelling unit on the lot;
2. The dwelling conforms to the development standards and requirements for accessory dwelling units and/or junior accessory dwelling units as provided in this section;
3. The dwelling conforms to the coastal resource protection development regulations of Section 21.28.040 (Bluff (B) Overlay District), Section 21.28.050 (Canyon (C) Overlay District), Section 21.30.100 (Scenic and Visual Quality Protection), or Chapter 21.30B (Habitat Protection); and

4. ~~Zoning clearance~~ Building permit shall be considered and approved ministerially, without discretionary review or a hearing, within sixty (60) days from the date that the City determines an application to be complete, unless either:

- a. The applicant requests a delay, in which case the sixty (60) day time period is tolled for the period of the requested delay, or
- b. In the case of an application for an accessory dwelling unit and/or junior accessory dwelling unit submitted with an application to create a new single-unit dwelling on the lot, the City may delay acting on the accessory dwelling unit and/or junior accessory dwelling application until the City renders a decision on the new single-unit dwelling application.

D. Coastal Development Permits.

1. Application. The applicant shall obtain a coastal development permit, pursuant to Chapter 21.52 (Coastal Development Review Procedures), unless otherwise exempt or excluded from the coastal development permit process pursuant to Section 21.52.035 (Projects Exempt from Coastal Development Permit Requirements) or Section 21.52.045 (Categorical Exclusions).
2. Hearing Exemption. All of the provisions of Chapter 21.52 (Coastal Development Review Procedures) regarding the review and approval of coastal development permits in relation to accessory dwelling units are applicable, except that a public hearing as required by Chapter 21.62 (Public Hearings) shall not be required. Public notice shall be provided as required in Section 21.62.020, except the requirements of Section 21.62.020(A) shall be replaced with a statement that no local public hearing will be held and that written comments on the proposed development may be submitted. Written comments received shall be reviewed by the review authority.
3. Appeal Exemption. Notwithstanding the local appeal provisions of Chapter 21.64 (Appeals and Calls for Review), coastal development permits for accessory dwelling units that are defined as “appealable development” pursuant to Section 21.64.035(A) may be directly appealed to the Coastal Commission in accordance with the provisions of Section 21.64.035 without a discretionary hearing by the Planning Commission or City Council.

E. Maximum Number of Accessory Dwelling Units Allowed. The following is the maximum number of accessory dwelling units ~~and/or junior accessory dwelling units~~ allowed on any residential lot. For the purposes of this section, “multi-unit dwelling” means a structure or development containing two or more dwelling units. ~~Unless otherwise specified below, e~~Only one of the categories described below in this subsection may be used per lot.

1. Internal to a Single-Unit or Multi-Unit Dwelling Category. Only one accessory dwelling unit ~~or one junior accessory dwelling unit~~ may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling, subject to the following:
 - a. The accessory dwelling unit is proposed:
 - i. Within the space of a proposed single-unit or multi-unit dwelling; or
 - ii. Within the existing space of an existing single-unit or multi-unit dwelling; or

iii. Within the existing space of an existing accessory structure, plus an addition beyond the physical dimensions of the existing structure of up to one hundred fifty (150) square feet if the expansion is limited to accommodating ingress and egress.

~~b. The junior accessory dwelling unit is proposed:~~

~~i. Within the space of a proposed single-unit dwelling; or~~

~~ii. Within the existing space of an existing single-unit dwelling.~~

~~eb.~~ The accessory dwelling unit ~~or junior accessory dwelling unit will~~ shall have independent exterior access from the single-unit dwelling.

~~ec.~~ Side and rear setbacks comply with Title 9 (Fire Code) and Title 15 (Buildings and Construction).

~~2. Detached/Attached on Lot with Single-Unit or Multi-Unit Dwelling Category. One detached or one attached, new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling. A detached, new-construction accessory dwelling unit may also be permitted in addition to any junior accessory dwelling unit that might otherwise be established on the lot under subsection (E)(1)(b) of this section.~~

2. Attached on Lot with Single-Unit or Multi-Unit Dwelling Category. Only one attached, new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling.

3. Detached on Lot with Single-Unit or Multi-Unit Dwelling Category. Only one detached new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling. Up to two detached new-construction accessory dwelling units may be constructed on a lot that has an existing or proposed multi-unit dwelling. For the purposes of this section, a multi-unit development approved and built as a single complex shall be considered one lot, regardless of the number of parcels.

~~3~~ 4. Conversion of Multi-Unit Dwelling Category. Multiple accessory dwelling units may be permitted on lots with existing multi-unit dwellings subject to the following:

a. The number of accessory dwelling units shall not exceed twenty-five (25) percent of the existing multi-unit dwellings on the lot. For the purpose of calculating the number of allowable accessory dwelling units, the following shall apply:

i. Previously approved accessory dwelling units shall not count towards the number of existing multi-unit dwellings;

ii. Fractions shall be rounded down to the next lower number of dwelling units, except that at least one accessory dwelling unit shall be allowed; and

iii. For the purposes of this section, multi-unit developments approved and built as a single complex shall be considered one lot, regardless of the number of parcels.

b. The portion of the existing multi-unit dwelling that is to be converted to an accessory dwelling unit is not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages.

~~4. Detached on Multi-Unit Lot Category. Up to two detached accessory dwelling units may be constructed on a lot that has an existing multi-unit dwelling. For the purposes of this section, multi-unit developments approved and built as a single complex shall be considered one lot, regardless of the number of parcels.~~

F. Maximum Number of Junior Accessory Dwelling Units Allowed. One (1) junior accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling, subject to the following:

1. The junior accessory dwelling unit is proposed to be attached to, or within the space of, a proposed or existing single-unit dwelling.
2. The junior accessory dwelling unit shall have independent exterior access from the single-unit dwelling and may provide interior access to the single-unit dwelling.
3. Side and rear setbacks comply with Title 9 (Fire Code) and Title 15 (Buildings and Construction).
4. The junior accessory dwelling unit may be constructed in addition to an accessory dwelling unit on the lot with a proposed or existing single-unit dwelling. A junior accessory dwelling unit shall not be allowed on the lot with a proposed or existing multi-unit dwelling.

GF. Development Standards. Except as modified by this subsection, an accessory dwelling unit and/or junior accessory dwelling unit shall conform to all requirements of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions of Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan), including but not limited to height, setback, site coverage, floor area limit, and residential development standards and design criteria.

1. Minimum Lot Area. There shall be no minimum lot area required ~~in order~~ to establish an accessory dwelling unit and/or junior accessory dwelling unit.
2. Setback Requirements. Accessory dwelling units and junior accessory dwelling units shall comply with the setback requirements applicable to the zoning district, except as noted below:
 - a. For conversion of existing enclosed floor area, garage, or carport, no additional setback is required, beyond the existing provided setback, unless a greater setback is needed to comply with subsection (C)(3) of this section.
 - b. For replacement of an existing enclosed structure, garage, or carport, no existing setback is required, beyond the existing setback provided, unless a greater setback is needed to comply with subsection (C)(3) of this section. This provision shall only apply to accessory dwelling units and junior accessory dwelling units that are replacing existing structures within the same footprint and do not exceed the existing structure's size and/or height. For an accessory dwelling unit that will replace a detached garage, the building and demolition permits shall be reviewed and issued concurrently.
 - c. Attached and detached accessory dwelling units shall may provide a minimum setback of four feet from all side property lines and rear property lines not abutting an alley unless the setback requirements of the underlying zoning district are less restrictive.

3. Building Height. Detached accessory dwelling units shall not exceed ~~one story and~~ a height of ~~sixteen (16) feet~~ eighteen (18) feet for structures with flat roofs and twenty (20) feet for structures with sloped roofs (minimum 3/12 pitch). Notwithstanding the foregoing, an accessory dwelling unit constructed above a detached garage shall not exceed two stories and the maximum allowable height of the underlying zoning district, provided all the following criteria are met:

- a. The accessory dwelling unit meets the minimum setbacks, as required by underlying zoning district; and
- b. The principal dwelling unit complies with parking standards set forth in Section 21.40.040.

4. Unit Size.

- a. The maximum size of a detached or attached accessory dwelling unit is eight hundred fifty (850) square feet for a studio or one-bedroom unit and one thousand (1,000) square feet for a two or more bedroom unit.

~~b. An attached accessory dwelling unit that is created on a lot with an existing single-unit dwelling is further limited to fifty (50) percent of the floor area of the existing dwelling.~~

~~be.~~ Application of the size limitations set forth in subsections ~~(G)(4)(a) and (F)(4)(b)~~ of this section shall not apply to an accessory dwelling units that is are converted as part of a proposed or existing space of a principal residence or existing accessory structure.

~~cd.~~ Application of ~~size limitations set forth in subsection (F)(4)(b) of this section, or other~~ development standards, such as floor area limit or site coverage, may further limit the size of the accessory dwelling unit, but in no case shall the front setbacks, floor area limit, open space, or site coverage requirement reduce the accessory dwelling unit to less than eight hundred (800) square feet where there is no other alternative to comply and only to the extent necessary to construct the accessory dwelling unit ~~and the accessory dwelling unit shall not exceed a height of sixteen (16) feet measured from the finished grade as determined by the Director.~~

~~de.~~ The maximum size of a junior accessory dwelling unit shall be five hundred (500) square feet.

~~ef.~~ The minimum size of an accessory dwelling unit or junior accessory dwelling unit shall be at least that of an efficiency unit.

~~5.—Design. An accessory dwelling unit and/or junior accessory dwelling unit shall be similar to the principal dwelling with respect to architectural style, roof pitch, color, and materials.~~

5. Walkout Basement Floor Area Limit Exception. The gross floor area of an accessory dwelling unit or junior accessory dwelling shall be excluded from the allowable floor area limit when located below grade within a basement. Daylighting of the basement shall only be permitted where excavation is necessary to provide exterior access to the main surface level and in compliance with the following:

- a. The access passageway, inclusive of any necessary shoring, may encroach into a side setback area;
- b. The passageway shall be free of obstructions from the ground level to a height of eight feet; and
- c. The access passageway shall measure a minimum of thirty-six (36) inches clear in width, measure no longer than 60 feet in length, and shall not be located within a yard fronting a public right-of-way.

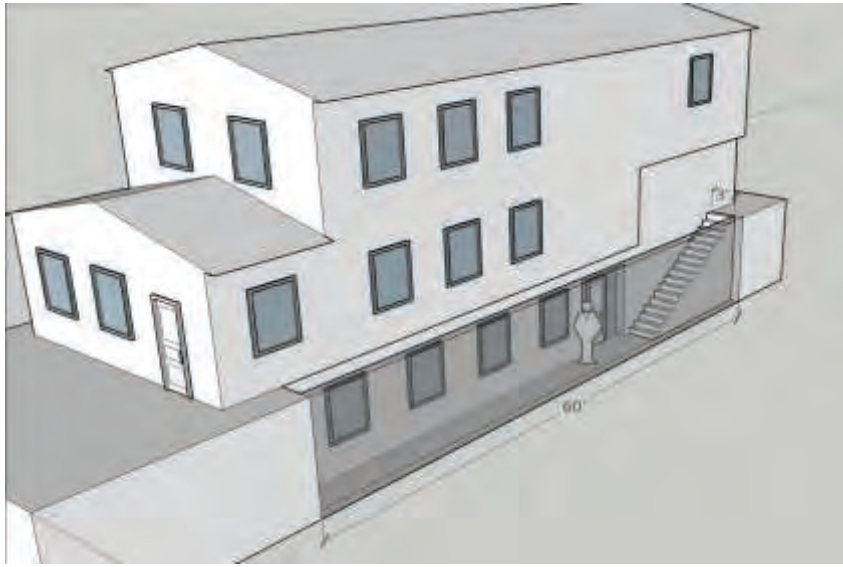


Figure 7-?

Walkout Basement Floor Area Limit Exception

6. Fire Sprinklers. An accessory dwelling unit and/or junior accessory dwelling unit shall not require fire sprinklers so long as fire sprinklers are not required for the principal residence; ~~however, fire sprinklers are encouraged, nor shall the construction of an accessory dwelling unit and/or junior accessory dwelling unit require fire sprinklers to be installed in the existing single-unit or multi-unit dwelling.~~
7. Passageway. No passageway shall be required in conjunction with the construction of an accessory dwelling unit and/or junior accessory dwelling unit. For the purposes of this section, "passageway" means a pathway that is unobstructed clear to the sky and extends from the street to one entrance of the accessory dwelling unit.
8. Parking. Parking shall comply with requirements of Chapter 21.40 (Off-Street Parking) except as modified below:
 - a. No additional parking shall be required for junior accessory dwelling units.
 - b. A maximum of one parking space shall be required for each accessory dwelling unit.
 - c. When additional parking is required, the parking may be provided as tandem parking and/or located on an existing driveway; however, in no case shall parking be

allowed in a rear setback abutting an alley or within the front setback, unless the driveway in the front setback has a minimum depth of twenty (20) feet.

d. No parking shall be required for:

- i. ~~An a~~Accessory dwelling units internal to a proposed principal residence or converted from existing space of principal residence or existing accessory structure;
 - ii. ~~An a~~Accessory dwelling units located within one-half mile walking distance of public transit. For the purposes of this section “public transit” shall include a bus stop where the public may access buses that charge set fares, run on fixed routes, and are available to the public;
 - iii. ~~An a~~Accessory dwelling units located within an architecturally and historically significant historic district;
 - iv. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit; or
 - v. When there is a car-share vehicle located within one block of the accessory dwelling unit. For the purposes of this section, “car-share vehicle” shall mean part of an established program intended to remain in effect at a fixed location for at least ten (10) years and available to the public.
- ~~e. If an accessory dwelling unit replaces an existing garage, replacement spaces shall be provided. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, any required replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts.~~
- e. Replacement Parking Necessary. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit at the same location or converted to an accessory dwelling unit, replacement parking shall be provided. Replacement parking may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. Accessory dwelling units shall not displace required uncovered parking spaces.

9. Waterfront Development and Flood Hazard Areas.

- a. The minimum top of slab elevation for new interior living areas, including areas converted from nonliving areas, shall comply with the flood hazard and sea level rise protection standards of Section 21.30.015(D).
- b. Any development in shoreline hazardous areas shall comply with Section 21.30.015(E)(2).

HG. Utility Connection.

1. Connection Required. All accessory dwelling units and junior accessory dwelling units shall connect to public utilities (or their equivalent), including water, electric, and sewer services.
2. Except as provided in subsection (HG)(3) of this section, the City may require the installation of a new or separate utility connection between the accessory dwelling unit, junior accessory dwelling unit and the utilities.
3. Conversion. No separate connection between the accessory dwelling unit and the utility shall be required for units created within a single-unit or multi-unit dwelling(s), unless the accessory dwelling unit is being constructed in connection with a new single-unit dwelling or multi-unit dwellings.
4. Septic Systems. If the principal dwelling unit is currently connected to an on-site wastewater treatment system and is unable to connect to a sewer system, accessory dwelling units and junior accessory dwelling units may connect to the on-site wastewater treatment system. However, the owner must include with the application a percolation test completed within the last five years or, if the percolation test has been recertified, within the last ten (10) years.

I.H. Additional Requirements for All Accessory Dwelling Units and Junior Accessory Dwelling Units.

1. No Separate Conveyance. An accessory dwelling unit or junior accessory dwelling unit may be rented, but no accessory dwelling unit or junior accessory dwelling unit may be sold or otherwise conveyed separately from the lot and the principal dwelling (in the case of a single-unit dwelling) or from the lot and all of the dwellings (in the case of a multi-unit dwelling).
2. Short-Term Lodging. The accessory dwelling unit and/or junior accessory dwelling unit shall not be rented for periods of thirty (30) days or less.
3. Owner-Occupancy for Junior Accessory Dwelling Units.

~~a.—Accessory Dwelling Units. A natural person with legal or equitable title to the lot must reside in either the principal dwelling unit or the accessory dwelling unit as the person's legal domicile and permanent residence. However, this owner-occupancy requirement shall not apply to any accessory dwelling unit that is permitted in accordance with this section between January 1, 2020, and January 1, 2025.~~

~~b.—Junior Accessory Dwelling Units. A natural person with legal or equitable title to the lot must reside in either the principal single-unit dwelling unit or the junior accessory dwelling unit as the person's legal domicile and permanent residence. However, this owner-occupancy requirement shall not apply to any junior accessory dwelling unit owned by a governmental agency, land trust, or housing organization.~~

J.I. Deed Restriction and Recordation Required.

1. Prior to the issuance of a building and/or grading permit for an accessory dwelling unit and/or junior accessory dwelling unit, the property owner shall record a deed restriction with the County Recorder's Office, the form and content of which is satisfactory to the City Attorney. The deed restriction document shall notify future owners of the owner-occupancy requirements, prohibition on the separate conveyance, the approved size and attributes of

the unit, and restrictions on short-term rentals. This deed restriction shall remain in effect so long as the accessory dwelling unit and/or junior accessory dwelling unit exists on the lot.

2. For properties in flood hazard areas, deed restriction shall also include notice to future owners that the unit is located within an area that may be subject to flooding or future flooding.

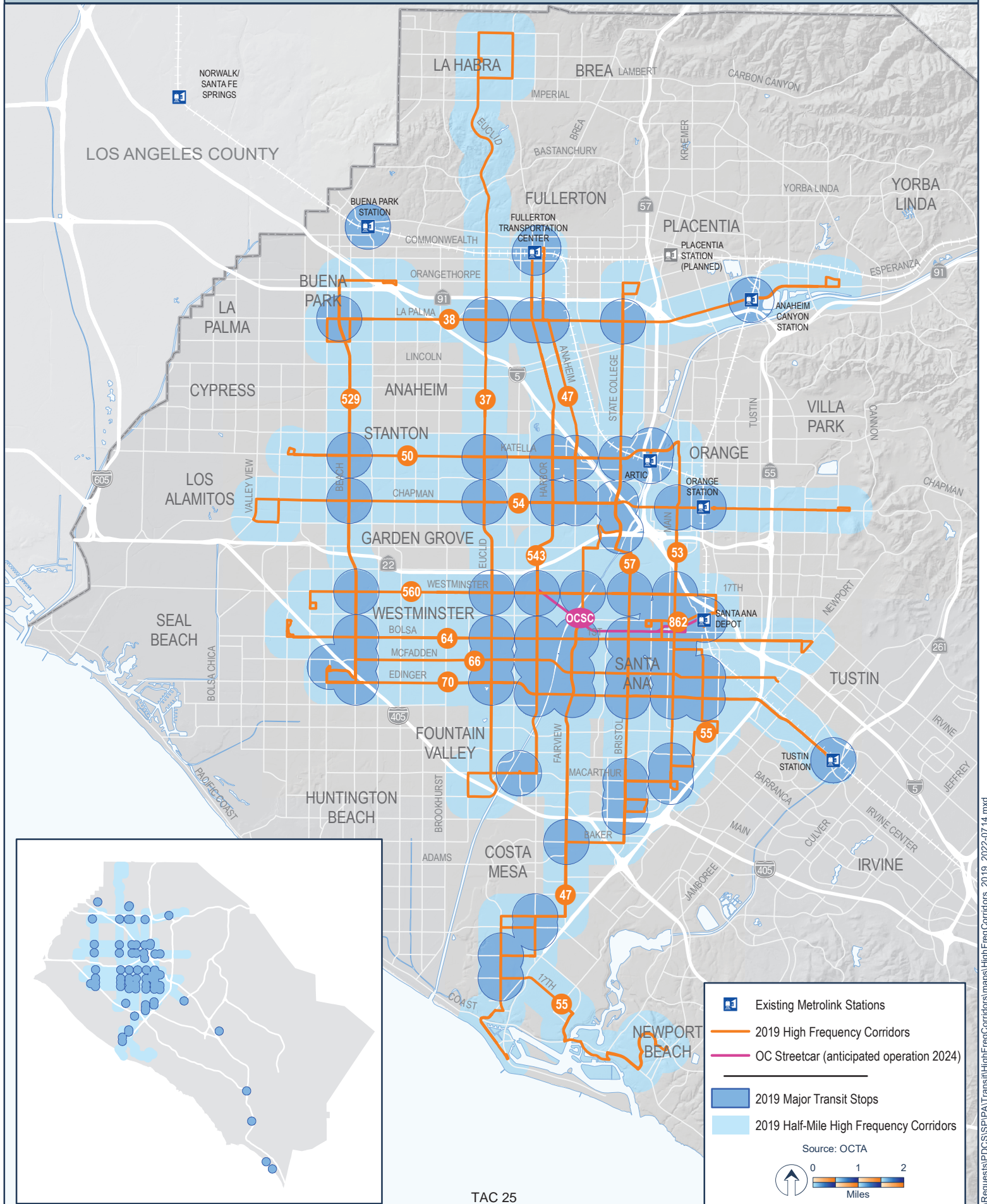
3. For properties located in low lying shoreline areas that may be subject to future sea level rise, the property owner shall also record a waiver of future protection in compliance with Section 21.30.015(E)(5).

KJ. Historic Resources. Accessory dwelling units and/or junior accessory dwelling units proposed on residential or mixed-use properties that are determined to be historic shall be approved ministerially, in conformance with California Government Code Sections 65852.2 and 65852.22. However, any accessory dwelling unit or junior accessory dwelling unit that is listed on the California Register of Historic Resources shall meet all Secretary of the Interior standards, as applicable.

Attachment F

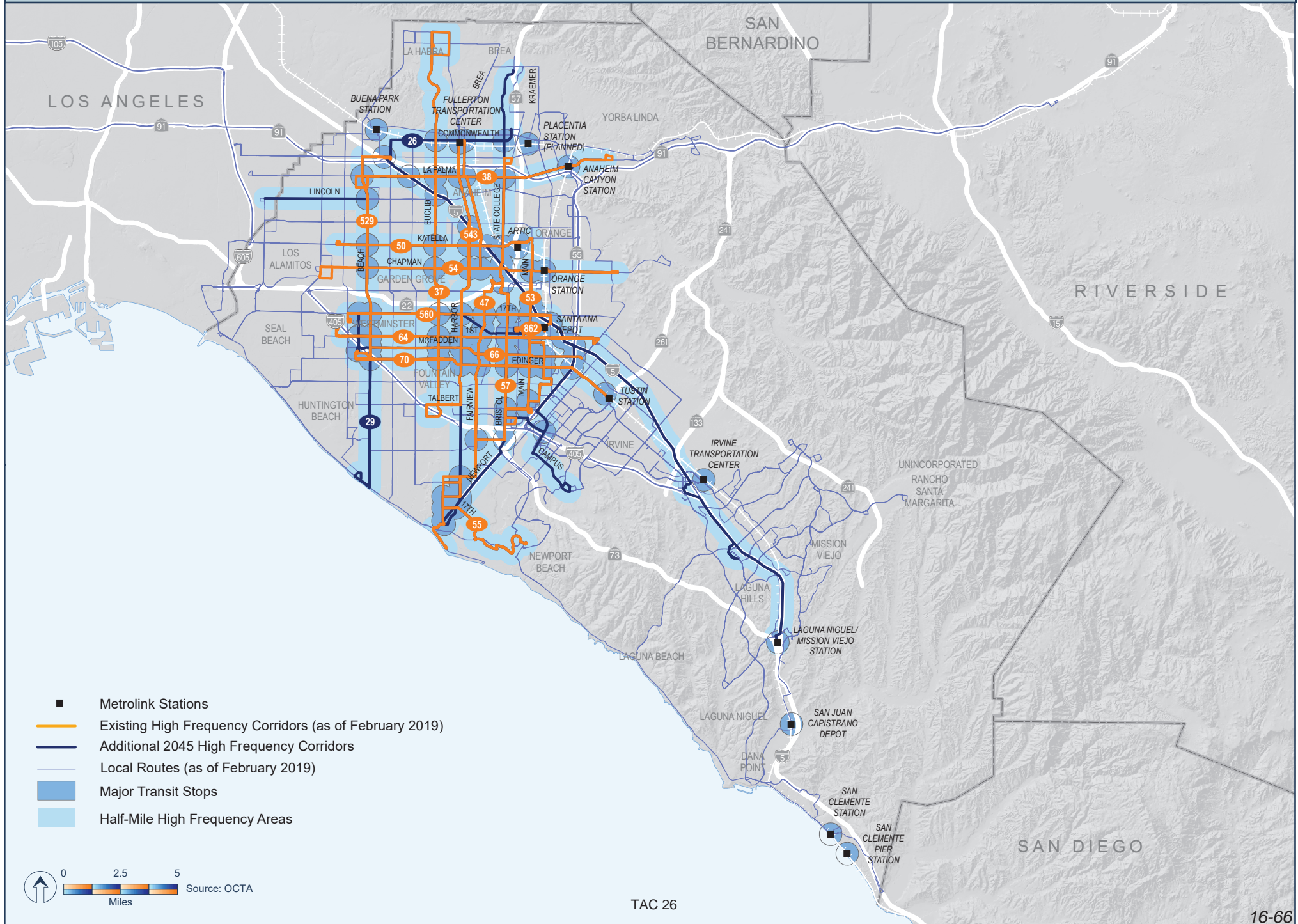
Map of Major Transit Stops and
High-Quality Transit Corridors

2019 High-Frequency Corridors and Major Transit Stops



TAC 25

2045 High-Frequency Corridors and Major Transit Stops



TAC 26

Attachment G

Map of Coastal Zone



Attachment H

Planning Commission Resolution No. PC2023-004

RESOLUTION NO. PC2023-004

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA RECOMMENDING CITY COUNCIL ADOPTION OF CODE AMENDMENT NO. CA2021-005 AMENDING SECTION 20.48.200 (ACCESSORY DWELLING UNITS) OF THE NEWPORT BEACH MUNICIPAL CODE TO IMPLEMENT COUNCIL POLICY K-4 (REDUCING THE BARRIERS OF THE CREATION OF HOUSING) AND NEW STATE LAW REQUIREMENTS RELATING TO ACCESSORY DWELLING UNITS (PA2021-113)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. On March 9, 2021, the City Council adopted Resolution No. 2021-18 to add City Council Policy K-4 (Reducing the Barriers of the Creation of Housing). Council Policy K-4 encourages the development of accessory dwelling units ("ADU") as an important strategy to accommodate future growth and is an integral strategy to help meet the City's Regional Housing Needs Allocation (RHNA).
2. On May 25, 2021, the City Council adopted Resolution 2021-43, initiating a code amendment to Title 20 (Planning and Zoning) to modify regulations relating to the development of ADU and junior accessory dwelling units ("JADU").
3. On September 9, 2021, the Planning Commission formed an Ad-Hoc Committee to evaluate potential code amendments related to encouraging new ADU development within the City. The Ad-Hoc Committee met a total of five times and developed recommendations that were shared with the Planning Commission at a study session on July 7, 2022; however, due to new ADU legislation that was pending, the Planning Commission directed staff to delay the amendments, monitor the pending legislation, and incorporate any necessary code revisions needed to comply with new legislation.
4. In 2022, the California Legislature adopted, and the Governor signed, SB 897 and AB 2221 into law that, among other things, amended Government Code Section 65852.2 and 65852.22 to impose new limits on the City to regulate ADU and JADU. The new regulations took effect on January 1, 2023.
5. Government Code Sections 65852.2 and 65852.22 authorize cities to act by ordinance to provide for the creation and regulation of ADUs and JADUs.
6. The City desires to amend its local regulatory scheme for the construction of ADUs and JADUs to comply with the amended provisions of Government Code sections 65852.2 and 65852.22 ("Code Amendment No. CA2021-005").

7. A public hearing was held on January 5, 2023, in the 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 the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. Code Amendment No. CA2021-005 is statutorily and categorically exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 21080.17 of the Public Resources Code and Section 15282(h) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, which states the adoption of an ordinance regarding second units to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code is exempt from the requirements of CEQA. Similarly, the ministerial approval of accessory dwelling units is not a project for CEQA purposes, and environmental review is not required prior to approving individual applications.
2. The exceptions to the categorical exemption under Section 15300.2 are not applicable. The Code Amendment No. CA2021-005 does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. FINDINGS.

1. Code Amendment No. CA2021-005 is consistent with and implements California Government Code Sections 65852.2 and 65852.22.
2. Adopting an ordinance consistent with Government Code Sections 65852.2 and 65852.22 ensures that the character of the City is preserved to the maximum extent possible and that the City's regulation regarding ADUs and JADUs continue to promote the health, safety, and welfare of the community.
3. As permitted by California Government Code Section 65852.2, the City finds that maintaining the prohibition of parking in rear alley setbacks is essential to preserve vehicular maneuverability for residents and fire and life safety personnel traveling through the City's narrow alleyways. Also, prohibiting parking in front setbacks, unless located on a driveway a minimum 20 feet in depth, is also essential to ensure that driveways are of sufficient depth to accommodate a vehicle entirely on-site without protruding into the public right-of-way and blocking pedestrian, bicyclist, and vehicular traffic creating a life safety condition.
4. The City is a coastal community with numerous coastal resources that attract over seven million annual visitors. This includes public beaches, Newport Harbor, Balboa Peninsula,

Balboa Island, and Newport Bay. The number of annual visitors, coupled with historic development patterns of the City, has created a significant impact on the limited parking supply. The loss of off-street parking on residential lots would exacerbate the continual public parking problems in the coastal zone, as it shifts residential parking from on-site to on-street. Government Code Section 65852.2(a)(1)(D)(xi) notes that off-street parking shall not be required to be replaced when a garage, carport, or other covered parking is converted to an ADU or JADU. Notwithstanding this, Government Code Section 65852.2(l) notes, "Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976..."

The elimination of off-street parking in residential properties within the coastal zone would create a significant impact to public parking and limit visitor access to coastal resources. In order to preserve the limited parking supply and ensure Code Amendment No. CA2021-005 is consistent with the Coastal Act, Code Amendment No. CA2021-005 maintains and clarifies that the requirement for replacement parking is needed when existing parking is displaced by an ADU or JADU. The Code Amendment also requires parking to provide for an ADU constructed in conjunction with a new single-unit or multi-unit development when not located within ½ mile walking distance to a bus stop.

5. Code Amendment No. CA2021-005 would serve to implement Housing Element Policy Action 1H (Accessory Dwelling Unit Construction) of the 2021-2029 Housing Element. Policy Action 1 requires the City to analyze methods to aggressively support and accommodate ADU construction within 12 months of Housing Element adoption and establish a program within 24 months of adoption.
6. Local Coastal Program Amendment No. LC2021-003 is also underway to bring the City's ADU regulations into compliance with State Law in the coastal zone.
7. The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby finds Code Amendment No. CA2021-005 is statutorily and categorically exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 21080.17 of the Public Resources Code and Section 15282(h) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, which states the adoption of an ordinance regarding second units to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code is exempt from the requirements of CEQA. Similarly, the ministerial approval of accessory dwelling units is not a project for CEQA purposes, and environmental review is not required prior to approving individual applications.

2. The exceptions to the categorical exemption under Section 15300.2 are not applicable. The Code Amendment does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.
3. The Planning Commission hereby recommends to the City Council review Code Amendment No. CA2021-005 as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.

PASSED, APPROVED, AND ADOPTED THIS 5TH DAY OF JANUARY 2023.

AYES: Ellmore, Harris, Klaustermeier, Lowrey, and Rosene

NOES: None

ABSTAIN: None

ABSENT: None

BY: Curtis Ellmore
Curtis Ellmore, Chair

BY: Sarah Klaustermeier
Sarah Klaustermeier, Secretary

EXHIBIT “A”**ZONING CODE AMENDMENT NO. CA2021-005**

Section 20.48.200 (Accessory Dwelling Units) of the Newport Beach Municipal Code is amended in its entirety to read as follows:

20.48.200 Accessory Dwelling Units.

A. Purpose. The purpose of this section is to establish the procedures for the creation of accessory dwelling units and junior accessory dwelling units, as defined in Part 7 (Definitions) of this title and in California Government Code Sections 65852.2 and 65852.22, or any successor statute, in areas designated for residential use, including as part of a planned community development plan or specific plan, and to provide development standards to ensure the orderly development of these units in appropriate areas of the City.

B. Effect of Conforming. An accessory dwelling unit or junior accessory dwelling unit that conforms to the requirements in this section shall not be:

1. Deemed to be inconsistent with the General Plan and zoning district designation for the lot on which the accessory dwelling unit or junior accessory dwelling unit is located;
2. Deemed to exceed the allowable density for the lot on which the accessory dwelling unit or junior accessory dwelling unit is located;
3. Considered in the application of any ordinance, policy, or program to limit residential growth; or
4. Required to correct legally established nonconforming zoning condition(s), building code violation(s), and/or unpermitted structure(s) that do/does not present a threat to public health and safety and is/are not affected by the construction of the accessory dwelling unit or junior accessory dwelling unit. This does not prevent the City from enforcing compliance with applicable building standards in accordance with California Health and Safety Code Section 17980.12.

C. Review Authority. Accessory dwelling units and junior accessory dwelling units shall be approved in any residential or mixed-use zoning district, subject to issuance of a building permit and the following conditions:

1. There is an existing or proposed dwelling unit on the lot;
2. The dwelling conforms to the development standards and requirements for accessory dwelling units and/or junior accessory dwelling units as provided in this section; and
3. The building permit shall be considered and approved ministerially, without discretionary review or a hearing, within sixty (60) days from the date that the City determines an application to be complete, unless either:

a. The applicant requests a delay, in which case the sixty (60) day time period is tolled for the period of the requested delay, or

b. In the case of an application for an accessory dwelling unit and/or junior accessory dwelling unit submitted with an application to create a new single-unit dwelling on the lot, the City may delay acting on the accessory dwelling unit and/or junior accessory dwelling application until the City renders a decision on the new single-unit dwelling application.

D. Maximum Number of Accessory Dwelling Units Allowed. The following is the maximum number of accessory dwelling units allowed on any residential lot. For purposes of this section, multi-unit dwelling means a structure or development containing two (2) or more dwelling units. Only one (1) of the categories described below in this subsection may be used per lot.

1. Internal to a Single-Unit or Multi-Unit Dwelling Category. Only one (1) accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling, subject to the following:

a. The accessory dwelling unit is proposed:

i. Within the space of a proposed single-unit or multi-unit dwelling;

ii. Within the existing space of an existing single-unit or multi-unit dwelling; or

iii. Within the existing space of an existing accessory structure, plus an addition beyond the physical dimensions of the existing structure of up to one hundred fifty (150) square feet if the expansion is limited to accommodating ingress and egress.

b. The accessory dwelling unit shall have independent exterior access from the single-unit dwelling.

c. Side and rear setbacks comply with Title 9 (Fire Code) and Title 15 (Buildings and Construction).

2. Attached on Lot with Single-Unit or Multi-Unit Dwelling Category. One (1) attached, new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling.

3. Detached on Lot with Single-Unit or Multi-Unit Dwelling Category. One (1) detached new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling. Up to two (2) detached new-construction accessory dwelling units may be constructed on a lot that has an existing or proposed multi-unit dwelling. For purposes of this section, multi-unit developments approved and built as a single complex shall be considered one (1) lot, regardless of the number of parcels.

4. Conversion of Multi-Unit Dwelling Category. Multiple accessory dwelling units may be permitted on lots with existing multi-unit dwellings subject to the following:

a. The number of accessory dwelling units shall not exceed twenty-five (25) percent of the existing multi-unit dwellings on the lot. For the purpose of calculating the number of allowable accessory dwelling units, the following shall apply:

i. Previously approved accessory dwelling units shall not count towards the number of existing multi-unit dwellings;

ii. Fractions shall be rounded down to the next lower number of dwelling units, except that at least one accessory dwelling unit shall be allowed; and

iii. For the purposes of this section, multi-unit developments approved and built as a single complex shall be considered one (1) lot, regardless of the number of parcels.

b. The portion of the existing multi-unit dwelling that is to be converted to an accessory dwelling unit is not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages.

E. Maximum Number of Junior Accessory Dwelling Units Allowed. One (1) junior accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling, subject to the following:

1. The junior accessory dwelling unit is proposed to be attached to, or within the space of, a proposed or existing single-unit dwelling.

2. The junior accessory dwelling unit shall have independent exterior access from the single-unit dwelling and may provide interior access to the single-unit dwelling.

3. Side and rear setbacks comply with Title 9 (Fire Code) and Title 15 (Buildings and Construction).

4. The junior accessory dwelling unit may be constructed in addition to an accessory dwelling unit established on the lot with a proposed or existing single-unit dwelling. A junior accessory dwelling unit is not permitted on a lot with a proposed or existing multi-unit dwelling.

F. Development Standards. Except as modified by this subsection, an accessory dwelling unit and/or junior accessory dwelling unit shall conform to all objective standards of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions of Title 20 (Planning and Zoning), including but not limited to height, setback, site coverage, floor area limit, and residential development standards and design criteria.

1. Minimum Lot Area. There shall be no minimum lot area required in order to establish an accessory dwelling unit and/or junior accessory dwelling unit.

2. Setback Requirements. Accessory dwelling units and junior accessory dwelling units shall comply with the setback requirements applicable to the zoning district, except as noted below:

a. For conversion of existing enclosed floor area, garage, or carport, no additional setback is required, beyond the existing provided setback.

-
- b. For replacement of an existing enclosed structure, garage, or carport, no existing setback is required, beyond the existing setback provided. This provision shall only apply to accessory dwelling units and junior accessory dwelling units that are replacing existing structures within the same footprint and do not exceed the existing structure's size and/or height. For an accessory dwelling unit that will replace a detached garage, the building and demolition permits shall be reviewed and issued concurrently.
 - c. Attached and detached accessory dwelling units may provide a minimum setback of four (4) feet from all side property lines and rear property lines not abutting an alley.
3. **Building Height.** Detached accessory dwelling units shall not exceed a height of eighteen (18) feet for structures with flat roofs and twenty (20) feet for structures with sloped roofs (minimum 3/12 pitch). Notwithstanding the foregoing, an accessory dwelling unit constructed above a detached garage shall not exceed two (2) stories and the maximum allowable height of the underlying zoning district, provided all the following criteria are met:
- a. The accessory dwelling unit meets the minimum setbacks, as required by underlying zoning district; and
 - b. The principal dwelling unit complies with parking standards set forth in Section 20.40.040.
4. **Unit Size.**
- a. The maximum size of a detached or attached accessory dwelling unit is eight hundred fifty (850) square feet for a studio or one-bedroom unit and one thousand (1,000) square feet for a two (2) or more bedroom unit.
 - b. Application of size limitations set forth in subsections (F)(4)(a) of this section, shall not apply to accessory dwelling units that are converted as part of a proposed or existing space of a principal residence or existing accessory structure.
 - c. Application of development standards, such as floor area limit or site coverage, may further limit the size of the accessory dwelling unit, but in no case shall the front setbacks, floor area limit, open space, or site coverage requirement reduce the accessory dwelling unit to less than eight hundred (800) square feet where there is no other alternative to comply and only to the extent necessary.
 - d. The maximum size of a junior accessory dwelling unit shall be five hundred (500) square feet.
 - e. The minimum size of an accessory dwelling unit or junior accessory dwelling unit shall be at least that of an efficiency unit.
5. **Walkout Basement Floor Area Limit Exception.** The gross floor area of an accessory dwelling unit or junior accessory dwelling shall be excluded from the allowable floor area limit when located below grade within a basement. Daylighting of the basement

shall only be permitted where excavation is necessary to provide exterior access to the main surface level and in compliance with the following:

- a. The access passageway, inclusive of any necessary shoring, may encroach into a side setback area;
- b. The passageway shall be free of obstructions from the ground level to a height of eight (8) feet; and
- c. The access passageway shall measure a minimum of thirty-six (36) inches in width, measure a maximum of sixty (60) feet in length, and shall not be located within a yard fronting a public right-of-way.

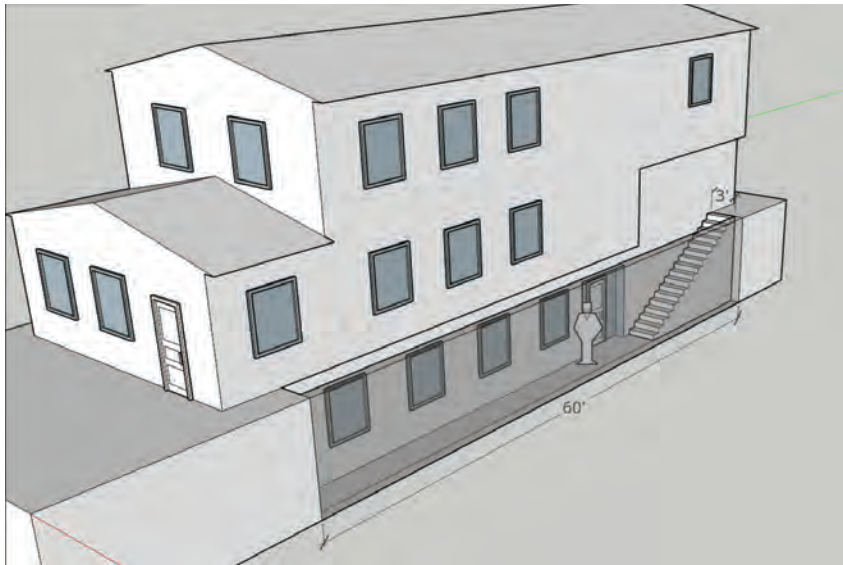


Figure 3-7

Walkout Basement Floor Area Limit Exception

6. Fire Sprinklers. An accessory dwelling unit and/or junior accessory dwelling unit shall not require fire sprinklers so long as fire sprinklers are not required for the principal residence, nor shall the construction of an accessory dwelling unit and/or junior accessory dwelling unit trigger a requirement for fire sprinklers to be installed in the existing single-unit or multi-unit dwelling.

7. Passageway. No passageway shall be required in conjunction with the construction of an accessory dwelling unit and/or junior accessory dwelling unit. For the purposes of this section, “passageway” means a pathway that is unobstructed clear to the sky and extends from the street to one entrance of the accessory dwelling unit.

8. Parking. Parking shall comply with requirements of Chapter 20.40 (Off-Street Parking) except as modified below:

- a. No additional parking shall be required for junior accessory dwelling units.

- b. A maximum of one (1) parking space shall be required for each accessory dwelling unit.
- c. When additional parking is required, the parking may be provided as tandem parking and/or located on an existing driveway; however, in no case shall parking be allowed in a rear setback abutting an alley or within the front setback, unless the driveway in the front setback has a minimum depth of twenty (20) feet.
- d. No additional parking shall be required for:
 - i. Accessory dwelling unit internal to a proposed principal residence or converted from existing space of a principal residence or existing accessory structure;
 - ii. Accessory dwelling units located within one-half-mile walking distance of a public transit. For the purposes of this section “public transit” shall include a bus stop where the public may access buses that charge set fares, run on fixed routes, and are available to the public;
 - iii. Accessory dwelling units located within an architecturally and historically significant historic district;
 - iv. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit; or
 - v. When there is a car-share vehicle located within one block of the accessory dwelling unit. For the purposes of this section, “car-share vehicle” shall mean part of an established program intended to remain in effect at a fixed location for at least ten (10) years and available to the public.
 - vi. Outside the coastal zone, accessory dwelling units constructed in conjunction with a new single-unit or multi-unit dwelling on the same lot.
- e. No Replacement Parking Necessary. Outside the coastal zone, when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit at the same location or converted to an accessory dwelling unit, those off-street parking spaces are not required to be replaced. Accessory dwelling units shall not displace required uncovered parking spaces. Refer to Section 21.48.200(F)(8)(e)* for replacement parking in the coastal zone.

G. Utility Connection.

1. Connection Required. All accessory dwelling units and junior accessory dwelling units shall connect to public utilities (or their equivalent), including water, electric, and sewer services.
2. Except as provided in subsection (G)(3) of this section, the City may require the installation of a new or separate utility connections between the accessory dwelling unit, junior accessory dwelling unit and the utilities.

3. Conversion. No separate connection between the accessory dwelling unit and the utility shall be required for units created within a single-unit or multi-unit dwelling(s), unless the accessory dwelling unit is being constructed in connection with a new single-unit dwelling.

4. Septic Systems. If the principal dwelling unit is currently connected to an on-site wastewater treatment system and is unable to connect to a sewer system, accessory dwelling units and junior accessory dwelling units may connect to the on-site wastewater treatment system. However, the owner must include with the application a percolation test completed within the last five years or, if the percolation test has been recertified, within the last ten (10) years.

H. Additional Requirements for All Accessory Dwelling Units and Junior Accessory Dwelling Units.

1. No Separate Conveyance. An accessory dwelling unit or junior accessory dwelling unit may be rented, but no accessory dwelling unit or junior accessory dwelling unit may be sold or otherwise conveyed separately from the lot and the principal dwelling (in the case of a single-unit dwelling) or from the lot and all of the dwellings (in the case of a multi-unit dwelling).

2. Short-Term Lodging. The accessory dwelling unit and/or junior accessory dwelling unit shall not be rented for periods of thirty (30) days or less.

3. Owner-Occupancy for Junior Accessory Dwelling Units. A natural person with legal or equitable title to the lot must reside in either the principal single-unit dwelling unit or the junior accessory dwelling unit as the person's legal domicile and permanent residence. However, this owner-occupancy requirement shall not apply to any junior accessory dwelling unit owned by a governmental agency, land trust, or housing organization.

I. Deed Restriction and Recordation Required. Prior to the issuance of a building and/or grading permit for an accessory dwelling unit and/or junior accessory dwelling unit, the property owner shall record a deed restriction with the County Recorder's Office, the form and content of which is satisfactory to the City Attorney. The deed restriction document shall notify future owners of the owner occupancy requirements, prohibition on the separate conveyance, the approved size and attributes of the unit, and restrictions on short-term rentals. This deed restriction shall remain in effect so long as the accessory dwelling unit and/or junior accessory dwelling unit exists on the lot.

J. Historic Resources. Accessory dwelling units and/or junior accessory dwelling units proposed on residential or mixed-use properties that are determined to be historic shall be approved ministerially, in conformance with California Government Code Sections 65852.2 and 65852.22. However, any accessory dwelling unit or junior accessory dwelling unit that is listed on the California Register of Historic Resources shall meet all Secretary of the Interior Standards, as applicable.

Attachment I

Planning Commission Resolution No. PC2023-004

RESOLUTION NO. PC2023-005

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA RECOMMENDING CITY COUNCIL AUTHORIZE SUBMITTAL OF LOCAL COASTAL PROGRAM AMENDMENT NO. LC2021-003 AMENDING SECTION 21.48.200 (ACCESSORY DWELLING UNITS) OF THE NEWPORT BEACH MUNICIPAL CODE TO THE CALIFORNIA COASTAL COMMISSION TO IMPLEMENT COUNCIL POLICY K-4 (REDUCING THE BARRIERS TO THE CREATION OF HOUSING) AND NEW STATE LAW REQUIREMENTS RELATING TO ACCESSORY DWELLING UNITS (PA2019-248)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. Section 30500 of the California Public Resources Code requires each county and city to prepare a Local Coastal Program (“LCP”) for that portion of the coastal zone within its jurisdiction.
2. In 2005, the City of Newport Beach (“City”) adopted the City of Newport Beach Local Coastal Program Coastal Land Use Plan as amended from time to time.
3. The California Coastal Commission effectively certified the City’s Local Coastal Program Implementation Plan on January 13, 2017, and the City added Title 21 (Local Coastal Program Implementation Plan) (“Title 21”) to the City of Newport Beach Municipal Code (“NBMC”) whereby the City assumed coastal development permit-issuing authority on January 30, 2017.
4. On March 9, 2021, the City Council adopted Resolution No. 2021-18 to add City Council Policy K-4 (Reducing the Barriers of the Creation of Housing). Council Policy K-4 encourages the development of accessory dwelling units (“ADU”) as an important strategy to accommodate future growth and is an integral strategy to help meet the City’s Regional Housing Needs Allocation (“RHNA”) allocation.
5. On May 25, 2021, the City Council adopted Resolution 2021-43, initiating a code amendment to Title 21 (Local Coastal Program Implementation Plan) to modify regulations relating to the development of ADUs and junior accessory dwelling units (“JADU”).
6. On September 9, 2021, the Planning Commission formed an Ad-Hoc Committee to evaluate potential code amendments related to encouraging new ADU development within the City. The Ad-Hoc Committee met a total of five times and developed recommendations that were shared with the Planning Commission at a study session on July 7, 2022; however, due to new ADU legislation that was pending, the Planning

Commission directed staff to delay the amendments, monitor the pending legislation, and incorporate any necessary code revisions needed to comply with new legislation.

7. In 2022, the California Legislature adopted, and the Governor signed, SB 897 and AB 2221 into law which, among other things, amended Government Code Section 65852.2 and 65852.22 to impose new limits on the City to regulate ADUs and JADUs. The new regulations took effect on January 1, 2023.
8. Government Code Sections 65852.2 and 65852.22 authorize cities to act by ordinance to provide for the creation and regulation of ADUs and JADUs.
9. The City desires to amend its local regulatory scheme for the construction of ADUs and JADUs to comply with the amended provisions of Government Code sections 65852.2 and 65852.22 ("LCP Amendment No. LC2021-003").
10. Pursuant to Section 13515 (Public Participation and Agency Coordination Procedures) of the California Code of Regulations Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 5 (Public Participation) ("Section 13515"), drafts of LCP Amendment No. LC2021-003 were made available and a Notice of Availability was distributed at least six weeks prior to the anticipated final action date.
11. A public hearing was held on January 5, 2023, in the 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 the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act"), Chapter 21.62 (Public Hearings) of the NBMC, and Section 13515. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. LCP Amendment No. LC2021-003 is statutorily and categorically exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 21080.17 of the Public Resources Code and Section 15282(h) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, which states the adoption of an ordinance regarding second units to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code is exempt from the requirements of CEQA. Similarly, the ministerial approval of ADUs is not a project for CEQA purposes, and environmental review is not required prior to approving individual applications.
2. The exceptions to the categorical exemption under Section 15300.2 are not applicable. LCP Amendment No. LC2021-003 does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. FINDINGS.

1. LCP Amendment No. LC2021-003 is consistent with and implements California Government Code Sections 65852.2 and 65852.22.
2. Adopting an ordinance consistent with Government Code Sections 65852.2 and 65852.22 ensures that the character of the City is preserved to the maximum extent possible and that the City's regulation regarding ADUs and JADUs continue to promote the health, safety, and welfare of the community.
3. As permitted by California Government Code Section 65852.2, the City finds that maintaining the prohibition of parking in rear alley setbacks is essential to preserve vehicular maneuverability for residents and fire and life safety personnel traveling through the City's narrow alleyways. Also, prohibiting parking in front setbacks, unless located on a driveway a minimum 20 feet in depth, is also essential to ensure that driveways are of sufficient depth to accommodate a vehicle entirely on-site without protruding into the public right-of-way and blocking pedestrian, bicyclist, and vehicular traffic creating a life safety condition.
4. The City is a coastal community with numerous coastal resources that attract over seven million annual visitors. This includes public beaches, Newport Harbor, Balboa Peninsula, Balboa Island, and Newport Bay. The number of annual visitors, coupled with historic development patterns of the City, has created a significant impact on the limited parking supply. The loss of off-street parking on residential lots would exacerbate the continual public parking problems in the Coastal Zone, as it shifts residential parking from on-site to on-street. Government Code Section 65852.2(a)(1)(D)(xi) notes that off-street parking shall not be required to be replaced when a garage, carport, or other covered parking is converted to an ADU or JADU. Notwithstanding this, Government Code Section 65852.2(l) notes, "Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976..."

The elimination of off-street parking in residential properties within the Coastal Zone would create a significant impact to public parking and limit visitor access to coastal resources. In order to preserve the limited parking supply and ensure this amendment is consistent with the Coastal Act, this amendment maintains and clarifies that the requirement for replacement parking is needed when existing parking is displaced by a ADU or JADU. The amendment also requires parking to provide for an ADU constructed in conjunction with a new single-unit or multi-unit development when not located within ½ mile walking distance to a bus stop.

5. LCP Amendment No. LC2021-003 would serve to implement Housing Element Policy Action 1H (Accessory Dwelling Unit Construction) of the 2021-2029 Housing Element. Policy Action 1 requires the City to analyze methods to aggressively support and accommodate ADU construction within 12 months of Housing Element adoption and establish a program within 24 months of adoption.
6. LCP Amendment No. LC2021-003 shall not become effective until approval by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution and/or ordinance of the City Council of the City of Newport Beach.

7. The LCP, including LCP Amendment No. LC2021-003, will be carried out fully in conformity with the California Coastal Act.
8. The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby finds Local Coastal Program Amendment No. LC2021-003 is statutorily and categorically exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 21080.17 of the Public Resources Code and Section 15282(h) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, which states the adoption of an ordinance regarding second units to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code is exempt from the requirements of CEQA. Similarly, the ministerial approval of accessory dwelling units is not a project for CEQA purposes, and environmental review is not required prior to approving individual applications.
2. The exceptions to the categorical exemption under Section 15300.2 are not applicable. Local Coastal Program Amendment No. LC2021-003 does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.
3. The Planning Commission of the City of Newport Beach hereby recommends the City Council authorize staff to submit Local Coastal Program Amendment No. LC2021-003, as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference, to the California Coastal Commission.

PASSED, APPROVED, AND ADOPTED THIS 5TH DAY OF JANUARY 2023.

AYES: Ellmore, Harris, Klaustermeier, Lowrey, and Rosene

NOES: None

ABSTAIN: None

ABSENT: None

BY: Curtis Ellmore
Curtis Ellmore, Chair

BY: Sarah Klaustermeier
Sarah Klaustermeier, Secretary

Attachment(s): Exhibit A – Local Coastal Program Amendment No. LC2021-003

EXHIBIT “A”**LOCAL COASTAL PLAN AMENDMENT NO. LC2021-003**

Section 21.48.200 (Accessory Dwelling Units) of the Newport Beach Municipal Code is amended in its entirety to read as follows:

21.48.200 Accessory Dwelling Units.

A. Purpose. The purpose of this section is to establish the procedures for the creation of accessory dwelling units and junior accessory dwelling units, as defined in Part 7 (Definitions) of this title and in California Government Code Sections 65852.2 and 65852.22, or any successor statute, in areas designated for residential use, including as part of a planned community development plan or specific plan, and to provide development standards to ensure the orderly development of these units in appropriate areas of the City.

B. Effect of Conforming. An accessory dwelling unit or junior accessory dwelling unit that conforms to the requirements in this section shall not be:

1. Deemed to be inconsistent with the Coastal Land Use Plan and coastal zoning district designation for the lot on which the accessory dwelling unit or junior accessory dwelling unit is located;
2. Deemed to exceed the allowable density for the lot on which the accessory dwelling unit or junior accessory dwelling unit is located;
3. Considered in the application of any ordinance, policy, or program to limit residential growth; or
4. Required to correct a legally established nonconforming zoning condition(s), building code violation(s), and/or unpermitted structure(s) that do/does not present a threat to public health and safety and is/are not affected by the construction of the accessory dwelling unit or junior accessory dwelling unit. This does not prevent the City from enforcing compliance with applicable building standards in accordance with California Health and Safety Code Section 17980.12.

C. Review Authority. Accessory dwelling units and junior accessory dwelling units shall be approved in any residential or mixed-use zoning district, subject to issuance of a building permit and the following conditions:

1. There is an existing or proposed dwelling unit on the lot;
2. The dwelling conforms to the development standards and requirements for accessory dwelling units and/or junior accessory dwelling units as provided in this section;
3. The dwelling conforms to the coastal resource protection development regulations of Section 21.28.040 (Bluff (B) Overlay District), Section 21.28.050 (Canyon (C) Overlay

District), Section 21.30.100 (Scenic and Visual Quality Protection), or Chapter 21.30B (Habitat Protection); and

4. The building permit shall be considered and approved ministerially, without discretionary review or a hearing, within sixty (60) days from the date that the City determines an application to be complete, unless either:

a. The applicant requests a delay, in which case the sixty (60) day time period is tolled for the period of the requested delay, or

b. In the case of an application for an accessory dwelling unit and/or junior accessory dwelling unit submitted with an application to create a new single-unit dwelling on the lot, the City may delay acting on the accessory dwelling unit and/or junior accessory dwelling application until the City renders a decision on the new single-unit dwelling application.

D. Coastal Development Permits.

1. Application. The applicant shall obtain a coastal development permit, pursuant to Chapter 21.52 (Coastal Development Review Procedures), unless otherwise exempt or excluded from the coastal development permit process pursuant to Section 21.52.035 (Projects Exempt from Coastal Development Permit Requirements) or Section 21.52.045 (Categorical Exclusions).

2. Hearing Exemption. All of the provisions of Chapter 21.52 (Coastal Development Review Procedures) regarding the review and approval of coastal development permits in relation to accessory dwelling units are applicable, except that a public hearing as required by Chapter 21.62 (Public Hearings) shall not be required. Public notice shall be provided as required in Section 21.62.020, except the requirements of Section 21.62.020(A) shall be replaced with a statement that no local public hearing will be held and that written comments on the proposed development may be submitted. Written comments received shall be reviewed by the review authority.

3. Appeal Exemption. Notwithstanding the local appeal provisions of Chapter 21.64 (Appeals and Calls for Review), coastal development permits for accessory dwelling units that are defined as “appealable development” pursuant to Section 21.64.035(A) may be directly appealed to the Coastal Commission in accordance with the provisions of Section 21.64.035 without a discretionary hearing by the Planning Commission or City Council.

E. Maximum Number of Accessory Dwelling Units Allowed. The following is the maximum number of accessory dwelling units allowed on any residential lot. For purposes of this section, “multi-unit dwelling” means a structure or development containing two (2) or more dwelling units. Only one (1) of the categories described below in this subsection may be used per lot.

1. Internal to a Single-Unit or Multi-Unit Dwelling Category. Only one (1) accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling, subject to the following:

a. The accessory dwelling unit is proposed:

- i. Within the space of a proposed single-unit or multi-unit dwelling; or
- ii. Within the existing space of an existing single-unit or multi-unit dwelling; or
- iii. Within the existing space of an existing accessory structure, plus an addition beyond the physical dimensions of the existing structure of up to one hundred fifty (150) square feet if the expansion is limited to accommodating ingress and egress.

b. The accessory dwelling unit shall have independent exterior access from the single-unit dwelling.

c. Side and rear setbacks comply with Title 9 (Fire Code) and Title 15 (Buildings and Construction).

2. Attached on Lot with Single-Unit or Multi-Unit Dwelling Category. One (1) attached, new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling.

3. Detached on Lot with Single-Unit or Multi-Unit Dwelling Category. One (1) detached new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling. Up to two (2) detached new-construction accessory dwelling units may be constructed on a lot that has an existing or proposed multi-unit dwelling. For purposes of this section, multi-unit developments approved and built as a single complex shall be considered one (1) lot, regardless of the number of parcels.

4. Conversion of Multi-Unit Dwelling Category. Multiple accessory dwelling units may be permitted on lots with existing multi-unit dwellings subject to the following:

a. The number of accessory dwelling units shall not exceed twenty-five (25) percent of the existing multi-unit dwellings on the lot. For the purpose of calculating the number of allowable accessory dwelling units, the following shall apply:

i. Previously approved accessory dwelling units shall not count towards the number of existing multi-unit dwellings;

ii. Fractions shall be rounded down to the next lower number of dwelling units, except that at least one accessory dwelling unit shall be allowed; and

iii. For the purposes of this section, multi-unit developments approved and built as a single complex shall be considered one (1) lot, regardless of the number of parcels.

b. The portion of the existing multi-unit dwelling that is to be converted to an accessory dwelling unit is not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages.

E. Maximum Number of Junior Accessory Dwelling Units Allowed. One (1) junior accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling, subject to the following:

1. The junior accessory dwelling unit is proposed to be attached to, or within the space of, a proposed or existing single-unit dwelling.
2. The junior accessory dwelling unit shall have independent exterior access from the single-unit dwelling and may provide interior access to the single-unit dwelling.
3. Side and rear setbacks comply with Title 9 (Fire Code) and Title 15 (Buildings and Construction).
4. The junior accessory dwelling unit may be constructed in addition to an accessory dwelling unit established on the lot with a proposed or existing single-unit dwelling. A junior accessory dwelling unit is not permitted on a lot with a proposed or existing multi-unit dwelling.

F. Development Standards. Except as modified by this subsection, an accessory dwelling unit and/or junior accessory dwelling unit shall conform to all requirements of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions of Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan), including but not limited to height, setback, site coverage, floor area limit, and residential development standards and design criteria.

1. Minimum Lot Area. There shall be no minimum lot area required in order to establish an accessory dwelling unit and/or junior accessory dwelling unit.
2. Setback Requirements. Accessory dwelling units and junior accessory dwelling units shall comply with the setback requirements applicable to the zoning district, except as noted below:
 - a. For conversion of existing enclosed floor area, garage, or carport, no additional setback is required, beyond the existing provided setback, unless a greater setback is needed to comply with subsection (C)(3) of this section.
 - b. For replacement of an existing enclosed structure, garage, or carport, no existing setback is required, beyond the existing setback provided, unless a greater setback is needed to comply with subsection (C)(3) of this section. This provision shall only apply to accessory dwelling units and junior accessory dwelling units that are replacing existing structures within the same footprint and do not exceed the existing structure's size and/or height. For an accessory dwelling unit that will replace a detached garage, the building and demolition permits shall be reviewed and issued concurrently.
 - c. Attached and detached accessory dwelling units may provide a minimum setback of four (4) feet from all side property lines and rear property lines not abutting an alley.
3. Building Height. Detached accessory dwelling units shall not exceed a height of eighteen (18) feet for structures with flat roofs and twenty (20) feet for structures with sloped roofs (minimum 3/12 pitch). Notwithstanding the foregoing, an accessory dwelling unit constructed above a detached garage shall not exceed two (2) stories and the maximum allowable height of the underlying zoning district, provided all the following criteria are met:

- a. The accessory dwelling unit meets the minimum setbacks, as required by underlying zoning district; and
- b. The principal dwelling unit complies with parking standards set forth in Section 21.40.040.

4. Unit Size.

- a. The maximum size of a detached or attached accessory dwelling unit is eight hundred fifty (850) square feet for a studio or one-bedroom unit and one thousand (1,000) square feet for a two (2) or more bedroom unit.
- b. Application of the size limitations set forth in subsections (F)(4)(a) of this section shall not apply to accessory dwelling units that are converted as part of a proposed or existing space of a principal residence or existing accessory structure.
- c. Application of development standards, such as floor area limit or site coverage, may further limit the size of the accessory dwelling unit, but in no case shall the front setbacks, floor area limit, open space, or site coverage requirement reduce the accessory dwelling unit to less than eight hundred (800) square feet where there is no other alternative to comply and only to the extent necessary.
- d. The maximum size of a junior accessory dwelling unit shall be five hundred (500) square feet.
- e. The minimum size of an accessory dwelling unit or junior accessory dwelling unit shall be at least that of an efficiency unit.

5. Walkout Basement Floor Area Limit Exception. The gross floor area of an accessory dwelling unit or junior accessory dwelling shall be excluded from the allowable floor area limit when located below grade within a basement. Daylighting of the basement shall only be permitted where excavation is necessary to provide exterior access to the main surface level and in compliance with the following:

- a. The access passageway, inclusive of any necessary shoring, may encroach into a side setback area;
- b. The passageway shall be free of obstructions from the ground level to a height of eight (8) feet;
- c. The access passageway measure a minimum of thirty-six (36) inches in width, measure a maximum of sixty (60) feet in length, and shall not be located within a yard fronting a public right-of-way; and

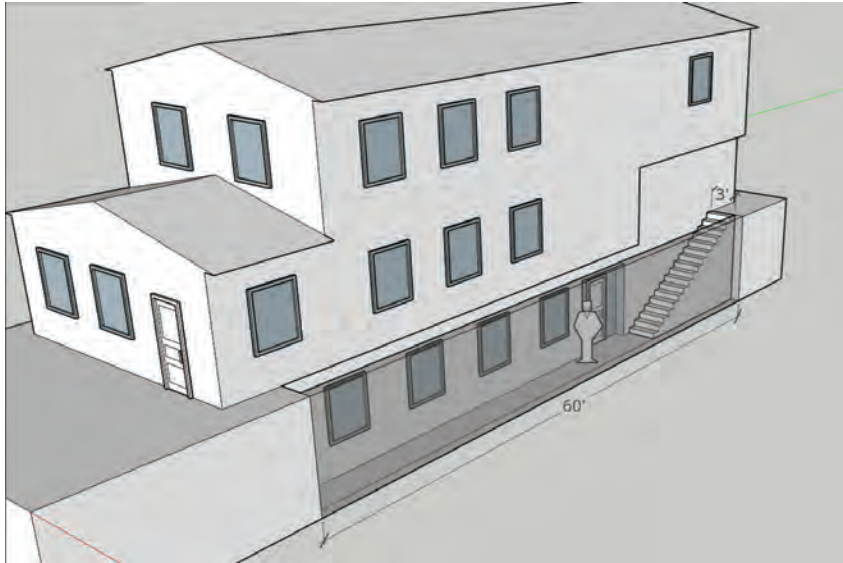


Figure 3-7

Walkout Basement Floor Area Limit Exception

6. Fire Sprinklers. An accessory dwelling unit and/or junior accessory dwelling unit shall not require fire sprinklers so long as fire sprinklers are not required for the principal residence, nor shall the construction of an accessory dwelling unit and/or junior accessory dwelling unit trigger a requirement for fire sprinklers to be installed in the existing single-unit or multi-unit dwelling.
7. Passageway. No passageway shall be required in conjunction with the construction of an accessory dwelling unit and/or junior accessory dwelling unit. For the purposes of this section, “passageway” means a pathway that is unobstructed clear to the sky and extends from the street to one entrance of the accessory dwelling unit.
8. Parking. Parking shall comply with requirements of Chapter 21.40 (Off-Street Parking) except as modified below:
 - a. No additional parking shall be required for junior accessory dwelling units.
 - b. A maximum of one (1) parking space shall be required for each accessory dwelling unit.
 - c. When additional parking is required, the parking may be provided as tandem parking and/or located on an existing driveway; however, in no case shall parking be allowed in a rear setback abutting an alley or within the front setback, unless the driveway in the front setback has a minimum depth of twenty (20) feet.
 - d. No parking shall be required for:
 - i. Accessory dwelling units internal to a proposed principal residence or converted from existing space of principal residence or existing accessory structure;

ii. Accessory dwelling units located within one-half mile walking distance of public transit. For the purposes of this section “public transit” shall include a bus stop where the public may access buses that charge set fares, run on fixed routes, and are available to the public;

iii. Accessory dwelling units located within an architecturally and historically significant historic district;

iv. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit; or

v. When there is a car-share vehicle located within one block of the accessory dwelling unit. For the purposes of this section, “car-share vehicle” shall mean part of an established program intended to remain in effect at a fixed location for at least ten (10) years and available to the public.

e. Replacement Parking Necessary. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit at the same location or converted to an accessory dwelling unit, replacement parking shall be provided. Replacement parking may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. Accessory dwelling units shall not displace required uncovered parking spaces.

9. Waterfront Development and Flood Hazard Areas.

a. The minimum top of slab elevation for new interior living areas, including areas converted from nonliving areas, shall comply with the flood hazard and sea level rise protection standards of Section 21.30.015(D).

b. Any development in shoreline hazardous areas shall comply with Section 21.30.015(E)(2).

G. Utility Connection.

1. Connection Required. All accessory dwelling units and junior accessory dwelling units shall connect to public utilities (or their equivalent), including water, electric, and sewer services.

2. Except as provided in subsection (G)(3) of this section, the City may require the installation of a new or separate utility connection between the accessory dwelling unit, junior accessory dwelling unit and the utilities.

3. Conversion. No separate connection between the accessory dwelling unit and the utility shall be required for units created within a single-unit or multi-unit dwelling(s), unless the accessory dwelling unit is being constructed in connection with a new single-unit dwelling or multi-unit dwellings.

4. Septic Systems. If the principal dwelling unit is currently connected to an on-site wastewater treatment system and is unable to connect to a sewer system, accessory dwelling units and junior accessory dwelling units may connect to the on-site wastewater treatment system. However, the owner must include with the application a percolation test completed within the last five years or, if the percolation test has been recertified, within the last ten (10) years.

H. Additional Requirements for All Accessory Dwelling Units and Junior Accessory Dwelling Units.

1. No Separate Conveyance. An accessory dwelling unit or junior accessory dwelling unit may be rented, but no accessory dwelling unit or junior accessory dwelling unit may be sold or otherwise conveyed separately from the lot and the principal dwelling (in the case of a single-unit dwelling) or from the lot and all of the dwellings (in the case of a multi-unit dwelling).

2. Short-Term Lodging. The accessory dwelling unit and/or junior accessory dwelling unit shall not be rented for periods of thirty (30) days or less.

3. Owner-Occupancy for Junior Accessory Dwelling Units. A natural person with legal or equitable title to the lot must reside in either the principal single-unit dwelling unit or the junior accessory dwelling unit as the person's legal domicile and permanent residence. However, this owner-occupancy requirement shall not apply to any junior accessory dwelling unit owned by a governmental agency, land trust, or housing organization.

I. Deed Restriction and Recordation Required.

1. Prior to the issuance of a building and/or grading permit for an accessory dwelling unit and/or junior accessory dwelling unit, the property owner shall record a deed restriction with the County Recorder's Office, the form and content of which is satisfactory to the City Attorney. The deed restriction document shall notify future owners of the owner-occupancy requirements, prohibition on the separate conveyance, the approved size and attributes of the unit, and restrictions on short-term rentals. This deed restriction shall remain in effect so long as the accessory dwelling unit and/or junior accessory dwelling unit exists on the lot.

2. For properties in flood hazard areas, deed restriction shall also include notice to future owners that the unit is located within an area that may be subject to flooding or future flooding.

3. For properties located in low lying shoreline areas that may be subject to future sea level rise, the property owner shall also record a waiver of future protection in compliance with Section 21.30.015(E)(5).

J. Historic Resources. Accessory dwelling units and/or junior accessory dwelling units proposed on residential or mixed-use properties that are determined to be historic shall be approved ministerially, in conformance with California Government Code Sections 65852.2 and 65852.22. However, any accessory dwelling unit or junior accessory

dwelling unit that is listed on the California Register of Historic Resources shall meet all Secretary of the Interior standards, as applicable.