



**CITY OF NEWPORT BEACH
CITY COUNCIL AGENDA**

STUDY SESSION AND REGULAR MEETING

**NOVEMBER 14, 2017
CITY COUNCIL CHAMBERS - 100 CIVIC CENTER DRIVE, NEWPORT BEACH**

**STUDY SESSION - 4:00 P.M. (PUBLIC WELCOME)
CLOSED SESSION FOLLOWS STUDY SESSION
REGULAR MEETING - 7:00 P.M.**

**KEVIN MULDOON, Mayor
DUFFY DUFFIELD, Mayor Pro Tem
BRAD AVERY, Council Member
DIANE B. DIXON, Council Member
JEFF HERDMAN, Council Member
WILL O'NEILL, Council Member
SCOTT PEOTTER, Council Member**

**DAVE KIFF, City Manager
AARON HARP, City Attorney
LEILANI BROWN, City Clerk
CAROL JACOBS, Assistant City Manager**

NOTICE REGARDING PRESENTATIONS REQUIRING USE OF CITY EQUIPMENT

Any presentation requiring the use of the City of Newport Beach's equipment must be submitted to the City Clerk 24 hours prior to the scheduled City Council meeting.

PUBLIC HEARINGS

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

NOTICE TO THE PUBLIC

The City provides a yellow sign-in card for those wishing to address the City Council to assist in the preparation of the minutes. The cards are available in the lobby of the Council Chambers. Speakers are not required to submit a card as a condition to addressing the City Council. If you do fill out the card, please place it in the box at the podium. 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 at the City Clerk's Office located at 100 Civic Center Drive (Bay E, 2nd Floor). Staff reports or other written documentation have been prepared or organized with respect to each item 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. The agendas, minutes and staff reports are also available on the City's website: <http://www.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 Leilani Brown, City Clerk, prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or cityclerk@newportbeachca.gov).

NEWPORT BEACH CITY COUNCIL AGENDA
CITY COUNCIL CHAMBERS - 100 CIVIC CENTER DRIVE, NEWPORT BEACH
NOVEMBER 14, 2017
STUDY SESSION - 4:00 P.M. (PUBLIC WELCOME)
CLOSED SESSION FOLLOWS STUDY SESSION
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I. ROLL CALL - 4:00 p.m.

II. CURRENT BUSINESS

SS1. Clarification of Items on the Consent Calendar

SS2. Recognition to OC Books on the Run

Recognition of a local program that collects books to benefit local charities.

SS3. Comprehensive General Plan Update (PA2017-141)

The Community Development Department will ask for City Council and community feedback on the proposed public process as the 2006 Newport Beach General Plan is updated.

SS4. Harbor Operations Update

The City Manager, Public Works staff, and Harbormaster will brief the City Council on the City's actions since July 1, 2017, and the City's administration of moorings (and more) in Newport Harbor. Staff will also talk about options for expanding the program into other areas.

III. PUBLIC COMMENTS

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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 LABOR NEGOTIATORS

(Government Code § 54957.6): 1 matter

Agency Designated Representatives: Dave Kiff, City Manager, Carol Jacobs, Assistant City Manager, Barbara Salvini, Human Resources Director, Brian P. Walter and Peter Brown; Labor Negotiators.

Employee Organizations: Newport Beach Lifeguard Management Association (NBLMA); Newport Beach City Employees Association (NBCEA); Newport Beach Firefighters Association (NBFA); Newport Beach Police Association (NBPA); Newport Beach Police Management Association (NBPMA); and Newport Beach Professional and Technical Employee Association (NBPTEA).

B. CONFERENCE WITH LEGAL COUNSEL

ANTICIPATED LITIGATION

(Government Code § 54956.9(d)(2) (e) (2)): 9 matters

The Newport Beach Lifeguard Management Association (NBLMA), the Newport Beach Police Management Association (NBPMA), the Newport Beach Police Association (NBPA), the Newport Beach Firefighters Association (NBFA), the Laborers International Union of North America Local 777 (as affiliated with and on behalf of the Newport Beach Professional and Technical Employees Association (NBTEA) and Newport Beach City Employees Association (NBCEA)), on behalf of the current and former members of said unions, as well as Vladimir Anderson and Robert Salerno, in their individual capacities, are aware of the United States Court of Appeals for the Ninth Circuit's decision in the case of *Flores v. City of San Gabriel* (9th Cir. 2016) 824 F.3d 890 which may result in litigation against the City of Newport Beach related to the calculation and payment of overtime compensation..

**C. CONFERENCE WITH LEGAL COUNSEL
ANTICIPATED LITIGATION – INITIATION OF LITIGATION
(Government Code § 54956.9(d)(4): 1 matter**

**D. CONFERENCE WITH LEGAL COUNSEL
EXISTING LITIGATION
(Government Code § 54956.9(d)(1)): 1 matter**

City of Newport Beach v. United States Federal Aviation Administration et al.
United States Court of Appeals for the District of Columbia Circuit Case Number 17-1008

V. RECESS

VI. RECONVENE AT 7:00 P.M. FOR REGULAR MEETING

VII. ROLL CALL

VIII. CLOSED SESSION REPORT

IX. INVOCATION - Pastor Mark Whitlock, Christ Our Redeemer Church

X. PLEDGE OF ALLEGIANCE

XI. NOTICE TO THE PUBLIC

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XII. CITY COUNCIL ANNOUNCEMENTS (NON-DISCUSSION ITEM)

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

- Asking the City Manager to return with a strategy for improving our response to homelessness concerns, given potential changes to camping activities at the Santa Ana River (Dixon)

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 - 16**). 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 October 24, 2017 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 to Amend Recycled Water Commodity Charge

- 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. 2017-69, *A Resolution of the City Council of the City of Newport Beach, California, Amending the Recycled Water Commodity Charge Effective January 1, 2018.*

4. Resolution in Support of the California WaterFix and California EcoRestore

- a) Determine that the action is exempt from the California Environmental Quality Act (CEQ) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2017-70, *A Resolution of the City Council of the City of Newport Beach, California, Supporting the California WaterFix for Improvements to the Sacramento-San Joaquin Delta Water Delivery System and the California EcoRestore Program for Delta Habitat Restoration.*

5. Approval of Measure M2 Expenditure Report

- 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. 2017-71, *A Resolution of the City Council of the City of Newport Beach, California, Concerning the Measure M2 Expenditure Report for the City of Newport Beach for the Fiscal Year Ending June 30, 2017, subject to technical revisions to conform to OCTA guidelines.*

6. Adopt Resolution No. 2017-72 for Acceptance of Grant Funding for the Surrendered and Abandoned Vessel Exchange (SAVE) Program from the Division of Boating and Waterways

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- b) Adopt Resolution No. 2017-72, *A Resolution of the City Council of the City of Newport Beach, California, Accepting a Grant from the State of California Department of Parks and Recreation Division of Boating and Waterways for the Surrendered and Abandoned Vessel Exchange Program*; and
- c) Approve Budget Amendment No. 18BA-014 recognizing \$125,000 in grant revenue from the California Division of Boating and Waterways (13501-431385-18H11) and appropriating \$125,000.00 to Account No. 13501-980000-18H11 (Abandoned Watercraft Abatement).

CONTRACTS AND AGREEMENTS

- 7. Corona del Mar Concrete Pavement Reconstruction – Poppy Avenue and Ocean Boulevard – Notice of Completion Contract No. 6189 (15R14)**
 - a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project. On December 13, 2016, the project was found to be exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(c);
 - 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 the Civil Code; and
 - c) Release Faithful Performance Bond one (1) year after acceptance by the City Council.
- 8. Professional Service Agreement with PlaceWorks for Environmental Services for the Newport Crossings Project Located at 1701 Corinthian Way (PA2017-107)**
 - a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
 - b) Approve the Professional Services Agreement and authorize the Mayor and City Clerk to execute the agreement.
- 9. Investment Advisor Contract with Chandler Asset Management**
 - 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 five-year professional service contract for investment advisory services with Chandler Asset Management in a not-to-exceed contract of \$675,000.

MISCELLANEOUS

- 10. Planning Commission Agenda for the November 9, 2017 Meeting**

Receive and file.
- 11. Appointment to the Aviation Committee**
 - a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
 - b) Confirm Council Member Peotter's appointment of G. Scott Bergey as the District 6 Alternate Member to the Aviation Committee.
- 12. Transfer of Park-In-Lieu Reserves for Playground Improvements**
 - a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines because this project has no potential to have a significant effect on the environment; and

- b) Approve Budget Amendment No. 18BA-011 to transfer \$200,000 in Park In-Lieu reserves from Fund 513 to the Playground Refurbishment CIP project (56201-980000-18P01) in Fund 562 for purchase and installation of playground shade structures, play elements and surfacing improvements.

13. Cultural Arts Grants 2017/18

- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
- b) Approve recommended recipients for FY 2017/18 Cultural Arts Grants as selected by the City Arts Commission in accordance with City Council Policy I-10 – *Financial Support for Culture and the Arts*.

14. Approval of the Corona del Mar Business Improvement District's Revised Fiscal Year 2017-2018 Budget

- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
- b) Approve the revised FY 2017-2018 budget for the Corona del Mar Business Improvement District.

15. Annual Reporting on Development Impact Fees & Development Agreements

- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
- b) Receive, review and file the Annual Reports on Development Impact Fees.

16. Approval of Budget Amendment for Paramedic Training

- 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 Budget Amendment No. 18BA-012 appropriating \$95,000 from the General Fund unappropriated surplus fund balance to account 01040401-713003.

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. ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES

XIX. CURRENT BUSINESS

17. Citywide ADA Curb Access Ramp Improvements – Award of Contract No. 7154-1 (18R11)

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(c) Class 2, (reconstruction of existing facility involving negligible or no expansion of capacity) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment;

- b) Approve the project plans and specifications;
- c) Award Contract No. 7154-1 to Victor Concrete, Inc. for the total bid amount of \$1,239,100.00, and authorize the Mayor and City Clerk to execute the contract; and
- d) Approve Budget Amendment No. 18BA-013 appropriating \$65,755.00 from the Community Development Block Grant unappropriated fund balance to Account No. 12001-980000-18R11 and transferring \$7,335.00 from project savings from Account No. 01201927-980000-15R14 (Concrete Replacement Program) to Account No. 01201927-980000-18R11 for Citywide ADA Improvements.

18. General Plan Update Process (PA2017-141)

- a) Determine the recommended action exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 because the recommended action has no potential to have a significant effect on the environment;
- b) Initiate the General Plan update process;
- c) Adopt Resolution No. 2017-73, *A Resolution of the City Council of the City of Newport Beach, California, Establishing the General Plan Steering Committee (Steering Committee) and the General Plan Advisory Committee (GPAC) to Assist in a Comprehensive Review and Update of the General Plan*;
- d) Authorize the Mayor to appoint the following members to the Steering Committee: City Council Members William O'Neill and Jeff Herdman, and former Mayor Nancy Gardner, and appoint a chairperson; and
- e) Authorize the City Clerk to begin accepting applications for the GPAC, and forward the applications for review by the Steering Committee.

XX. 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.

XXI. ADJOURNMENT - In memory of Gary Dee Johnson

Testimony given before the City Council is recorded.
The timing light will turn yellow when the speaker has one-minute remaining.
The timing light will turn red when the speaker has 10 seconds remaining.

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CITY OF

NEWPORT BEACH

City Council Staff Report

November 14, 2017
Agenda Item No. SS4

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Dave Kiff, City Manager
dkiff@newportbeachca.gov

PREPARED BY: Dave Kiff, Carol Jacobs, Dave Webb, and Dennis Durgan
PHONE: 949-644-3001

TITLE: Four Month Update – Harbor Operations

ABSTRACT:

The City's new Harbor Operations program took over administration of the City's approximately 1,220 public moorings and on-water, non-safety related operations in Newport Harbor on July 1, 2017 from the Orange County Sheriff's Harbor Patrol (OCSD). OCSD has continued to serve as the primary provider of law enforcement and fire/rescue services within the harbor.

It's time now for a four-month update. This report provides that update and estimates staffing and budget levels necessary to continue this program at an optimal level service through the end of FY 17/18.

RECOMMENDATION:

- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
- b) Provide the City Manager and staff with comments and/or further direction in regards to:
 - 1) Establishing a permanent Harbor Operations Division, with a possible broadening of duties and responsibilities, including setting the organization up under the City Manager's Office (for Phase II at least);
 - 2) Consider establishing three new positions: one full-time Harbormaster; one full-time Department Assistant; and one full-time Harbor Services Worker assigned as dockmaster. One existing unfilled position would be transitioned into one of these three new positions;

- 3) Shifting management of either (or both) of the Marina Park Marina and the Balboa Yacht Basin from Basin Marine; and
- 4) Purchasing a dedicated work boat for the Division (estimated to cost \$150K).

FUNDING REQUIREMENTS:

See Attachment C.

DISCUSSION:

Background

Since the 1950s, most on-water supervision of Newport Harbor vessel activity has been provided by the OCSD. In 1973, the City entered into an agreement with the County for Harbor Patrol services. In January 1975, the City also entered into a Joint Powers Agreement with OCSD to provide Mooring Administration Services in the harbor as well as to administer/enforce City-related Harbor Codes (Title 17 of the Municipal Code).

During its decades-long operation within Newport Harbor, OCSD provided staffing, facilities and equipment to perform a 24/7/365 management of the City's approximately 1,220 moorings and related harbor operation services. Their mooring program included: mooring field oversight, mooring and vessel inspections, vessel relocations and monitoring, mooring rental check ins/outs, mooring permit transfers, collection of fees, record keeping, dye tablet tests and urgent vessel pumpouts, mooring and emergency related towing needs, processing permit revocations and vessel impounds, as well as enforcement of the City's Title 17. Title 17 includes items such as vessel pier docking time limits, sound limits, live-aboard regulations, trash and waste discharges, derelict or abandoned vessel disposal, sea lion abatement, fishing restrictions and more.

On March 31, 2017, the City issued the required 90-day notice to OCSD stating that it would be terminating the contract with OCSD to manage the moorings. This action was taken with the goal of offering more customer oriented profile to harbor users, including mooring permittees, harbor residents, vessel owners, visiting guests and the general public. We started managing the moorings and related harbor operation duties as of July 1, 2017, under the interim direction of Mr. Dennis Durgan, who has the working title of Harbormaster.

Phase I – Harbor Operations Start-Up

Under the lead of the Public Works Department and our new Harbormaster, and with the assistance of many other Departments (including the City Manager's Office, Human Resources, Information Technology, Police, Community Development and Recreation), we started-up the new Harbor Operations program within a short timeframe. Key actions included:

- Establishing offices at Marina Park

- Establishing the new job classifications of Harbormaster, Harbor Services Worker and Lead Harbor Services Worker.
- Recruiting/Hiring a Harbormaster to oversee and run the new operation.
- Recruiting/Hiring/Training thirteen (13) part-time Harbor Services Workers.
- Temporarily assigning/transferring an experienced FT Management Assistant from Public Works to the new operation and back-filling with short-term temporary staff.
- Refurbishing/outfitting a current City vessel and leasing two (2) additional catamaran style vessels from Newport Aquatic Center, outfitted with appropriate technology and equipment.
- Establishing two (2) on-call agreements with local vessel towing companies for as-needed towing services (Tow Boat US and Sea Tow Newport/LA).
- Updating the City Website to include a new Harbor Operations page.
- Created/set-up the VHF Harbormaster Channel (19a), radio base station, Harbor Operation phone numbers and phone tree, contact emails, etc.
- Established 10 new guest moorings within two mooring fields in front of Marina Park.
- Worked with OCSD to transition all mooring data and existing procedures over to the City, as well as to identify roles and functions between the City and OCSD; and more.

Our Analysis – How did we do?

The first four months of operation were fast-learning days for all of us. Most people would have been intimidated by an Independence Day weekend beginning to a completely new effort, but not the Harbormaster and his team.

The Harbormaster and staff began receiving visitor requests for mooring/slips, accepting payments, patrolling the mooring fields to verify the actual moored vessels to the County's permittee/visitor records, taking and returning calls and questions, entering data and setting up permittee/visitor tracking software, attending to sea lion abatement issues, setting up and overseeing lost or abandoned vessel/equipment storage and overseeing the growing Marina Park occupancies. This was in addition to familiarizing themselves with the overall harbor facilities, operation and new duties.

While harbor services workers patrolled the Harbor, they also advised visitors and locals on issues such as no-wake rules, etiquette/safety for users of stand-up paddle boards/small crafts/kayaks, fishing regulations, noise limits, raft-up applications, general harbor information, as well as addressed lost and found vessels, code issues and collected debris within the harbor. Staff continued to fine-tune the operation's procedures and activities and began renting moorings, conducting field inspections of various mooring fields, and started accepting and processing mooring permit transfers.

New Technology. Part of our new mooring administration effort was to introduce current technology applications so as to enhance customer service, simplify and improve access/processing (payments, permitting, transfers, mooring rentals/reservations, service request, etc.), while reducing delay and cost. This was done by deploying reservation/tracking software and other digital applications.

The City's IT staff made this a priority and have been working towards this goal. As mentioned, a new customer-oriented Harbor Operations website has been created, a Harbor link has been added to the "My NB" mobile application, and an on-line application for sub-permits was rolled out, with further software enhancements currently being developed.

Historic and current paper permittee records have now been scanned into the City's Laserfiche record system and necessary permit data put in a digital format. The "Harbormaster" boats have been outfitted with digital tablets that feed live time mooring data/status to the on-water staff and log/track service request and events.

Beginning operations in summer just prior to the busy July 4th weekend added a bit of a challenge in deploying the right amount of staffing and boats. By Labor Day; however, scheduling became a little more predictable.

What's Next? About Phase II

As the busy summer season gave way very recently to a calmer fall, staff has now begun to drill down on longer-term issues within Newport Harbor, many of which have been addressed in a very limited way in years past. These issues include:

- Moored vessels that need more owner care;
- Live-aboard activity, including non-permitted live-aboards and vessel sharing akin to Airbnb or VRBO;
- Encouraging mooring permittees to appropriately prepare for wintertime;
- Reviewing and recommending changes to Title 17 to reflect today's harbor;
- Developing standard and written practices for the Harbor Operations function;
- Determining what level of permanent full-time staff is appropriate, and the classifications and salary schedules of each position;
- Properly delineating roles and responsibilities between Public Works/Harbor Resources, Harbor Operations, OCSD, and others;
- Improving code enforcement activities on the water, from public dock use to illegal discharges to vessel or mooring upkeep to the safe use of vessels and more;
- Improving trash and debris removal on the water, including assisting various volunteer groups with trash removal efforts;
- Improving the way that the City can assist the OCSD in providing a rapid response to oil or fuel spills, small fires, or vessels taking on water;
- Assisting CDD/Building, Public Works and MOD with capital and maintenance issues from the waterside, including various infrastructure observations and inspection, and more.

To date, all on-water operations have been performed using the City's whaler vessel and two leased NAC catamarans. But to assist with some of the points above, we suggest considering purchasing a work vessel (equipped with a pump, davit, and some other specialty equipment). The estimated cost for an approximately 23' outfitted boat is \$150,000.00. This expense is proposed to be added to the Vehicle Replacement Internal Service Fund managed by Municipal Operations so that future replacement costs can be considered.

Given all of the duties above, and how they cross multiple departments, we also recommend placing the Harbor Operations division within the City Manager's Office for the next period of time (Phase II).

More about Code Enforcement. As noted, one goal is to address a backlog of possible nuisance-related code violations. Harbor Operations sent out a friendly letter to all mooring permittees advising them to attend to their vessels and mooring equipment, as well as advising them that non-permitted live-aboards are not allowed. This action appeared to address some of the observed concerns. Additionally, PW's Water Quality staff and CDD's Code Enforcement staff, with assistance from the City Attorney's Office, recently began assisting with problem vessels by issuing Notices of Violation (NOVs) where necessary. As of the date of this report, Code Enforcement staff have issued 50 NOVs and 16 citations.

Staffing

Harbor Operation staffing over Phase I has consisted of:

- Our Harbormaster, who can often work >40 hrs/week;
- One full-time and one part-time dockworker, covering up to 8 hrs/day and 7 days/week at Marina Park marina (these are contracted through Basin Marine);
- One temporarily-assigned full-time PW/Management Assistant working 40+ hrs/week
- One temporary part-time hourly Department Assistant working 10 to 40 hrs/week
- Thirteen (13) part-time hourly Harbor Services Workers working an average of 228 hrs/week (combined) in the summer and 168 hours/week in the off season.

Note - Two of the part-time Harbor Services Workers were recently promoted to part-time Harbor Services Lead Worker positions to provide for adequate staff supervision.

Harbor Operations current hours of operation are depicted in the following table:

Hours of operation vary by season as follows:

	In-Season (May – Labor Day)	Off-Season (Labor Day - April)
Office Hours (7 Days/Week)	8 a.m. to 5 p.m.	8 a.m. to 5 p.m.
On-Water Staffing (Mon – Thurs)	8 a.m. to 8 p.m.	8 a.m. to 5 p.m.
On-Water Staffing (Fri, Sat)	8 a.m. to 10 p.m.	8 a.m. to 8 p.m.
On-Water Staffing (Sun)	8 a.m. to 8 p.m.	8 a.m. to 5 p.m.

Note: On-Water staffing times may vary depending upon need, weather conditions, events, etc.

Now that we have four months of actual operating and cost history for the program, and a better understanding of how we see the next eight or more months playing out if we hold our present service levels, we are better able to recommend necessary adjustments to the current operating budget to finish this fiscal year.

If the City desires to continue providing harbor operations for Newport Harbor – Marina Park marina management, mooring administration, and on-water, non-safety-related harbor operations and administration in a new Phase II, we recommend the following position changes:

Phase 2 Position Changes (Recommended)			
Phase 1 Positions/Roles		Phase 2 Proposed Positions/Roles	Net FT Position Count Change?
Harbor Resources Manager	➔	Harbor Resources Manager	-
Harbormaster, PT Temp	➔	Harbormaster, FT	1.0
Harbor Resources Supervisor	➔	(removed)	(1.0)
Department Assistant, PT Temp	➔	Department Assistant, FT	1.0
Management Analyst (FT)	➔	Management Analyst, Share 0.25	-
Lead Harbor Services Worker, PT	➔	Lead Harbor Services Worker, PT	-
Harbor Services Worker, PT	➔	Harbor Services Worker, PT	-
Dockmaster, Contract	➔	Harbor Services Worker/Dock, FT	1.0
Dockmaster, PT Contract	➔	Harbor Services Worker hours, PT	-
Net Change in FT Positions			2.0

A more detailed “Before and After” draft organization chart is shown as **Attachment A**.

Staffing needs above the minimum (such as weekend, in-season, summer, holidays, and special events) will be staffed with the PT Harbor Services Workers. **Attachment B** shows the proposed typical weekly schedules for Off-Season (October – April) and In-Season (May-September).

Budget. Budget and financial information will be within **Attachment C** (may be added later).

And Finally. Ramping up this operation from the ground up since spring 2017 has been a major task. I, Dave Kiff, offer my thanks for the significant hours and effort put in by individuals and departments/divisions such as:

- The City Council, for its prompting and support, especially that of Mayor pro Tem Duffield.
- The Harbor Commission, for its support and advice.
- Carol Jacobs, Assistant City Manager, for liaison with OCSD as well as pulling together important contracts and other work.
- Dennis Durgan, our new Harbormaster, for embracing the effort with energy.
- Dave Webb, Public Works, for early and important supervision.
- Chris Miller, Public Works, for the same.
- Our office team at Harbor Operations, especially Jessica Allen and Raymund Reyes.
- The Human Resources Department, for fast recruitments and hiring.

- Our Harbor Services Worker team, for their ability to learn quickly and to provide great customer service.
- Our CDD/Code Enforcement group, especially Matt Cosyion, for help with complex CE issues on the water.

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 – “Before and After” Organizational Chart
Attachment B – Typical Weekly Staffing Schedules
Attachment C – Harbor Operations Budget Summary

ATTACHMENT A

Harbor Operations

Phase 1 (July 1, 2017 through Nov/Dec 2017)		Phase 2 (Nov/Dec 2017 through June 30, 2018)	
Public Works		City Manager's Office	Public Works
Harbor Operations Major Functions: Mooring management, customer service, harbor user education, anchorage oversight, more.	Harbor Resources Major Functions: Public and private dredging coordination, dock permits, eelgrass, RGP 54, MAPs, Harbor Commission, Upper Bay issues, more.	Harbor Operations Major Functions: Mooring management, on-water code enforcement, Title 17 enforcement , customer service, harbor user education, MAP enforcement , anchorage oversight, more.	Harbor Resources Major Functions: Public and private dredging coordination, dock permits, eelgrass, RGP 54, MAP issuance , Harbor Commission, Upper Bay issues, more.
Management Harbormaster (Temp)	Management Harbor Resources Manager Harbor Res Supervisor (Vacant)	Management Harbormaster (FT - New)	Management Harbor Resources Manager Harbor Res Supervisor
Office Help Department Assistant (Temp, PT) Mgmt Analyst (Temp, FT)	Permits/Plan Review Harbor Res Tech II	Office Help Admin Position TBD (FT - New) Mgmt Analyst (Temp Share - 0.25)	Permits/Plan Review Harbor Res Tech II
On-Water Staff Lead Harbor Services Workers (2 -PT) Harbor Services Workers (11 - PT)		On-Water Staff Lead Harbor Services Workers (2 -PT) Harbor Services Workers (11 - PT) HWS/Dock (FT - New) HWS/Dock hours (PT) Code Enf. (Temp Share - 0.25)	
Contract Assistance Dockworkers, Marina Park Marina Balboa Yacht Basin (Dave New) Towing (Sea Tow, Tow Boat US) Mooring & Harbor Maint (Chuck South) more...	Contract Assistance Anchor QEA (special studies, permits) Dock & Harbor Maintenance (South) Water Quality more...	Contract Assistance Dockworkers, Marina Park Marina Balboa Yacht Basin (Dave New) Towing (Sea Tow, Tow Boat US) Mooring Maint (Chuck South) more...	Contract Assistance Anchor QEA (special studies, permits) Dock Maintenance (South) Water Quality more...
Other City Assistance PW/Admin - contract assist, other support PW/Harbor Resources, WQ CDD (major code enforcement) City Attorney (any legal issue) MOD (trash, maintenance) Police/Fire (as needed)		Other City Assistance PW/Admin - contract assist, other support PW/Harbor Resources, WQ CDD (major code enforcement) City Attorney (any legal issue) MOD (trash, maintenance) Lifeguards (after hours assistance) Police/Fire (as needed)	Legend Bold or S/O = changes from Phase I Yellow = new FT position Orange = deleted FT position

ATTACHMENT B

TYPICAL ON-SEASON SCHEDULE, JUNE - SEPTEMBER

MONDAY		POSITION OFFICE	DOCKMASTER	VESSEL 1	VESSEL 2	VESSEL 3	TOTAL HRS
STAFF							
HARBORMASTER	8am-5pm						Salaried
ADMIN	(8am-5pm)						8
LEAD HARBOR SERVICE WORKER P/T							0
HARBOR SERVICE WORKER P/T		(8am-5pm)	(8am-2pm)				14
HARBOR SERVICE WORKER P/T			(2pm-8pm)				6
TUESDAY		POSITION OFFICE	DOCKMASTER	VESSEL 1	VESSEL 2	VESSEL 3	TOTAL HRS
STAFF							
HARBORMASTER							-
ADMIN	(8am-5pm)						8
LEAD HARBOR SERVICE WORKER P/T			(11am-8pm)				8
HARBOR SERVICE WORKER P/T		(8am-5pm)		(8am-2pm)			14
HARBOR SERVICE WORKER P/T				(2pm-8pm)			6
WEDNESDAY		POSITION OFFICE	DOCKMASTER	VESSEL 1	VESSEL 2	VESSEL 3	TOTAL HRS
STAFF							
HARBORMASTER							-
ADMIN	(8am-5pm)						8
LEAD HARBOR SERVICE WORKER P/T			(11am-8pm)				8
HARBOR SERVICE WORKER P/T		(8am-5pm)		(8am-2pm)			14
HARBOR SERVICE WORKER P/T				(2pm-8pm)			6
THURSDAY		POSITION OFFICE	DOCKMASTER	VESSEL 1	VESSEL 2	VESSEL 3	TOTAL HRS
STAFF							
HARBORMASTER	8am-5pm						Salaried
ADMIN	(8am-5pm)						8
LEAD HARBOR SERVICE WORKER P/T			(11am-8pm)				8
HARBOR SERVICE WORKER P/T		(8am-5pm)		(8am-2pm)			14
HARBOR SERVICE WORKER P/T				(2pm-8pm)			6
FRIDAY		POSITION OFFICE	DOCKMASTER	VESSEL 1	VESSEL 2	VESSEL 3	TOTAL HRS
STAFF							
HARBORMASTER	8am-5pm						Salaried
ADMIN	(8am-5pm)						8
LEAD HARBOR SERVICE WORKER P/T			(1pm-10pm)				8
HARBOR SERVICE WORKER P/T		(8am-5pm)		(8am-3pm)	(8am-3pm)		21
HARBOR SERVICE WORKER P/T				(3pm-10pm)	(3pm-10pm)		13
SATURDAY		POSITION OFFICE	DOCKMASTER	VESSEL 1	VESSEL 2	VESSEL 3	TOTAL HRS
STAFF							
HARBORMASTER	8am-5pm						Salaried
ADMIN							8
LEAD HARBOR SERVICE WORKER P/T			(1pm-10pm)				8
HARBOR SERVICE WORKER P/T		(8am-5pm)		(8am-3pm)	(8am-3pm)		21
HARBOR SERVICE WORKER P/T				(3pm-10pm)	(3pm-10pm)		13
SUNDAY		POSITION OFFICE	DOCKMASTER	VESSEL 1	VESSEL 2	VESSEL 3	TOTAL HRS
STAFF							
HARBORMASTER	8am-5pm						Salaried
ADMIN							8
LEAD HARBOR SERVICE WORKER P/T			(11am-8pm)				8
HARBOR SERVICE WORKER P/T		(8am-5pm)		(8am-2pm)	(8am-2pm)		20
HARBOR SERVICE WORKER P/T				(2pm-8pm)	(2pm-8pm)		12

Title	Hours Per Week
Harbormaster	Salaried (5 Days on 2 Days off)
Admin	40
Harbor Service Worker - Lead	48
Harbor Service Worker - Dockmaster	56
Harbor Service Worker - Field	124

8 hour shifts are calculated with a 1hr lunch

7 hour shifts are calculated with a 30 min lunch

TYPICAL OFF-SEASON SCHEDULE, OCTOBER - MAY

MONDAY		POSITION OFFICE	DOCKMASTER	VESSEL 1	VESSEL 2	VESSEL 3	TOTAL HRS
STAFF							
HARBORMASTER	(8am-5pm)						Salaried
ADMIN	(8am-5pm)						8
LEAD HARBOR SERVICE WORKER P/T							-
HARBOR SERVICE WORKER P/T		(8am-5pm)	(8am-5pm)				16
HARBOR SERVICE WORKER P/T							-
TUESDAY		POSITION OFFICE	DOCKMASTER	VESSEL 1	VESSEL 2	VESSEL 3	TOTAL HRS
STAFF							
HARBORMASTER							-
ADMIN	(8am-5pm)						8
LEAD HARBOR SERVICE WORKER P/T			(8am-5pm)				8
HARBOR SERVICE WORKER P/T		(8am-5pm)		(8am-5pm)			16
HARBOR SERVICE WORKER P/T							-
WEDNESDAY		POSITION OFFICE	DOCKMASTER	VESSEL 1	VESSEL 2	VESSEL 3	TOTAL HRS
STAFF							
HARBORMASTER							-
ADMIN	(8am-5pm)						8
LEAD HARBOR SERVICE WORKER P/T			(8am-5pm)				8
HARBOR SERVICE WORKER P/T		(8am-5pm)		(8am-5pm)			16
HARBOR SERVICE WORKER P/T							-
THURSDAY		POSITION OFFICE	DOCKMASTER	VESSEL 1	VESSEL 2	VESSEL 3	TOTAL HRS
STAFF							
HARBORMASTER	(8am-5pm)						Salaried
ADMIN	(8am-5pm)						8
LEAD HARBOR SERVICE WORKER P/T			(8am-5pm)				8
HARBOR SERVICE WORKER P/T		(8am-5pm)		(8am-5pm)			16
HARBOR SERVICE WORKER P/T							-
FRIDAY		POSITION OFFICE	DOCKMASTER	VESSEL 1	VESSEL 2	VESSEL 3	TOTAL HRS
STAFF							
HARBORMASTER	(8am-5pm)						Salaried
ADMIN	(8am-5pm)						8
LEAD HARBOR SERVICE WORKER P/T			(11am-8pm)				8
HARBOR SERVICE WORKER P/T		(8am-5pm)		(8am-2pm)			20
HARBOR SERVICE WORKER P/T				(2pm-8pm)			-
SATURDAY		POSITION OFFICE	DOCKMASTER	VESSEL 1	VESSEL 2	VESSEL 3	TOTAL HRS
STAFF							
HARBORMASTER	(8am-5pm)						Salaried
ADMIN							8
LEAD HARBOR SERVICE WORKER P/T			(11am-8pm)				8
HARBOR SERVICE WORKER P/T		(8am-5pm)		(8am-2pm)			14
HARBOR SERVICE WORKER P/T				(2pm-8pm)			6
SUNDAY		POSITION OFFICE	DOCKMASTER	VESSEL 1	VESSEL 2	VESSEL 3	TOTAL HRS
STAFF							
HARBORMASTER	(8am-5pm)						Salaried
ADMIN							8
LEAD HARBOR SERVICE WORKER P/T			(8am-5pm)				8
HARBOR SERVICE WORKER P/T		(8am-5pm)		(8am-12pm)			12
HARBOR SERVICE WORKER P/T				(12pm-4pm)			4

Title	Hours Per Week
Harbormaster	Salaried (5 Days on 2 Days off)
Admin	40
Harbor Service Workser - Lead	48
Harbor Service Worker - Dockmaster	56
Harbor Service Workser - Field	64

8 hour shifts are calculated with a 1hr lunch

ATTACHMENT C

Harbor Operations Budget Summary

The attachment will be available for viewing on Monday, November 13, 2017

CITY OF NEWPORT BEACH

City Council Minutes Study Session and Regular Meeting October 24, 2017

I. ROLL CALL - 4:00 p.m.

Present: Council Member Brad Avery, Council Member Diane Dixon, Council Member Jeff Herdman, Council Member Will O'Neill, Council Member Scott Peotter, Mayor Pro Tem Duffy Duffield, Mayor Kevin Muldoon

II. CURRENT BUSINESS

SS1. **Clarification of Items on the Consent Calendar - None**

SS2. **Presentation to Burr-White Realty on its 50th Anniversary in Newport Beach**

Council Member Dixon read the proclamation and presented it to Craig Batley.

SS3. **Update on Traffic Signal Modernization and Technology**

Principal Civil Engineer Sommers utilized a PowerPoint presentation to discuss the City's traffic signal system, the field components, traffic signal operations, various timing methods, challenges to efficient traffic flow, signal technology, benefits of today's system, current improvements, system improvements being studied, future technology, and how to prepare for the future.

In response to Council questions, Principal Civil Engineer Sommers displayed the location map, discussed Bluetooth technology, addressed privacy concerns, explained how the data will be used to track travel trends to improve traffic flow, indicated that traffic bypass is a component of the system, provided the timeline for the installation of the BlueTOAD system, explained that this is different than the Coast Highway Signal Synchronization project, confirmed how advanced the data is compared to previous intersection counts, discussed how the system could respond to incidents quicker and assist drivers who are not using navigation tools or applications, and believed that municipalities and private companies may eventually share information in the future.

Council Member Dixon thanked Principal Civil Engineer Sommers for his efforts and commended the signal timing at Pacific Coast Highway and Crystal Cove.

Council Member Peotter thanked staff for their hard work and encouraged using the data to move toward automatically updating signal timing Citywide.

Jim Mosher asked if the system indicates what direction the vehicles are traveling, if it could be used in other parts of the City, and if the system is portable and could be relocated to different locations rather than purchase additional units. He expressed skepticism relative to the system's ability to keep information totally anonymous.

In response to Mayor Muldoon's question regarding the terms and conditions of the BlueTOAD agreement, Principal Civil Engineer Sommers and Public Works Director Webb discussed what information is collected by the system and noted there is State law governing what information is accessible to municipalities. City Attorney Harp indicated he will review the agreement, see if there is any provision relative to what information is gathered and how long it is stored, and will make modifications, if needed, to ensure privacy.

SS4. Peninsula Crosswalk Study *(continued from the 10/10/17 City Council meeting)*

Traffic Engineer Brine utilized a PowerPoint presentation to summarize the crosswalk study, locations of the intersections studied, crosswalk improvements studied, general and specific improvements, high-visibility crosswalk striping, and pedestrian caution signs. He also discussed recommended improvements at specific intersections, California Vehicle Code Section 21950, the various meetings conducted on this topic, and phases involved with the project. He indicated that the study can be found at newportbeachca.gov/crosswalkstudy.

In response to Council questions, Traffic Engineer Brine discussed pavement striping and reflective markings, the recommended removal of a parking space near Cassidy's Bar and Grill, the addition of street lights, and concerns around the Newport Elementary School area.

Jim Mosher noted the contract with Albert Grover & Associates, Inc., mentioned assisting the City in creating the framework for a crosswalk policy, the study did not evaluate all the crosswalks on the Balboa Peninsula, and requested clarification about "failure to yield" statistics and what is counted. Traffic Engineer Brine clarified that the study counted vehicles that are not yielding to pedestrians or bicycles that are already in the street.

Maureen Cotton, President of the Central Newport Beach Community Association, expressed her concerns with "failure to yield" traffic, referenced her correspondence, discussed conversations with Police Chief Lewis, encouraged more enforcement near Newport Elementary School, believed the palm trees near the school impede the crossing guards' view of oncoming traffic, and recommended exploring using solar powered push button blinking crosswalks and utilizing reflective walk sign posts and stop sign posts.

Mayor Pro Tem Duffield commended the effectiveness of the pedestrian improvements on 17th Street between Irvine Avenue and Dover Drive. Traffic Engineer Brine noted that the rapid flashing beacons are also being used at Via Lido and Via Oporto, and that they are proposing to use them near Newport Elementary School.

III. PUBLIC COMMENTS

Jim Mosher questioned Council for not requesting clarification on Consent Calendar items (Item SS1), took issue that no explanation was included with Closed Session Item IV.C, and believed that the memos requesting minor changes to the recommendation for Item 6 (Bonita Creek Sports Park Pickleball Courts – Notice of Completion) and Item 7 (Central Avenue Public Dock Project – Notice of Completion) should amend the agenda.

Mayor Muldoon indicated Council asks questions about Consent Calendar items when the item is before Council and the appropriate audience is in attendance.

City Attorney Harp announced that the City Council would adjourn to Closed Session to discuss the items as listed in the Closed Session agenda and read the titles.

IV. CLOSED SESSION - Council Chambers Conference Room

**A. CONFERENCE WITH LABOR NEGOTIATORS
(Government Code § 54957.6): 1 matter**

Agency Designated Representatives: Dave Kiff, City Manager, Carol Jacobs, Assistant City Manager, Barbara Salvini, Human Resources Director, Brian P. Walter and Peter Brown; Labor Negotiators.

Employee Organizations: Newport Beach City Employees Association (NBCEA); Newport Beach Firefighters Association (NBFA); Newport Beach Police Association (NBPA); Newport Beach Police Management Association (NBPMA); Newport Beach Lifeguard Management Association (NBLMA); and Newport Beach Professional and Technical Employee Association (NBPTEA).

**B. CONFERENCE WITH LEGAL COUNSEL
ANTICIPATED LITIGATION**

(Government Code § 54956.9(d)(2) (e) (2)): 8 matters

The Newport Beach Police Management Association (NBPMA), the Newport Beach Police Association (NBPA), the Newport Beach Firefighters Association (NBFA), the Laborers International Union of North America Local 777 (as affiliated with and on behalf of the Newport Beach Professional and Technical Employees Association (NBTEA) and Newport Beach City Employees Association (NBCEA)), on behalf of the current and former members of said unions, as well as Vladimir Anderson and Robert Salerno, in their individual capacities, are aware of the United States Court of Appeals for the Ninth Circuit's decision in the case of *Flores v. City of San Gabriel* (9th Cir. 2016) 824 F.3d 890 which may result in litigation against the City of Newport Beach related to the calculation and payment of overtime compensation.

**C. CONFERENCE WITH LEGAL COUNSEL
ANTICIPATED LITIGATION**

(Government Code § 54956.9(d)(2) (e)(1)): 1 matter

V. RECESS - 5:10 p.m.

VI. RECONVENED AT 7:00 P.M. FOR REGULAR MEETING

VII. ROLL CALL

Present: Council Member Jeff Herdman, Council Member Brad Avery, Council Member Diane Dixon, Council Member Will O'Neill, Council Member Scott Peotter, Mayor Pro Tem Duffy Duffield, Mayor Kevin Muldoon

VIII. CLOSED SESSION REPORT

City Attorney Harp reported that there were no reportable actions taken.

IX. INVOCATION - Council Member Peotter

X. PLEDGE OF ALLEGIANCE - Council Member Avery

XI. NOTICE TO THE PUBLIC

XII. CITY COUNCIL ANNOUNCEMENTS (NON-DISCUSSION ITEM)

Council Member O'Neill:

- Announced that the Newport Beach Chamber of Commerce Economic Forecast will be held on October 27, 2017; the OASIS Senior Center will be holding its 40th Anniversary events November 2-4, 2017; *Boss Baby* will be showing on November 3, 2017, in San Miguel Park; and the high school students who started OC Books on the Run (ocbooksontherun.com) will be at the November 14, 2017 Council meeting, he will be donating 100 books, and encouraged others to donate books to the organization
- Reminded everyone to drive safely on Halloween

Council Member Dixon:

- Attended the Fire Department promotional ceremony earlier today, along with all of Council
- Announced that the sculpture exhibit in the Civic Center Park will open on October 28, 2017
- Requested a future report from the City Manager relative to how the City can be prepared for changes in the homeless population due to the possible anti-camping laws being proposed for the Santa Ana River area.

Council Member Peotter:

- Requested and received confirmation from City Manager Kiff that the Corona del Mar Fire Station and Library project can be re-bid for its current location and will not need Council approval prior to going out to re-bid.

Council Member Herdman:

- Announced that the pickleball courts at Bonita Canyon Sports Park are officially open; the Newport Beach Animal Shelter will be holding a Halloween costume contest for dogs at Marina Park on October 28, 2017; and a Halloween Spooktacular will be held at Grant Howald Park on October 28, 2017

Council Member Avery:

- Attended the Fire Department promotional ceremony earlier today and the Environmental Nature Center (ENC) Fall Fair

Mayor Muldoon:

- Read and presented the ***National Nurse Practitioner Week Proclamation*** to Taylor Cwiertniewicz and Danielle Godino.

XIII. PUBLIC COMMENTS ON CONSENT CALENDAR

Referencing his comments from Study Session, Jim Mosher reiterated his belief that Council Members have either had no questions regarding Consent Calendar items or had them answered at another time.

XIV. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. Minutes for the October 10, 2017 City Council Meeting [100-2017]

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

2. Reading of Ordinances

Waive reading in full of all ordinances under consideration, and direct the City Clerk to read by title only.

RESOLUTIONS FOR ADOPTION

3. Resolution Affirming the City Manager's Authority to Administer and Manage the City's Employee Deferred Compensation and Health Savings Plans and Authority to Sign Related Contracts (C-8420-1) (continued from the 10/10/17 City Council meeting) [38/100-2017]

- 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. 2017-65, *A Resolution of the City Council of the City of Newport Beach, California, Affirming the City Manager's Authority to Administer and Manage the City's 457 Plan and Retirement Health Savings Plan.*

4. **Adopt a Resolution Supporting an Application by the City of Irvine for the OCTA Measure M2 Regional Traffic Signal Synchronization Program for the Culver Drive - Bonita Canyon Drive Project [100-2017]**
 - a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
 - b) Adopt Resolution No. 2017-67, *A Resolution of the City Council of the City of Newport Beach, California, Supporting an Application by the City of Irvine for the Orange County Transportation Authority's Measure M2 Traffic Signal Synchronization Program Funding for the Culver Drive - Bonita Canyon Drive Corridor Synchronization Project.*

Mayor Muldoon recused himself from Item 4 due to his employment.

5. **Resolution Authorizing CalRecycle Rubberized Pavement Grant Program Application (C-8526-1) [38/100-2017]**
 - a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
 - b) Adopt Resolution No. 2017-68, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of Application(s) for All CalRecycle Grants for which the City of Newport Beach is Eligible.*

CONTRACTS AND AGREEMENTS

6. **Bonita Creek Sports Park Pickleball Courts – Notice of Completion for Contract No. 8130-2 (Project No. 17P12) [38/100-2017]**
 - a) On April 25, 2017, City Council found this action exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing facilities) based on the project is a minor alteration of a public facility involving negligible expansion 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) 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 the Civil Code;
 - c) Release Faithful Performance Bond one (1) year after acceptance by the City Council; and
 - d) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project.
7. **Central Avenue Public Dock Project – Notice of Completion for Contract No. 8197-1 (Project No. 17H12) [38/100-2017]**
 - a) On April 11, 2017, City Council found this action exempt from the California Environmental Quality Act (CEQA) pursuant to Class 4 Section 15303 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;
 - 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 the Civil Code;
 - c) Release Faithful Performance Bond one (1) year after acceptance by the City Council; and
 - d) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project.
8. **Corporation Yards Painting Project – Award of Contract No. 7153-1 (18F02) [38/100-2017]**
 - a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Minor Alteration of Existing Public Facilities with Negligible Expansion) 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 drawings and specifications;

- c) Declare the bid submitted by Harry H. Joh Construction as non-responsive and reject the bid submitted by Harry H. Joh Construction;
 - d) Declare TL Veterans Construction, Inc. as the low responsive bidder;
 - e) Award Contract No. 7153-1 to TL Veterans Construction, Inc. for the total bid price of \$570,000.00, and authorize the Mayor and City Clerk to execute the contract; and
 - f) Establish a contingency of \$57,000.00 (10 percent) to cover the cost of work not included in the original contract.
- 9. Approval of Purchase of BlueTOAD Bluetooth Traffic Monitoring System (C-8527-1) [38/100-2017]**
- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly;
 - b) Approve Econolite, Inc. of Anaheim, California, via Single Source Selection for procurement of the BlueTOAD traffic monitoring system and Econolite Centracs related software module; and
 - c) Authorize the City Manager to execute a Professional Services Agreement with Econolite, Inc. of Anaheim, California, for the procurement of the BlueTOAD traffic monitoring system for a not to exceed fee of \$119,151.21.
- 10. Marina Management Services – Amendment to Agreement with Basin Marine and Budget Amendment (C-6333) [38/100-2017]**
- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly;
 - b) Approve Budget Amendment No. 18BA-009 appropriating \$137,700 from the Tidelands Fund unappropriated fund balance to Account 1008014-811044 for Marina Management Services at Marina Park for the balance of FY 2017-18; and
 - c) Approve Amendment No. 1 to the Professional Services Agreement with Basin Marine, Inc. to extend the term to December 31, 2018, and increase compensation by \$214,200, for a total contract value of \$581,400, for Marina Management Services at Marina Park.

MISCELLANEOUS

- 11. Planning Commission Agenda for the October 19, 2017 Meeting [100-2017]**
Receive and file.
- 12. Appointments to the Aviation Committee [24/100-2017]**
- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly;
 - b) Confirm Council Member Avery's appointment of Charles (Steve) Byers as the District 2 Representative Member to the Aviation Committee; and
 - c) Confirm Council Member Herdman's appointment of Patricia Janssen as the District 5 Alternate Member to the Aviation Committee.
- 13. Balboa Peninsula Pedestrian Crossing Study (C-8528-1) (continued from the 10/10/17 City Council meeting) [38/100-2017]**
- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly;
 - b) Receive and file the study; and

- c) Direct staff to prepare plans and specifications for the implementation of signing and striping improvements at uncontrolled crosswalks on the Balboa Peninsula, per the recommendations outlined in the Study. In addition, include funding in the FY 18/19 Capital Improvement Budget for sidewalk bulb-out installations and a flashing beacon installation.

Motion by Mayor Pro Tem Duffield, seconded by Council Member Herdman, to approve the Consent Calendar; and noting the recusal by Mayor Muldoon on Item 4, the amendments to the recommendations for Items 6 and 7, and the submission of the agreement for Item 9.

The motion carried by the following roll call vote:

Ayes: Council Member Jeff Herdman, Council Member Avery, Council Member Dixon, Council Member Peotter, Council Member O'Neill, Mayor Pro Tem Duffield, Mayor Muldoon

XV. ITEM REMOVED FROM THE CONSENT CALENDAR - None

XVI. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Nancy Gardner, Friends of the Newport Beach Animal Shelter (FONBAS), announced that their Howl-O-Ween costume event for dogs will be held on October 28, 2017, at Marina Park from 10:00 a.m. to noon, and highlighted the judging categories.

Roberta Buchanan discussed coyote concerns in her neighborhood, announced that there are coyote dens below Castaways, took issue that the City is concerned more with sea lions than coyotes, and believed the City needs a comprehensive plan to deal with this issue.

Lenore Pittman expressed coyotes concerns for the pets and children in her neighborhood and agreed with Ms. Buchanan about the immediate need for a plan.

Jim Mosher discussed, with concern, details of the Civic Center audit and process, and asked if Council believed the matter is concluded, when this was decided and the vote, where the final audit report is, the cost of the audit, where he could locate the settlement agreement, and what the City learned and how that knowledge will be preserved for the future.

City Attorney Harp explained the audit process, why it was not reported until after the settlement was made, the use of the draft report as being the formal audit, and the cost of the audit and amount of the settlement. He noted that the public can view the settlement agreement and previous staff reports related to the audit. Mayor Muldoon believed that what was learned most from the audit was that government must have restrictions to control spending and pointed out that the current City Council is working on creating a Charter amendment that would restrict the amount of debt that could be issued without voter approval.

In response to Council Member Peotter's question, City Attorney Harp confirmed that the settlement agreement does not include a confidentiality provision to restrict Council Members from stating opinions about the audit or settlement agreement.

XVII. ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES - None

XVIII. PUBLIC HEARING

14. Annual Review of Zoning Implementation for Sober Living by the Sea, Inc. (PA2010-150) (C-4145) [38/100-2017]

In response to Council Member O'Neill's question, Assistant Planner Whelan reported that out of the 204 beds allowed pursuant to the agreement, 43 are occupied.

Mayor Muldoon opened the public hearing. Hearing no testimony, he closed the public hearing.

Motion by Council Member Peotter, seconded by Council Member Dixon, to a) find this review exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15321 (Enforcement Actions by Regulatory Agencies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because this review enforces an entitlement for use adopted by the City and has no potential to have a significant effect on the environment; b) find that Sober Living by the Sea has demonstrated good faith compliance with the terms of the Zoning Implementation and Benefit Agreement; and c) receive and file documents submitted by Sober Living by the Sea to demonstrate good faith compliance with the terms of the Zoning Implementation and Public Benefit Agreement.

The motion carried by the following roll call vote:

Ayes: Council Member Jeff Herdman, Council Member Avery, Council Member Dixon, Council Member Peotter, Council Member O’Neill, Mayor Pro Tem Duffield, Mayor Muldoon

XIX. CURRENT BUSINESS

15. Ocean Piers Maintenance Project – Award of Contract No. 7126-1 (17H03) [38/100-2017]

Deputy Public Works Director Vukojevic utilized a PowerPoint presentation to highlight the pier inspection process, how piers can be damaged, the damage that occurred October 17-18, 2017, the constant corrosive marine environment, previous ocean piers maintenance projects, and the current proposed project. He discussed the bid process and announced that the work will be started later this year, if approved.

In response to Council questions, Deputy Public Works Director Vukojevic reported that the repairs in 2002 were for concrete decking and indicated various maintenance projects are conducted every two years. He discussed what was done recently to stabilize the Balboa Pier and displayed a video to show what broke during the last storm. He also reported on the sewage spill and announced that Ruby’s Diner was able to open later that same day.

Mayor Pro Tem Duffield stated he will talk with Public Works about using composite piles in lieu of wood piles.

Motion by Council Member O’Neill, seconded by Council Member Duffield, to a) find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (minor alteration of existing public facilities with negligible expansion) 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 drawings and specifications; c) award Contract No. 7126-1 to John S. Meek Company Inc. for the total bid price of \$1,182,395.00, and authorize the Mayor and City Clerk to execute the Contract; d) establish an amount of \$236,000 (20%) to cover the cost of unforeseen work not included in the original contract; e) authorize the City Manager to execute an Amendment on a form acceptable to the City Attorney to the current Professional Services Agreement with COWI Marine North America Inc. for up to \$50,000 for additional design, inspection and construction support services that may be necessary to execute the construction contract; and f) approve Budget Amendment No. 18BA-010 appropriating \$937,000 from Tidelands Capital Fund unappropriated fund balance to Account No. 10101-980000-17H03 (Ocean Piers Maintenance and Repairs Project).

The motion carried by the following roll call vote:

Ayes: Council Member Jeff Herdman, Council Member Avery, Council Member Dixon, Council Member Peotter, Council Member O'Neill, Mayor Pro Tem Duffield, Mayor Muldoon

XX. MOTION FOR RECONSIDERATION - None

XXI. ADJOURNMENT - 7:41 p.m.

The agenda was posted on the City's website and on the City Hall Electronic Bulletin Board located in the entrance of the City Council Chambers at 100 Civic Center Drive on October 19, 2017, at 4:00 p.m.

Kevin Muldoon
Mayor

Leilani I. Brown
City Clerk



CITY OF

NEWPORT BEACH

City Council Staff Report

November 14, 2017
Agenda Item No. 3

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: George Murdoch, Municipal Operations Director - 949-644-3011,
gmurdoch@newportbeachca.gov

PREPARED BY: Joshua Rosenbaum, Senior Management Analyst
rosenbaum@newportbeachca.gov

PHONE: 949-644-3057

TITLE: Resolution to Amend Recycled Water Commodity Charge

ABSTRACT:

The City of Newport Beach (City) provides non-potable (recycled) water for irrigation of parks, schools, center medians, and golf courses. The City purchases recycled water from the Orange County Water District (OCWD) through the Green Acres Project.

The Commodity charge is one component of the recycled water rate the City charges its customers. The Commodity charge (price per HCF or billing unit) is a direct reflection of what the City pays OCWD for recycled water.

Municipal Code NBMC 14.13.010 states that if the City's cost of recycled water increases by more than the projected rate to purchase water from OCWD, the commodity charge will be adjusted annually to reflect the City's cost to purchase water from OCWD.

OCWD has increased the rate higher than the established rates projected. In compliance with our municipal code, staff recommends the City's recycled commodity charge be adjusted to cover the actual cost the City pays OCWD. The proposed rates are described in the discussion section below.

RECOMMENDATION:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2017-69, *A Resolution of the City Council of the City of Newport Beach, California, Amending the Recycled Water Commodity Charge Effective January 1, 2018.*

FUNDING REQUIREMENTS:

There are no funding requirements to implement the adjusted recycled water rate; however, this action will change the recycled water commodity charge currently assessed to users of recycled water.

DISCUSSION:

The City of Newport Beach (City) provides non-potable (recycled) water for irrigation of parks, schools, center medians, and golf courses. The City purchases recycled water from the Orange County Water District (OCWD) through the Green Acres Project.

The City retained the services of HF&H Consultants (HF&H) to conduct a recycled water rate study in 2013 and presented the findings to the Finance Committee and City Council in 2014. Following a Proposition 218 notice period and public hearing on August 12, 2014, the City Council introduced Ordinance No. 2014-13 amending the NBMC adding Section 14.13 *Recycled Water Rates Established*.

On September 9, 2014, the City Council conducted a second reading of the ordinance and adopted Resolution No. 2014-78 setting new recycled water rates over a five-year period. The rates are a combination of fixed charges to cover operations and maintenance costs of the system, a pump station charge for operations and maintenance of the City owned pump stations and a commodity (price per HCF or billing unit) charge that is the actual cost the City pays OCWD for recycled water.

The rates were first adjusted in 2015 and scheduled to increase every year for a five-year period ending with in 2019. Table 1 below is the current rates established by Resolution 2014-78.

Table 1 Current Monthly Recycled Water Charges

Fixed Charge

Meter Size	2014	2015	2016	2017	2018	2019
5/8" or 3/4"	\$13.82	\$18.91	\$19.29	\$19.68	\$20.07	\$20.47
1"	\$23.03	\$31.53	\$32.16	\$32.80	\$33.46	\$34.13
1 1/2"	\$46.06	\$63.05	\$64.32	\$65.60	\$66.91	\$68.25
2"	\$73.70	\$100.88	\$102.90	\$104.95	\$107.05	\$109.19
3"	\$138.18	\$189.15	\$192.94	\$196.80	\$200.73	\$204.75
4"	\$230.30	\$315.25	\$321.56	\$327.99	\$334.55	\$341.24
6"	\$460.61	\$630.50	\$643.11	\$655.98	\$669.10	\$682.48
8"	\$736.98	\$1,008.81	\$1,028.99	\$1,049.57	\$1,070.56	\$1,091.97

Commodity Charge

Per HCF	\$2.46	\$0.86	\$0.87	\$0.89	\$0.91	\$0.93
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Pump Station Charge

Per HCF	none	\$0.36	\$0.37	\$0.38	\$0.38	\$0.39
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On June 27, 2017, the City and OCWD entered into a new Agreement related to the City's purchase and distribution of recycled water from OCWD. This Agreement establishes the distribution, purchase price, water quality, operating obligations, and rules related to the purchase and distribution of recycled water from OCWD. Furthermore, the Agreement allows OCWD to establish fees in accordance to their true cost to provide reclaimed/recycled water.

Municipal Code NBMC 14.13.010 states that if the City's cost of recycled water increases by more than the projected rate to purchase water from OCWD, the commodity charge will be adjusted annually to reflect the City's cost to purchase water from OCWD. Currently, the City collects from our customers \$0.89 per HCF (1 HCF = 748 gallons) which equals \$387.71 dollars per Acre-Foot (AF) of revenue. Prior to July 1, 2017, OCWD set its rate to \$478.40 per AF. This is higher than the anticipated \$387.71 per AF used in our rate study.

On May 31, 2017, the City, as well as all GAP recycled water retailers, received a letter from OCWD notifying us that the wholesale rate would be increasing from \$478.40 per Acre-Foot (AF) to \$738.00 per AF effective July 1, 2017. In order to pay for this significant increase, the City will need to increase the commodity rate to \$1.69 per HCF. This number is established by the following conversions and equation: 1 Acre-Foot (AF) = 43,560 Cubic Feet (FT³), 100 FT³ = 1 Hundred Cubic Feet (HCF) therefore: $\$738 / 43,560 \text{ FT}^3 \times 100 = \$1.69/\text{HCF}$.

The fixed charges as well as the pump station charge are proposed to remain the same. Table 2 reflects the proposed changes which recovers 100 percent of the actual cost the City pays OCWD for recycled water for the calendar year 2018. It is anticipated that OCWD may increase their rates again in 2019 at which time staff will bring the item back to Council for a recommended change if needed.

Table 2 Proposed Monthly Recycled Water Charges

Fixed Charge

Meter Size	2014	2015	2016	2017	2018	2019
5/8" or 3/4"	\$13.82	\$18.91	\$19.29	\$19.68	\$20.07	\$20.47
1"	\$23.03	\$31.53	\$32.16	\$32.80	\$33.46	\$34.13
1 ½"	\$46.06	\$63.05	\$64.32	\$65.60	\$66.91	\$68.25
2"	\$73.70	\$100.88	\$102.90	\$104.95	\$107.05	\$109.19
3"	\$138.18	\$189.15	\$192.94	\$196.80	\$200.73	\$204.75
4"	\$230.30	\$315.25	\$321.56	\$327.99	\$334.55	\$341.24
6"	\$460.61	\$630.50	\$643.11	\$655.98	\$669.10	\$682.48
8"	\$736.98	\$1,008.81	\$1,028.99	\$1,049.57	\$1,070.56	\$1,091.97

Commodity Charge

Per HCF	\$2.46	\$0.86	\$0.87	\$1.69	\$1.69	\$1.69
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Pump Station Charge

Per HCF	none	\$0.36	\$0.37	\$0.38	\$0.38	\$0.39
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If City Council approves of the increase, then staff will provide thirty days' notice of the increase to the recycled water rate payers in compliance with California Government Code Section 53756. Rates will be effective January 1, 2018.

ENVIRONMENTAL REVIEW:

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

NOTICING:

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

ATTACHMENTS:

Attachment A – Resolution No. 2017-69

Attachment B – OCWD Letter to the City – Intent to Increase Recycled Water Charges

ATTACHMENT A

RESOLUTION NO. 2017-69

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING THE RECYCLED WATER COMMODITY CHARGE EFFECTIVE JANUARY 1, 2018

WHEREAS, Newport Beach Municipal Code ("NBMC") Section 3.36.030(A) provides that the cost recovery percentage for most user fee services shall be one hundred percent (100%), with the exception of the user services listed therein and those services for which the fee is limited by statute. NBMC Section 3.36.030(C) provides that the City Council may amend the amount of any fee or charge for, and the actual cost of providing, any user service upon a determination that there has been an increase or decrease in one or more of the cost factors relevant to the calculation of the actual cost of providing the service;

WHEREAS, on September 9, 2014, City Council adopted Ordinance No. 2014-13 adding Chapter 14.13 to the NBMC and establishing recycled water rates. NBMC Section 14.13.010 provides that the City of Newport Beach ("City") will charge and collect a monthly fixed recycled water service charge, a monthly per-unit commodity charge for each meter, and a monthly pump station charge from each customer who receives recycled water by means of a pump station and allows for any or all of such charges to be effective January 1st of each year and be charged according to the fee schedule adopted by resolution of the City Council;

WHEREAS, pursuant to Subsection (B) of NBMC Section 14.13.010, the monthly commodity charge recovers the City's cost to purchase recycled water from the Orange County Water District ("OCWD") and, if the City's cost of recycled water increases by more than the projected rate to purchase recycled water from OCWD, the commodity charge will be adjusted annually to reflect the City's cost to purchase recycled water from OCWD;

WHEREAS, pursuant to Resolution No. 2014-78, the City Council adopted a fee schedule for the City's recycled water rates, incorporated the recycled water rate schedule into the City's master fee schedule, now referred to as the Schedule of Rates, Fines, and Fees, and resolved that the recycled water rates shall be updated in January of each year pursuant to the annual fee schedule attached to Resolution No. 2014-78;

WHEREAS, on June 27, 2017, the City Council approved an agreement between the City and OCWD which established the distribution, purchase price, water quality, operating obligations, and rules related to the purchase and distribution of reclaimed (recycled) water from OCWD as part of OCWD's Green Acres Project ("GAP Agreement");

WHEREAS, the GAP Agreement allows OCWD to sell the City recycled water for an amount equal to OCWD's cost of producing and distributing Green Acres Project water;

WHEREAS, in a letter to the City from OCWD dated May 31, 2017, OCWD informed that City that, for the period commencing July 1, 2017, OCWD's cost of producing and distributing Green Acres Project water to the City is \$738 per acre-foot;

WHEREAS, the significant increase (from \$478.40 per acre-foot to \$738 per acre-foot as of July 1, 2017) in City's cost to purchase recycled water from OCWD requires a comparable increase in City's recycled water commodity charge to offset OCWD's increased cost of providing recycled water to the City;

WHEREAS, pursuant to Subsection (B) of NBMC Section 14.13.010, the City is authorized to pass-through the effects of this increase charged by OCWD through an adjustment to the commodity charge rate to be charged to its recycled water customers;

WHEREAS, in 2014, the City conducted the majority protest hearing on its recycled water fees as required by California Constitution, article XIII D, section 6 (Proposition 218), no majority protest was lodged, the rates the City Council then adopted included the requirement of Subsection (B) of NBMC section 14.13.010 to pass-through to customers increases in the City's cost of water from OCWD as authorized by Government Code section 53756 and, accordingly, no further protest proceeding is required at this time; and

WHEREAS, by adopting this resolution, the City Council intends to amend the recycled water commodity charge effective January 1, 2018 by adopting the fee schedule attached hereto as Exhibit A and incorporated herein by this reference. The City's other recycled water rates (fixed charge and pump station charge) are restated in Exhibit A, but remain unchanged.

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

Section 1: The City Council hereby adopts the fee schedule attached hereto as Exhibit A and incorporated herein by this reference and amends the recycled water commodity charge effective January 1, 2018. The recycled water rates shall be updated in January of each year pursuant to the schedule set forth in Exhibit A. The City Council directs staff to include the recycled water rates in Exhibit A within the City's Schedule of Rates, Fees, and Fines or other successor document and adjust the recycled water rates each January consistent with Exhibit A.

Section 2: Resolution No. 2017-14 is hereby rescinded.

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

Section 4: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council

hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 5: The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

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

ADOPTED this 14th day of November 2017.

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Nov 10, 2017

Attachment: Exhibit A – Recycled Water Commodity Charge Rate Tables

Exhibit A

Current Monthly Recycled Water Charges

Fixed Charge

Meter Size	2014	2015	2016	2017	2018	2019
5/8" or 3/4"	\$13.82	\$18.91	\$19.29	\$19.68	\$20.07	\$20.47
1"	\$23.03	\$31.53	\$32.16	\$32.80	\$33.46	\$34.13
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8"	\$736.98	\$1,008.81	\$1,028.99	\$1,049.57	\$1,070.56	\$1,091.97

Commodity Charge

Per HCF	\$2.46	\$0.86	\$0.87	\$0.89	\$0.91	\$0.93
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Pump Station Charge

Per HCF	none	\$0.36	\$0.37	\$0.38	\$0.38	\$0.39
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Proposed Monthly Recycled Water Charges

Fixed Charge

Meter Size	2014	2015	2016	2017	2018	2019
5/8" or 3/4"	\$13.82	\$18.91	\$19.29	\$19.68	\$20.07	\$20.47
1"	\$23.03	\$31.53	\$32.16	\$32.80	\$33.46	\$34.13
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2"	\$73.70	\$100.88	\$102.90	\$104.95	\$107.05	\$109.19
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Per HCF	\$2.46	\$0.86	\$0.87	\$1.69	\$1.69	\$1.69
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Pump Station Charge

Per HCF	none	\$0.36	\$0.37	\$0.38	\$0.38	\$0.39
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DIRECTORS

PHILIP L. ANTHONY
 DENIS R. BILLODEAU, P.E.
 SHAWN DEWANE
 CATHY GREEN
 DINH NGUYEN
 VICENTE SARMIENTO
 STEPHEN R. SHELDON
 JAMES VANDEBILT
 BRUCE WHITAKER
 ROGER C. YOH, P.E.



SINCE 1933

ORANGE COUNTY WATER DISTRICT

ORANGE COUNTY'S GROUNDWATER AUTHORITY

OFFICERS

President
 DENIS R. BILLODEAU, P.E.
 First Vice President
 PHILIP L. ANTHONY
 Second Vice President
 SHAWN DEWANE
 General Manager
 MICHAEL R. MARKUS, P.E., D.V.

May 31, 2017

CITY OF NEWPORT BEACH
 MUNICIPAL OPERATIONS DEPT.
 ATTN: Mr. George Murdoch
 Utilities General Manager
 100 Civic Center Drive
 Newport Beach, CA 92660

Subject: 2017-2018 GREEN ACRES PROJECT WHOLESALE WATER RATE

Dear Mr. Murdoch:

This letter is to inform you of the Green Acres Project Wholesale Water rate for 2017-2018 (period July 1, 2017 through June 30, 2018).

For project water served to water customers of the City of Newport Beach (City), City shall purchase the Project Water from OCWD, at the point of its metered connection, for an amount equal to OCWD's cost of producing and distributing Project Water based on the methodology set forth in Exhibit D (attached), as determined by OCWD after consultation with the Operating Group defined in Paragraph 3.3

Paragraph 3.3 of the Green Acres Project water agreement between City and OCWD, staff representatives of OCWD, City, and other retail agencies participating in the Green Acres Project shall form an "Operating Group" to meet at least once prior to the annual publishing of the revised Exhibit D by OCWD.

The wholesale project water pricing, effective July 1, 2017 is: **\$738.00/af**

Should you have any questions, please contact Joanne Goco at (714) 378-3306.

Very truly yours,

Randy Fick
 Randy Fick
 CFO/Treasurer

Attachment

cc: Chris Auger, Water System Services Supervisor
 File

MO *K*

Exhibit D: OCWD Unit Price Calculation Project Water Sold to RETAILER

Revisions to Exhibit D by OCWD do not require an amendment to this Agreement.

Fiscal Year 2015-2016 calculation listed below. This unit price shall be effective for Fiscal Year 2017-2018.

Previous fiscal year operational and maintenance cost to operate, treat, and distribute Product Water (Electricity, Chemicals, Labor, Maintenance, Testing, Utility Location Services, Replenishment Assessment Value of Deep Well Blending Water) \$1,173,230.46	+	Previous fiscal year Repair and Rehabilitation Fund contribution for Project Facilities. This figure may be periodically reviewed and adjusted by OCWD Board as necessary \$936,678.00	+	Debt service payments. This figure may vary as terms for loans, certificates of participation, and other Project Facilities financing change. Smoothing may occur to avoid sudden increases to this figure \$980,296.67	=	\$738 per acre foot
Previous fiscal year Project Water in acre-feet 4,186.09						

Estimated future fiscal year rates provided for planning purposes only. Rates are subject to substantive change prior to implementation.

FY 2018-19: \$778 per acre foot

FY 2019-20: \$769 per acre foot

FY 2020-21: \$741 per acre foot

FY 2021-22: \$761 per acre foot

FY 2022-23: \$782 per acre foot



CITY OF

NEWPORT BEACH

City Council Staff Report

November 14, 2017
Agenda Item No. 4

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: George Murdoch, Municipal Operations Director - 949-644-3011,
gmurdoch@newportbeachca.gov

PREPARED BY: Joshua Rosenbaum, Senior Management Analyst
PHONE: 949-644-3057

TITLE: Resolution in Support of the California WaterFix and California
EcoRestore

ABSTRACT:

An important water supply to Southern California is the State Water Project, which supplies approximately 30 percent of Orange County's water. For South Orange County water agencies that do not have access to groundwater the percentage is even higher.

The California Bay Delta conveyance system has had a number of challenges over the recent years. The status quo is yielding a continuing degradation of the Delta systems, levee integrity and water supply reliability. Equally concerning is the ecological health of the Delta and fish species. The California WaterFix and EcoRestore initiatives address water reliability and ecological restoration solutions.

RECOMMENDATION:

- a) Determine that the action is exempt from the California Environmental Quality Act (CEQ) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2017-___, *A Resolution of the City Council of the City of Newport Beach, California, Supporting the California WaterFix for Improvements to the Sacramento-San Joaquin Delta Water Delivery System and the California EcoRestore Program for Delta Habitat Restoration.*

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

As a critical source of water supply, the California Bay Delta provides approximately 30 percent of Southern California's water supply annually and supplies water for approximately 25 million people. That number is higher in South Orange County, which relies heavily on imported water from the Metropolitan Water District of Southern California.

In partnership with the Municipal Water District of Orange County (MWDOC), the City of Newport Beach participated in the recent Orange County Water Reliability Study (Study) evaluating scenarios and projects that enhance or sustain water supplies to the region. Modeling shows the California WaterFix initiative, as currently proposed, represents the most cost-effective, large-scale reliability solution to improving Orange County's water supply reliability over the next 25 years.

The supply analyses in the Study assumed that the California WaterFix results in "recovery" (i.e., prevents the future loss) of historical supplies in the amount of 440,000 acre-feet per year on average.

MWDOC Directors in December passed a resolution of support for the California WaterFix, which is approaching the final stages for its permits and environmental documents (EIR/EIS and Record of Decision). The profile and level of support for these two programs needs to be raised. More than 100 alternatives were considered during a 10-year study period that drew 30,000 public comments before Plan 4A, the WaterFix, was recommended.

The California WaterFix involves construction and design of three new water intakes north of the Delta and two, 32-mile, 9,000 cubic feet per second(cfs) underground tunnels that will provide operational pumping flexibility and protect against water supply disruption. However, much remains to be determined, especially with respect to the financing, regulatory certainty and operating criteria for the project.

In addition to water management and quality benefits, a large and growing consensus understands that the Delta is in an unsustainable position and needs to be "fixed" to accommodate the many competing interests for the future, especially with regard to ensuring the area is a sustainable ecosystem. The status quo is yielding a continuing degradation of the Delta systems, levee integrity and water supply reliability. The companion initiative to the California WaterFix is the EcoRestore, which seeks to achieve the State's co-equal goal of habitat restoration and reliability of supplies. EcoRestore is initially charged with 30,000 acres of restoration efforts under an accelerated effort by 2020 to improve habitat conditions for fisheries migration, restore tidal and non-tidal wetland habitat for native wildlife, and improve connectivity among existing grassland and other natural habitats.

Success in the Delta continues to rely on the implementation of the California WaterFix and EcoRestore to achieve the co-equal goals. The ecological health of the Delta and fish species are fundamentally linked to the reasonable use and export of water supplies. Although total restoration of the Delta to the historical past is not possible, there can be significant improvements in how best to approach the management of the Delta's combined water and land resources in a manner that will realistically achieve improvements in both water supply reliability and ecosystem protection of the Delta's endangered or threatened aquatic species.

Based on these proposed improvements in system conveyance and habitat restoration, staff recommends the City adopt a support position for the California WaterFix and California EcoRestore and Preferred Alternative (No.4A) as described in the environmental documents, with reasonable adherence to the current, public operating criteria and cost allocation principles and assumptions.

ENVIRONMENTAL REVIEW:

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

NOTICING:

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

ATTACHMENTS:

Attachment A – Resolution No. 2017-40

Attachment B – California WaterFix Frequently Asked Questions

RESOLUTION NO. 2017-70

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, SUPPORTING THE CALIFORNIA WATERFIX PROGRAM FOR IMPROVEMENTS TO THE SACRAMENTO-SAN JOAQUIN DELTA WATER DELIVERY SYSTEM AND THE CALIFORNIA ECORESTORE PROGRAM FOR DELTA HABITAT RESTORATION

WHEREAS, the Sacramento-San Joaquin Delta ("Delta"), formed by the confluence of the Sacramento and San Joaquin Rivers as they come together and flow into San Francisco Bay, is a major water hub for California's water supply system for the majority of the State, including thirty percent (30%) of the supplies for Southern California, and therefore underpins the overall economy of California;

WHEREAS, the Delta historically was a complex and dynamic natural system driven by tidal fluctuations and natural marsh flooding that has been highly altered over the last one hundred (100) years, with many of the levees and islands reclaimed from former marshlands for development or farming. As the Delta was never intended to be a water conveyance facility, the Delta is not sustainable as it exists today and changes must be made to stabilize conditions;

WHEREAS, from a fisheries, farming and water-management perspective, the Delta will continue to decline at an increasing rate due to the ongoing impacts of the environment, farming, and artesian conditions as well as levee failures becoming more frequent and more expensive to mitigate or repair as time passes;

WHEREAS, twenty-five (25) million residents rely on water from the Delta, and local conservation cannot replace the water the Delta has historically supplied to Southern California even though that amount is only four percent (4%) of the annual average Delta flows;

WHEREAS, no practical and economically efficient way exists to improve existing levees to keep pace with the environment, farming, artesian conditions or to prevent levee collapse during a large earthquake. The consequences to the Delta ecosystem, the water supply and the California economy would be immediate, severe and negative if a large earthquake were to occur;

WHEREAS, approximately fifty-five (55) years ago, voters approved the State Water Project ("SWP"), which was never completed and does not include an independent conveyance facility that would allow increased capture and storage of water during periods of high flows and would also minimize conflicts with fisheries;

WHEREAS, as the result of federal court decisions, U.S. Fish & Wildlife Service and National Marine Fisheries Service Biological Opinions, as well as other regulatory

constraints to protect native species in the Delta, the SWP has not been able to collect, store, and deliver an estimated volume of 3.6 million acre-feet of water since 2008;

WHEREAS, although restoration of the Delta to the conditions of the historical past is not possible, much has been learned through scientific studies about what is needed to improve the management and utilization of the Delta to enhance fish, wildlife and water management for the future;

WHEREAS, Governor Brown has proposed the California WaterFix and California EcoRestore programs as the preferred alternatives for managing the Delta's combined water and land resources in a manner that will realistically achieve improvements in both water supply reliability and ecosystem protection for the Delta;

WHEREAS, the proposed California WaterFix and EcoRestore programs will help with water supply reliability by improving essential Delta ecosystem functions so that populations of endangered or threatened aquatic species will be strengthened;

WHEREAS, the California WaterFix program includes construction of three (3) intakes north of the Delta, two (2) thirty-five (35) mile tunnels up to 150 feet below the Delta and Clifton Court fore bay modifications, all of which will provide operational pumping flexibility and protect against water supply disruption due to changes in sea levels, earthquakes and flood events. The three (3) new intakes north of the Delta will improve environmental conditions in the Delta by reducing reverse-flow conditions, minimizing the trapping of migrating fish, and reducing diversions during critical fish migration periods, which will all allow more operational flexibility to enhance water deliveries especially during wet periods;

WHEREAS, improving the SWP system can increase regional storage reserve levels. These storage reserves are used to protect the region from devastating effects of drought and other emergencies. The California WaterFix will help ensure that Orange County will have sufficient supplies at critical times when we need them;

WHEREAS, the California EcoRestore program will pursue more than 30,000 acres of critical Delta restoration over the next five (5) years, including the improvements of habitat conditions for fisheries migration, restoring tidal and non-tidal wetland habitat for native wildlife, and improving connectivity among existing grassland and other natural habitats;

WHEREAS, in partnership with the Municipal Water District of Orange County ("MWDOC"), the City of Newport Beach participated in the recent 2016 Orange County Water Reliability Study ("OCWRS") to evaluate scenarios and projects that enhance or sustain water supplies to the region. The OCWRS revealed a number of important findings with implications for the county's water reliability, including that by 2030 projected water shortages would be too frequent and overall reliability would not be sustainable without new supply and system investments by the Metropolitan Water District of Southern California ("MWD"), its member agencies and Orange County;

WHEREAS, implementation of the proposed California WaterFix and California EcoRestore programs, as currently proposed, represents the most cost-effective large-scale reliability solution to improve regional water supply reliability for all of Southern California over the next twenty-five (25) years. The OCWRS indicates the California WaterFix program will result in "recovery" of historical supplies in the amount of approximately 440,000 acres per year on average and notes that adjustments to the project costs or supply development could result in changes to this recommendation;

WHEREAS, in December 2016, the MWDOC Board of Directors adopted a resolution of support for the California WaterFix program, which is approaching the final stages for its permits and environmental documents. More than one hundred (100) alternatives were considered during a ten (10) year study period that drew thirty thousand (30,000) public comments before the California WaterFix program was recommended;

WHEREAS, Orange County ratepayers have invested millions of dollars to build and maintain the SWP as well as portions of MWD's regional storage, distribution and treatment systems that take delivery of SWP supplies. Modernizing the system through the California WaterFix program will protect this investment for decades to come;

WHEREAS, moving forward with the California WaterFix program is the most cost-effective investment of the ratepayers' dollars to maintain and continue economic vitality for the region, and all of the costs for the California WaterFix program will be paid for exclusively by water agencies benefiting from the program; and

WHEREAS, doing nothing in the Delta is far costlier to the businesses, residents and economy in the State of California and Orange County than investing in the proposed California WaterFix and California EcoRestore programs.

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

Section 1: The City Council does hereby support the California WaterFix program for improvements to the Delta water delivery system and the California EcoRestore program for Delta habitat restoration, as each are generally described in their environmental documents with reasonable adherence to the current public operating criteria and cost allocation principles and assumptions therein.

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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

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

ADOPTED this 14th day of November, 2017.

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

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



Aaron C. Harp
City Attorney

Handwritten in blue ink:
HWP
10.16.17

Updated August 2015

California WaterFix (Alternative 4A)/Recirculated Environmental Analysis Frequently Asked Questions

1. What is the purpose and need for California WaterFix (Alternative 4A)?

The California Department of Water Resources' (DWR's) primary purpose in proposing California WaterFix (Alternative 4A) is to make the physical and operational improvements to the California's main water delivery system in the Sacramento-San Joaquin Delta (Delta) that will protect water supplies, restore and protect ecosystem health, and improve water quality within a stable regulatory framework.

The Delta has long been an important resource for California, providing municipal, industrial, agricultural and recreational uses, fish and wildlife habitat, and water supply for 25 million Californians. However, the Delta is in crisis. There is an urgent need to improve the conditions for threatened and endangered fish species within the Delta. Improvements to the conveyance system are needed to respond to increased demands upon and risks to water supply reliability, water quality, and the aquatic ecosystem.

2. What is the new California Environmental Quality Act (CEQA)/National Environmental Policy Act (NEPA) preferred alternative?

California WaterFix (Alternative 4A) has been identified as the new CEQA and NEPA Preferred Alternative, replacing Alternative 4 (the proposed Bay Delta Conservation Plan). Alternative 4A includes an underground conveyance facility, three northern intakes capable of diverting a combined total of up to 9,000 cubic feet per second, and mitigation measures and environmental commitments to meet the requirements of CEQA, NEPA, the federal Endangered Species Act (ESA) Section 7, section 2081(b) of the California Endangered Species Act (CESA), and other environmental requirements. California WaterFix (Alternative 4A) achieves the co-equal goals by securing state water supplies from climate change and seismic risk, and improving operations and environmental conditions to benefit fish species. California WaterFix (Alternative 4A) was developed in response to public and agency input, as well as an interest in exploring multiple regulatory approaches (e.g. Section 7 consultation) to achieving the dual goals.

3. Who are the lead agencies for California WaterFix (Alternative 4A)?

The Partially Recirculated Draft Environmental Impact Report/Supplement Draft Environmental Impact Statement (RDEIR/SDEIS) associated with California WaterFix (Alternative 4A) is a joint document prepared by DWR as the CEQA lead

agency and the Bureau of Reclamation (Reclamation) as the NEPA lead agency. The National Marine Fisheries Service (NMFS) and United States Fish and Wildlife Service (USFWS) serve as NEPA cooperating agencies, and the lead agencies will consult with NMFS and USFWS under Section 7 of the ESA. The California Department of Fish and Wildlife serves as a CEQA responsible and trustee agency and will be considering the issuance of the Section 2081(b) permit after EIR/EIS approval.

4. Why is there a recirculated environmental document?

The RDEIR/SDEIS has been prepared to provide the public and interested agencies an opportunity to review engineering refinements made to the water conveyance facilities; to introduce new sub-alternatives (Alternatives 4A, or California WaterFix, 2D and 5A); and, to include updated environmental analyses that in part were conducted in response to issues raised in the more than 12,000 comments received on the 2013 Bay Delta Conservation Plan (BDCP) Draft EIR/EIS.

5. What is the difference in the regulatory strategy between the BDCP (Alternative 4) and California WaterFix (Alternative 4A)?

DWR's initial regulatory strategy proposed a habitat conservation plan, presented as Alternative 4 in the 2013 BDCP Draft EIR/EIS (i.e. a conservation plan that seeks 50-year permits as a Habitat Conservation Plan (HCP) through Section 10 of the ESA and a Natural Community Conservation Plan (NCCP) through the California Natural Community Conservation Planning Act (NCCPA)). The proposed habitat conservation plan would provide for both broad-scale regional habitat restoration and new Delta water delivery infrastructure for the State Water Project (SWP). California WaterFix (Alternative 4A) reflects an alternative regulatory strategy (through federal ESA Section 7 consultation and the CESA Section 2081(b) permit process) to meet the project purpose and need and includes the new Delta water delivery infrastructure for the SWP, the same as proposed in Alternative 4, without a habitat conservation plan. California WaterFix (Alternative 4A) allows for other state and federal programs to address broader habitat conservation efforts over a shorter timeframe.

Both Alternative 4 and 4A propose new infrastructure (updated in the RDEIR/SDEIS) to modernize the SWP's water delivery system to address water supply reliability needs in conjunction with related ecosystem improvements, such as significantly reducing reverse flows and direct impacts to fish species associated with the existing south Delta intakes.

6. Why did the state select the alternative regulatory strategy of California WaterFix (Alternative 4A) as the preferred alternative?

California WaterFix (Alternative 4A) would allow for an alternative implementation strategy for the new Delta water delivery infrastructure under

Section 7 of the ESA and Section 2081(b) of CESA, and reflects the lead agencies interest in exploring alternate regulatory approaches that could facilitate expeditious progress on Delta solutions. California WaterFix (Alternative 4A) was developed in response to input from the 2013 BDCP Draft EIR/EIS comment period as well as from agencies' comments regarding the challenges with meeting the standards required to issue long-term assurances associated with compliance with Section 10 of the ESA and the NCCPA. These challenges relate to the difficulties in assessing species status and issuing assurances over a 50-year period, in light of climate change, and accurately factoring in the benefits of long-term conservation in contributing to the recovery of the covered species. There were also questions raised as to the ability to implement large-scale habitat restoration and an interest in early implementation of certain restoration actions, untethered to the water infrastructure approval.

7. What is the difference between ESA Section 7 consultation and Section 10 permitting? What is the difference between compliance with the NCCPA and Section 2081 CESA permitting?

A project's compliance with the Federal ESA varies depending on federal agency involvement and the project's potential effects to listed species. Where a project is proposed by a non-federal entity and the proposed project would "take" a listed species, Section 10 of the ESA provides USFWS and NMFS with the authority to issue incidental take permits with an approved HCP. Where a project would involve the take of a species listed under CESA, the California Fish and Game Code provides the California Department of Fish and Wildlife (DFW) with the authority to allow for take of listed species and issue assurances for a larger list of covered species, with an approved NCCP and through a Section 2081(b) incidental take permit.

The primary requirement for issuance of the incidental take permit is that the action must minimize and fully mitigate the impacts of the proposed take. Where long-term assurances are sought for a range of actions affecting a large list of covered species (as with the BDCP), the HCP/NCCP necessarily requires detailed documentation as to the potential effects to those species, sufficiency of mitigation for those effects, and sufficiency of funding for that mitigation over the entire permit term. Like the BDCP, these types of HCPs/NCCPs can also require a complicated Implementation Agreement to specify management actions over the life of the permit.

Section 7 of the ESA requires that federal agencies ensure their actions do not jeopardize the continued existence of a listed species or adversely modify or destroy critical habitat. Section 7 may require formal consultation with USFWS and NMFS where the federal action could adversely affect a listed species, including where take could occur. Through formal consultation, USFWS and NMFS issue biological opinions that may, among other things, authorize the

taking of the listed species. Measures may be required as part of the opinion to minimize the impacts of take; however, because no long-term assurances are issued for a large list of covered species, the same level of detailed documentation as to the potential effects to species, sufficiency of mitigation for those effects, and sufficiency of funding for that mitigation over the entire permit term is not required. The duration of the ESA authorization under Section 7 does not have a “permit term” or Implementation Agreement and instead the authorization and management of actions relate to the triggers for re-initiation of consultation.

California WaterFix (Alternative 4A) is not presented as habitat conservation /natural community conservation plans according to ESA Section 10 and the NCCPA. A 50-year permit and long term assurances are not being sought and the proposed BDCP habitat restoration and stressor reduction measures (i.e., CM2 through CM21) that are presented in the Draft BDCP (and proposed to meet that stringent requirements of Section 10 of the ESA and NCCPA) are not carried forward fully for California WaterFix (Alternative 4A), except where elements of the former conservation measures are retained to mitigate the potential impacts of the proposed project in compliance with CEQA, NEPA, and other environmental regulatory permitting requirements. Under the proposed California WaterFix (Alternative 4A), compliance with the federal ESA would be achieved by Reclamation, and DWR as the permit applicant, under Section 7 through formal consultation with the USFWS and NMFS. Under California WaterFix (Alternative 4A), take authorization for state-listed species would be obtained by DWR through Section 2081(b) of CESA and DFW’s incidental take permit process.

8. Why is the BDCP still referenced in the environmental analysis?

All alternatives will be included for decision-makers to consider. The alternatives, including Alternative 4 (BDCP), and the environmental analysis in the 2013 BDCP Draft EIR/EIS, along with the additional alternatives and environmental analysis contained in the RDEIR/SDEIS and comments received on the both documents, will be considered in agency decision-making when preparing the Final EIR/EIS and determining whether to approve the proposed project. The analysis for Alternative 4 also forms the basis for California WaterFix (Alternative 4A) due to the overlap in the proposed conveyance facilities. California WaterFix (Alternative 4A) has been added to the environmental analysis as the new CEQA and NEPA preferred alternative. No final decisions have been made regarding the proposed action or in selecting an alternative; those decisions will only occur after the completion of the environmental review process.

9. What has changed since the 2013-2014 Public Draft EIR/EIS?

The recirculated environmental documents cover several substantive changes, including:

- Introduction of three new sub-alternatives -- Alternative 4A (California WaterFix) as the new preferred alternative, Alternative 2D, and Alternative 5A. These alternatives were designed to reduce environmental effects, respond to public and agency input, and explore multiple regulatory approaches.
- Design modifications to Alternative 4 (also applied to Alternatives 4A, 2D and 5A) to reduce impacts to Delta communities, minimize disturbances or dislocation to greater sandhill cranes, and improve the long-term reliability and operation of the conveyance facilities.
- Updated Fish and Aquatic Habitat analysis to include additional rationale for impact conclusions and methods for determining impacts.
- Additional Water Quality analysis and modeling to more accurately characterize the potential for exceedances of water quality standards, resulting in the reduction of several water quality impacts to less than significant.
- Inclusion of downstream effects, including an assessment of water quality and fish and aquatic resources in the San Francisco Bay.
- Updated engineering, construction assumptions, performance standards, and air quality models for the Air Quality, Health Risk Assessment, Traffic and Noise impact analysis.
- Updated analyses of water facility construction to include geotechnical investigations
- Inclusion of Additional NEPA Determinations – includes NEPA determinations on conclusions previously deemed “No Determination.”

10. Will the public have an opportunity to comment?

Yes. The public can comment on the recirculated environmental analysis from July 10, 2015 through August 31, 2015. Comments received on the RDEIR/SDEIS will be considered in the Final EIR/EIS and decision-making process.

11. What is the proposed operational structure for the conveyance facilities?

Implementation of California WaterFix (Alternative 4A) will include operations of both new and existing water conveyance facilities (“dual conveyance”) once the new north Delta facilities are operational. The dual conveyance facilities will be operated as directed by California WaterFix environmental compliance requirements, and in compliance with the USFWS (2008) and NMFS (2009) Biological Opinions and D-1641 guidelines. These operations may be subject to adjustments through an adaptive management process consistent with and similar to the program already described in the 2008 and 2009 Biological Opinions. The proposed project incorporates existing criteria from the 2008 and 2009 Biological Opinions (including Fall X2) and adds additional criteria for spring outflow and new minimum flow criteria at Rio Vista from January through August.

12. Will habitat restoration/protection be proposed as part of California WaterFix (Alternative 4A)?

Based on ongoing review of potential construction and operation impacts, mitigation for California WaterFix (Alternative 4A) construction and operation will include about 2,300 acres of habitat restoration and up to 13,300 acres of habitat protection (e.g. conservation easements). This additional acreage will focus primarily on preserving the existing cultivated lands habitat and working landscape values in the Delta. DWR and Reclamation anticipate these revised acreage targets for habitat restoration and protection will be the maximum amount required for mitigation. Final determinations will be based on actual project impacts and consultation with fish and wildlife agencies. All habitat restoration and protection costs for California WaterFix (Alternative 4A) will be paid for exclusively by water agencies benefiting from the project.

13. What additional habitat restoration does the state of California plan to implement?

Separate from California WaterFix (Alternative 4A) and over the next 5 years, California will pursue more than 30,000 acres of critical Delta habitat restoration under the California EcoRestore program, pursuant to pre-existing regulatory requirements such as the 2008 and 2009 Biological Opinions and various enhancements to improve the overall health of the Delta ecosystem. Proposition 1 funds and other state public dollars will be directed exclusively for public benefits unassociated with any regulatory compliance responsibilities.

14. What is the anticipated yield for California WaterFix (Alternative 4A)?

California WaterFix (Alternative 4A) is estimated to include an average annual yield of 4.9 million acre-feet and provides the greatest complement to local water supply projects by allowing the safe capture of water in wet and above-normal years so that it can be stored and used in dry years.

15. What is the anticipated cost for California WaterFix (Alternative 4A)?

The cost to fix California's primary water delivery system is estimated at \$14.9 billion – or about \$5 a month for urban water users – and will be paid for by public water agencies that rely on the supplies.

16. When will the lead agencies respond to my comments on the Draft EIR/EIS and the recirculated environmental document?

DWR and Reclamation, as the state and federal lead agencies, will consider and prepare responses to all substantive comments received during the public review periods for the Draft EIR/EIS (December 13, 2013 through July 29, 2014) and RDEIR/SDEIS (July 10, 2015 through October 30, 2015). (On July 22, 2015, lead agencies announced an extension of the comment period to October 30, 2015.) Responses will appear in the Final EIR/EIS, which is the next milestone in

the environmental planning process. Comments will be sorted, coded, and logged into a tracking system, categorized by subject area, and then a response to the comment will be drafted. The comments will be assessed both individually and collectively and the Final EIR/EIS will include copies of the comments received and the responses prepared. If the EIR/EIS was changed in response to comments, these changes will be referenced in the responses.

17. When can the public expect a Final EIR/EIS?

Following completion of the RDEIR/SDEIS public review period, DWR and Reclamation will prepare a Final EIR/EIS. The timing associated with preparation and publication of the Final EIR/EIS will depend on the volume and nature of the comments received on the Draft EIR/EIS and RDEIR/SDEIS. To allow sufficient time to adequately meet all requirements associated with completion of a Final EIR/EIS, it is anticipated this document will be available in late 2015 or early 2016.

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CITY OF

NEWPORT BEACH

City Council Staff Report

November 14, 2017
Agenda Item No. 5

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Dan Matusiewicz, Finance Director - 949-644-3123,
dmatusiewicz@newportbeachca.gov

PREPARED BY: Rukshana Virany, Accounting Manager,
rvirany@newportbeachca.gov

PHONE: 949-644-3146

TITLE: Approval of Measure M2 Expenditure Report

ABSTRACT:

With the renewal of Measure M (M2) local jurisdictions, including the City, are required to submit an annual accounting of M2 revenue and expenditures to the Orange County Transportation Authority (OCTA) by December 31 of each year. Prior to submitting the accounting to OCTA, the M2 Expenditure Report must be adopted by resolution of the City Council.

RECOMMENDATION:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2017-71, *A Resolution of the City Council of the City of Newport Beach, California, Concerning the Measure M2 Expenditure Report for the City of Newport Beach for the Fiscal Year Ending June 30, 2017*, subject to technical revisions to conform to OCTA guidelines.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item. However, if this report is not filed, OCTA could potentially suspend or delay M2 funding to the City.

DISCUSSION:

In 1990, Orange County voters approved Measure M, a 20-year program for local transportation improvements funded by a half-cent sales tax, and entrusted the newly created Orange County Transportation Authority (OCTA) to administer Measure M funds. Measure M was designed to fund transportation improvement projects in three major areas – freeways, streets and roads, and transit.

The old Measure M Plan ended March 31, 2011. On November 7, 2006, Orange County voters renewed Measure M and Measure M2 (M2) was passed to keep the transportation improvements continuing for another 30 years until 2041. With the passage of M2, local agencies must continue to demonstrate eligibility. The M2 eligibility process began in the first quarter of Fiscal Year 2010-2011 and will continue on an annual basis. Local agencies were found conditionally eligible until all outstanding M2 requirements were met. One new requirement emphasizes financial accountability and requires each local agency to submit an expenditure report to the Orange County Transportation Authority (OCTA) each year. Specifically, Ordinance No. 3 of the Local Transportation Authority requires the following:

“Local jurisdictions must adopt and provide an annual expenditure report to OCTA to account for M2 funds, developer/traffic impact fees, and funds expended by the jurisdiction to satisfy maintenance of effort requirements. The report is required within six months of each jurisdiction’s fiscal year end. The report will include all M2 net revenue, fund balances and interest earned, and will identify expenditures by activity type and funding source.”

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 – Measure M2 Expenditure Report

Attachment B – Resolution No. 2017-71

ATTACHMENT A

M2 Expenditure Report

M2 Expenditure Report
Fiscal Year Ended June 30, 2017
Beginning and Ending Balances

Description	Line No.	Amount	Interest
Balances at Beginning of Fiscal Year			
A-M Freeway Environmental Mitigation	1	\$ -	\$ -
O Regional Capacity Program	2	\$ (428,677)	\$ -
P Regional Traffic Signal Synchronization Program	3	\$ -	\$ -
Q M2 Fair Share	4	\$ 3,205,609	\$ -
R High Frequency Metrolink Service	5	\$ -	\$ -
S Transit Extensions to Metrolink	6	\$ -	\$ -
T Convert Metrolink Station(s) to Regional Gateways that connect Orange County with High-Speed Rail Systems	7	\$ -	\$ -
U Senior Mobility Program or Senior Non-Emergency Medical Program	8	\$ -	\$ -
V Community Based Transit/Circulators	9	\$ -	\$ -
W Safe Transit Stops	10	\$ -	\$ -
X Water Quality Program	11	\$ (54,369)	\$ -
Other*	12	\$ -	\$ -
Balances at Beginning of Fiscal Year (Sum Lines 1 to 12)	13	\$ 2,722,563	\$ -
Monies Made Available During Fiscal Year	14	\$ 2,323,238	\$ 1,916
Total Monies Available (Sum Lines 13 & 14)	15	\$ 5,045,801	\$ 1,916
Expenditures During Fiscal Year	16	\$ 4,876,876	\$ 1,916
Balances at End of Fiscal Year			
A-M Freeway Environmental Mitigation	17	\$ -	\$ -
O Regional Capacity Program	18	\$ (79,238)	\$ -
P Regional Traffic Signal Synchronization Program	19	\$ (14,592)	\$ -
Q M2 Fair Share	20	\$ 1,800,295	\$ -
R High Frequency Metrolink Service	21	\$ -	\$ -
S Transit Extensions to Metrolink	22	\$ -	\$ -
T Convert Metrolink Station(s) to Regional Gateways that connect Orange County with High-Speed Rail Systems	23	\$ -	\$ -
U Senior Mobility Program or Senior Non-Emergency Medical Program	24	\$ -	\$ -
V Community Based Transit/Circulators	25	\$ (50,391)	\$ -
W Safe Transit Stops	26	\$ -	\$ -
X Water Quality Program	27	\$ (1,487,149)	\$ -
Other*	28	\$ -	\$ -

* Please provide a specific description

M2 Expenditure Report
Fiscal Year Ended June 30, 2017
Sources and Uses

Description	Line No.	Amount	Interest
Revenues:			
A-M Freeway Environmental Mitigation	1	\$ -	\$ -
O Regional Capacity Program	2	\$ 366,578	\$ -
P Regional Traffic Signal Synchronization Program	3	\$ 11,696	\$ -
Q M2 Fair Share	4	\$ 1,813,934	\$ 1,520
R High Frequency Metrolink Service	5	\$ -	\$ -
S Transit Extensions to Metrolink	6	\$ -	\$ -
T Convert Metrolink Station(s) to Regional Gateways that connect Orange County with High-Speed Rail Systems	7	\$ -	\$ -
U Senior Mobility Program or Senior Non-Emergency Medical Program	8	\$ 131,030	\$ 396
V Community Based Transit/Circulators	9	\$ -	\$ -
W Safe Transit Stops	10	\$ -	\$ -
X Water Quality Program	11	\$ -	\$ -
Other*	12	\$ -	\$ -
TOTAL REVENUES (Sum lines 1 to 12)	13	\$ 2,323,238	\$ 1,916
Expenditures:			
A-M Freeway Environmental Mitigation	14	\$ -	\$ -
O Regional Capacity Program	15	\$ 17,139	\$ -
P Regional Traffic Signal Synchronization Program	16	\$ 26,287	\$ -
Q M2 Fair Share	17	\$ 3,219,248	\$ 1,520
R High Frequency Metrolink Service	18	\$ -	\$ -
S Transit Extensions to Metrolink	19	\$ -	\$ -
T Convert Metrolink Station(s) to Regional Gateways that connect Orange County with High-Speed Rail Systems	20	\$ -	\$ -
U Senior Mobility Program or Senior Non-Emergency Medical Program	21	\$ 131,030	\$ 396
V Community Based Transit/Circulators	22	\$ 50,391	\$ -
W Safe Transit Stops	23	\$ -	\$ -
X Water Quality Program	24	\$ 1,432,780	\$ -
Other*	25	\$ -	\$ -
TOTAL EXPENDITURES (Sum lines 14 to 25)	26	\$ 4,876,876	\$ 1,916
TOTAL BALANCE (Subtract line 26 from 13)	27	\$ (2,553,638)	\$ -

* Please provide a specific description

M2 Expenditure Report
Fiscal Year Ended June 30, 2017
Streets and Roads Detailed Use of Funds

Type of Expenditure	Line No.	MOE ²	+ Developer / Impact Fees	O	O Interest	P	P Interest	Q	Q Interest	X	X Interest	Other M2 ³	Other M2 Interest	Other*	TOTAL
Administration (Indirect & Overhead)	1	\$ 9,657,953													\$ 9,657,953
Construction & Right-of-Way															
New Street Construction	2														\$ -
Street Reconstruction	3	\$ 2,386,866		\$ 17,139				\$ 1,174,890	\$ 555						\$ 3,579,449
Signals, Safety Devices, & Street Lights	4	\$ 198,365	\$ 17,784			\$ 26,287									\$ 242,435
Pedestrian Ways & Bikepaths	5														\$ -
Storm Drains	6														\$ -
Storm Damage	7														\$ -
Total Construction¹	8	\$ 2,585,230	\$ 17,784	\$ 17,139	\$ -	\$ 26,287	\$ -	\$ 1,174,890	\$ 555	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,821,885
Right of Way Acquisition	9														\$ -
Total Construction & Right-of-Way	10	\$ 2,585,230	\$ 17,784	\$ 17,139	\$ -	\$ 26,287	\$ -	\$ 1,174,890	\$ 555	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,821,885
Maintenance															
Patching	11														\$ -
Overlay & Sealing	12	\$ 640,872						\$ 2,044,358	\$ 965						\$ 2,686,195
Street Lights & Traffic Signals	13	\$ 595,272													\$ 595,272
Storm Damage	14														\$ -
Other Street Purpose Maintenance	15	\$ 2,868,469													\$ 2,868,469
Total Maintenance¹	16	\$ 4,104,613	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,044,358	\$ 965	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,149,936
Other	17		\$ 33,420							\$ 1,432,780		\$ 181,421	\$ 396		\$ 1,648,018
GRAND TOTALS (Sum Lines 1, 10, 16, 17)	18	\$ 16,347,795	\$ 51,204	\$ 17,139	\$ -	\$ 26,287	\$ -	\$ 3,219,248	\$ 1,520	\$ 1,432,780	\$ -	\$ 181,421	\$ 396	\$ -	\$ 21,277,791

¹ Includes direct charges for staff time

² Local funds used to satisfy maintenance of effort (MOE) requirements

³ Other M2 includes A-M, R,S,T,U,V, and W

+ Transportation related only

* Please provide a specific description

Legend

Project	Description
A-M	Freeway Environmental Mitigation
O	Regional Capacity Program
P	Regional Traffic Signal Synchronization Program
Q	M2 Fair Share
R	High Frequency Metrolink Service
S	Transit Extensions to Metrolink
T	Convert Metrolink Station(s) to Regional Gateways that connect Orange County with High-Speed Rail Systems
U	Senior Mobility Program or Senior Non-Emergency Medical Program
V	Community Based Transit/Circulators
W	Safe Transit Stops
X	Water Quality Program


[illegible]

M2 Expenditure Report
Fiscal Year Ended June 30, 2017

I certify that the interest earned on Net Revenues allocated pursuant to the Ordinance shall be expended only for those purposes for which the Net Revenues were allocated and all the information attached herein is true and accurate to the best of my knowledge:

Dan Matusiewicz
Director of Finance (Print Name)

10-26-17
Date


Signature

ATTACHMENT B

Resolution No. 2017-71

RESOLUTION NO. 201771

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, CONCERNING THE MEASURE M2 EXPENDITURE REPORT FOR THE CITY OF NEWPORT BEACH FOR THE FISCAL YEAR ENDING JUNE 30, 2017

WHEREAS, Local Transportation Authority Ordinance No. 3 requires local jurisdictions to adopt an annual Expenditure Report to account for Net Revenues, developer/traffic impact fees, and funds expended by local jurisdictions that satisfy the Maintenance of Effort requirements;

WHEREAS, the Expenditure Report shall include all Net Revenue fund balances, interest earned and expenditures identified by type and program or project; and

WHEREAS, the Expenditure Report must be adopted and submitted to the Orange County Transportation Authority ("OCTA") each year within six months of the end of the local jurisdiction's fiscal year to be eligible to receive Net Revenues as part of Measure M2.

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

Section 1: The City Council does hereby inform OCTA that:

- a) The M2 Expenditure Report is in conformance with the M2 Expenditure Report Template provided in the Renewed Measure M Eligibility Guidelines and accounts for Net Revenues including interest earned, expenditures during the fiscal year and balances at the end of fiscal year.
- b) The M2 Expenditure Report is hereby adopted by the City of Newport Beach.
- c) The City of Newport Beach's Finance Director is hereby authorized to sign and submit the M2 Expenditure Report to OCTA for the fiscal year ending June 30, 2017.

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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

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

ADOPTED this 14th day of November, 2017.

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney



CITY OF

NEWPORT BEACH

City Council Staff Report

November 14, 2017
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: Raymund Reyes, Acting Administrative Analyst,
rreyes@newportbeachca.gov

PHONE: 949-644-3325

TITLE: Adopt Resolution 2017-72 for Acceptance of Grant Funding for the
Surrendered and Abandoned Vessel Exchange (SAVE) Program
from the Division of Boating and Waterways

ABSTRACT:

Staff applied for and has been awarded grant funding from the State of California's Division of Boating and Waterways to remove abandoned and nuisance vessels from the waters of Newport Harbor. The funding provided by the grant supplements existing City funds dedicated towards the removal of abandoned or surrendered nuisance vessels in Newport Harbor.

RECOMMENDATION:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- b) Adopt Resolution No. 2017-72, *A Resolution of the City Council of the City of Newport Beach, California, Accepting a Grant from the State of California Department of Parks and Recreation Division of Boating and Waterways for the Surrendered and Abandoned Vessel Exchange Program*; and
- c) Approve Budget Amendment No. 18BA-014 recognizing \$125,000 in grant revenue from the California Division of Boating and Waterways (13501-431385-18H11) and appropriating \$125,000.00 to Account No. 13501-980000-18H11 (Abandoned Watercraft Abatement).

FUNDING REQUIREMENTS:

The Budget Amendment records and appropriates \$125,000.00 in additional revenue from the State Department of Boating and Waterways and \$125,000.00 in increased expenditure appropriations. The revenue will be posted to Contributions Account No. 13501-431385-18H11, and services will be expensed to the Abandoned Watercraft Abatement account in the Public Works Department, 13501-980000-18H11.

DISCUSSION:

Newport Harbor is one of the largest small-craft recreational harbors on the California Coastline, and is a welcome port to many boaters as they cruise the Pacific or tour local waters. The City encourages public access to the water and offers slips and vacant moorings available for rent to both locals and visitors. With approximately 1,220 public moorings, the harbor also serves as home for a variety of permitted vessels.

While the majority of boaters and mooring permittees properly use the harbor, occasionally issues such as vessel abandonment, illegal berthing and derelict vessels do occur. As a result of this, some vessels may face citations, impoundment, or subsequent legal action (such as liens, junking, and demolition.)

Left alone, such vessels may pose as harmful water hazards, and can be prone to discharges of oils, gas, sewage or other fluids, become platforms for wildlife to overrun, or worst yet take on water and sink in the harbor. Occasional City inheritance of these derelict and abandoned vessels results in disposal related costs for the City, and as such, requires funding for proper disposal.

Considering that the process results in a necessary expenditure of public funds, City staff is continuously exploring alternate mechanisms to reduce costs, obtain grant funding, and improve the effectiveness of the abandoned vessel remediation in Newport Harbor.

The Surrendered and Abandoned Vessel Exchange (SAVE) grant is a combination of state grant funds for the Abandoned Watercraft Abatement Fund (AWAF) and the Vessel Turn-In Program (VTIP), and is administered by the State of California's Department of Parks and Recreation's Division of Boating and Waterways.

The AWAF is a reimbursement grant created in 1997 to provide state funding for the abatement, removal, storage and disposal of abandoned vessels, wrecked or dismantled vessels that pose a substantial hazard to navigation from navigable waterways or adjacent public property, or private property (with the landowner's consent) per Harbors and Navigation Code (HNC) Section 525.

The VTIP grant was created by the State in 2010 as a proactive solution to prevent abandoned vessels before they happen. By providing an easy and free alternative for boat owners to surrender an unwanted vessel to a participating agency in lieu of abandonment, it helps eliminate the expensive, difficult and time-consuming adjudication and removal process that abandoned vessels require.

In Fiscal Year (FY) 2014-2015, Harbor Resources applied for, and successfully obtained SAVE grants for both AWAF and VTIP funding totaling \$125,700.00. In Fiscal Year (FY) 2014-2015, Harbor Resources applied for, and successfully obtained SAVE grants for both AWAF and VTIP funding totaling \$125,700.00. In September 2016, an amendment was executed to extend the grant term to 10/1/2017.

In April 2017, Harbor Resources staff submitted a new application for the next available round of SAVE grant funding. On August 2017, the State provided notice of award for a grant amount of \$125,000.00.

This grant will supplement current Capital Improvement Program (CIP) funds for abandoned vessel abatement and will allow the City to expeditiously process and demolish vessels, and ultimately recoup the costs up to \$125,000.00. This grant reimburses the City for removing abandoned and surrendered vessels while the City provides a 10 percent contribution with in-kind services, staffing, and other impound and disposal fees.

As required for grant acceptance, an adopted resolution must be submitted to the Division accepting the grant and authorizing the execution of the grant agreement.

ENVIRONMENTAL REVIEW:

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

NOTICING:

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

ATTACHMENTS:

Attachment A – Resolution No. 2017-72
Attachment B – Budget Amendment

ATTACHMENT A

RESOLUTION NO. 2017-72

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ACCEPTING A GRANT FROM THE STATE OF CALIFORNIA DEPARTMENT OF PARKS AND RECREATION DIVISION OF BOATING AND WATERWAYS FOR THE SURRENDERED AND ABANDONED VESSEL EXCHANGE PROGRAM

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

WHEREAS, the City uses local, county, state and federal regulations to remove abandoned and surrendered vessels from City controlled areas of Newport Harbor;

WHEREAS, the State of California Department of Parks and Recreation Division of Boating and Waterways ("Division") is authorized to distribute grants, through the Surrendered and Abandoned Vessel Exchange ("SAVE") program, to local public agencies that have jurisdiction over navigable waterways in California for the removal of abandoned and surrendered vessels;

WHEREAS, the City submitted a grant application to the Division through the SAVE program seeking funds for the City's vessel removal program in Newport Harbor; and

WHEREAS, the Division reviewed and approved the City's grant application and authorized the award of One Hundred Twenty-Five Thousand Dollars and 00/100 (\$125,000.00) ("Grant Funds") to partially fund the City's removal of abandoned and surrendered vessels from Newport Harbor ("Grant"), subject to the terms and conditions of the Grant Agreement, a copy of which is attached hereto.

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

Section 1: The City Council hereby accepts the Grant, made available through the SAVE program and administered by the Division, subject to the terms and conditions of the Grant Agreement.

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

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

Section 4: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 5: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

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

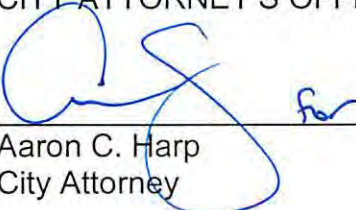
ADOPTED this 14th day of November, 2017.

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachment(s): Grant Agreement

GRANT AGREEMENT

State of California – Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION
DIVISION OF BOATING AND WATERWAYS
GRANT AGREEMENT - CERTIFICATE OF FUNDING

GRANTEE: City of Newport Beach
GRANT TITLE: SURRENDERED AND ABANDONED VESSEL EXCHANGE (SAVE)
GRANT AMOUNT: \$125,000.00
GRANT NUMBER: C17S0608
GRANT TERM: Effective: Date Fully Executed* through March 1, 2019
FULLY EXECUTED: To be advised

The Grantee agrees to the terms and conditions of this contract, hereinafter referred to as Agreement, and the State of California, acting through its Director of the Department of Parks and Recreation, and pursuant to the State of California agrees to fund the total State grant amount indicated below. The GRANTEE agrees to complete the SCOPE OF WORK as defined in the Agreement.

The General and Special Provisions attached are made a part of and incorporated into the Agreement.

Grantee: City of Newport Beach	Agency: Department of Parks and Recreation Division of Boating and Waterways
Address: 100 Civic Center Drive, Newport Beach, CA 92627	ATTN: Ron Kent Address: One Capitol Mall, Suite 500 Sacramento, CA 95814
Authorized Signature:	Authorized Signature:
Printed Name:	Printed Name: Ramona Fernandez
Title of Authorized Representative:	Title: Chief of Operations
Date:	Date:

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

Date: 11/2/17

By: 
Aaron C. Harp, City Attorney
Nov 11.2.17

**CERTIFICATE OF FUNDING
(FOR STATE USE ONLY)**

GRANTEE: City of Newport Beach

GRANT TITLE: FY 2017/18 Surrendered and Abandoned Vessel Exchange (SAVE)

GRANT AMOUNT: \$125,000.00

GRANT NUMBER: C17S0608

GRANT TERM: Effective: Date Fully Executed* through March 1, 2019

FULLY EXECUTED: To be advised

CONTRACT NO C17S0608	AMENDMENT NO	CALSTARS VENDOR NO 956000751		PROJECT NO
AMOUNT ENCUMBERED BY THIS DOCUMENT \$125,000.00	FUND TITLE Abandoned Watercraft Abatement Fund 0577		AGENCY BILLING CODE NO 053706	
PRIOR AMOUNT ENCUMBERED BY THIS DOCUMENT \$0	ITEM 3790-101-0577	CHAPTER 14	STATUTE 2017	FISCAL YEAR 2017/18
TOTAL AMOUNT ENCUMBERED TO DATE \$125,000.00	INDEX 1706	OBJECT CODE 702	PCA CODE 69008	PROJECT/WORK PHASE N/A
T.B.A. NO	I hereby certify upon my own personal knowledge that the budgeted funds are available for this encumbrance.			
B.R.NO 77-1	ACCOUNTING OFFICER'S SIGNATURE		DATE	

STATE OF CALIFORNIA

Department of Parks and Recreation, Division of Boating and Waterways
One Capitol Mall, Suite 500
Sacramento, CA 95814

EXHIBIT A
SURRENDERED AND ABANDONED VESSELS EXCHANGE (SAVE)

FISCAL YEAR 2017/18

SCOPE OF WORK

Grantee agrees to provide to the Division of Boating and Waterways (DBW) as described herein:

See Grant Application: Letter of Intent, Scope of Work and Work Plan of Exhibit G.

The services shall be performed in the jurisdiction of: City of Newport Beach

State Agency: Division of Boating and Waterways	Grantee (Agency Name): City of Newport Beach
Name: Ron Kent	Grantee Representative*: Shannon Levin
Title: Program Administrator	Title: Others
Address: One Capitol Mall, Suite 500 Sacramento, CA 95814	Address: 100 Civic Center Drive, Newport Beach, CA 92627
Phone: (916) 327-1825	Phone: (949) 644-3041
Fax:	Fax:
Email: ron.kent@parks.ca.gov	Email: silevin@newportbeachca.gov

* Grantee representative information may only be changed by giving 30 days written notice to DBW.

EXHIBIT B

Surrendered and Abandoned Vessels Exchange (SAVE) Grant Program

1. NEEDS AND OBJECTIVES OF DBW

- a. Pursuant to its authority under Harbors and Navigation Code section 525, the Division of Boating and Waterways (DBW) wishes to contract with Grantee for the removal and disposal of abandoned, wrecked or dismantled vessels, or parts thereof, or any other partially submerged objects (hereinafter "eligible water hazards") which pose a substantial hazard to navigation within Grantee's jurisdiction as listed on the Questionnaire, found in Exhibit A.
- b. Pursuant to its authority under Harbors and Navigation Code Section 525, the Division of Boating and Waterways (DBW) wishes to contract with Grantee for the removal and disposal of surrendered vessels, or parts thereof, which are in danger of being abandoned and has a likelihood of causing environmental degradation or becoming a hazard to navigation within Grantee's jurisdiction as specified according to the Grantee's Work Plan, found in Exhibit A.

2. WATER HAZARDS ELIGIBLE FOR REMOVAL AND DISPOSAL

The funds provided under this Agreement shall be used for the combined purposes of Surrendered and Abandoned Vessels Exchange (SAVE) as follows:

- a. **Abatement, removal, storage and/or disposal of eligible water hazards.** For purposes of this Agreement, "abandoned" is defined in Harbors and Navigation Code section 522(a):

"Any hulk, derelict, wreck, or parts of any ship, vessel, or other watercraft sunk, beached, or allowed to remain in an unseaworthy or dilapidated condition upon publicly owned submerged lands, salt marsh, or tidelands within the corporate limits of any municipal corporation or other public corporation or entity having jurisdiction or control over those lands, without its consent expressed by resolution of its legislative body, for a period longer than 30 days without a watchman or other person being maintained upon or near and in charge of the property, is abandoned property".

Harbors and Navigation Code, Section 525 (1)(A):

"...the Abandoned Watercraft Abatement Fund, which is hereby created as a special fund. Moneys in the fund shall be used exclusively, upon appropriation by the Legislature, for grants to be awarded by the department to local agencies for the abatement, removal, storage, and disposal as public nuisances of any abandoned property as described in Section 522 or for the disposal of surrendered vessels as defined in Section 526.1, wrecked or dismantled vessels, or parts thereof, or any other partially submerged objects that pose a substantial hazard to navigation, from navigable waterways or adjacent public property or private property with the landowner's consent.

- b. The funds provided under this Agreement shall not be utilized for abatement, removal, storage, or disposal of commercial vessels. Commercial vessels include those vessels for which the most recent registration or documentation was commercial, even though that registration or documentation may have lapsed.
- c. If Grantee is reimbursed for the costs related to the abatement, removal, storage, and/or disposal of an eligible water hazard by the registered or legal owner or other

person or entity known to have an interest in the water hazard, then the water hazard shall no longer be eligible for funding under this Agreement. Grantee shall notify DBW in writing of such reimbursement and shall return all funds disbursed by DBW to Grantee with respect to such water hazard immediately.

- d. **Abatement, removal, storage and disposal of eligible surrendered vessels.** For purposes of this Agreement, "surrendered" is defined in Harbors and Navigation Code section 526.1(a):
- e. **"surrendered vessel" means a recreational vessel that the verified titleholder has willingly surrendered to a willing agency under both of the following conditions:**
 - (1) The public agency has determined in its sole discretion that the vessel is in danger of being abandoned, and therefore has a likelihood of causing environmental degradation or becoming a hazard to navigation.
 - (2) The decision to accept a vessel is based solely on the potential of the vessel to likely be abandoned and cause environmental degradation or become a hazard to navigation."
- f. The funds provided under this Agreement shall not be utilized for surrender, abatement, removal, storage, or disposal of commercial vessels. Commercial vessels include those vessels for which the most recent registration or documentation was commercial, even though that registration or documentation may have lapsed.
- g. If Grantee is reimbursed for the costs related to the removal, storage, and/or disposal of a surrendered vessel by the registered or legal owner or other person or entity known to have an interest in the vessel, then the vessel shall no longer be eligible for funding under this Agreement. Grantee shall notify DBW in writing of such reimbursement and shall return all funds disbursed by DBW to Grantee with respect to such vessel immediately.

3. RIGHT OF INSPECTION

Grantee shall allow DBW and other state agency representatives, at any reasonable time, to inspect any site where Grantee or its subcontractors are performing work under this Agreement.

4. ANNUAL MEETING

Grantee's representative or alternate shall participate in an annual one-day video or phone conference conducted by DBW during the term of this agreement. Should the Grantee or representative be unable to attend the meeting and cannot provide a substitute from the agency, the Grantee must forward a letter to DBW stating the reason why they cannot attend. DBW must grant approval in writing in order for the Grantee not to be in breach of this Agreement for failure to attend.

5. ACTIVITY/NON ACTIVITY: REPORTING REQUIREMENTS

- a. Grantee shall provide quarterly reports to DBW describing the status of existing issues known, pending, or in progress.
- b. Lack of quarterly reporting and/or removal activity within any twelve month period during the term of this agreement is subject to possible revocation of grant.

6. **OVERLAPPING ANNUAL GRANT AWARDS**

A minimum of fifty percent (50%) of an existing SAVE grant must be utilized and reported for reimbursement to DBW by the new grant application deadline to qualify for a new fiscal year grant. Only one overlapping grant per fiscal year will be allowed.

7. **HAZARDOUS MATERIALS**

Grantee shall be responsible for securing any necessary or prudent studies, permits, or authorizations associated with treatment, removal, storage, or any other handling of hazardous substances including, but not limited to, toxic waste, petroleum waste, asbestos, and similar substances, prior to the removal of any vessel and water hazard pursuant to this Agreement.

Grantee shall be responsible for the proper and lawful handling, abatement, removal, storage, and/or disposal of any hazardous substances encountered in the execution of this Agreement.

8. **TITLES AND LIENS**

a. **Abandoned vessels:** Grantee shall comply with all relevant provisions of the Harbors and Navigation Code regarding notices, hearings and liens in the performance of this Agreement. Grantee (in conjunction with local law enforcement) shall conduct a title search for all vessels presumed to be abandoned, as provided by Harbors and Navigation Code section 526.

b. **Surrendered vessels:** Grantee shall comply with all relevant provisions of Harbors and Navigation Code section 526.1 in the performance of this Agreement, requiring that a surrendered vessel be that of the "verified titleholder."

9. **MEDIA**

Grantee agrees to acknowledge DBW's financial support whenever work funded by this Agreement is publicized in any news media, brochures, or other type of promotional material.

10. **MEDIA MATERIALS RELEASE**

Grantee agrees to irrevocably grant to California State Parks, Division of Boating and Waterways, its employees, officers, agents, and assigns (hereinafter referred to as "DBW"), the non-exclusive, royalty-free, perpetual and worldwide right and permission to use, reproduce, publish, copy, distribute, alter, license, adapt, and display the photographs, motion pictures, caption information, and/or written quotes (hereinafter referred to collectively as "Photographs"), that the Grantee has submitted to DBW for art, editorial, advertising, marketing, trade, broadcast, print, educational programs, or any other lawful purpose whatsoever, in any and all media. In connection with the foregoing license, the Grantee agrees not to use, reproduce, adapt, or display the Photographs, or allow others to do so, in a manner that tends to subject DBW or its AWAFF, VTIP and/or SAVE programs to ridicule, disparagement, mockery, satire, or that could tarnish the image of the DBW's AWAFF, VTIP, and/or SAVE programs. Grantee hereby releases and discharges DBW from any and all claims and demands arising out of or in connection with the use of the Photographs, including without limitations, any and all claims for libel, defamation, invasion of privacy, and/or publicity rights. DBW assumes no responsibility for lost or damaged Photographs or for the use of same. DBW may sell, assign, license, or transfer all rights granted to it hereunder.

Grantee also grants DBW and its licensees the unrestricted right to use and disclose its

name in connection with use of the Photographs. The Grantee understands that it will not be paid for any use or right granted herein.

The Grantee understands and agrees that the Photographs may be used in whole or in part, at any time. The license granted herein to DBW includes the right and permission to conduct or have conducted such alterations to the Photographs as DBW deems necessary. Grantee releases and discharges DBW and agrees to indemnify and hold DBW harmless from any liability by virtue of any blurring, distortion, alteration, optical illusion or use in composite form, loss or damage, whether intentional or otherwise, that may occur in the use of the Photographs. The Grantee waives any right to inspect or approve any finished product, advertising or other copy that may be used in connection therewith or the use to which it may be applied.

The Grantee declares and avows that the Photographs it is submitting to DBW are its own original work in all respects. The Grantee is the sole and exclusive owner of the Photographs; they are free, clear, and unencumbered. No part of them is taken from or based on any other work; no part infringes the copyright or any other right of any person; and the reproduction, publication, exhibition, or any other use by DBW of the Photographs in any form whatever will not in any way, directly or indirectly, infringe on the rights of any person. The Grantee agrees to indemnify and hold DBW harmless from and against any and all loss, damage, costs, charges, legal fees, recoveries, judgments, amounts paid in settlement, penalties, and expenses that may be obtained against, imposed on, or suffered by DBW by reason of (1) any violation or infringement of any proprietary right or copyright; or (2) any libelous or unlawful matter contained in the Photographs. Grantee also agrees to indemnify and hold DBW harmless for any such amounts arising from its breach of any covenant, representation, or warranty of this agreement.

11. PERMITS AND DOCUMENTATION

Prior to the removal of any abandoned vessel, eligible water hazard, or surrendered vessel, the Grantee shall obtain all necessary permits, authorizations, and documentation necessitated by any applicable provision of law.

12. SECURING OF BIDS

Grantee shall comply with any applicable laws and regulations governing the competitive bidding process when awarding subcontracts to marine salvage companies under this Agreement.

13. SUBCONTRACTORS

Grantee agrees that it shall guarantee and shall be responsible for ensuring that any and all of its contractors and subcontractors holds a valid business license and carries general commercial liability insurance coverage sufficient to fully insure against any and all risks of hazardous activities associated with the work to be performed under this Agreement; and Grantee agrees that if any of Grantee's contractors or subcontractors fail to fulfill any of these requirements, that Grantee itself carries general commercial liability insurance coverage sufficient to fully insure against any and all risks of hazardous activities associated with the work to be performed under this Agreement, whether performed by the Grantee, Grantee's contractor(s), or Grantee's subcontractor(s). Grantee shall provide DBW with a certificate of insurance from any contractor(s) and subcontractor(s) prior to the commencement of any work under this Agreement.

14. TRAFFIC CONTROL AND TRAFFIC SAFETY

The Grantee shall provide for adequate traffic control and safety measures at any site where Grantee and its subcontractors will perform any work under this Agreement.

15. AIR OR WATER POLLUTION VIOLATION

Grantee warrants that it is not (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to any cease and desist order not subject to review issued pursuant to Water Code section 13301 for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

16. ENTIRE AGREEMENT

This Agreement consists of the terms of this Agreement and all attachments, which are expressly incorporated herein. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required.

17. APPROVAL OF AGREEMENT AND AMENDMENTS

This Agreement and any variation thereto is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Commencement of performance prior to approval of this Agreement will be at the Grantee's own risk.

18. DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION REQUIREMENT

There are no Disabled Veteran Business Enterprise participation requirements with this agreement.

19. AUTHORITY TO CONTRACT

Grantee must provide DBW with evidence of its authority to enter into this Agreement. Grantee may provide a delegation of contracting authority from its local governing body that by law has authority to contract. Alternatively, Grantee shall provide DBW with a resolution, order, motion, or ordinance of its local governing body that by law has authority to contract, authorizing execution of this Agreement.

20. COMPLIANCE WITH LAW AND REGULATIONS

Grantee and its subcontractor(s) shall comply with all applicable laws and regulations of the State of California for all work to be performed under this Agreement. By signing this Agreement, Grantee certifies its compliance and the compliance of all subcontractors with: (a) applicable provisions of the California Environmental Quality Act; (b) Nondiscrimination Program requirements of Government Code section 12990 (a-f) and Title 2, California Code of Regulations, section 8103 (and section 8113 in contracts over \$5,000) along with section 7285 et. seq. of the Fair Employment and Housing Act; (c) Drug-Free Workplace requirement of Government Code section 8350 et seq.; (d) National Labor Relations Board Certification of Public Contract Code section 10296; (e) Workers' Compensation requirement of Labor Code section 3700; and (f) Americans with Disabilities Act regulations issued pursuant to 42 U.S.C. section 12101 et seq.

21. INDEPENDENT CONTRACTOR

Grantee and its employees are independent contractors and shall not be considered officers or employees of DBW or agents of the State of California.

22. INSURANCE REQUIREMENTS

The abatement, removal, storage, and /or disposal of vessels under this Agreement is a hazardous activity. Grantee therefore must maintain commercial general liability insurance in an amount and of a type acceptable to DBW and to the Department of General Services/ Office of Risk and Insurance Management (ORIM).

1. GENERAL PROVISIONS APPLYING TO ALL POLICIES

a. Coverage Term

Coverage needs to be in force for the complete term of the Agreement. If insurance expires during the term of the grant, a new certificate must be received by the Division at least ten (10) days prior to the expiration of this insurance. Any new insurance must still comply with the original terms of the grant.

b. Policy cancellation or termination & notice of non-renewal

Insurance policies shall contain a provision stating coverage will not be cancelled without 30 days prior written notice to the Division. In the event Grantee fails to keep in effect at all times the specified insurance coverage, the Division may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.

c. Deductible

Grantee is responsible for any deductible or self-insured retention contained within their insurance program.

d. Primary clause

Any required insurance contained in this Agreement shall be primary, and not excess or contributory, to any other insurance carried by the State.

e. Insurance carrier required rating

All insurance companies must carry a rating acceptable to ORIM. If the Grantee is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required by DBW or ORIM.

f. Endorsements

Any required endorsements requested by the Division must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

g. Inadequate Insurance

Inadequate or lack of insurance does not negate the Grantee's obligations under the Agreement.

h. Use of Subcontractors

In the case of Grantee's utilization of subcontractors to complete the contracted scope of work, Grantee shall include all subcontractors as insured's under Grantee's insurance or supply evidence of subcontractor's insurance to the State when requested equal to policies, coverages, and

limits required of Grantee.

2. INSURANCE REQUIREMENTS

a. Commercial General Liability

The Grantee shall maintain general liability on an occurrence form with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined with a \$2,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent subcontractors, products, completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Grantee's limit of liability. The policy must include:

"The State of California, its officers, agents, employees and servants as additional insureds, but only with respect to work performed under the contract."

This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.

In the case of Grantee's utilization of subcontractors to complete the contracted scope of work, Grantee shall include all subcontractors as insured's under Grantee's insurance or supply evidence of insurance to the State equal to policies, coverages and limits required of Grantee.

b. Automobile Liability

The Grantee shall maintain motor vehicle liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles.

c. Watercraft Liability

The Grantee shall maintain watercraft liability insurance with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of the maintenance and use of any watercraft (owned, hired or non-owned). The policy must include:

"The State of California, its officers, agents, employees and servants as additional insureds, but only with respect to work performed that is connected with or related to the activities contemplated in this Agreement."

This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.

d. Workers Compensation and Employers Liability

The Grantee shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement. Employer's liability limits of \$1,000,000 are required. The insurer waives any right of recovery the insurer may have against the State because of payments the insurer makes for injury or damage arising out of the work done under contract with the State. A Waiver of Subrogation or Right to Recover endorsement in favor of the

State must be attached to certificate.

If applicable, Grantee shall provide coverage for all its employees for any injuries or claims under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations, or statutes applicable to maritime employees. By signing this contract, Grantee acknowledges compliance with these regulations.

e. Environmental/Pollution Liability

Grantee shall maintain Pollution Liability for limits not less than \$1,000,000 occurrence covering the Grantee's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred arising out of the work or services to be performed under this contract. The policy must include:

"The State of California, its officers, agents, employees and servants as additional insureds, but only with respect to work performed under the contract."

This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.

Coverage shall be provided for both work performed on site and during transportation as well as proper disposal of hazardous materials.

3. **Self-Insurance**

If the Grantee is self-insured for a portion or all of its insurance, the Grantee shall provide evidence of self-insurance when requested by DBW. Review of financial information including a letter of credit may be required. The Division reserves the right to request financial information.

4. **Statement of Insurance Coverage:**

Grantee certifies and agrees that they have all required insurance coverages as stated in the grant agreement, which will be in effect for the entire term of the agreement.

Approver initials :

Date:

Name:

Title:

23. **TERMINATION**

- a. DBW may terminate this Agreement for any reason upon thirty (30) days written notice to Grantee.
- b. If the Grantee fails to keep the required insurance in effect at all times during the term of this agreement, DBW may, in addition to other remedies it may have, terminate this agreement upon two days written notice.
- c. DBW may, by two-day written notice to Grantee and without any prejudice to its other remedies, terminate this agreement because of failure of Grantee to fulfill any of the requirements of this agreement.
- d. Upon receipt of any notice terminating this Agreement, Grantee shall immediately

discontinue all removal and disposal activities affected, unless the notice directs otherwise. In such event, DBW shall pay Grantee only for removal and disposal activities completed prior to the termination date.

- e. Upon termination of this agreement, Grantee shall promptly return all advanced funds. At DBW's sole discretion, DBW may offer an opportunity to cure any breach prior to terminating for default.

24. ASSIGNMENT

This Agreement is not assignable by the Grantee, either in whole or in part, without the consent of the State in the form of a formal written amendment.

25. MATCHING 10% REQUIREMENT

- a. Section 525(C) of the Harbors and Navigation Code states, "A grant awarded by the department pursuant to subparagraph (A) shall be matched by a 10-percent contribution from the local agency receiving the grant."
- b. The 10-percent contribution is in addition to funds awarded in the grant and may be made by cash and/or in-kind contributions which may include personnel hours (net hourly rate only with no benefits included) excessive removal and/or storage fees, and other expenses with advance DBW approval.
- c. If using personnel hours for in-kind match, only net, raw hours will be accepted and verification of in-kind contribution is required with reimbursement request(s). The statement of in-kind hours must include:
 - a. Activity date
 - b. Vessel/issue name or description
 - c. Personnel name
 - d. Description of service provided
 - e. Number of hours provided by each person
 - f. Hourly rate and total value

Use the form provided on DBW's website at www.dbw.ca.gov under Grants & Loans, or the online grant system, OLGA, available on DBW's website.

- e. The burden of proof in complying with the 10-percent contribution requirement is the responsibility of the grantee. Grant funds will not be disbursed until the grantee has provided DBW with acceptable documentation that it complied with the 10-percent contribution requirement for each disbursement.

26. BUDGET DETAIL AND PAYMENT PROVISIONS

Covered Expenses and Reimbursement Claims Processes

- a. DBW will reimburse the following expenditures provided by Grantee's service providers, contractors and/or subcontractors, within the scope of the SAVE program for AWAFF and/or VTIP issues:
 - 1. Raising of submerged vessels and/or hazardous marine debris
 - 2. Vessel and/or hazardous marine debris removal from accessible locations
 - 3. Hazardous materials (hazmat) removal and disposal
 - 4. Towing
 - 5. Storage:

- i. Without lien sale: 60 days maximum
 - ii. With lien sale: 90 days maximum with justification
 - iii. If stored onsite at Grantee's facility, 50% of the normal rate of charge to the public will be reimbursed, and fee schedule is required for verification.
 - 6. Lien sale expenses: fees charged by lien sale service companies, postage, DMV fees, and advertising costs
 - 7. Public notice advertising
 - 8. Vessel appraisal
 - 9. Salvage and demolition
- Other expenses may be considered with advance approval from DBW. Please inquire in advance of completing work.
- b. **Reimbursement claim forms:**

Forms are available on DBW's website under the Grants & Loans tab under the appropriate link for SAVE. One (1) hard copy and one (1) electronic (PDF, CD or DVD) copy of all documents are required. Grantee must sign and date each reimbursement claim form in blue ink and submit with the following documents to DBW:
 - c. **Invoices from service providers, contractors and/or subcontractors to Grantee:**

Invoices must contain the following:

 - 1. Name and address of Grantee
 - 2. Contract or invoice number
 - 3. Description of service performed
 - 4. Date the service was performed
 - 5. Location of each service
 - 6. Vessel name, CF# or HIN# if available; otherwise, description of vessel
 - d. **Proof of payment for all invoices.**

The following acceptable forms of proof are:

 - 1. Cancelled check (with bank's cancelled stamp on back of check copy)
 - 2. Credit card statement with charge and payment posted, along with copy of charge slip
 - 3. Receipt from service provider showing payment received
 - 4. Receipt from service provider posted as "Paid" with authorized signature or indicating a zero balance.
 - e. **10% In-kind match contribution statement:**
 - 1. If Grantee is matching the 10% requirement with in-kind services, complete the following form located on DBW's website and submit with each claim: <http://www.dbw.ca.gov/PDF/Funding/DPR265.pdf>
 - 2. Net, hourly rates only will be accepted. Grantee must include verification of net rates with first claim and each time rates are changed.
 - f. **Photos of vessels (with CF numbers visible if available).**
 - g. **(VTIP ONLY) Statement of Vessel Release of Interest and Ownership:**

To be completed and signed by owner(s). Grantee may provide their own release form to vessel owners for completion. A sample of this release form is located on our website:

http://www.dbw.ca.gov/PDF/Funding/SAMPLE_Release_of_Interest_and_Liability_Form.pdf

NOTE: (VTIP ONLY) Vessel ownership verification is required; however, it is not required that boat owners bring their registration up to date in order to surrender their vessel through the VTIP.

- h. Reimbursement claims and support documents (as indicated above) are to be submitted to DBW at:

Division of Boating and Waterways

One Capitol Mall, Suite 500

Sacramento, CA 95814

Attention: SAVE Unit

- i. Submission of fraudulent invoices or other claim documentation is a breach of this Agreement, which shall result in forfeiture of all funds advanced and provided under this Agreement.
- j. All requests for payment must be submitted to DBW no later than 30 days after the expiration date of the agreement. DBW is not obligated to make payment on any reimbursement request(s) received or for any services completed after this date.

27. BUDGET CONTINGENCY CLAUSE

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program; this Agreement shall be of no further force and effect. In this event, DBW shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Agreement and Grantee shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, DBW shall have the option to either cancel this Agreement with no liability occurring to DBW, or offer an agreement amendment to Grantee to reflect the reduced amount.

28. INDEMNIFICATION

Grantee shall be responsible for, and DPR shall not be answerable or accountable in any manner for, any loss or expense by reason of any damage or injury to person or property, or both, arising out of or related in any way to activities carried out by Grantee, its agents, officers, contractors, subcontractors and/or employees, under this Agreement Grantee shall protect, hold harmless, indemnify and defend DPR, its agents, officers, and/or employees against any and all actions, claims, and damages to persons or property, penalties, obligations and liabilities that may be asserted or claimed by any person, firm, association, entity, corporation, political subdivision, or other organization or person arising out of or in connection with Grantee or Grantee's contractor's or subcontractor's activities hereunder, whether or not there is concurrent passive negligence on the part of DPR, its agents, officers, and/or employees.

29. FUNDS ASSIST

The Funds Assist process has been developed by DBW as a method for grantees with excessive, unused funds to assist other participating SAVE agencies in need. Funds Assist is a voluntary action (by both agencies) until within three (3) months of the expiration date of the grant at which time it will become a required action of those agencies with remaining grant balances, at DBW's discretion.

The Funds Assist process works as follows:

- 1) An introduction is made by DBW between the agency with excessive funds (Agency A) and the agency in need (Agency B).
- 2) A deadline shall be imposed by DBW for the work to be completed by Agency B.
- 3) Agency B pays for all contractor invoices, as is required with the SAVE grant.
- 4) The 10% required match is the obligation of Agency B and may be met with cash, in-kind services, or a combination of both.
- 5) To obtain reimbursement, Agency B will be required to supply the following to Agency A:
 - a. A Tax Identification Form (W-9)
 - b. All requirements/documents apply as outlined in this agreement under #26
 - c. A statement on Agency B's letterhead invoicing Agency A for the total reimbursement request.
 - d. Copies of completed forms and support documents to DBW for pre-approval.
- 6) Agency A completes the following actions:
 - a. Upon approval by DBW, pay Agency B the invoiced amount within 30 days and record as a pass-through grant (or use your accounting method preference).
 - b. Complete DBW's AWAFF and/or VTIP Reimbursement Claim Form and attach all supporting documents as listed in item b, c & d above, including the verification of payment to Agency B i.e., cancelled check or statement from Agency B of payment received.
 - c. Email the documents to the DBW program administrator for review. Once reviewed and approved, send finalized claim forms to DBW for payment processing.

DBW will act as a courtesy liaison between the agencies to ensure (as much as possible) that documents are correctly processed.

INDEMNIFICATION

Grantee and sub grantee (hereafter known as Agency A and Agency B) shall be responsible for, and DPR shall not be answerable or accountable in any manner for, any loss or expense by reason of any damage or injury to person or property, or both, arising out of or related in any way to activities carried out by Agency A and B, its agents, officers, contractors, subcontractors and/or employees, under this Agreement Agency A and B shall protect, hold harmless, indemnify and defend DPR, its agents, officers, and/or employees against any and all actions, claims, and damages to persons or property, penalties, obligations and liabilities that may be asserted or claimed by any person, firm, association, entity, corporation, political subdivision, or other organization or person arising out of or in connection with Agency A and B's contractor's or subcontractor's activities hereunder, whether or not there is concurrent

passive negligence on the part of DPR, its agents, officers, and/or employees.

If Agency B is a recipient of a current Save grant, as depleted or with insufficient funds for removal project, and receives assistance through the Funds Assist process, all provisions of the SAVE grant applies.

Approver initials: _____ Date: _____

Name: _____

Title: _____

30. 90-DAY RETURN OF GRANT DOCUMENTS TO DBW

Grant agreements issued to the awarded agency must be completed and returned within 90 days of the date of issuance according to the instructions issued by DBW with the grant agreement. If extenuating circumstances prevent the ability of the agency to meet this deadline, approval from DBW must be obtained in writing. DBW retains the right to determine approval or denial of extensions.

31. ANTI-CORRUPTION

SAVE grantees are required to report to DBW any written, suggested, or verbally implied cases whereby a contractor, subcontractor or other service provider increases their fee(s) due to the existence of a Grantee's SAVE grant, or inquires about the amount/balance of a SAVE grant in order to increase their fee(s), for possible investigation of price gouging. A two year history of charges applied to work of all known SAVE grant work by that contractor will be required by DBW for review.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. **APPROVAL:**

This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Grantee may not commence performance until such approval has been obtained.

2. **EFFECTIVE DATE:**

Effective date means either the start date or the approval date by the Department of General Services (DGS), whichever is later. In cases where DGS approval is not required, this Agreement is of no force or effect until the date of the last DBW signature. No work shall commence until the effective date.

3. **AMENDMENT:**

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

4. **ASSIGNMENT:**

This Agreement is not assignable by the Grantee, either in whole or in part, without the consent of the State in the form of a formal written amendment.

5. **AUDIT:**

Grantee agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Grantee agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Grantee agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

6. **INDEMNIFICATION:**

Grantee agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the subcontractor or Grantee in the performance of this Agreement.

7. **DISPUTES:**

Grantee shall continue with the responsibilities under this Agreement during any dispute.

8. **TERMINATION FOR CAUSE:**

The State may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner

herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Grantee under this Agreement and the balance, if any, shall be paid to the Grantee upon demand.

9. **RECYCLING CERTIFICATION:**

The Grantee shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. **NON-DISCRIMINATION CLAUSE:**

During the performance of this Agreement, Grantee and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Grantee and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission Implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Grantee and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. **CERTIFICATION CLAUSES:**

The GRANTEE CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. **TIMELINESS:**

Time is of the essence in this Agreement.

13. **COMPENSATION:**

The consideration to be paid Grantee, as provided herein, shall be in compensation for all of Grantee's expenses incurred in the performance hereof, as outlined in Exhibit B, Item #1.

14. **GOVERNING LAW:**

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

15. **ANTITRUST CLAIMS:**

The Grantee by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Grantee shall comply with the requirements of the Government Codes Sections set out below.

- a. The Government Code Chapter on Antitrust claims contains the following definitions:
 - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT:

For any Agreement in excess of \$100,000, the Grantee acknowledges in accordance with Public Contract Code 7110, that:

- a. The Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The Grantee, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees

to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION:

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS:

If this Agreement includes services in excess of \$200,000, the Grantee shall give priority consideration in filling vacancies in positions funded by the agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a. If for this Agreement Grantee made a commitment to achieve small business participation, then Grantee must within 60 days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b. If for this Agreement Grantee made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Grantee must within 60 days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) certify in a report to the awarding department: (1) the total amount the prime Grantee received under the Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement; (3) the amount each DVBE received from the prime Grantee; (4) that all payments under the Agreement have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this agreement involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

EXHIBIT D

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Grantee to the clause(s) listed below. This certification is made under the laws of the State of California.

Grantee Agency Name (Printed)	Federal ID Number
City of Newport Beach	95-6000751
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	Executed in the County of
	Orange

GRANTEE CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE:**

Grantee has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. **DRUG-FREE WORKPLACE REQUIREMENTS:**

Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Grantee may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Grantee has made false certification, or violated the certification by failing to

carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

Grantee certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Grantee within the immediately preceding two-year period because of Grantee's failure to comply with an order of a Federal court, which orders Grantee to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:

Grantee hereby certifies that Grantee will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Grantee agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the agreement equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its agreement with the State.

Failure to make a good faith effort may be cause for non-renewal of a state agreement for legal services, and may be taken into account when determining the award of future contracts/agreements with the State for legal services.

5. EXPATRIATE CORPORATIONS:

Grantee hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

- a. All Grantees contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Grantee further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b. The Grantee agrees to cooperate fully in providing reasonable access to the Grantee's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the Grantee's compliance with the requirements under paragraph (a).

7. **DOMESTIC PARTNERS:**

For contracts over \$100,000 executed or amended after January 1, 2007, the Grantee certifies that Grantee is in compliance with Public Contract Code section 10295.3.

EXHIBIT E

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST:

Grantee needs to be aware of the following provisions regarding current or former state employees. If Grantee has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC 10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Grantee violates any provisions of above paragraphs, such action by Grantee shall render this Agreement void. (PCC 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION:

Grantee needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Grantee affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT:

Grantee assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. **GRANTEE NAME CHANGE:**

An amendment is required to change the Grantee's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment. Any changes of the Grantee's representative shall be notified to DBW within 30 days written notice on Grantee's letterhead.

5. **CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:**

- a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the Grantee is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
- b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate Grantee performing within the state not be subject to the franchise tax.
- c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. **RESOLUTION:**

A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. **AIR OR WATER POLLUTION VIOLATION:**

Under the State laws, the Grantee shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. **PAYEE DATA RECORD FORM STD. 204:**

This form must be completed by all Grantees that are not another state agency or other governmental entity.

EXHIBIT F

Bid/Proposal Attachment regarding the Darfur Contracting Act of 2008

Effective January 1, 2009, all Invitations for Bids (IFB) or Requests for Proposals (RFP) for goods or services must address the requirements of the Darfur Contracting Act of 2008 (Act). (Public Contract Code sections 10475, et seq.; Stats. 2008, Ch. 272). The Act was passed by the California Legislature and signed into law by the Governor to preclude State agencies generally from contracting with "scrutinized" companies that do business in the African nation of Sudan (of which the Darfur region is a part), for the reasons described in Public Contract Code section 10475.

A scrutinized company is a company doing business in Sudan as defined in Public Contract Code section 10476. Scrutinized companies are ineligible to, and cannot, bid on or submit a proposal for a contract with a State agency for goods or services. (Public Contract Code section 10477(a)).

Therefore, Public Contract Code section 10478 (a) requires a company that currently has (or within the previous three years has had) business activities or other operations outside of the United States to certify that it is not a "scrutinized" company when it submits a bid or proposal to a State agency. (See # 1 on the sample Attachment).

A scrutinized company may still, however, submit a bid or proposal for a contract with a State agency for goods or services if the company first obtains permission from the Department of General Services (DGS) according to the criteria set forth in Public Contract Code section 10477(b). (See # 2 on the sample Attachment).

The following sample Attachment may be included in an IFB or RFP to satisfy the Act's certification requirements of bidders and proposers.

EXHIBIT F – DARFUR CONTRACTING ACT

Pursuant to Public Contract Code section 10478, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must certify that it is not a "scrutinized" company as defined in Public Contract Code section 10476.

Therefore, to be eligible to submit a bid or proposal, please complete only one of the following three paragraphs (via initials for Paragraph # 1 or Paragraph # 2, or via initials and certification for Paragraph # 3):

1. _____ We do not currently have, or we have not had within the previous three years, business activities or other operations outside of the United States.

OR

2. _____ We are a scrutinized company as defined in Public Contract Code section 10476, but we have received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b). A copy of the written permission from DGS is included with our bid or proposal.

OR

3. _____ We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we certify below that we are not a scrutinized company as defined in Public Contract Code section 10476.

CERTIFICATION For # 3.

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder to the clause listed above in # 3. This certification is made under the laws of the State of California.

Grantee Agency Name (Printed)		Federal ID Number
City of Newport Beach		95-6000751
By (Authorized Signature)		
Printed Name and Title of Person Signing		
.		
Date Executed	Executed in the County of	
	Orange	

YOUR BID OR PROPOSAL WILL BE DISQUALIFIED UNLESS YOUR BID OR PROPOSAL INCLUDES THIS FORM WITH EITHER PARAGRAPH #1 OR #2 INITIALED OR PARAGRAPH #3 INITIALED AND CERTIFIED

General**1. Applicant Information**

- a. Applicant Name City of Newport Beach
- b. Organizational Unit
- c. Address 100 Civic Center Drive
- d. Address 2 Public Works Department
- e. City Newport Beach State CA Zip 92627
- f. Federal ID Number 95-6000751 Reference No.
- g. Agency Type
- ☒ City ☐ County
- ☐ Federally Recognized Native American Tribe ☐ District

2. Project Information

- a. Project Name Surrendered and Abandoned Vessel Exchange (SAVE) Fiscal Year 2017/2018
- b. Is implementing agency same as Applicant ☒ Yes ☐ No
- c. Implementing Agency Name
- d. Project Start Date Oct-01-2017 End Date Mar-01-2019
- e. Amount of Funds Requested \$125,000.00 Project Cost \$137,500.00

3. Contacts

a. Project Administrator

Name	Shannon Levin				
Title	Others				
Mailing Address	100 Civic Center Drive				
City	Newport Beach	State	CA	Zip	92660
Telephone	(949) 644-3041			Fax	
E-mail Address	slevin@newportbeachca.gov				

b. Authorized Representative

Name	Chris Miller				
Title					
Mailing Address	100 Civic Center Drive				
City	Newport Beach	State	CA	Zip	92660
Telephone	(949) 644-3043 - 1			Fax	
E-mail Address	cmiller@newportbeachca.gov				

1. Agency Type and Area of Responsibility (AOR)

Newport Harbor is one the largest, small-craft, recreational harbors on the California Coast. Home to about 9,000 vessels, Newport Harbor is a welcome port to many boaters as they cruise the Pacific or stay within their home waters. The City encourages public access to the water and makes slips and moorings available to rent for visitors and locals alike. The City operates five public pumoputs, two marinas, and eleven public docks with two more slated for construction in 2017. With the accessibility to these public, recreational amenities comes abandonment, illegal berthing, and derelict vessels. The City works with owners to have seaworthy and operable vessels. However, legal action is sometimes required to hand impounds, liens, junking, and demolition of vessels.

The City has assisted boaters in Newport Harbor, nearby harbors, and those on trailers stored in inland areas.

2. Statement of Need

The City has demonstrated both the need to remediate problem vessels through VTIP and AWAFF and the ability to assist boaters with VTIP. The City was the recipient of the AWAFF grant and has exhausted nearly all funds (later SAVE). With the help of the SAVE Grant the City was able to remove and demolish more than 30 vessels and work on at least 15 more for compliance. Interested parties continue to inquire as to how the City and grant funding can be used to assist them.

The City of Newport Beach and the Orange County Sheriff's Department Marine Operations Bureau (Harbor Patrol) work together to address the abandoned watercraft in Newport Harbor. Duties to mitigate vessels include:

- Relocation of problem vessels;
- Pumping out vessels that have taken on water;
- processing DMV paperwork for liens, junking, etc.; and
- coordination with local marine contractors and shipyards to relocate vessels for haul-out and demolition.

1. California State Senate Districts

Select one or more of the California State Senate Districts where the proposed project activities will occur. Copy and Paste the URL (http://www.legislature.ca.gov/legislators_and_districts/districts/districts.html) in your browser to determine the State Senate district(s).

<input type="checkbox"/> State Senate 01	<input type="checkbox"/> State Senate 02	<input type="checkbox"/> State Senate 03	<input type="checkbox"/> State Senate 04	<input type="checkbox"/> State Senate 05
<input type="checkbox"/> State Senate 06	<input type="checkbox"/> State Senate 07	<input type="checkbox"/> State Senate 08	<input type="checkbox"/> State Senate 09	<input type="checkbox"/> State Senate 10
<input type="checkbox"/> State Senate 11	<input type="checkbox"/> State Senate 12	<input type="checkbox"/> State Senate 13	<input type="checkbox"/> State Senate 14	<input type="checkbox"/> State Senate 15
<input type="checkbox"/> State Senate 16	<input type="checkbox"/> State Senate 17	<input type="checkbox"/> State Senate 18	<input type="checkbox"/> State Senate 19	<input type="checkbox"/> State Senate 20
<input type="checkbox"/> State Senate 21	<input type="checkbox"/> State Senate 22	<input type="checkbox"/> State Senate 23	<input type="checkbox"/> State Senate 24	<input type="checkbox"/> State Senate 25
<input type="checkbox"/> State Senate 26	<input type="checkbox"/> State Senate 27	<input type="checkbox"/> State Senate 28	<input type="checkbox"/> State Senate 29	<input type="checkbox"/> State Senate 30
<input type="checkbox"/> State Senate 31	<input type="checkbox"/> State Senate 32	<input type="checkbox"/> State Senate 33	<input type="checkbox"/> State Senate 34	<input type="checkbox"/> State Senate 35
<input type="checkbox"/> State Senate 36	<input checked="" type="checkbox"/> State Senate 37	<input type="checkbox"/> State Senate 38	<input type="checkbox"/> State Senate 39	<input type="checkbox"/> State Senate 40

2. California State Assembly Districts

Select one or more of the California State Assembly Districts where the proposed project activities will occur. Copy and Paste the URL (http://www.legislature.ca.gov/legislators_and_districts/districts/districts.html) in your browser to determine the State Assembly district(s).

<input type="checkbox"/> State Assembly 01	<input type="checkbox"/> State Assembly 02	<input type="checkbox"/> State Assembly 03	<input type="checkbox"/> State Assembly 04	<input type="checkbox"/> State Assembly 05
<input type="checkbox"/> State Assembly 06	<input type="checkbox"/> State Assembly 07	<input type="checkbox"/> State Assembly 08	<input type="checkbox"/> State Assembly 09	<input type="checkbox"/> State Assembly 10
<input type="checkbox"/> State Assembly 11	<input type="checkbox"/> State Assembly 12	<input type="checkbox"/> State Assembly 13	<input type="checkbox"/> State Assembly 14	<input type="checkbox"/> State Assembly 15
<input type="checkbox"/> State Assembly 16	<input type="checkbox"/> State Assembly 17	<input type="checkbox"/> State Assembly 18	<input type="checkbox"/> State Assembly 19	<input type="checkbox"/> State Assembly 20
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<input type="checkbox"/> State Assembly 41	<input type="checkbox"/> State Assembly 42	<input type="checkbox"/> State Assembly 43	<input type="checkbox"/> State Assembly 44	<input type="checkbox"/> State Assembly 45
<input type="checkbox"/> State Assembly 46	<input type="checkbox"/> State Assembly 47	<input type="checkbox"/> State Assembly 48	<input type="checkbox"/> State Assembly 49	<input type="checkbox"/> State Assembly 50
<input type="checkbox"/> State Assembly 51	<input type="checkbox"/> State Assembly 52	<input type="checkbox"/> State Assembly 53	<input type="checkbox"/> State Assembly 54	<input type="checkbox"/> State Assembly 55
<input type="checkbox"/> State Assembly 56	<input type="checkbox"/> State Assembly 57	<input type="checkbox"/> State Assembly 58	<input type="checkbox"/> State Assembly 59	<input type="checkbox"/> State Assembly 60
<input type="checkbox"/> State Assembly 61	<input type="checkbox"/> State Assembly 62	<input type="checkbox"/> State Assembly 63	<input type="checkbox"/> State Assembly 64	<input type="checkbox"/> State Assembly 65
<input type="checkbox"/> State Assembly 66	<input type="checkbox"/> State Assembly 67	<input type="checkbox"/> State Assembly 68	<input type="checkbox"/> State Assembly 69	<input type="checkbox"/> State Assembly 70
<input type="checkbox"/> State Assembly 71	<input type="checkbox"/> State Assembly 72	<input type="checkbox"/> State Assembly 73	<input checked="" type="checkbox"/> State Assembly 74	<input type="checkbox"/> State Assembly 75
<input type="checkbox"/> State Assembly 76	<input type="checkbox"/> State Assembly 77	<input type="checkbox"/> State Assembly 78	<input type="checkbox"/> State Assembly 79	<input type="checkbox"/> State Assembly 80

3. California Congressional Districts

Select one or more of the California Congressional Districts where the proposed project activities will occur. Copy and Paste the URL (<https://www.govtrack.us/congress/members/CA>) in your browser to determine the Congressional district(s).

EXHIBIT G - Grant Application: Letter of Intent, Scope of Work and Work Plan

- | | | | |
|--|--|--|---|
| <input type="checkbox"/> Congressional District 1 | <input type="checkbox"/> Congressional District 2 | <input type="checkbox"/> Congressional District 3 | <input type="checkbox"/> Congressional District 4 |
| <input type="checkbox"/> Congressional District 5 | <input type="checkbox"/> Congressional District 6 | <input type="checkbox"/> Congressional District 7 | <input type="checkbox"/> Congressional District 8 |
| <input type="checkbox"/> Congressional District 9 | <input type="checkbox"/> Congressional District 10 | <input type="checkbox"/> Congressional District 11 | <input type="checkbox"/> Congressional District 12 |
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| <input type="checkbox"/> Congressional District 53 | | | |

4. County

Select one or more of the California Counties where the proposed project activities will occur.

- | | | | | | |
|---------------------------------------|--|--------------------------------------|--|-------------------------------------|--|
| <input type="checkbox"/> Alameda | <input type="checkbox"/> Alpine | <input type="checkbox"/> Amador | <input type="checkbox"/> Butte | <input type="checkbox"/> Calaveras | <input type="checkbox"/> Colusa |
| <input type="checkbox"/> Contra Costa | <input type="checkbox"/> Del Norte | <input type="checkbox"/> El Dorado | <input type="checkbox"/> Fresno | <input type="checkbox"/> Glenn | <input type="checkbox"/> Humboldt |
| <input type="checkbox"/> Imperial | <input type="checkbox"/> Inyo | <input type="checkbox"/> Kern | <input type="checkbox"/> Kings | <input type="checkbox"/> Lake | <input type="checkbox"/> Lassen |
| <input type="checkbox"/> Los Angeles | <input type="checkbox"/> Madera | <input type="checkbox"/> Marin | <input type="checkbox"/> Mariposa | <input type="checkbox"/> Mendocino | <input type="checkbox"/> Merced |
| <input type="checkbox"/> Modoc | <input type="checkbox"/> Mono | <input type="checkbox"/> Monterey | <input type="checkbox"/> Napa | <input type="checkbox"/> Nevada | <input checked="" type="checkbox"/> Orange |
| <input type="checkbox"/> Placer | <input type="checkbox"/> Plumas | <input type="checkbox"/> Riverside | <input type="checkbox"/> Sacramento | <input type="checkbox"/> San Benito | <input type="checkbox"/> San Bernardino |
| <input type="checkbox"/> San Diego | <input type="checkbox"/> San Francisco | <input type="checkbox"/> San Joaquin | <input type="checkbox"/> San Luis Obispo | <input type="checkbox"/> San Mateo | <input type="checkbox"/> Santa Barbara |
| <input type="checkbox"/> Santa Clara | <input type="checkbox"/> Santa Cruz | <input type="checkbox"/> Shasta | <input type="checkbox"/> Sierra | <input type="checkbox"/> Siskiyou | <input type="checkbox"/> Solano |
| <input type="checkbox"/> Sonoma | <input type="checkbox"/> Stanislaus | <input type="checkbox"/> Sutter | <input type="checkbox"/> Tehama | <input type="checkbox"/> Trinity | <input type="checkbox"/> Tulare |
| <input type="checkbox"/> Tuolumne | <input type="checkbox"/> Ventura | <input type="checkbox"/> Yolo | <input type="checkbox"/> Yuba | | |

1. Legal authority to remove abandoned vessels

The City of Newport Beach is the lead agency in Newport Harbor, according to State of California Tidelands Grant Section 1 of Chapter 74 of the Statutes of 1978, and partners with the Orange County Sheriff's Department to enforce boating safety. The Orange County Sheriff's Department Harbor Patrol has jurisdiction in Newport Harbor according to Harbors and Navigation Code 510.

2. Agency Experience

Newport Harbor is the largest small craft recreational harbor on the west coast. Transient boaters and local boaters have access to the harbor. Many boaters are no longer financially able to maintain their boats and they become derelict or abandoned. Transient boaters frequently abandon vessels in Newport Harbor with the idea that the local agencies will remediate the blight.

The County of Orange previously received AWAFF funding in the amount of \$35,000 and the City of Newport Beach relieved funding for VTIP and AWAFF in the amount of \$125,000. The agencies worked cooperatively to abate vessels from coastal waterways and receive turn-ins from the local inland areas.

City of Newport Beach staff has extensive experience working with boaters as they request assistance turning in vessels. Due to the cost of hauling out and maintenance some boaters resort to abandoning their vessels. In those cases the City of Newport Beach takes action to relocate, investigate the case, and ultimately demolish the vessels.

The current SAVE agreement between the City and State is nearly exhausted. There are approximately ten impounded and abandoned boats that the City will demolish pending a new grant agreement. Additionally, there are numerous parties who have expressed interest in taking advantage of the VTIP program should the City receive additional funding.

3. Adjudication Process

The City of Newport Beach and the Orange County Sheriff's Department Harbor Patrol work together to identify problem vessels and make contact with the vessel owners. Staff will determine whether the vessel can be brought into compliance and vessel owners are encouraged to work on their vessels. Other vessels that are inoperable and not seaworthy are solicited for the VTIP program.

Large vessels that are abandoned or impounded are secured and locked to an offshore mooring, and small craft such as is hauled out into dry storage. Staff attempts notification to the last registered owner. Upon determination that there are no interested parties staff will solicit bids for demolition and follow through with the removal of those vessels. However, small craft such as dinghies, row boats, kayaks and other non-registered craft are auctioned to the public. The City's grant funding is used specifically for larger vessels that are costly and have DMV or USCG Documentation records.

4. Agency prevention efforts of abandoned vessels

The City of Newport Beach Harbor Resources staff works with the boating community to keep vessels seaworthy and operable. Harbor Patrol conducts weekly inspections of the offshore mooring fields, anchorage, public piers and marinas for vessel condition. Staff investigates reports of vessels and makes contact with owner on record.

All mooring permittees are required to submit proof of vessel insurance. All mooring renters and marina slip tenants are required to demonstrate proof of insurance. Mooring live-aboards are required to demonstrate vessel operability, seaworthiness, and holding tank in good working order and free of leaks. The Newport Beach Harbor Commission supports staff to identify and remediate problem vessels.

5. Application Questionnaire

1. Does your agency have an active local enforcement program tasked with addressing abandoned vessels in your jurisdiction? ☒ Yes ☐ No

If yes, explain in detail. If no, elaborate on your agency's efforts to create a program or if you utilize enforcement services from another City staff works with the Sheriff's Harbor Patrol to identify vessels that may be a potential problem and existing problem. Owners are notified to bring vessels into compliance or utilize

EXHIBIT G - Grant Application: Letter of Intent, Scope of Work and Work Plan

agency and how.

the VTIP. Owners may be issued a Notice of Violation if they fail to bring vessels into compliance. Other vessels that are abandoned or have no identifiable owner are put in line for AWAF. Vessel condition is taken into consideration when prioritizing enforcement and use of SAVE funds for demolition. Sinking or hazardous vessels are prioritized.

2. Does your agency have a submerged navigational hazard abatement plan (SNHAP)? ☒ Yes ☐ No
This may include: 1) An established internal process outlining procedures to prevent, mitigate and process abandoned vessels; 2) Bylaws, regulations, or ordinances that help prevent or mitigate abandoned vessels.

If Yes, provide plan documentation on the next page (Submerged Navigational Hazard Abatement Plan (SNHAP) documentation).

If No, explain your agency's efforts to create a SNHAP and anticipated date of effect.

3. At-risk vessels: Explain if/how your agency identifies at-risk vessels (what indicators do you look for). Do you identify and document existing owners/occupants, and do you work with owners to prevent vessels from being abandoned?

City staff and Harbor Patrol Officers patrol the waters of Newport Harbor and identify vessel condition and ownership. Newport Beach Municipal Code Chapter 17, also known as the Harbor Code, is enforced by both City staff and Orange County Sheriff's Department Harbor Patrol.

Since using the SAVE grant the intensity of abandoned vessels has decreased since VTIP is an option. Staff encourages owners of derelict and neglected vessels to turn in their vessels, and makes the process as easy as possible for those owners. However, there are instances when vessels are abandoned in the public anchorages, piers and mooring fields. With the use of the grant funding the size of abandoned vessels has significantly decreased. There had been times that the City has had to assume responsibility for multiple 40-plus foot vessels, and in more recent years the sizes have been in the 20-foot range.

4. Does your agency regularly check vessels in your AOR for current registrations? ☒ Yes ☐ No

If Yes, What is your process?

All mooring holders and tenants of public marinas are required to provide current registration and proof insurance. Harbor Patrol monitors vessels cruising the waters of Newport Harbor for compliance.

5. List by name and size the bodies of water or waterways in your agency's area of responsibility. If you wish to add maps or photos, please click on the BLUE arrow below to upload.

Name	Size	Attachment
Newport Harbor	800 acres	18181_0_Newport Harbor.jpg

6. Local agencies are required to make a 10 percent match by cash, or in-kind. Is your agency able to comply with the 10 percent match in advance before any grant money is reimbursed? ☒ Yes ☐ No
7. To provide additional information, please click on the Blue Arrow to add an attachment

6. Submerged Navigational Hazard Abatement Plan (SNHAP) documentation

Attachment Title	Attachment
	Newport Beach Municipal

EXHIBIT G - Grant Application: Letter of Intent, Scope of Work and Work Plan

Newport Beach Municipal Code

Code.pdf

1. Outreach / Advertising plan for implementing a Vessel Turn-In Program

The City of Newport Beach City Council and Harbor Commission have an active interest in the condition of vessels in Newport Harbor. Staff regularly reports to the Council and Commission on the progress or remediating derelict vessels from the Harbor and those either trailered or towed for disposal. The Harbor Patrol services Dana Point, Newport and Sunset Harbors and the City of Newport Beach grant funding has been used to remove derelict boats from those areas. Interested parties contact staff directly. The DBW SAVE Grant webpage directs people to contact the City of Newport Beach from the page of participating agencies

(<http://www.dbw.ca.gov/pages/28702/files/ALL%20ACTIVE%20VTIP%20AGENCIES%202016.17%202.27.17.pdf>).

Newport Harbor is home to 1200 moorings, 1200 residential piers, dry storage and approximately 60 marinas. There is a need in Newport Harbor to assist with a deteriorating and aging boating community. Removing problem vessels clears the mooring fields, marinas and docks creating more open space for recreation and availability for new boaters to keep a boat in Newport Harbor.

The City of Newport Beach certainly worked to remediate issues specific to Newport Harbor yet accepted vessels from the surrounding areas. City staff understands that the grant funding should be used to help many users.

2. Administrative Information

1. Please state if you will accept surrendered vessels only within Area of Responsibility (AOR) or if you will accept outside Area of Responsibility requests

☐ Within AOR

☒ Within and Outside AOR

2. Identify schedule for accepting surrendered vessels

☐ Daily

☐ Weekly

☐ Monthly

☒ As Needed

3. Location where vessels will be accepted

☐ Agency Office

☐ Local Landfill

☐ Pickup by Agency or Salvager

☒ As Needed [office and pickup]

4. Storage area: Does your agency have a storage area for surrendered vessels pending destruction?

☒ Yes ☐ No

If Yes, identify the type of storage area

☒ Water

☐ Land

1. Applicant Certification

Per Harbors and Navigation Code 525 (C) "A grant awarded by the department pursuant to subparagraph (A) shall be matched by a 10% contribution from the local agency receiving the grant." This matching fund may be rendered in cash, or through in-kind contributions which must be verified, and are at the discretion of DBW. These contributions may include (but are not limited to) the following: administrative costs, personnel hours, removal, and/or storage.

Grant monies WILL NOT be reimbursed by DBW unless 10% of each reimbursement claim is met.

- a. ☒ Under penalty of perjury, I certify that I have examined this application and the document(s), proposal(s), and statement(s) submitted in conjunction herewith, and that to the best of my information and belief, the information contained herein is true, accurate, correct, and complete.
- b. ☒ I certify that I am the person authorized to submit this application on behalf of the applicant.

Prepared by: Name: Shannon Levin Date: 04/25/2017

Reviewed by: Name: Chris Miller Date: 04/28/2017

Approving Officer: Name: Chris Miller Date: 04/28/2017

City of Newport Beach

BUDGET AMENDMENT 2017-18

ATTACHMENT B

NO. BA- 18BA-014

AMOUNT: \$125,000.00

EFFECT ON BUDGETARY FUND BALANCE:

<input checked="" type="checkbox"/>	Increase	Revenue Estimates
<input checked="" type="checkbox"/>	Increase	Expenditure Appropriations AND
<input type="checkbox"/>	Transfer	Budget Appropriations

<input type="checkbox"/>	Increase in Budgetary Fund Balance
<input type="checkbox"/>	Decrease in Budgetary Fund Balance
<input checked="" type="checkbox"/>	No effect on Budgetary Fund Balance

SOURCE:

<input type="checkbox"/>	from existing budget appropriations
<input checked="" type="checkbox"/>	from additional estimated revenues
<input type="checkbox"/>	from unappropriated fund balance

ONE-TIME?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No

EXPLANATION:

This budget amendment is requested to provide for the following:

To increase revenue estimates and expenditure appropriations to record grant revenue from State of California's Division of Boating and Waterways SAVE grant.

ACCOUNTING ENTRY:

BUDGETARY FUND BALANCE

Fund	Object	Description	Amount	
			Debit	Credit

REVENUE ESTIMATES

		Description	
Org/Object	13501-431385-18H11	DEPT OF BOATING & WATERWAYS F -18H11-STATE-135-GRANT	\$125,000.00

EXPENDITURE APPROPRIATIONS

		Description	
Org/Object	13501-980000-18H11	ABANDONED WATERCRAFT ABATEMENT E- 18H11-UNASSIGNED-135-UNASSIGNED	\$125,000.00

* Automatic System Entry.

Signed:

Financial Approval: Finance Director

11-7-17
Date

Signed:

Administrative Approval: City Manager

11/9/17
Date

Signed:

City Council Approval: City Clerk

Date



CITY OF

NEWPORT BEACH

City Council Staff Report

November 14, 2017
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: Patrick Arciniega, Senior Civil Engineer,
parciniega@newportbeachca.gov

PHONE: 949-644-3347

TITLE: Corona del Mar Concrete Pavement Reconstruction – Poppy Avenue
and Ocean Boulevard – Notice of Completion Contract No. 6189
(15R14)

ABSTRACT:

On December 13, 2016, City Council awarded Contract No. 6189 for Corona del Mar Concrete Pavement Reconstruction – Poppy Avenue and Ocean Boulevard to All American Asphalt (AAA). The required work is now complete and staff requests City Council acceptance and close out of the contract.

RECOMMENDATION:

- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project. On December 13, 2016, the project was found to be exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(c);
- 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 the Civil Code; and
- c) Release Faithful Performance Bond one (1) year after acceptance by the City Council.

FUNDING REQUIREMENTS:

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

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
General Fund	01201927-980000-15R14	\$1,206,609.13
	Total:	\$1,206,609.13

DISCUSSION:

This past spring Public Works successfully reconstructed Poppy Avenue and Ocean Boulevard. The reconstruction of Poppy, from Ocean Blvd. to Coast Highway included the replacement of the entire street pavement, curb, gutters, sidewalks, parkways, driveways, alley approaches and ADA accessible curb access ramps. It also included the complete reforestation of the street with new street trees and plantings in the parkway. The reconstruction of Ocean Blvd., from Poppy to Marguerite included the replacement of the street pavement with high-strength fiber reinforced concrete, replacement of damaged sidewalks and ADA accessible curb access ramps.

Overall Contract Cost/Time Summary

Awarded Contract Amount	Final Cost at Completion	Contingency Allowance	Actual Contract Change	% Due to Directed Change	% Due to Unforeseen Change
\$1,216,033.00	\$1,206,609.13	10% or less	-1%	0.0%	-1%
Allowed Contract Time + Approved Extensions days) =		170	Actual Time Under (-) or Over (+)		-25

Contract No. 6189, Corona del Mar Concrete Pavement Reconstruction – Poppy Avenue and Ocean Boulevard has now been completed to the satisfaction of the Public Works Department. A summary of this contract's construction cost is as follows:

Original Bid Amount:	\$1,216,033.00
Actual Cost of Bid Items Constructed:	\$1,131,572.48
Total Change Orders:	\$ 75,036.65
Final Contract Cost:	\$1,206,609.13

Four change orders were issued totaling \$75,036.65. Despite these change orders, the total contract completed approximately 1 percent less than the original contract amount, and was within the contingency allowance. The change orders included repairs to existing irrigation systems, adding additional cement to the concrete mix design to allow the roadway to be open sooner, new amenities for Back Bay View Park, and a credit for tree substitution on Poppy Avenue.

A summary of the project schedule milestones is as follows:

Estimated Start of Construction per Annual Baseline Schedule	2/1/2017
Actual Start of Construction Per Notice To Proceed	2/27/2017
Extended Contract Completion Date Inclusive of Extra Work	12/13/2017
Actual Substantial Construction Completion Date	9/29/2017

ENVIRONMENTAL REVIEW:

On December 13, 2016, City Council found this action exempt from the California Environmental Quality Act (CEQA) pursuant to Class 4 Section 15302(c) (reconstruction of existing facility 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.

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





CITY OF

NEWPORT BEACH

City Council Staff Report

November 14, 2017
Agenda Item No. 8

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Rosalinh Ung, Associate Planner
PHONE: 949-644-3208
rung@newportbeachca.gov

TITLE: Professional Service Agreement with PlaceWorks for Environmental Services for the Newport Crossings Project Located at 1701 Corinthian Way (PA2017-107)

ABSTRACT:

Staff requests approval of a Professional Services Agreement with PlaceWorks for the preparation of necessary environmental studies and services for Newport Crossings project. A proposed mixed-use residential development located at 1701 Corinthian Way, 4251, 4253 & 4255 Martingale Way, 4200, 4220 & 4250 Scott Drive and 1660 Dove Street.

RECOMMENDATION:

- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
- b) Approve the Professional Services Agreement and authorize the Mayor and City Clerk to execute the agreement.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item. The cost of \$184,728 will be reimbursed to the City by the applicant (Starboard MacArthur Square, LP).

DISCUSSION:

On May 31, 2017, Starboard MacArthur Square, LP submitted an application for Site Development Review and Tentative Tract Map seeking the development of a 350-unit mixed-use project on a 5.69-acre site bounded by Corinthian Way, Martingale Way, Scott Drive, and Dove Street. The proposal includes 2,000 square feet of restaurant space with outdoor dining area, 5,500 square feet of retail space, and 0.50-acre public park. The project would replace the existing MacArthur Square shopping center.

The proposed development requires the preparation of Environmental Impact Report (EIR). Consistent with Council Policy F-14 and the City Manager's Administrative Procedures Manual, a request for proposals for the preparation of an EIR was sent to seven environmental consulting firms and six proposals were received. PlaceWorks has been selected based on their qualifications, experience and competitive cost.

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 PlaceWorks

Attachment B – Project Site Exhibit

Attachment A

Professional Services Agreement with PlaceWorks

**PROFESSIONAL SERVICES AGREEMENT
WITH PLACEWORKS, INC. FOR
NEWPORT CROSSINGS MIXED USE ENVIRONMENTAL IMPACT REPORT (EIR)**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 14th day of November, 2017 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and PLACEWORKS, INC., a California corporation ("Consultant"), whose address is 3 MacArthur Place, Suite 1100, Santa Ana, California 92707, 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 prepare an Environmental Impact Report ("EIR") for the Newport Crossings Mixed Use Residential Project ("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 November 15, 2019, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). City may elect to delete certain Services within the Scope of Services at its sole discretion.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit A. In the absence of a specific schedule, the Services shall be performed to

completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

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

3.3 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

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

4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **One Hundred Eighty Four Thousand Seven Hundred Twenty Eight Dollars and 00/100 (\$184,728.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

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

4.3 City shall reimburse Consultant only for those costs or expenses specifically identified in Exhibit B to this Agreement or specifically approved in writing in advance by City.

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

Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

5. PROJECT MANAGER

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

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

5.3 If Consultant is performing inspection services for City, the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. The Project Manager's cellular phone number shall be provided to City.

6. ADMINISTRATION

This Agreement will be administered by the Community Development Department, Planning Division. City's Associate Planner or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

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

8. STANDARD OF CARE

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

requirements of this Agreement, all applicable federal, state and local laws, and legally recognized professional standards.

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

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

9. HOLD HARMLESS

9.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Consultant's presence or activities conducted on the Project (including the negligent, reckless, and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them).

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

10. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of

conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Consultant or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

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

12. CITY POLICY

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

13. PROGRESS

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

14. INSURANCE

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

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

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

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

16. SUBCONTRACTING

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

17. OWNERSHIP OF DOCUMENTS

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

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

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

18. CONFIDENTIALITY

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

19. INTELLECTUAL PROPERTY INDEMNITY

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

20. RECORDS

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

21. WITHHOLDINGS

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

22. ERRORS AND OMISSIONS

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

23. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

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

24. CONFLICTS OF INTEREST

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

24.2 If subject to the Act, Consultant shall conform to all requirements of the Act. 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: Associate Planner
Community Development Department, Planning Division
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: JoAnn C. Hadfield
PlaceWorks, Inc.
3 MacArthur Place, Suite 1100
Santa Ana, CA 92707

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: 10/19/17

By:  for
Aaron C. Harp
City Attorney *am 10/19/17*

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Kevin Muldoon
Mayor

CONSULTANT: PlaceWorks, Inc., a
California corporation

Date: _____

By: _____
Keith McCann
Chief Executive Officer

Date: _____

By: _____
William Halligan, Esq.
Vice President / Assistant 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

Methodology

PROJECT UNDERSTANDING

PROPOSED PROJECT

The Newport Crossings Mixed Use Residential project is proposed in the designated Airport Area of the City's General Plan and the Newport Place Planned Community (PC-11). The applicant proposes development of 350 residential units, 2,000 square feet of "casual dining" restaurant space, 5,500 square feet of commercial space, and a one-half acre public neighborhood park on a 5.69-acre project site. The site is currently occupied by the 58,277-square-foot MacArthur Square shopping center.

At first glance, the project may appear straight-forward because the proposed uses do not require a general plan amendment or zoning code amendment. Therefore, it does not require review by the Airport Land Use Commission. City discretionary approvals for the proposed project include a site development review, tentative tract map, and traffic study.

The Uptown Newport project—also within the Airport Area and reflecting the same MU-H2 zoning—required a planned community plan amendment (i.e., zoning amendment) and ALUC review, and was within the Integrated Concept Development Plan (ICDP). Both projects require demolition of existing uses, but Uptown Newport phasing related to ongoing operation and lease options of the Jazz Semiconductor facility complicated that project.

As described below, although this project does not have all of the complexities of the Uptown Newport project for which PlaceWorks successfully prepared a defensible EIR, it shares many of the same issues. Our work on Uptown Newport provides us an invaluable background to proceed with Newport Crossings.

THE RESIDENCES AT NEWPORT PLACE (2016)

Just last year, a Mitigated Negative Declaration was prepared for a proposed mixed-use development on the same project site that encompassed 384 apartment units (including 86 affordable units), and 5,677 square feet of commercial use (restaurant). The primary issues raised by commenters, the Planning Commission, and the City Council were not about technical environmental impacts or the adequacy of the environmental review. Ultimately, this project was denied for a myriad of reasons—including overall scale, mass, and density; aesthetics; the lack of a useable, publicly accessible park; public benefit; and consistency with the overall goals, policies, and intent

of the General Plan. Understanding the history of the former project proposal will help us focus the Newport Crossings EIR on the most important considerations for the City's decision makers. In particular, PlaceWorks will work extremely closely with City staff to appropriately evaluate and substantiate conclusions of consistency with General Plan goals and policy as well as to craft meaningful project alternatives to minimize project environmental impacts and optimize General Plan consistency. For Newport Beach, plan consistency encompasses an important, overall vision for the Airport Area.

AIRPORT AREA POLICIES AND TRAFFIC ANALYSIS

Key to defensible CEQA analysis of this project will be an understanding of the City's unique TPO traffic study requirements (vs. CEQA requirements) and how the allowable land use for the site is based on a "trip neutral" condition (i.e., the proposed project cannot generate more traffic trips than the existing, underlying uses). Currently, a high proportion of the existing development is vacant. Unlike the CEQA traffic analysis, which will be based on existing trips generated by the uses, the TPO analysis (and trip-neutral assessment) will be based on the trips that the underlying uses could generate when occupied.

The number of residential units allowed on this project site is also governed by the maximum of 2,200 residential units allocated to the Airport Area. A total of 1,244 units were approved for Uptown Newport. The number of units allowed on a given site is determined by requirements related to "replacement units" (defined by the trip analysis noted above), density bonuses, and infill units (only applicable to the ICDP and therefore, not to Newport Crossings).

The transportation analysis and allowable development analysis, therefore, are inherently linked. For traffic analysis, this is complicated by the fact the CEQA and TPO traffic requirements and methodologies differ (as discussed under topical sections, Transportation and Traffic).

PLACEWORKS APPROACH

CEQA

- » Focus our analysis. We will conduct defensible project scoping, including the review of previous documentation, and actively participate in the project

scoping meeting to ensure that we appropriately focus our analysis and close out topics that clearly and defensibly can be eliminated in the Initial Study.

- » Coordinate CEQA requirements of technical studies prepared by others at the outset. This approach applies primarily to the traffic study to ensure that the analysis meets CEQA requirements in addition to the TPO requirements. This may require parallel analyses. Early coordination will assure that no time is lost. We will coordinate with the City and your traffic consultant (if desired) to ensure that the scope meets CEQA requirements for existing conditions; related projects (vs. committed projects); and phasing, demolition, and construction impact analysis. We will also detail project needs to support our air quality/GHG and noise studies.
- » Conduct peer review promptly and communicate early regarding adequacy and consistency among the various applicant-prepared technical studies.
- » Efficiently use previously prepared narrative and exhibits from recent PlaceWorks-prepared documents for Newport Beach. Review and confirm adequacy and up-to-date status of any of these materials.
- » Prepare a timely, comprehensive project description for review by the project team. Prepare clear, meaningful project objectives that will largely serve as the basis for defining and evaluating project alternatives.

COMMUNICATION AND COORDINATION

Assigned Project Manager and Assistant Project Manager

JoAnn Hadfield will be assigned as project manager for this project, including day-to-day coordination with the City's project manager. Frances Yau will be assigned as assistant project manager. She will be apprised of all project activities and be the second contact in the event that JoAnn is not immediately available to answer the City project manager's questions or respond to requests. Protocol will be established to cc JoAnn and Frances on all project emails.

- » **Contact Sheet.** At the outset of the project, PlaceWorks will provide the City with a comprehensive contact list with phone numbers and email addresses for PlaceWorks staff on the project as well as subconsultant contacts.
- » **Status Log.** We will maintain a project status log identifying project activities. In a spreadsheet form, the log will identify the date, person making the entry, activity/communication, and deliverable if applicable. This log will be available at any time upon request by the City's project manager.

- » **Meeting Agendas and Minutes.** We will prepare formal meeting agendas (to be reviewed by City's project manager before meeting) and meeting minutes for each project meeting documenting the attendees, discussion items and summary, and action items.
- » **Project Budget Control.** We utilize Deltek software for detailed project accounting. This allows us to plan staff hours from the outset of the project by task and to track these hours on a weekly basis. We will coordinate with the City's project manager at the initiation of the project to determine the level of detail and timing for provision of budget status information.

WORK PLAN

TASK 1. PROJECT INITIATION

1.1 Project Kick-off Meeting and Data Collection

PlaceWorks' project manager and assistant project manager will attend a project kick-off meeting with City staff. We will review the City's objectives; discuss the project in detail; and confirm the project approach, scope, and schedule. This discussion should include any known constraints and/or opportunities observed by the City, project applicant, and the consultant team.

PlaceWorks will review all available plans applicable to the proposed project and conduct a site visit to review the existing physical conditions of the project site and surrounding areas. It is assumed that communication protocol between the City, PlaceWorks, and project applicant's team will also be clearly established at this kick-off meeting.

TASK 2. PROJECT DESCRIPTION AND EIR OUTLINE

2.1 Project Description

A defensible EIR starts with a comprehensive and accurate project description. We will complete the project description after the kick-off meeting and after receipt of all information clarifying our inquiries. Critical components of the project description include the project objectives, proposed site plan and allowable uses, circulation plan, infrastructure improvements (both on- and offsite), and demolition/construction detail and phasing plan. Our first deliverable will be the complete project description for review by the City.

2.1 EIR Outline

As part of our Task 2 deliverable, PlaceWorks will prepare an EIR outline in the form of our EIR table of contents to provide an overview of what will be in the document. The outline will include detailed headings and subheadings for each environmental topical section.

Deliverables:

- Draft Project Description and EIR Outline (2 hard copies and 1 electronic copy)

TASK 3. INITIAL STUDY, NOTICE OF PREPARATION, AND SCOPING MEETING

3.1 Initial Study/Notice of Preparation

The Initial Study (IS) will include a comprehensive project description and analyze each topical area of the CEQA Appendix G checklist:

- | | |
|----------------------------------|---------------------------------|
| » Aesthetics | » Land Use & Planning |
| » Agriculture/Forestry Resources | » Mineral Resources |
| » Air Quality | » Noise |
| » Biological Resources | » Population & Housing |
| » Cultural Resources | » Public Services |
| » Geology/Soils | » Recreation |
| » Greenhouse Gas Emissions | » Transportation/Traffic |
| » Hazards/Hazardous Materials | » Tribal Cultural Resources |
| » Hydrology/Water Quality | » Utilities and Service Systems |

Findings will be clearly substantiated for each checklist question to conclude that impacts are less than significant or potentially significant. At this time, we anticipate that the only CEQA topics that will be entirely eliminated from further review (not carried through to the EIR) will be Agriculture/Forestry Resources and Mineral Resources. It is anticipated that Biological Resources may also be eligible to be closed out in the Initial Study, as supported by a technical memorandum by Cadre. This decision will be made in consultation with the City. Note that for some topics, individual subtopics and impact statements may be eliminated from further review in the EIR. For example, under Geology and Soils, the project would not use septic tanks that may impact site soils because sewer service is available. And under Population and Housing, the project would not displace existing housing or people and necessitate the construction of replacement housing elsewhere. The EIR, however, will include the Geology and Soils and Population and Housing sections to address remaining checklist questions.

Under Assembly Bill 52 (AB 52), a discussion of potential impacts to tribal cultural resources will be included in the Initial Study. Cogstone, our cultural resources subconsultant, will assist the City with AB 52 tribal consultation. Please refer to Task 11.2 for additional details to their scope.

Although not yet formally in the CEQA checklist, recent case law and adherence to the CEQA Guidelines (Appendix F) mandates that Energy impacts be

addressed in the EIR. PlaceWorks will complete the Energy analysis which, at this time is anticipated to be included in a separate subsection under Other CEQA Considerations.

In addition to the Initial Study, PlaceWorks will prepare the draft Notice of Preparation (NOP), which will provide notice of a public scoping meeting and will clearly identify the time period, contact person, and address established for submitting responses during the 30-day public review period. We will submit the IS/NOP for one round of review by the City.

After City approval of the “proof-check” IS/NOP, PlaceWorks will assist the City in preparing a distribution list to ensure proper noticing of all applicable state and local agencies, surrounding property owners, and other special interest groups or individuals identified by the City. PlaceWorks will file the NOP with the State Clearinghouse and County Clerk, and the City will be responsible for publishing the NOP in the local newspaper.

Deliverables:

- Draft IS/NOP (2 hard copies and 1 electronic copy)
- Final IS/NOP (20 hard copies and 20 CDs)
- Filing of IS/NOP with State Clearinghouse and County Clerk and mailing to agencies and general public

3.2 Scoping Meeting

Per the RFP, PlaceWorks will assist the City in organizing and conducting one public scoping meeting to present the preliminary environmental impacts of the proposed project and to solicit comments regarding the scope and content of the environmental issues to be addressed in the EIR. We will prepare a PowerPoint presentation for the meeting to be reviewed by the City prior to finalization. At the meeting, we will be prepared to discuss the environmental review process and to answer specific questions, as desired by the City. It is recommended that the scoping meeting be held one or two weeks after the release of the IS/NOP, so the public has time to review the document and voice their concerns about potential environmental issues. After the meeting, we will prepare a summary of comments that will ultimately be included in the EIR with references to where each comment is addressed or explanation of why it is not addressed (e.g., not an environmental issue).

Deliverable(s):

- Preparation of PowerPoint and participation at scoping meeting
- Sign-in sheet, comment cards, and hand-outs (if any)

TASK 4. ADMINISTRATIVE DRAFT EIR I AND II

4.1 Administrative Draft EIR I

An EIR will be prepared for the proposed project and will include the following sections in accordance with the CEQA Guidelines:

- » Executive Summary
- » Introduction
- » Project Description
- » Environmental Setting
- » Discussion of Existing Conditions, Environmental Analysis, and Mitigation Measures
- » Cumulative Impacts
- » Consideration of Significant Effects
- » Project Alternatives
- » Other CEQA-Mandated Sections
- » Organizations and Persons Consulted

Each topical section of the document will: (a) describe existing environmental conditions and pertinent regulatory policies and programs that apply to this project, (b) define the criteria by which impacts will be determined to be significant, (c) determine the environmental changes that would result from the project, (d) evaluate the significance of those changes with respect to the impact significance criteria (thresholds), (e) define mitigation measures to reduce or avoid all potentially significant adverse impacts, and (f) provide a conclusion as to whether significant impacts would remain, even after successful implementation of recommended mitigation measures. Each section will be supplemented with applicable GIS-based graphics to enhance the analysis and clarify the project's environmental impacts. Our scope of work also assumes that a quantified analysis will be included for the technical sections—air quality, greenhouse gas (GHG) emissions, noise, and transportation/traffic.

Topical Sections

As indicated above, it is anticipated that all CEQA topical sections, with the exception of Agriculture/Forestry Resources and Mineral Resources, and potentially Biological Resources will be carried through and included in the EIR. Analysis and findings of technical studies will be incorporated. Technical study scopes are described under Tasks 10 and 11. Complete technical studies (for stand-alone reports as provided by the applicant's team) and supporting modeling information (Air Quality/GHG and Noise) will be included in the EIR appendices.

- » **Aesthetics.** The MacArthur Square shopping center currently encompasses the project site. Development of the proposed project would substantially alter the visual character and quality of the site. The aesthetics analysis will address the project's potential effect on scenic vistas, visual and community character and quality, and lighting in the project area. Available project details—including conceptual plans, building elevations, and renderings

provided by the project applicant—will be helpful in clearly portraying the visual impacts of the proposed project. This section of the EIR will also review applicable visual-related policies in the City’s general plan and be cognizant of the aesthetic-related mass and scale issues raised regarding the previous development proposal for this site.

- » **Air Quality.** An air quality/GHG analysis will be prepared by our in-house technical specialists (see Task 10.1). Findings from the air quality/GHG analysis will be integrated into the EIR section and will include an assessment of consistency with the South Coast Air Quality Management District (SCAQMD) Air Quality Management Plan, quantified emissions for construction and operational criteria pollutants, and evaluation of potential air quality impacts.
- » **Biological Resources.** Cadre Environmental will prepare a biological resources technical memorandum (see Task 11.1). Findings from the memorandum will be summarized in this section to determine whether the project would have any impact on sensitive species and habitat, jurisdictional resources, and wildlife corridors. Given the built-out and urbanized condition of the project area, no substantial biological resources are anticipated.
- » **Cultural Resources.** No significant cultural resources are expected within the project site. Cogstone will prepare cultural and paleontological resources technical memorandums supporting the findings from Cogstone’s previous cultural resources assessment for the City’s General Plan Land Use Element Amendment Supplemental EIR (see Task 11.2). Analyses from the technical memorandums will be incorporated into the Cultural Resources section, and mitigation measures will be identified as necessary.
- » **Geology and Soils.** This section will define the existing geologic, soils, and groundwater characteristics onsite; identify regional seismic influences; and explain the characteristics of any areas with constraints to site development. Analysis of project impacts will be based on the proposed land use plan, available technical studies including the soil and soil gas investigation report, and information from the project’s civil engineer. Regulatory requirements and performance standards will be detailed.
- » **Greenhouse Gas Emissions.** PlaceWorks will prepare a GHG analysis for the proposed project, and findings will be integrated into the EIR section (scoped in Task 10.1). Project-related GHG emissions will be quantified in the report using SCAQMD’s CalEEMod program. Project consistency with statewide GHG emissions reduction strategies will also be analyzed. Mitigation measures will be incorporated, as necessary, to reduce potentially significant GHG impacts of the project.

- » **Hazards and Hazardous Materials.** The project-applicant team will prepare a soil/soil gas investigation report and Phase I and II environmental site assessments (ESAs), which will be reviewed by PlaceWorks for CEQA adequacy. This section will summarize findings from the soil/soil gas report and Phase I and II ESAs, including review of the site history and usage as they relate to the presence of hazardous substances and petroleum products onsite; document visible evidence of current and past usage of the property, particularly related to potential hazardous substances, petroleum products, storage tanks, and evidence of spills or releases of hazardous substances or petroleum products; and identify any required mitigation measures for remediation and cleanup prior to development of the proposed project.
- » **Hydrology and Water Quality.** A hydrology report and water quality management plan (WQMP) will be prepared by the project applicant's team. Upon City approval, PlaceWorks will review these technical reports to ensure they are adequate for addressing the CEQA Appendix G thresholds. This section will include an analysis of existing hydrology and water quality conditions. It will identify the regulatory framework, regional and site-specific hydrological setting of the area, stormwater drainage characteristics, water quality data (surface and groundwater), local receiving water bodies, pollutants of concern based on changes in land use, and potential hazards due to flooding. The section will also include the best management practices from the WQMP to be implemented at the site, including source control, site design, and stormwater treatment measures. The section will conclude with a discussion of the potential water impacts attributable to the proposed project, based on applicable significance criteria, and incorporate mitigation measures from the technical reports as necessary.
- » **Land Use and Planning.** The proposed project will not require a general plan amendment or zone change. However, this section will thoroughly review the requested entitlements for consistency with the various elements of the City's General Plan and its overall vision, goals, and policies. Responding to the Appendix G checklist question of whether the project will physically divide an established community, this section will assess the land use compatibility of introducing residential uses into a commercial and office use area. This section will also analyze the project's consistency with applicable regional plans, including SCAG's Regional Transportation Plan/Sustainable Communities Strategy.
- » **Noise.** A noise and vibration analysis will be prepared by PlaceWorks (see Task 10.2). Noise modeling datasheets and assumptions will be included as an appendix to the EIR. The noise analysis will be prepared consistent with the noise compatibility standards of the City of Newport Beach. Operational and construction noise impacts could be a potential project issue. Findings will be

integrated into the Noise section of the EIR, and mitigation measures, if necessary, will be incorporated to reduce potentially significant noise impacts of the project.

- » **Population and Housing.** The proposed project would introduce 350 dwelling units and approximately 7,500 square feet of commercial/restaurant use. Population (residents and employees) and housing impacts are anticipated at buildout of the mixed-use development. This section will analyze the project's buildout impacts on the City's anticipated population growth and jobs-housing balance.
- » **Public Services.** Service providers (i.e., City fire, police, school, and library providers) will be contacted at the outset of the project for input on existing staffing and capacities and long-term plans to demonstrate their ability to serve buildout of the proposed project.
- » **Recreation.** The proposed project would introduce new residents into the City, which may increase demand on existing parks and recreational facilities. The project is proposing development of a half-acre public park onsite. This section of the EIR will analyze whether the City's existing park and recreational facilities and the proposed project's recreational area would provide adequate recreational opportunities, will provide sufficient public access, and whether the project would adversely impact existing parkland.
- » **Transportation and Traffic.** Under separate contract, the City's traffic consultant will prepare a traffic impact analysis that will analyze existing roadways and traffic conditions compared to future conditions. As discussed under Project Understanding and PlaceWorks Approach, the traffic analysis for the project must comply with both City TPO requirements and meet CEQA requirements. We will coordinate from the outset to assure that the traffic consultant's scope of work will meet the EIR requirements, and assist, if desired by the City in defining the structure for the final traffic report. Upon City approval of the traffic report, PlaceWorks will integrate the findings into the EIR section. Potential traffic impacts related to project-generated trips and intersection levels of service will be identified, and appropriate mitigation measures will be incorporated.
- » **Tribal Cultural Resources.** Cogstone will prepare letters to send to AB 52-specific Native American tribal groups identified by the City (see Task 11.2). The AB 52 consultation process and analysis of potential project impacts on tribal cultural resources in the project area will be summarized in this section of the EIR, and mitigation measures will be identified as necessary.
- » **Utilities and Service Systems.** Service letter requests will be sent to the City's water, wastewater, solid waste, natural gas, and electricity providers for

existing and future capacities to determine whether buildout of the project could be accommodated. The project applicant's team will also prepare a dry utilities report and sewer and water demand report. PlaceWorks will review the reports for CEQA adequacy and incorporate the report findings into this section of the EIR.

As required by CEQA, PlaceWorks will also address potential Energy impacts pursuant to Appendix F. Energy will be addressed in a separate section, "Other CEQA Considerations."

Consideration of Significant Effects

The EIR will identify and focus on the significant effects of the project and include the following discussions, as required by CEQA Guidelines Section 15126.2:

- » Effects Not Found to Be Significant
- » Significant Unavoidable Impacts
- » Significant Irreversible Changes
- » Growth-Inducing Impacts

Alternatives to the Proposed Project

The processing experience of The Residences at Newport Place highlight the value of defining and evaluating project alternatives in an EIR. Meaningful EIR project alternatives are helpful to decision makers for projects that substantially alter the physical conditions of an existing site. Our scope is based on the evaluation of up to three alternatives, including the following two scenarios detailed in the RFP: 1) No Project/No Construction, and 2) Reduced Intensity/Reduced Height. In compliance with CEQA, the EIR is required to address a reasonable range of alternative to be defined and analyzed on the basis of their ability to: 1) avoid or reduce one or more of the project's significant impacts, and 2) feasibly attain most of the basic objectives of the project.

PlaceWorks expertise in design and planning provides a unique opportunity to create alternatives that not only specifically address specific environmental issues, but consider a broader evaluation of land use compatibility, design/aesthetics, and General Plan vision.

Impacts resulting from construction and temporary impacts on the surrounding uses (public access, traffic diversion, construction schedule) will also be addressed in the alternatives.

Alternatives considered but eliminated from further consideration will also be documented. The environmentally superior alternative will be identified; if it is

the No Project/No Construction Alternative, then one of the development alternatives will be identified as environmentally superior to the others.

Deliverables:

- Administrative Draft EIR I (4 hard copies with technical appendices on CDs)

4.2 Administrative Draft EIR II

It is assumed the City will provide one consolidated set of written comments on the Administrative Draft EIR I to PlaceWorks. As appropriate, PlaceWorks' project manager will meet with City staff to discuss and resolve any major areas of concern and clarify areas of misunderstanding, etc. We will follow up with City departments or other agencies as necessary to respond to City staff comments.

PlaceWorks will incorporate and address City comments on the review of the Administrative Draft EIR I and submit Administrative Draft EIR II for the City's second round of review.

Deliverables:

- Administrative Draft EIR II (4 hard copies with technical appendices on CDs)

4.3 Preprint Draft EIR

Similar to Administrative Draft EIR I, PlaceWorks assumes the City will provide one consolidated set of written comments on Administrative Draft EIR II. PlaceWorks will incorporate and address the City's comments and submit a Preprint Draft EIR to the City for final review.

Note that, in total, it is anticipated that there will be two rounds of review of the Administrative Draft EIR (I and II) and one round of review of the Preprint Draft EIR prior to publication of the Draft EIR for public review.

Deliverables:

- Preprint Draft EIR (1 hard copy with technical appendices on a CD)

TASK 5. DRAFT EIR

Upon approval of the Preprint Draft EIR, PlaceWorks will conduct final edits, formatting, and QA/QC. We will reproduce and distribute copies of the document to the all applicable agencies and other interested parties identified on a distribution list to be developed in consultation with the City.

We will also prepare the Notice of Completion (NOC) for City approval and signature. We will also prepare the Notice of Availability (NOA) for City approval

and file it with the State Clearinghouse and County Clerk. It is assumed the City will publish the NOA in the local newspaper.

Deliverables:

- Draft EIR (10 hard copies with technical appendices on CDs, and 50 CDs)
- Draft EIR in web-friendly format to be uploaded on City's website (divided into smaller, more easily downloadable portions)
- NOC, NOA, and distribution list (electronic copy)
- Filing of NOA with State Clearinghouse and County Clerk and mailing to agencies and general public

TASK 6. FINAL EIR

6.1 Response to Comments/Errata

Responses to comments received on the Draft EIR will be prepared in accordance with CEQA Guidelines Section 15089. Following receipt of all comments on the Draft EIR, written responses will be prepared for each comment. A Response to Comments section will be created for the Final EIR and will contain an introduction describing the public review process for the Draft EIR, copies of all comment letters, and written responses to all comments. Responses will focus on comments that address the adequacy of the DEIR. Comments that do not address EIR adequacy will be noted as such, and no further response will be provided unless deemed necessary by the City. Responses will be prepared by PlaceWorks with input from our technical specialists, as needed. It is also assumed that the City's traffic consultant and the applicant's technical consultants will support in preparation of the Response to Comments, as needed.

Per the RFP, up to 100 hours split between key PlaceWorks staff are budgeted for the preparation of responses to comments. The estimated budget assumes that no additional basic research will be required to respond to comments, and that the comments will be directed at the substance and technical adequacy of the EIR. Modification to the scope of work, budget, and time frame may be necessary if any comments from agencies or the general public require substantially increasing the scope of impacts and issues addressed in the EIR and cannot be completed within the 100 budgeted hours.

The Final EIR will also include errata detailing any revisions, updates, or corrections needed to respond to comments or address minor errors in the DEIR. Revisions will be made in underline and strike-out text.

PlaceWorks will revise the Response to Comments/Errata based on revisions provided by the City. Responses to comments from responsible agencies will be distributed a minimum of 10 days prior to consideration of the Final EIR by the City Council.

Per the RFP, the Final EIR deliverable will include the Draft EIR, Response to Comments/Errata, and MMRP.

Deliverables:

- Draft Response to Comments/Errata (electronic copy)
- Final Response to Comments/Errata (10 hard copies and 50 CDs)
- Mailing of Response to Comments to commenting agencies
- Final EIR with MMRP (10 hard copies and 25 CDs)

6.2 Mitigation Monitoring and Reporting Program

A Mitigation Monitoring and Reporting Program (MMRP) will be prepared pursuant to Section 21081.6 of the Public Resources Code. It will be presented in standard City format and will identify the significant impacts that would result from the project, proposed mitigation measures for each impact, the times at which the measures will need to be conducted, the entity responsible for implementing the mitigation measure, and the City department or other agency responsible for monitoring the mitigation effort and ensuring its success. A draft MMRP will be submitted to the City for review. Upon approval, the MMRP will be incorporated into the Final EIR.

Deliverables:

- Draft MMRP (electronic copy)
- Final MMRP (included in Task 6.1)

TASK 7. FOF, SOC, NOD, AND FINAL PRODUCT

7.1 Findings of Fact and Statement of Overriding Considerations

The Findings of Fact (FOF) will be prepared consistent with the requirements of CEQA and in a format approved by the City. The draft FOF will be distributed to the City for review and comment. If required, we will prepare a Statement of Overriding Considerations (SOC) for the project, consistent with the requirements of CEQA and in a City-approved format.

Deliverables:

- FOF and SOC (electronic copy)

7.2 Notice of Determination

PlaceWorks will prepare a draft Notice of Determination (NOD) for review by the City. If the City takes action to certify the Final EIR and approve the project, PlaceWorks will file the NOD with the State Clearinghouse and the Orange County Clerk. Our budget includes all filing fee costs associated with filing with the County Clerk (\$50) and California Department of Fish and Wildlife (\$3,078).

Deliverables:

- NOD (electronic copy)
- Filing of NOD with State Clearinghouse and County Clerk

7.3 Final Product

At project completion, PlaceWorks will provide one copy of all notices (NOP, NOA, and NOD), Initial Study, Final EIR, and FOF in Microsoft Word, and all appendices in electronic format.

Deliverables:

- Notices, IS, Final EIR, and FOF in MS Word and all appendices in electronic format

TASK 8. MEETINGS AND PUBLIC HEARINGS

Communication is key to a project's success. Therefore, PlaceWorks will be in regular communication with City staff and participate in regularly scheduled progress updates (phone or email) related to project approach, scheduling, and environmental issues throughout the CEQA process.

Per the RFP, it is assumed that PlaceWorks' project manager and assistant project manager will attend up to 6 in-person meetings with City staff and the project applicant team, in addition to the kick-off meeting (Task 1.1) and scoping meeting (Task 3.2). Our technical staff is available to attend meetings upon request on a time and materials basis in accordance with our billing rates.

We also assume PlaceWorks' project manager and assistant project manager will attend up to 4 public meetings/hearings (e.g., Planning Commission and City Council). The PlaceWorks team will serve as an extension of City staff and will be prepared to make presentations and/or answer questions regarding the environmental document and impact analyses at public meetings/hearings.

Additional meeting attendance by PlaceWorks or by other members of the consultant team will be billed on a time-and-materials basis in accordance with the hourly rates for the personnel involved.

Deliverables:

- 1 kick-off meeting (included under Task 1.1)
- 1 scoping meeting (included under Task 3.2)
- Up to 6 in-person meetings at the City (project manager and assistant project manager)
- Up to 4 public meetings/hearings (project manager)

TASK 9. PROJECT MANAGEMENT

As discussed above, PlaceWorks will coordinate closely with the City to ensure that the EIR and associated documents are legally defensible, accurate, and useful to decision makers when considering the approval of the project. Project management responsibilities include: task scheduling and assignment; management of resources; monitoring of costs and schedule adherence;

management and coordination of subconsultants, including contract administration and accounting; consultation and coordination with local and state entities relative to the environmental review process; and coordination and communications with the City's project team to ensure compliance with policies, procedures, and any applicable codes. This task is based on an estimated number of hours for the anticipated work schedule in this proposal. If this schedule is extended beyond the control of PlaceWorks, a budget augment may be requested for this task.

TASK 10. PLACEWORKS IN-HOUSE TECHNICAL STUDIES AND PEER REVIEWS

10.1 Air Quality and Greenhouse Gas Emissions Analyses

PlaceWorks will prepare an air quality and GHG emissions analysis to evaluate potential air quality impacts associated with the proposed project. Impacts will be based on the current methodology of the SCAQMD for projects within the South Coast Air Basin (SoCAB). Modeling will be conducted using the current California Emissions Estimator Model (CalEEMod). PlaceWorks is a beta tester for CalEEMod and beta tested the new 2016 CalEEMod, version 2016.3.1. The results of the air quality and GHG technical analysis will be summarized in the EIR and model outputs included in the appendix.

Consistency with GHG Reduction Plans

The CEQA Guidelines require an assessment of whether the project would conflict with plans adopted for the purpose of reducing GHG emissions. Applicable plans include the California Air Resources Board's (CARB) Scoping Plan for statewide GHG reduction goals of Assembly Bill 32 (AB 32) and Senate Bill 32 (SB 32); and the Southern California Association of Government's 2016 Regional Transportation Plan/Sustainable Communities Strategy for the regional GHG reduction goals of SB 375. PlaceWorks will provide a qualitative assessment of consistency of the proposed project with the applicable measures and/or strategies in these state and regional plans.

Criteria Air Pollutant and GHG Emissions

The existing land uses onsite generate criteria air pollutant and GHG emissions from transportation sources, energy (natural gas and indirect emissions from purchased electricity), area sources (landscape emissions, consumer products), indirect emissions from water use and wastewater generation, and indirect emissions from waste disposal. The proposed project would replace the existing uses with newer buildings but would result in a substantial increase in residential and nonresidential density onsite. As a result, the proposed project would generate an increase in criteria air pollutant and/or GHG emissions on- and offsite. The emissions inventory and forecast will be developed for the

project based on the existing and proposed land uses. PlaceWorks will coordinate with the City's traffic consultant to obtain trip generation and vehicle miles traveled for the existing and proposed land uses to ensure internal consistency in the EIR modeling. The air quality and GHG technical analysis will provide an estimate of the increase in long-term emissions from operation of the project compared to SCAQMD's significance thresholds. SB 32 established a GHG emissions reduction target of 40 percent below 1990 levels by 2030. CARB recently released a draft of the 2017 Climate Change Scoping Plan Update to achieve the SB 32 reduction target. As a result of recent CEQA case law regarding target setting, the EIR will need to consider the post-2020 threshold established by SB 32 for the proposed project when evaluating GHG emissions.

Construction Phase

PlaceWorks will estimate the increase in short-term criteria air pollutant emissions generated from construction activities associated with the project. It is assumed that the demolition and construction phasing and equipment mix will be similar to that identified in the 2016 The Residences at Newport Place Air Quality and Greenhouse Gas Assessment. We will coordinate with the City and the applicant to ensure that there are no substantial changes to the construction phasing, including duration for each construction subphase, anticipated equipment for each subphase, and estimated demolition volumes and earthwork (if applicable), for air quality and GHG modeling. Where preliminary construction information is unavailable, we will use CalEEMod defaults, as appropriate, and work with City to develop the construction assumptions. Localized air pollution impacts from construction equipment exhaust and fugitive dust will be compared to SCAQMD's screening-level localized significance thresholds (LST) for their potential to elevate concentrations of air pollutants at the adjacent land uses surrounding the development site. A construction health risk assessment is not proposed, and it is assumed that, based on the LST analysis, construction-related risk can be described qualitatively. Mitigation measures to reduce potential impacts will be identified, as necessary.

AQMP Consistency and Other Air Quality Impacts

The SoCAB is designated under the California and National ambient air quality standards (AAQS) for ozone, particulate matter (PM₁₀ and PM_{2.5}), and lead (Los Angeles County only). Consistency of the project's regional emissions will also be evaluated against the SCAQMD Air Quality Management Plan. For other localized emissions, the SoCAB has been designated as attainment for carbon monoxide (CO) under both the California and National AAQS, and therefore CO hotspots will be discussed qualitatively. A qualitative assessment of potential odor generation will also be included.

Deliverables:

- Air Quality and GHG Emissions Analysis, to be included as an appendix to the EIR

10.2 Noise and Vibration Analysis

PlaceWorks will evaluate potential noise and vibration impacts for the construction and operational phases of the proposed project. We will use our experience and knowledge of similar noise environments to characterize the existing conditions for the project area, with particular attention to the airport noise from John Wayne Airport as well as the traffic flows on MacArthur Boulevard and other nearby roadways. Additionally, PlaceWorks will leverage, to the extent applicable, our previous experience with working within the 2006 General Plan, as well as our preparation of the 2014 Newport Beach Land Use Element Amendment Supplemental EIR.

The proposed project is in proximity to John Wayne Airport and is subject to the Airport Environs Land Use Plan; however, review by the Airport Land Use Commission is not required because a general plan amendment or zoning code amendment is not necessary to approve the project. Regardless, PlaceWorks will briefly discuss the compatibility of the proposed project and the existing ambient noise environment. Based on the existing noise contours for John Wayne Airport, the proposed project site is currently exposed to a Community Noise Exposure Level (CNEL) of approximately 60 to 65 dBA (due to aircraft noise alone). Conformity with state interior sound insulation standards will be made assuming typical architectural attributes for multifamily facilities.

PlaceWorks will make a quantitative assessment of temporary noise and vibration impacts during demolition and project construction activities using industry-standard analysis techniques and using scheduling, equipment mix, hauling, and truck trip information as provided by the applicant. There are no offsite, residential facilities within the vicinity of the project; however, there are still several noise-sensitive receptors that may be impacted by construction noise (i.e., the Radisson Hotel, Janus University).

The addition of residences and mixed-use development may result in increased operation around the project area, in terms of existing conditions. Long-term, operational noise impacts will be primarily related to project-generated traffic flows. Traffic noise existing conditions and future impacts to land uses along nearby roadway segments will be assessed with input parameters based on traffic forecasts in the project's traffic study (provided by the applicant) and will be assessed using a version of the U.S. Federal Highway Administration Traffic Noise Model. Other, ongoing noise sources at the site (such as heating, ventilation, and air conditioning units; maintenance activities; and periodic truck

movements) are expected to be of secondary importance to the traffic impacts and will be discussed qualitatively.

Potential noise and vibration impacts will be evaluated according to applicable City of Newport Beach noise and vibration criteria in the City's General Plan and Municipal Code. Applicable mitigation measures and/or project design features will be recommended to reduce projected noise and vibration impacts to less than significant levels for both project construction and operations, as necessary.

The findings of the noise and vibration analyses and impact assessment will be presented in a Noise section of the EIR. Pertinent technical background information and impact assessment details will be included in an appendix.

Deliverables:

- Noise and Vibration Analysis, to be included as an appendix to the EIR

10.3 Peer Review of Applicant-Provided Technical Studies

Per the RFP, the following technical reports have been prepared or are being prepared by the project applicant's team:

- » Phase I and II ESAs
- » Soil and Soil Gas Investigation Report
- » Dry Utilities Report
- » Sewer and Water Demand Report
- » Hydrology Report
- » Water Quality Management Plan

We will review these technical reports to ensure that they have been prepared using appropriate methodology, consistent with existing regulatory requirements, and using accurate and verifiable field techniques and are in conformance with all applicable CEQA requirements. PlaceWorks will also ensure the studies can adequately address all applicable CEQA Guidelines Appendix G checklist questions. If we find any inaccuracies or deficiencies in analyses, we will prepare a brief memorandum for that study to formalize our review and summary adequacy conclusion.

Deliverables:

- Peer Review Memoranda, as required (electronic copy)

TASK 11. SUBCONSULTANTS TECHNICAL STUDIES

11.1 Biological Resources Technical Memo—Cadre Environmental

Given the built-out and urban setting of the project area, no sensitive biological resources are anticipated onsite; thus, this scope of work does not include a

literature review or habitat assessment. PlaceWorks will survey and document potential resources at the site and Cadre Environmental will prepare a technical memorandum to defensibly conclude whether significant biological resources are present and whether this topic needs to be further evaluated. Regulatory requirements and City standard conditions of approval will be documented in the memorandum. No potentially threatened or endangered species, sensitive floral/fauna species habitats, or trees are anticipated onsite. The technical memorandum will be included as an appendix to the DEIR.

Deliverables:

- Draft and Final Biological Resources Technical Memorandum (1 hard copy and 1 electronic copy)

11.2 Cultural and Paleontological Resources Technical Report—Cogstone

Cogstone will prepare cultural and paleontological resources technical reports that analyze the project's potential impacts on cultural resources. Cogstone will also assist the City with Native American consultation in accordance with AB 52 requirements.

Background Research, Data Collection, and Native American Consultation

- » Cultural Resources Record Search: Cogstone will conduct an updated record search at the South Central Coastal Information Center (SCCIC) at California State University, Fullerton, for a one-half-mile radius surrounding the project area in order to identify any previously recorded sites and previous cultural resource studies documented within the study area.
- » Paleontology Records Search: Cogstone will obtain an updated paleontological records search from the Los Angeles County Natural History Museum.
- » Native American Consultation. Cogstone will request a Sacred Lands File (SLF) search from the Native American Heritage Commission (NAHC). Cogstone will also assist the City with meeting AB 52 requirements by drafting consultation letters to be provided on City letterhead. The City will be required to mail the letters and conduct the consultation. This scope of work does not include conducting consultation meetings. If requested, a budget augment will be required.

Fieldwork

Since the project area is hardscaped, Cogstone will conduct a reconnaissance survey to document baseline conditions. It is assumed that no archaeological resources will be identified.

Deliverables

Cogstone will prepare draft AB 52 letter templates and a brief cultural and paleontological resources letter memo report that will summarize the updated records searches, field reconnaissance, and baseline conditions and assess potential impacts to cultural and paleontological resources resulting from the project. This scope of work includes responding to two rounds of comments. Final reports and GIS will be filed with the SCCIC.

Deliverables:

- Draft and Final Cultural and Paleontological Resources Letter Memo Report (1 hard copy and 1 electronic copy)
- Draft AB 52 letter templates

TEAM ORGANIZATION

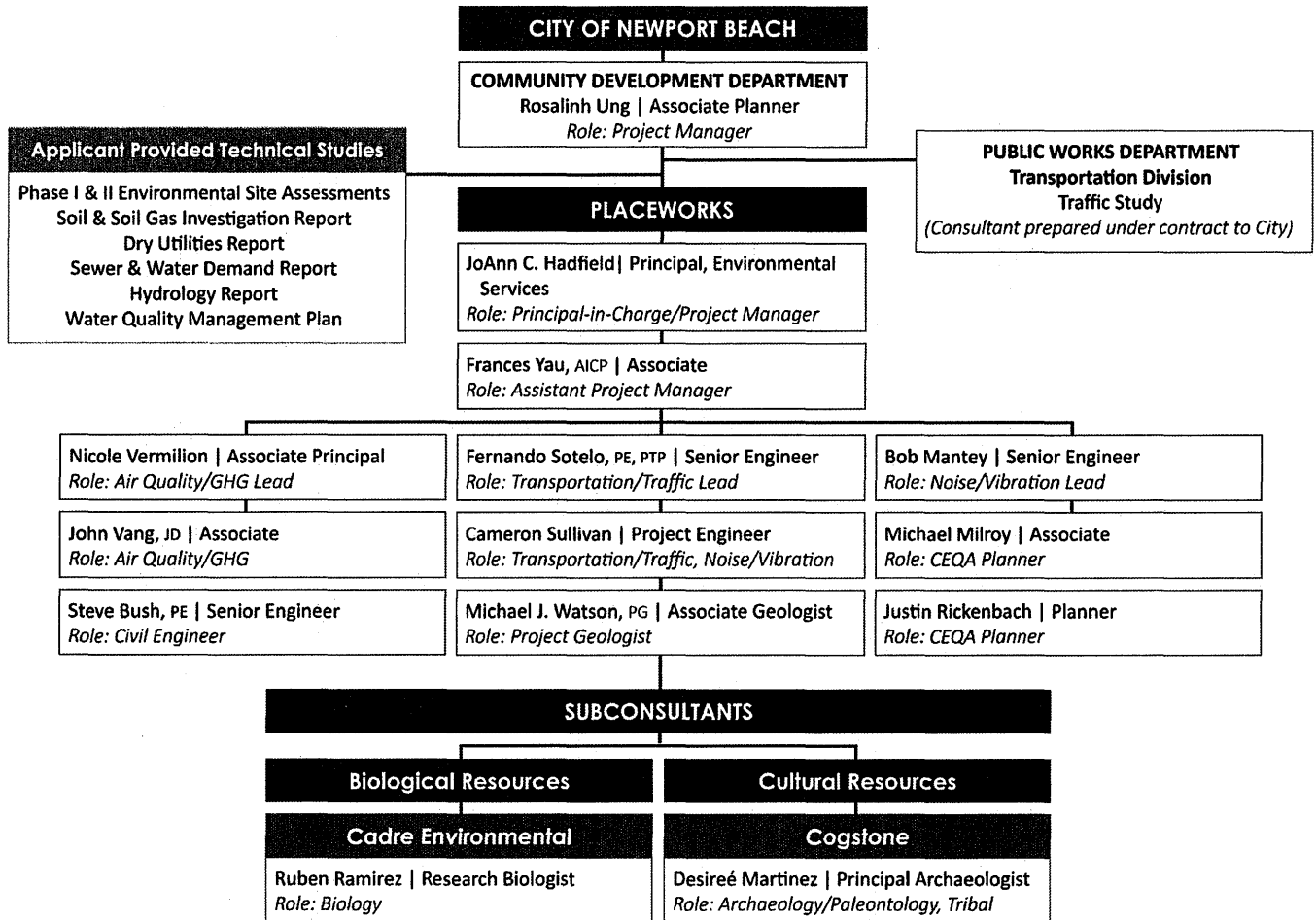


EXHIBIT B

SCHEDULE OF BILLING RATES

THE PLACEWORKS TEAM
NEWPORT CROSSINGS MIXED USE RESIDENTIAL EIR
COST PROPOSAL

		PLACEWORKS																CADRE	COGSTONE		
		HADFIELD	YAU	VERMILION	MANTEY	OTOLO	BUSH	VANG	WATSON	MILROY	SULLIVAN	RICKENBACH	NAKAMA	FROELICH	MUNOZ						
Task	Description	Principal PM	Assistant PM	AG/HGH	Noise/ Vibration	Traffic	AQ/Health Risk	AQ/Health Risk	Hazards	CEQA	Noise	CEQA	Graphics	Senior Editor	WP/Clerical	PlaceWorks Hours	PlaceWorks Labor Total	Biological Resources	Cultural Resources	Total Task Budget	
Hourly Rate:																					
		\$230	\$135	\$195	\$180	\$180	\$185	\$135	\$115	\$115	\$105	\$90	\$90	\$110	\$85						
CEQA DOCUMENTATION																					
Task 1. Project Initiation																					
1.1	Project Kick-Off Meeting and Data Collection	2	2													4	\$730			\$745	
Task 1. Subtotal		2	2	0	0	0	0	0	0	0	0	0	0	0	1	1	4	\$730	\$0	\$0	\$745
Task 2. Project Description and EIR Outline																					
2.1	Project Description	2	18											4	2	2	26	\$3,370		\$3,437	
2.2	EIR Outline		2														2	\$270		\$275	
Task 2. Subtotal		2	18	0	0	0	0	0	0	0	0	0	0	4	2	2	28	\$3,640	\$0	\$0	\$3,713
Task 3. Initial Study, Notice of Preparation, and Scoping Meeting																					
3.1	Initial Study/Notice of Preparation	8	8									32		2	8	4	62	\$7,200		\$7,344	
3.2	Scoping Meeting (attendance and PPT prep)	4	8														12	\$2,000		\$2,040	
Task 3. Subtotal		12	16	0	0	0	0	0	0	0	0	32		2	8	4	74	\$9,200	\$0	\$0	\$9,384
Task 4. Administrative Draft EIR I & II																					
4.1	Administrative Draft EIR I													32	48	40	120	\$11,560		\$11,791	
Chapters 1-4 (except Project Description)		2	20														22	\$3,160		\$3,223	
Project Description (Chapter 3)			2														2	\$270		\$275	
Aesthetics		4	20														24	\$3,620		\$3,692	
Agriculture and Forestry Resources																	0	\$0		\$0	
Air Quality		4															4	\$920		\$938	
Biological Resources		2	4								16						6	\$1,000		\$1,020	
Cultural Resources		2	12														14	\$2,080		\$2,122	
Geology and Soils		2															16	\$2,300		\$2,346	
Greenhouse Gas Emissions		2															2	\$460		\$469	
Hazards and Hazardous Materials		2							20								22	\$2,760		\$2,815	
Hydrology and Water Quality		2									16						18	\$2,300		\$2,346	
Land Use and Planning		8	24														32	\$5,080		\$5,182	
Mineral Resources																	0	\$0		\$0	
Noise		4															4	\$920		\$938	
Population and Housing		2												16			18	\$1,900		\$1,938	
Public Services		1	2											36			39	\$3,740		\$3,815	
Recreation		1	2											16			19	\$1,940		\$1,979	
Transportation and Traffic		8				32											40	\$7,600		\$7,762	
Tribal Cultural Resources		2	8														10	\$1,540		\$1,571	
Utilities and Service Systems		4									24						28	\$3,680		\$3,754	
Chapters 5-12 (except Alternatives)		2	2									8					12	\$1,450		\$1,479	
Alternatives (Chapter 7)		16	32														48	\$9,000		\$9,160	
4.2	Administrative Draft EIR II																0	\$0		\$0	
Revisions to Administrative Draft EIR I		12	32		2	2		2									50	\$8,070		\$8,231	
4.3	Pre-Print Draft EIR																0	\$0		\$0	
Revisions to Administrative Draft EIR II		8	16														24	\$4,000		\$4,080	
Task 4. Subtotal		90	176	0	2	34	0	2	20	56	0	76	32	48	40	576	\$78,350	\$0	\$0	\$78,917	
Task 5. Draft EIR																					
5.1	Public Review Draft EIR		4											8	16	16	44	\$4,380		\$4,468	
Task 5. Subtotal		0	4	0	0	0	0	0	0	0	0	0	0	8	16	16	44	\$4,380	\$0	\$0	\$4,468
Task 6. Final EIR																					
6.1	Response to Comments/Errata (Revisions to DEIR)	24	48			6		6				4	4	8	4	106	\$15,478			\$15,779	
6.2	Mitigation Monitoring and Reporting Program		2														6	\$630		\$643	
Task 6. Subtotal		24	50	0	0	6	0	6	0	0	0	4	4	8	4	106	\$16,108	\$0	\$0	\$16,422	
Task 7. FOF, SOC, NOD and Final Product																					
7.1	Findings of Fact and Statement of Overriding Cons.	4	18												4	2	26	\$3,690		\$3,764	
7.2	Notice of Determination											2					2	\$180		\$184	
7.3	Final Product		2														2	\$270		\$275	
Task 7. Subtotal		4	18	0	0	0	0	0	0	0	0	2	0	4	2	30	\$4,140	\$0	\$0	\$4,222	
Task 8. Meetings and Public Hearings																					
8.1	In-person Meetings (6 @ 1-hr each)	10	10														20	\$3,650		\$3,723	
8.2	Public Meetings/Hearings (4 @ 5-hr each)	20	20														40	\$7,300		\$7,446	
Task 8. Subtotal		30	30	0	0	0	0	0	0	0	0	0	0	0	0	60	\$10,950	\$0	\$0	\$11,169	
Task 9. Project Management																					
9.1	Project Management	48	24														72	\$14,280		\$14,566	
Task 9. Subtotal		48	24	0	0	0	0	0	0	0	0	0	0	0	0	72	\$14,280	\$0	\$0	\$14,566	
TECHNICAL STUDIES																					
Task 10. PlaceWorks In-House Technical Studies and Peer Review																					
10.1	Air Quality/GHG Analysis			10				68									78	\$11,130		\$11,353	
10.2	Noise and Vibration Analysis				12							48					60	\$7,200		\$7,344	
10.3	Peer Review of Applicant-Provided Technical Study	10				10			10								30	\$5,100		\$5,202	
Task 10. Subtotal		10	0	10	12	0	10	68	10	0	48	0	0	0	0	168	\$23,430	\$0	\$0	\$23,899	
Task 11. Subconsultant Technical Studies																					
11.1	Biological Resources Tech Memo																0	\$0	500	\$500	
11.2	Cultural and Paleo Resources Letter Memo Report	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	3,871	\$4,258	
Task 11. Subtotal		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$550	\$4,258	\$4,808
Labor Hours Total		222	338	10	14	40	10	76	30	56	48	114	50	87	69	1162	\$165,200	\$550	\$4,258	\$173,312	
Labor Dollars Total		\$51,060	\$45,630	\$1,950	\$2,520	\$7,200	\$1,650	\$10,260	\$3,450	\$6,440	\$5,040	\$10,260	\$4,500	\$9,570	\$5,865						
PlaceWorks Percent of Total Labor		19.1%	29.1%	0.9%	1.2%	3.4%	0.9%	6.5%	2.6%	4.8%	4.1%	9.8%	4.3%	7.5%	5.9%						
REIMBURSABLE EXPENSES TOTAL																					
GRAND TOTAL																					

EXHIBIT C

INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

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

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement.
 - B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
 - C. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Consultant arising out of or in connection with Work to be performed under this

Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

- D. Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.
- B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement shall be included as insureds under such policies.
- C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
- D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

5. Additional Agreements Between the Parties. The parties hereby agree to the following:

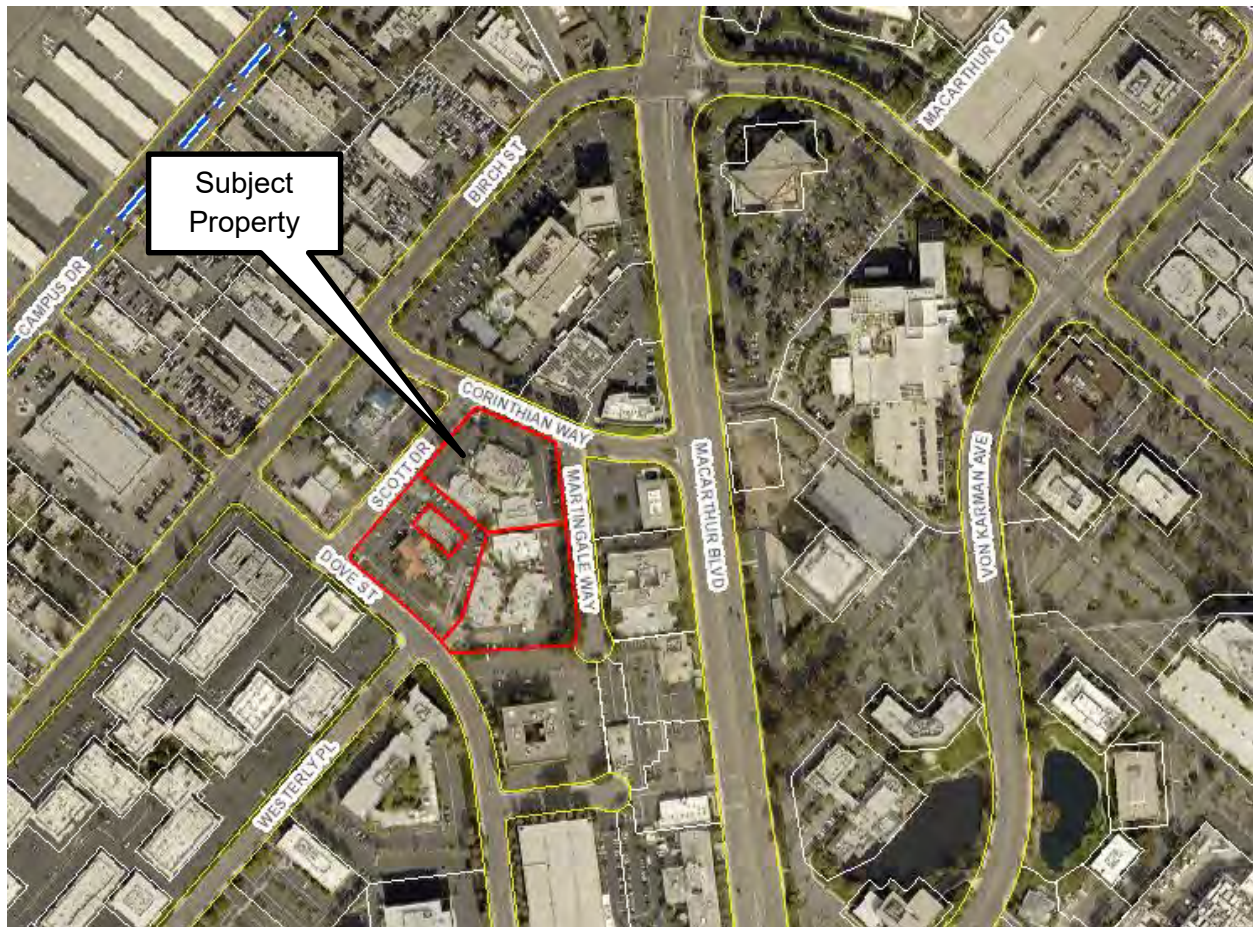
- A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. 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. 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.
- 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. 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.
- 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 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.

- G. 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 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. 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

Project Site Exhibit

Newport Crossings Project Project Site Map





CITY OF

NEWPORT BEACH

City Council Staff Report

November 14, 2017
Agenda Item No. 9

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Dan Matusiewicz, Finance Director - 949-644-3123,
dmatusiewicz@newportbeachca.gov

PREPARED BY: Steve Montano, Deputy Finance Director,
smontano@newportbeachca.gov

PHONE: 949-644-3240

TITLE: Investment Advisor Contract with Chandler Asset Management

ABSTRACT:

The City previously engaged two separate investment managers to oversee a portion of the City's investment portfolio totaling approximately \$208 million, not including bond or other short-term cash portfolios. At the end of a five-year contract cycle, the City solicited and evaluated proposals with the specific intent to determine the appropriate mix of investment managers while obtaining more advantageous pricing in the process. Based on the proposal responses, staff selected Chandler Asset Management (Chandler) as the sole investment manager and will sever its working relationship with the other. Staff's recommendation was presented and supported by the Finance Committee.

RECOMMENDATION:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Approve a five-year professional service contract for investment advisory services with Chandler Asset Management in a not-to-exceed contract of \$675,000.

FUNDING REQUIREMENTS:

Based on the fee schedule associated with a five-year contract, the total annual cost for the contract will range between \$127,000 and \$139,000 per year depending on the total assets managed per year. The new contract will result in a savings to the City of approximately \$30,000 per year. There is sufficient funding for this contract. Since cash and investments are pooled together for investment management purposes, the fees are initially expensed to a non-departmental "Investment Advisor Fee" account, which is then netted against investment earnings before earnings are shared and allocated to each fund based on their proportionate cash balance.

DISCUSSION:

The Finance Department has outsourced the management of the City's investment portfolio for more than 25 years. With increased staff workloads over the years, it is increasingly clear that the City's portfolio has benefited from full time expert management by professionally managed investment firms. During the last eight years, the Federal Government has kept interest rates historically low, and reduced the inventory of agency securities making investing the City's idle money and diversifying the portfolio more challenging. Contracting for investment advisory services avails the City to a full complement of investment services that would not be possible to do in-house without the economy of scale that full-time investment advisory services command. This means our investment portfolio is invested more safely because it benefits from full-time professional attention, ongoing credit analysis and the industry tools and resources to manage public funds effectively and prudently.

The City previously engaged five separate investment managers and five separate custodial banks to oversee and safeguard its investment portfolio. In 2011, the City evaluated proposals from investment advisory firms to evaluate the possibility of reducing its number of investment managers and custody banks greatly improving efficiency and reducing fees in the process. Based on the circumstances at that time, the City reduced the number of service providers to Chandler, Cutwater Asset Management (Cutwater), and PFM Asset Management (PFM) who each were awarded five-year contracts. On October 6, 2014, the firm BNY Mellon, our current custody bank, announced its intention to acquire Cutwater. The City terminated its contract with Cutwater shortly after and transferred the assets previously managed by Cutwater to Chandler and PFM proportionately. As part of its due diligence, staff intends to conduct a complete and competitive selection process for investment advisory services at the end of every five-year contract term.

Staff has traditionally undertaken the task of planning, preparing and facilitating the RFP process for investment advisory services. Since the City had already engaged two excellent firms, the task to differentiate the quality of services and best fit was going to be a difficult task. Staff thought it was prudent to hire a consultant with (a) years of industry experience who could attract a group of highly qualified firms to respond to the RFP; (b) a demonstrated commitment to government excellence; and (c) the ability to undertake this important and detailed work during a time when staff was consumed with preparing the annual budget and undertaking the ERP implementation. The City hired the firm Portfolio Services for Government, LLC (PSG) to review RFP expectations and logistics with the City, prepare the RFP documents, analyze and summarize RFP responses, and facilitate the finalist interview process.

Together with PSG, the City issued a Request for Proposal (RFP) for Investment Advisory Services and by the proposal due date, six firms submitted proposals, including: Atlanta Capital, Chandler, Eaton Vance Management, PFM, Public Trust Assets, and Reams Asset Management. Proposals were submitted in two parts, including a written technical proposal and a separated sealed dollar cost bid.

Under the coordination of the Finance Director and PSG, proposals were reviewed and ranked by a three-person Selection Committee comprised of the Finance Director, the Deputy Finance Director and a staff Accountant in charge of investment accounting and reconciliation. The written technical proposals were reviewed and ranked by the Committee before the sealed dollar cost bids were opened and scored.

Staff evaluated and ranked each firm's proposals based on qualifications and experience, management approach and discipline, value added services, and fees. Due to the lower rankings assigned to Reams, Atlanta Capital, and Eaton Vance, staff did not advance these three firms for further consideration. Staff narrowed their selection consideration to Chandler, PFM, and Public Trust – all reputable firms that have experience with meeting investment goals while providing continuity through challenging market cycles. These firms were then invited back to a finalist presentation and interview responding to 16 specific questions that were provided to them in advance, and to respond to any other questions the Selection Committee chose to probe further into.

While the three finalists met the qualifications; based on the technical content of the proposals, the quality and experience of the proposed engagement staff, comparable clients, and other intangibles; the Selection Committee ranked Chandler as the top overall proposer deemed best able to meet the City's overall needs. Sealed dollar cost bids were opened and revealed annual cost. Firms proposed a tiered fee structure based on the total assets under management. The relative rankings and average fee rate based on \$200 million are summarized in the table to follow:

Firm	Fees as Percent of Managed	
	Portfolio ¹	Rank
Chandler	0.060%	1
PFM	0.070%	2
Public Trust	0.061%	3
Reams	0.078%	4
Atlanta Capital	0.093%	5
Eaton Vance	0.085%	6

¹ Assuming each firm had \$200 million of assets under management.

While any of the three finalists would make a great choice, staff selected Chandler as the sole investment manager. The City values the relationship it has had with its past investment advisors; however, we believe Chandler is currently the best fit for City at present because of their narrow focus on fixed income investments, frequent direct communication with portfolio managers, customizable solutions, favorable pricing and other intangibles. Chandler also has a proven track record of understanding and delivering on the City's cash flow needs, a history of providing excellent service and has consistently performed well in up and down market conditions. Since 1991, Chandler's portfolio managers have worked diligently to invest the City's portfolio in a manner that fulfills the specific objectives for safety, liquidity and income in a prudent manner at a very competitive price.

Chandler Asset Management is an SEC-registered investment advisor and woman-owned business enterprise with its principal place of business located in San Diego, California. Chandler's primary focus is managing funds for public agencies and other conservative-minded clients who are guided by the objectives of preservation of principal, access to cash, and maximization of investment outcome without undue exposure to risk.

Public Trust is a relatively new firm that has been in operation for five years. While Public Trust has highly experienced financial professionals, staff believes that having a few more years as an established firm would make it more attractive. Although the City has been very satisfied with the past expert performance of PFM, City staff believes that a single investment manager could more efficiently manage its portfolio at a lower cost and streamline treasury operations without introducing new portfolio risk. In moving to one investment manager, the City will lower its fee structure from approximately \$150,000 to \$120,000, a savings of over \$30,000 per year based on a \$200 million average balance. The City will also optimize the investment program by making better use of liquidity and long-term funds. There will be additional staff efficiency by reducing coordination efforts, reducing the number of quarterly meetings with investment advisors and fewer account reconciliations. The incremental cost of investing new funds is also reduced by reaching lower tiered pricing through one investment advisor.

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 – Chandler Asset Management Professional Services Agreement

Attachment A

Chandler Asset Management Professional Services Agreement

**PROFESSIONAL SERVICES AGREEMENT
WITH CHANDLER ASSET MANAGEMENT, INC. FOR
INVESTMENT MANAGEMENT AND ADVISORY SERVICES**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 1st day of January, 2018 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and CHANDLER ASSET MANAGEMENT, INC., a California corporation ("Consultant"), whose address is 6225 Lusk Boulevard, San Diego, California 92121, 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 is required to manage its operating portfolio of cash and marketable securities in accordance with the City's current adopted investment policy, Council Policy F-1. Council Policy F-1 is attached to this Agreement as Exhibit "A" and incorporated herein by reference.
- C. City desires to engage Consultant to provide investment management and advisory services ("Project").
- 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.
- E. Consultant represents it is a registered investment advisor under the Investment Advisers Act of 1940 and possesses the skill, experience, ability, background, certification and knowledge to provide the services described 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 December 31, 2022, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit B and incorporated herein by reference ("Services" or "Work"). City may elect to delete certain Services within the Scope of Services at its sole discretion.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit B. 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 B, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

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

3.3 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

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

4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit C and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Six Hundred Seventy-Five Thousand Dollars and 00/100 (\$675,000.00)**, 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, a description of any reimbursable expenditures, and the average monthly market value of assets under management for the time period for which the fee is assessed and the total fee charged in accordance with the schedule stated in Exhibit C. 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 C to this Agreement or specifically approved in writing in advance by City.

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

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 Jayson Schmitt to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit B 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 Finance Department. City's Finance Director or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

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

8. STANDARD OF CARE

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

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

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

9. HOLD HARMLESS

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

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce

the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant.

10. INDEPENDENT CONTRACTOR

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

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

17. OWNERSHIP OF DOCUMENTS

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

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

full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

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

18. CONFIDENTIALITY

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

19. INTELLECTUAL PROPERTY INDEMNITY

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

20. RECORDS

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

21. WITHHOLDINGS

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

22. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have

resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

23. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

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

24. CONFLICTS OF INTEREST

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

24.2 If subject to the Act, Consultant shall conform to all requirements of the Act. 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: Finance Director
Finance 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: Jayson Schmitt
Chandler Asset Management, Inc.
6225 Lusk Boulevard
San Diego, CA 92121

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: 11/2/17

By:  for
Aaron C. Harp
City Attorney Nov 10.30.17

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Kevin Muldoon
Mayor

CONSULTANT: Chandler Asset
Management, Inc., a California
corporation

Date: _____

By: _____
Martin D. Cassell
Chief Executive Officer

Date: _____

By: _____
Nicole Dragoo
Secretary

[END OF SIGNATURES]

Attachments: Exhibit A – Council Policy F-1
 Exhibit B – Scope of Services
 Exhibit C – Schedule of Billing Rates
 Exhibit D – Insurance Requirements

EXHIBIT A
COUNCIL POLICY F-1

STATEMENT OF INVESTMENT POLICY

PURPOSE:

The City Council has adopted this Investment Policy (the Policy) in order to establish the scope of the investment policy, investment objectives, standards of care, authorized investments, investment parameters, reporting, investment policy compliance and adoption, and the safekeeping and custody of assets.

This Policy is organized in the following sections:

- A. Scope of Investment Policy
 - 1. Pooling of Funds
 - 2. Funds Included in the Policy
 - 3. Funds Excluded from the Policy
- B. Investment Objectives
 - 1. Safety
 - 2. Liquidity
 - 3. Yield
- C. Standards of Care
 - 1. Prudence
 - 2. Ethics and Conflicts of Interest
 - 3. Delegation of Authority
 - 4. Internal Controls
- D. Banking Services
- E. Broker/Dealers
- F. Safekeeping and Custody of Assets
- G. Authorized Investments
 - 1. Investments Specifically Permitted
 - 2. Investments Specifically Not Permitted
 - 3. Exceptions to Prohibited and Restricted Investments
- H. Investment Parameters
 - 1. Diversification
 - 2. Maximum Maturities
 - 3. Credit Quality
 - 4. Competitive Transactions
- I. Portfolio Performance
- J. Reporting
- K. Investment Policy Compliance and Adoption
 - 1. Compliance
 - 2. Adoption

A. SCOPE OF INVESTMENT POLICY

1. Pooling of Funds

All cash shall be pooled for investment purposes. The investment income derived from the pooled investment shall be allocated to the contributing funds, net of all banking and investing expenses, based upon the proportion of the respective average balances relative to the total pooled balance. Investment income shall be distributed to the individual funds not less than annually.

2. Funds Included in the Policy

The provisions of this Policy shall apply to all financial assets of the City as accounted for in the City's Comprehensive Annual Financial Report, including;

- a) General Fund
- b) Special Revenue Funds
- c) Capital Project Funds
- d) Enterprise Funds
- e) Internal Service Funds
- f) Trust and Agency Funds
- g) Permanent Endowment Funds
- h) Any new fund created unless specifically exempted

If the City invests funds on behalf of another agency and, if that agency does not have its own investment policy, this Policy shall govern the agency's investments.

3. Funds Excluded from this Policy

Bond Proceeds - Investment of bond proceeds will be made in accordance with applicable bond indentures.

B. INVESTMENT OBJECTIVES

The City's funds shall be invested in accordance with all applicable City policies and codes, State statutes, and Federal regulations, and in a manner designed to accomplish the following objectives, which are listed in priority order:

1. Safety

Preservation of principal is the foremost objective of the investment program. Investments of the City shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective shall be to mitigate credit risk and interest rate risk. To attain this objective, the City shall diversify its investments by investing funds among

several financial institutions and a variety of securities offering independent returns.

a) Credit Risk

The City shall minimize credit risk, the risk of loss due to the failure of the security issuer or backer, by:

- Limiting investments in securities that have higher credit risks, pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisors with which the City will do business
- Diversifying the investment portfolio so as to minimize the impact any one industry/investment class can have on the portfolio

b) Interest Rate Risk

To minimize the negative impact of material changes in the market value of securities in the portfolio, the City shall:

- Structure the investment portfolio so that securities mature concurrent with cash needs to meet anticipated demands, thereby avoiding the need to sell securities on the open market prior to maturity
- Invest in securities of varying maturities

2. Liquidity

The City's investment portfolio shall remain sufficiently liquid to enable the City to meet all operating requirements which might be reasonably anticipated without requiring a sale of securities. Since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets. A portion of the portfolio also may be placed in money market mutual funds or LAIF which offer same-day liquidity for short-term funds.

3. Yield

The City's investment portfolio shall be designed with the objective of attaining a benchmark rate of return throughout budgetary and economic cycles, commensurate with the City's investment risk constraints and the liquidity characteristics of the portfolio. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The core of investments is limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed.

C. STANDARDS OF CARE

1. Prudence

The standard of prudence to be used for managing the City's investment program is California Government Code Section 53600.3, the prudent investor standard, which states that "when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency."

The City's overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The City recognizes that no investment is totally without risk and that the investment activities of the City are a matter of public record. Accordingly, the City recognizes that occasional measured losses may occur in a diversified portfolio and shall be considered within the context of the overall portfolio's return, provided that adequate diversification has been implemented and that the sale of a security is in the best long-term interest of the City.

The Finance Director and authorized investment personnel acting in accordance with established procedures and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that deviations from expectations are reported in a timely fashion to the City Council and appropriate action is taken to control adverse developments.

2. Ethics and Conflicts of Interest

Elected officials and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the City's investment program or could impair or create the appearance of an impairment of their ability to make impartial investment decisions. Employees and investment officials shall subordinate their personal investment transactions to those of the City. In addition, City Council members, the City Manager, and the Finance Director shall file a Statement of Economic Interests each year as required by California Government Code Section 87203 and regulations of the Fair Political Practices Commission.

3. Delegation of Authority

Authority to manage the City's investment program is derived from the Charter of the City of Newport Beach section 605 (j). The Finance Director shall assume the title of and act as City Treasurer and with the approval of the City Manager appoint deputies annually as necessary to act under the provisions of any law requiring or permitting action by the City Treasurer. The Finance Director may then delegate the authority to conduct investment transactions and to manage the operation of the investment portfolio to other specifically authorized staff members. No person may engage in an investment transaction except as expressly provided under the terms of this Policy.

The City may engage the support services of outside investment advisors with respect to its investment program, so long as it can be demonstrated that these services produce a net financial advantage or necessary financial protection of the City's financial resources. Such companies must be registered under the Investment Advisors Act of 1940, be well-established and exceptionally reputable. Members of the staff of such companies who will have primary responsibility for managing the City's investments must have a working familiarity with the special requirements and constraints of investing municipal funds in general and this City's funds in particular. These firms must insure that the portion of the portfolio under their management complies with various concentration and other constraints specified herein, and contractually agree to conform to all provisions of governing law and the collateralization and other requirements of this Policy. Selection and retention of broker/dealers by investment advisors shall be at their sole discretion and dependent upon selection and retention criteria as stated in the Uniform Application for Investment Advisor Registration and related Amendments (SEC Form ADV 2A).

4. Internal Controls

The Finance Director is responsible for establishing and maintaining a system of internal controls. The internal controls shall be designed to prevent losses of public funds arising from fraud, employee error, and misrepresentation by third parties, unanticipated changes in financial markets, or imprudent action by City employees and officers. The internal structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived, and (2) the valuation of costs and benefits requires estimates and judgments by management.

D. BANKING SERVICES

Banking services for the City shall be provided by FDIC insured banks approved to provide depository and other banking services. To be eligible, a bank shall qualify as a depository of public funds in the State of California as defined in California Government Code Section 53630.5 and shall secure deposits in excess of FDIC insurance coverage in accordance with California Government Code Section 53652.

E. BROKER/DEALERS

In the event that an investment advisor is not used to purchase securities, the City will select broker/dealers on the basis of their expertise in public cash management and their ability to provide service to the City's account.

Each approved broker/dealer must possess an authorizing certificate from the California Commissioner of Corporations as required by Section 25210 of the California Corporations Code.

To be eligible, a firm must meet at least one of the following criteria:

1. Be recognized as Primary Dealers by the Federal Reserve Bank of New York or have a primary dealer within their holding company structure, or
2. Report voluntarily to the Federal Reserve Bank of New York, or
3. Qualify under Securities and Exchange Commission (SEC) Rule 15c3-1 (Uniform Net Capital Rule).

F. SAFEKEEPING AND CUSTODY OF ASSETS

The Finance Director shall select one or more banks to provide safekeeping and custodial services for the City. A Safekeeping Agreement approved by the City shall be executed with each custodian bank prior to utilizing that bank's safekeeping services.

Custodian banks will be selected on the basis of their ability to provide services for the City's account and the competitive pricing of their safekeeping related services.

The purchase and sale of securities and repurchase agreement transactions shall be settled on a delivery versus payment basis. All securities shall be perfected in the name of the City. Sufficient evidence to title shall be consistent with modern investment, banking and commercial practices.

All investment securities, except non-negotiable Certificates of Deposit, Money Market Funds and local government investment pools, purchased by the City will

be delivered by book entry and will be held in third-party safekeeping by a City approved custodian bank, its correspondent bank or its Depository Trust Company (DTC) participant account.

All Fed wireable book entry securities owned by the City shall be held in the Federal Reserve system in a customer account for the custodian bank which will name the City as "customer."

All DTC eligible securities shall be held in the custodian bank's DTC participant account and the custodian bank shall provide evidence that the securities are held for the City as "customer."

G. AUTHORIZED INVESTMENTS

All investments and deposits of the City shall be made in accordance with California Government Code Sections 16429.1, 53600-53609 and 53630-53686. Any revisions or extensions of these code sections will be assumed to be part of this Policy immediately upon being enacted. The City has further restricted the eligible types of securities and transactions. The foregoing list of authorized securities and transactions shall be strictly interpreted. Any deviation from this list must be pre-approved by resolution of the City Council. In the event an apparent discrepancy is found between this Policy and the Government Code, the more restrictive parameter(s) will take precedence.

Where this section specifies a percentage limitation for a particular security type, that percentage is applicable only at the date of purchase.

1. Investments Specifically Permitted

- a) United States Treasury bills, notes, or bonds with a final maturity not exceeding five years from the date of trade settlement. There is no limitation as to the percentage of the City's portfolio that may be invested in this category.
- b) Federal Instrumentality (government-sponsored enterprise) debentures, discount notes, callable and step-up securities, with a final maturity not exceeding five years from the date of trade settlement. There is no limitation as to the percentage of the portfolio that can be invested in this category.
- c) Federal Agency Obligations for which the full faith and credit of the United States are pledged for the payment of principal and interest and which have a final maturity not exceeding five years from the

date of trade settlement. There is no limitation as to the percentage of the portfolio that can be invested in this category.

- d) Mortgage-backed Securities, Collateralized Mortgage Obligation (CMO) and Asset-backed Securities limited to mortgage-backed pass-through securities issued by a US government agency, or consumer receivable pass-through certificates or bonds with a final maturity not exceeding five years from the date of trade settlement. Securities eligible for investment under this subdivision shall be issued by an issuer whose debt is rated in at least the "A" category or the equivalent by a Nationally Recognized Statistical Rating Organization (NRSRO). The security itself shall be rated at least "AAA" or the equivalent by an NRSRO. No more than five percent (5%) of the City's total portfolio shall be invested in any one issuer of mortgage-backed and asset-backed securities listed above, and the aggregate investment in mortgage-backed and asset-backed securities shall not exceed twenty percent (20%) of the City's total portfolio.
- e) Medium-Term Notes issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States, with a final maturity not exceeding five years from the date of trade settlement, and rated in at least the "A" category or the equivalent by an NRSRO. No more than five percent (5%) of the City's total portfolio shall be invested in any one issuer of medium-term notes, and the aggregate investment in medium-term notes shall not exceed thirty percent (30%) of the City's total portfolio.
- f) Municipal Bonds: including bonds issued by the City of Newport Beach, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the City or by a department, board, agency, or authority of the City.

State of California registered warrants or treasury notes or bonds, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

Registered treasury notes or bonds of any of the other 49 states in addition to California, including bonds payable solely out of the revenues from a revenue producing property owned, controlled, or

operated by a state or by a department, board, agency, or authority of any of the other 49 states, in addition to California.

Bonds, notes, warrants, or other evidences of indebtedness of a local agency within California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

In addition, these securities must be rated in at least the "A" category or the equivalent by a NRSRO with maturities not exceeding five years from the date of trade settlement. No more than five percent (5%) of the City's total portfolio shall be invested in any one municipal issuer. In addition, the aggregate investment in municipal bonds may not exceed thirty percent (30%) of the portfolio.

- g) Non-negotiable Certificates of Deposit and savings deposits with a maturity not exceeding two years from the date of trade settlement, in FDIC insured state or nationally chartered banks or savings banks that qualify as a depository of public funds in the State of California as defined in California Government Code Section 53630.5. Deposits exceeding the FDIC insured amount shall be secured pursuant to California Government Code Section 53652. No one issuer shall exceed more than five percent (5%) of the portfolio, and investment in negotiable and nonnegotiable certificates of deposit shall be limited to thirty percent (30%) of the portfolio combined.
- h) Negotiable Certificates of Deposit only with a nationally or state-chartered bank, a savings association or a federal association (as defined by Section 5102 of the Financial Code), a state or federal credit union, or by a federally licensed or state-licensed branch of a foreign bank whose senior long-term debt is rated in at least the "A" category, or the equivalent, or short-term debt is rated at least "A-1" or the equivalent by an NRSRO and having assets in excess of \$10 billion, so as to ensure security and a large, well-established secondary market. Ease of subsequent marketability should be further ascertained prior to initial investment by examining currently quoted bids by primary dealers and the acceptability of the issuer by these dealers. No one issuer shall exceed more than five percent (5%) of the portfolio, and maturity shall not exceed two years. Investment in negotiable and non-negotiable certificates of deposit shall be limited to thirty percent (30%) of the portfolio combined.

- i) Prime Commercial Paper with a maturity not exceeding 270 days from the date of trade settlement that is rated "A-1", or the equivalent, by an NRSRO. The entity that issues the commercial paper shall meet all of the following conditions in either sub-paragraph i. or sub-paragraph ii. below:
 - i. The entity shall (1) be organized and operating in the United States as a general corporation, (2) have total assets in excess of \$500,000,000 and (3) have debt other than commercial paper, if any, that is rated in at least the "A" category or the equivalent by an NRSRO.
 - ii. The entity shall (1) be organized within the United States as a special purpose corporation, trust, or limited liability company, (2) have program wide credit enhancements, including, but not limited to, over collateralization, letters of credit or surety bond and (3) have commercial paper that is rated at least "A-1" or the equivalent, by an NRSRO.
 - iii. No more than five percent (5%) of the City's total portfolio shall be invested in the commercial paper of any one issuer, and the aggregate investment in commercial paper shall not exceed twenty-five percent (25%) of the City's total portfolio.
- j) Eligible Banker's Acceptances with a maturity not exceeding 180 days from the date of trade settlement, drawn on and accepted by a commercial bank whose senior long-term debt is rated in at least the "A" category or the equivalent by an NRSRO at the time of purchase. Banker's Acceptances shall be rated at least "A-1", or the equivalent at the time of purchase by an NRSRO. If the bank has senior debt outstanding, it must be rated in at least the "A" category or the equivalent by an NRSRO. The aggregate investment in banker's acceptances shall not exceed forty percent (40%) of the City's total portfolio, and no more than five percent (5%) of the City's total portfolio shall be invested in banker's acceptances of any one bank.
- k) Repurchase Agreements and Reverse Repurchase Agreements with a final termination date not exceeding 30 days collateralized by U.S. Treasury obligations or Federal Instrumentality securities listed in items 1 and 2 above with the maturity of the collateral not exceeding ten years. For the purpose of this section, the term collateral shall mean purchased securities under the terms of the City's approved

Master Repurchase Agreement. The purchased securities shall have a minimum market value including accrued interest of one hundred and two percent (102%) of the dollar value of the funds borrowed. Collateral shall be held in the City's custodian bank, as safekeeping agent, and the market value of the collateral securities shall be marked-to-the-market daily.

Repurchase Agreements and Reverse Repurchase Agreements shall be entered into only with broker/dealers and who are recognized as Primary Dealers with the Federal Reserve Bank of New York, or with firms that have a Primary Dealer within their holding company structure. Primary Dealers approved as Repurchase Agreement counterparties shall have a short-term credit rating of at least "A-1" or the equivalent and a long-term credit rating of at least "A" or the equivalent. Repurchase agreement counterparties shall execute a City approved Master Repurchase Agreement with the City. The Finance Director shall maintain a copy of the City's approved Master Repurchase Agreement and a list of the broker/dealers who have executed same.

In addition, the City must own assets for more than 30 days before they can be used as collateral for a reverse repurchase agreement. No more than ten percent (10%) of the portfolio can be involved in reverse repurchase agreements.

- l) State of California's Local Agency Investment Fund (LAIF), pursuant to California Government Code Section 16429.1.
- m) County Investment Funds: Los Angeles County provides a service similar to LAIF for municipal and other government entities outside of Los Angeles County, including the City. Investment in this pool is intended to be used as a temporary repository for short-term funds used for liquidity purposes. The Finance Director shall maintain on file appropriate information concerning the county pool's current investment policies, practices, and performance, as well as its requirements for participation, including, but not limited to, limitations on deposits or withdrawals and the composition of the portfolio. At no time shall more than five percent (5%) of the City's total investment portfolio be placed in this pool.
- n) Mutual Funds and Money Market Mutual Funds registered under the Investment Company Act of 1940, provided that:

- i. **MUTUAL FUNDS** that invest in the securities and obligations as authorized under California Government Code, Section 53601 (a) to (k) and (m) to (q) inclusive and that meet either of the following criteria:
 - 1) Attained the highest ranking or the highest letter and numerical rating provided by not less than two (2) NRSROs; or
 - 2) Have retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by California Government Code, Section 53601 and with assets under management in excess of \$500 million.
 - 3) No more than 10% of the total portfolio may be invested in shares of any one mutual fund.
- ii. **MONEY MARKET MUTUAL FUNDS** registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and issued by diversified management companies and meet either of the following criteria:
 - 1) Have attained the highest ranking or the highest letter and numerical rating provided by not less than two (2) NRSROs; or
 - 2) Have retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of \$500 million.
 - 3) No more than 20% of the total portfolio may be invested in Money Market Mutual Funds.
- iii. No more than 20% of the total portfolio may be invested in these securities.

- o) Supranationals which are United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC), or Inter-American Development Bank (IADB), with a maximum remaining maturity of five years or less, and eligible for purchase and sale within the United States. Investments under this paragraph shall be rated in the "AA" category, its equivalent, or better by at least one NRSRO.

No more than ten percent (10%) of the City's total portfolio shall be invested in any one issuer of supranational obligations. Purchases of supranational obligations shall not exceed twenty percent (20%) of the investment portfolio of the City.

2. **Investments Specifically Not Permitted**

Any security type or structure not specifically approved by this policy is hereby prohibited. Security types, which are thereby prohibited include, but are not limited to: "exotic" derivative structures such as range notes, dual index notes, inverse floating rate notes, leveraged or de-leveraged floating rate notes, interest only strips that are derived from a pool of mortgages and any security that could result in zero interest accrual if held to maturity, or any other complex variable or structured note with an unusually high degree of volatility risk.

The City shall not invest funds with the Orange County Pool.

3. **Exceptions to Prohibited and Restricted Investments**

The City shall not be required to sell securities prohibited or restricted in this policy, or any future policies, or prohibited or restricted by new State regulations, if purchased prior to their prohibition and/or restriction. Insofar as these securities provided no notable credit risk to the City, holding of these securities until maturity is approved. At maturity or liquidation, such monies shall be reinvested as provided by this policy.

H. INVESTMENT PARAMETERS

1. Diversification

The City shall diversify its investments to avoid incurring unreasonable risks inherent in over-investing in specific instruments, individual financial institutions or maturities. As such, no more than five percent (5%) of the City's portfolio may be invested in the instruments of any one issuer, except governmental issuers, supranationals, investment pools, mutual funds and money market funds. This restriction does not apply to any type of Federal Instrumentality or Federal Agency Security listed in Sections G1 b and G1 c above. Nevertheless, the asset allocation in the investment portfolio should be flexible depending upon the outlook for the economy, the securities markets and the City's anticipated cash flow needs.

2. Maximum Maturities

To the extent possible, investments shall be matched with anticipated cash flow requirements and known future liabilities. The City will not invest in securities maturing more than five years from the date of trade settlement, unless the City Council has by resolution granted authority to make such an investment at least three months prior to the date of investment.

3. Credit Quality

The City shall not purchase any security rated "A1" and / or "A+" or below if that security has been placed on "credit watch" for a possible downgrade by an NRSRO.

Each investment manager will monitor the credit quality of the securities in their respective portfolio. In the event a security held by the City is the subject of a rating downgrade which brings it below accepted minimums specified herein, or the security is placed on negative credit watch, where downgrade could result in a rate drop below acceptable levels, the investment advisor who purchased the security will immediately notify the Finance Director. The City shall not be required to immediately sell such securities. The course of action to be followed will then be decided on a case by case basis, considering such factors as the reason for the rate drop, prognosis for recovery or further drop, and market price of the security. The City Council will be advised of the situation and intended course of action.

4. Competitive Transactions

Investment advisors shall make best effort to price investment transactions on a competitive basis with broker/dealers selected consistent with their practices disclosed in form ADV 2A filed with the SEC. Where possible, at least three broker/dealers shall be contacted for each transaction and their

bid or offering prices shall be recorded. If there is no other readily available competitive offering, the investment advisor shall make their best efforts to document quotations for comparable or alternative securities. If qualitative characteristics of a transaction, including, but not limited to, complexity of the transaction, or sector expertise of the broker, prevent a competitive selection process, investment advisors shall use brokerage selection practices as described above.

I. PORTFOLIO PERFORMANCE

The investment portfolio shall be designed to attain a market rate of return throughout budgetary and economic cycles, taking into account prevailing market conditions, risk constraints for eligible securities, and cash flow requirements. The performance of the City's investments shall be compared to the total return of a benchmark that most closely corresponds to the portfolio's duration, universe of allowable securities, risk profile, and other relevant characteristics. When comparing the performance of the City's portfolio, its rate of return will be computed consistent with Global Investment Performance Standards (GIPS).

J. REPORTING

Monthly, the Finance Director shall produce a treasury report of the investment portfolio balances, transactions, risk characteristics, earnings, and performance results of the City's investment portfolio available to City Council and the public on the City's Website. The report shall include the following information:

1. Investment type, issuer, date of maturity, par value and dollar amount invested in all securities, and investments and monies held by the City;
2. A description of the funds, investments and programs;
3. A market value as of the date of the report (or the most recent valuation as to assets not valued monthly) and the source of the valuation;
4. A statement of compliance with this Policy or an explanation for non-compliance

K. INVESTMENT POLICY COMPLIANCE AND ADOPTION

1. Compliance

Any deviation from the policy shall be reported to Finance Committee as soon as practical, but no later than the next scheduled Finance Committee meeting. Upon recommendation of the Finance Committee, the Finance Director shall review deviations from policy with the City Council.

2. Adoption

The Finance Director shall review the Investment Policy with the Finance Committee at least annually to ensure its consistency with the overall

objectives of preservation of principal, liquidity and return, and its relevance to current law and financial and economic trends.

The Finance Director shall review the Investment Policy with City Council at a public meeting if there are changes recommended to the Investment Policy.

This Policy was endorsed and adopted by the City Council of the City of Newport Beach on September 8, 2015. It replaces any previous investment policy or investment procedures of the City.

Adopted - April 6, 1959
Amended - November 9, 1970
Amended - February 11, 1974
Amended - February 9, 1981
Amended - October 27, 1986
Rewritten - October 22, 1990
Amended - January 28, 1991
Amended - January 24, 1994
Amended - January 9, 1995
Amended - April 22, 1996
Corrected - January 27, 1997
Amended - February 24, 1997
Amended - May 26, 1998
Reaffirmed - March 22, 1999
Reaffirmed - March 14, 2000
Amended & Reaffirmed - May 8, 2001
Amended & Reaffirmed - April 23, 2002
Amended & Reaffirmed - April 8, 2003
Amended & Reaffirmed - April 13, 2004
Amended & Reaffirmed - September 13, 2005
Amended - August 11, 2009
Amended & Reaffirmed - August 10, 2010
Amended & Reaffirmed - September 28, 2010
Reaffirmed - June 28, 2011
Amended & Reaffirmed - October 9, 2012
Amended - August 13, 2013
Amended - September 8, 2015
Amended - March 28, 2017

EXHIBIT B SCOPE OF SERVICES

Consultant shall perform the following services:

1. Provide investment research and supervision of the City's assets under management and conduct a continuous program of investment, evaluation and, when appropriate, sale and reinvestment of the City's Managed Funds assets.
2. Continuously monitor investment opportunities of the City's Funds.
3. Provide discretionary investment advisory services which conform with state law, federal law, the City's investment policy and the Prudent Expert Standard of care.
4. Annually review investment policy and compare to applicable laws. Recommend appropriate amendments annually to comply with applicable laws or minimize risk with respect to stated investment objectives.
5. Develop and execute an investment strategy consistent with the City's stated investment policy objectives and parameters, applicable laws and an understanding of the City's cash flow needs
6. Establish an appropriate performance benchmark and compare historical results to benchmark.
7. Regularly ensure portfolio structure matches the City's stated investment objectives.
8. Provide monthly reporting of each portfolio under management showing deposits, withdrawals, purchases and sales (or maturities) of investments, earnings received, and the value of assets held on the last business day of the month. The statement shall be in the format and manner that is mutually agreed upon in writing by the Consultant and the City.
9. Provide credit analysis of investment instruments in portfolio.
10. Provide assurance of portfolio compliance with applicable policies and laws.
11. Immediately apprise Project Administrator of all instances of non-compliance with applicable policies and laws.
12. Attend meetings with government officials as needed.
13. Discuss cash flow needs and market strategy with Project Administrator quarterly.
14. Assist the City with cash flow/maturity analysis as needed.
15. Observe the instructions of the City with respect to broker/dealers who are approved to execute transactions involving the City's Managed Funds and in the absence of such instructions will engage broker/dealers who are reputable, qualified and financially sound. In connection with the selection of such brokers and dealers and the placing of such orders, the Consultant is directed to seek for the City the most favorable execution and price.

16. Regularly evaluate market risk and develop strategies that minimize the impact on the portfolio.
17. Immediately apprise staff of significant market events impacting portfolio security or performance.
18. Interact and communicate effectively with the City's Custodian bank. All securities shall be perfected in the name of the City. Sufficient evidence to title shall be consistent with modern investment, banking and commercial practices.
19. Assist in credit monitoring of financial institutions with which the City conducts business.
20. Exercise diligence in the selection and use of broker dealers.
21. All investment transactions shall be conducted competitively. Documentation of recorded bid or offering prices shall be maintained for a period of at least three (3) years.
22. Provide for online access to and electronic delivery of monthly statements.
23. Vote proxies on behalf of City unless otherwise instructed.
24. Value securities held in portfolios managed by Consultant no less than monthly.

ADDITIONAL TERMS

1. Proxy Voting. Consultant has adopted and implemented written policies and procedures and will provide City with a copy of the proxy voting procedures upon request. Consultant will provide information regarding how City's proxies were voted upon request.
2. Valuation. Securities or investments in the portfolio will be valued in a manner determined in good faith by Consultant to reflect fair market value.
3. Custody of Securities and Funds. Consultant shall not have custody or possession of the funds or securities that City has placed under its management. City shall appoint a custodian to take and have possession of its assets. City shall compare statements received from the appointed custodian to statements received from Consultant.
4. Investment Advice. City recognizes that the opinions, recommendations and actions of Consultant will be based on information deemed by it to be reliable, but not guaranteed to or by it. Provided that Consultant acts in good faith, City agrees that Consultant will not in any way be liable for any error in judgment or for any act or omission, except as may otherwise be provided for under the Federal Securities laws, state law or other applicable laws.
5. Other Clients. It is further understood that Consultant may be acting in a similar capacity for other institutional and individual clients, and that investments and

reinvestments for City's portfolio may differ from those made or recommended with respect to other accounts and clients even though the investment objectives may be the same or similar. Accordingly, it is agreed that Consultant will have no obligation to purchase or sell for City's account any securities, which it may purchase or sell for other clients.

6. Receipt of Brochure and Privacy Policy. City hereby acknowledges receipt of the disclosure statement or "brochure" and "brochure supplement" also known as Part 2A and Part 2B of Form ADV, required to be delivered pursuant to Rule 204-3 of the Investment Advisers Act of 1940 (Brochure). City further acknowledges receipt of Consultant's Privacy Policy, as required by Regulation S-P.
7. Additional Services. If and to the extent that the City requests the Consultant to render services other than those to be rendered by the Consultant according to this Agreement, such additional services shall be compensated separately on terms to be agreed upon between the City and the Consultant.

EXHIBIT C
SCHEDULE OF BILLING RATES

Average Monthly Market Value of Assets Under Management	Tiered Annual Investment Management Fee
\$0-\$100 Million	7 basis points (0.07 of 1%)
\$100-\$150 Million	6 basis points (0.06 of 1%)
Greater than \$150 Million	4 basis points (0.04 of 1%)

Consultant shall only charge fees on assets under its direct management. Funds not under Consultant's management, such as pooled investment vehicles, will be excluded from fee calculations. Since the Consultant calculates fees based on the average balance of assets under its direct management (market value including accrued interest), fees will fluctuate based on portfolio value.

Consultant's fee schedule is all-inclusive for the services that Consultant provides, including meetings, personal visits, and educational offerings for City staff, as well as investment advisory services described in the Agreement.

EXHIBIT D
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 ten million dollars (\$10,000,000) per claim and 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.
 - E. Fidelity Insurance. Consultant shall maintain fidelity insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of five million dollars (\$5,000,000) limit per claim.
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. 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. 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.
- 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. 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.
- 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 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.
- G. 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 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. 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.

NEWPORT BEACH PLANNING COMMISSION AGENDA
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, NOVEMBER 9, 2017
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 OCTOBER 19, 2017

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 GINSBERG RESIDENCE COASTAL DEVELOPMENT PERMIT AND VARIANCE
(PA2016-170)

Site Location: 2607 Ocean Boulevard

Summary:

A Coastal Development Permit to allow the construction of a new 4,500-square-foot, single-family residence and a 684-square-foot, three-car garage and a Variance request to allow the residence to: 1) exceed the maximum floor area; 2) encroach into the 10-foot rear yard setback along Way Lane, 3) encroach into the 10-foot front yard setback along Ocean Boulevard; 4) exceed the height limit for an elevator shaft and portions of the roof deck guardrail; and 5) provide open volume within the required setback areas. The new residence building height will not exceed Ocean Boulevard top-of-curb elevation height limit.

Recommended Action:

1. Conduct a public hearing;
2. Find the project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303, Article 19, of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 3, (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 No. 2069 approving Variance No. VA2016-005 and Coastal Development Permit No. CD2017-080.

ITEM NO. 3 IRVINE AVENUE CHIROPRACTIC FACILITY USE PERMIT (PA2017-171)
Site Location: 20341 Irvine Avenue (Unit D1)

Summary:

Conditional Use Permit (CUP) to allow operation of a chiropractic (medical) office within an existing professional office park. The subject site is located within the Santa Ana Heights Specific Plan within the Professional and Administrative Office District. Medical office is not listed as an allowed use; however, a conditional use permit may be approved for an unlisted use if it is determined to be consistent with the intent and purpose of the Professional and Administrative Office District. The chiropractic facility would occupy approximately 2,225 square feet and operate from approximately 9 a.m. to 4 p.m., daily.

Recommended Action:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines because it has no potential to have a significant effect on the environment; and
3. Adopt Resolution No. 2070 approving Conditional Use Permit No. UP2017-024.

ITEM NO. 4 76 STATION EXPANSION (PA2017-067)
Site Location: 1461 Superior Avenue

Summary:

A conditional use permit to expand an existing convenience store with a 1,668-square-foot first floor addition and 2,219-square-foot second floor addition with some deviations from landscaping requirements. The total convenience store area will be 4,416 square feet. The existing carwash and 12 fueling dispensers are to remain unchanged. The applicant requests for the convenience store and fueling station to operate 24 hours daily. The carwash hours of operation are to remain unchanged at 8 a.m. to 6 p.m. daily. Also included in the request is the addition of a Type 20 (Off-Sale Beer and Wine) Alcoholic Beverage Control (ABC) License. If approved, this Conditional Use Permit would supersede Use Permit No. UP3566.

Recommended Action:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
3. Adopt Resolution No. 2071 approving Conditional Use Permit No. UP2017-007.

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 5 MOTION FOR RECONSIDERATION

ITEM NO. 6 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

1. Update on City Council Items
2. Status of the General Plan Update Process

ITEM NO. 7 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS
WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT

ITEM NO. 8 REQUESTS FOR EXCUSED ABSENCES

IX. ADJOURNMENT



CITY OF

NEWPORT BEACH

City Council Staff Report

November 14, 2017
Agenda Item No. 11

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Jennifer Nelson, Assistant City Clerk
PHONE: 949-644-3005

TITLE: Appointment to the Aviation Committee

ABSTRACT:

The Aviation Committee District 6 Alternate seat is currently vacant. It is the desire of Council Member Scott Peotter to make an appointment, subject to City Council confirmation.

RECOMMENDATION:

- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
- b) Confirm Council Member Peotter's appointment of G. Scott Bergey as the District 6 Alternate Member to the Aviation Committee.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

Resolution No. 2011-31, which established the membership of the Aviation Committee states, in part, that the Aviation Committee shall consist of seven members, one from each City Council District, nominated by the District Council Member and confirmed by the City Council; seven alternates, one from each City Council District, nominated by the District Council Member and confirmed by the City Council; and a member of the General Aviation Community, nominated by the Mayor and confirmed by the City Council.

The District 6 alternate position is vacant and Council Member Peotter has nominated G. Scott Bergey to fill the seat.

Pursuant to City Council Policy A-2 (*Boards, Commissions and Committees*) and the Maddy Act, an Unscheduled Vacancy Notice was prepared by the City Clerk. The notice was posted in the City Clerk's Office, Central Library, and on the City's bulletin board on July 10, 2017, September 27, 2017 and October 25, 2017. The City Clerk's Office also published the notice on July 15, 2017, October 2, 2017 and October 28, 2017. The application is attached as Attachment A.

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 – Application

RECEIVED 2017 OCT 23 AM 9:14 OFFICE OF THE CITY CLERK CITY OF NEWPORT BEACH	APPLICATION FOR APPOINTIVE POSITION	Submit by Email Print Form	CITY OF NEWPORT BEACH 100 Civic Center Drive Newport Beach, CA 92660 City Clerk (949) 644-3005 Fax (949) 644-3039
--	--	-------------------------------	--

FOR OFFICE USE ONLY
 Residence District No. 6
 Verified by ✓
 Policy A-13 Sent ✓
ROV

DIRECTIONS: One application can be used for all the appointive positions you are applying for. Applications should be filled out completely so that the City Council may fully evaluate your qualifications. It is the responsibility of the applicant to familiarize themselves with the duties and responsibilities of the position(s) applied for. Detailed information outlining the responsibilities of the positions can be obtained from the City Clerk's Office or on the City's website: www.newportbeachca.gov (City Government/Boards, Commissions and Committees). Applications will be kept on file for two years for the position(s) applied for. If you are not selected for appointment during that period of time, it will be necessary for you to re-submit an application if you are still interested in being considered.

NOTICE: Section 702 of the City Charter requires that members of Boards or Commissions appointed by the City Council shall be from the qualified electors of the City. This document is a public record and may be posted on the internet.

NAME OF BOARD, COMMISSION OR COMMITTEE:

Scott Proctor / Aviation

Name:

BERGEY

(Last)

GARY

(First)

SCOTT

(Middle)

Residence Address (required):

[REDACTED]

Zip Code:

[REDACTED]

How long have you lived in Newport Beach?

17+ years

Home/Cell #:

[REDACTED]

Business Address:

N/A

Home Business Phone:

[REDACTED]

N/A

Email Address:

[REDACTED]

Have you ever been convicted of any crime or violation of any law or statute other than minor traffic violations?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

NOTICE: Pursuant to Section 702 of the City Charter, no members of boards or commissions shall hold any paid office or employment in the City government.

Do you currently hold any paid office or employment with the City of Newport Beach, including but not limited to contracted services?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

If applying for a position on the Finance Committee, have you declared bankruptcy in the last 10 years? ☐ NO ☐ YES N/A

Please state any past, current or foreseeable future financial interests of any kind that may conflict with the Board, Commission or Committee you are applying for.

NONE

CONTINUE TO PAGE TWO

Name and Location of Colleges/ Universities Attended	Major	Degree	Last Year Attended
Attached			

Prior or Current Civic Experience (include membership in professional, charity or community organization)	Office Held (if any)	Dates of Membership
N/A		

Occupational History. Begin with your present or most recent position. List all positions separately held for the last five years.

Firm or Organization	Type of Business	Title	Dates of Employment
Attached (RETIRED)			

References. Include names of at least two residents of Newport Beach who are not officially connected with the City.

1. Name KENT MOORE Address Phone No.
2. Name TIM STEPHENS Address Phone No.

Summarize why you wish to serve the City of Newport Beach on a board, commission or committee. Include any special qualifications you have which are particularly appropriate to the position for which you are applying.

AVIATION BACKGROUND
See Attached

I certify that all statements made on this application are true and correct to the best of my knowledge. I have read and understand the duties and responsibilities of the particular position(s) that I am applying for and authorize the release of this information on the internet.

[BOX MUST BE CHECKED IF SUBMITTING ELECTRONICALLY]

☐

Signature

[Signature]

Date

10-26-17

G. Scott Bergey

Professional History

American Airlines

I am a senior Captain and for the last 35 years have flown all major aircraft. I retired flying the 777 to Europe and the Pacific.

Air Cal

I began as an aircraft dispatcher, then a pilot until American Airlines bought the company.

Military

USMCR - Aircontrollman (tower and radar) for 6 years. Rank of Sgt.

US Army - (Guard and Reserve) - Warrant Officer Aviator for 21 years. Retired rank CWO4.

Licenses, Medical and Times:

Recent Professional

Duty:

Airline Transport Pilot - Type Ratings: L-188, B737
DC9, B757/767, B777, Gulfstream V

FAA Control Tower Operator (CTO)
FAA Aircraft Dispatcher

Valid U.S. Passport
First Class Medical

Total Time Approx.
Multi-engine jet 25,000 hours
Helicopter 1,400 hours

Atl./Pac. Current Training
NASA - Fit. Sim. Test Pilot
MCRD Historic Society
Marine Memorial Assoc.
Army Aviation Assoc.
Grey Eagles
Quiet Birdmen
American Legion

Personal

2 Years college Aviation—Northrup Inst. of Tech. And Glendale College

Excellent health, likes all travel.
Aviation and personal references available.



Bergay, G. Scott
LAX 777 Captain - 35 years of service -
LAX

In 1964, Captain Bergay enlisted in the US Marine Corps after attending Oakland City College in Oakland, CA. There he minored in Aeronautics. While with the Corps he trained as a controller and attended Northrop Institute, again in his pursuit of a career in aviation. Also, while on active duty as a Marine, Captain Bergay soloed a Cessna 150 out of Santa Monica airport on March 9, 1966. Thus began his long and varied career in aviation.

In 1969 he was honorably discharged from the Marine Corps. Soon thereafter, he entered the US Army Flight Training program and was commissioned a Warrant Officer. After two years active duty, he remained in the Army Reserves and CA National Guard until 1995. Having served as an aircraft dispatcher with Los Angeles Airways (helicopter), he worked at Air California Airlines in that capacity and was subsequently hired as a pilot with Air Cal where he flew the L-188 Electra and B-737. Since Air Cal was acquired by American, Captain Bergay has flown the S80, DC10, B757/767 and is retiring as a captain on the Boeing 777.

"Great career! Great people! Great airline! To everyone, Thanks for the help. I couldn't do it without you all! Teamwork is the answer for success."



CITY OF

NEWPORT BEACH

City Council Staff Report

November 14, 2017
Agenda Item No. 12

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Laura Detweiler, Recreation and Senior Services Director -
949-644-3151, ldetweiler@newportbeachca.gov

PREPARED BY: Tam Ho, Budget Analyst, tho@newportbeachca.gov

PHONE: 949-644-3224

TITLE: Transfer of Park In-Lieu Reserves for Playground Improvements

ABSTRACT:

Recreation and Senior Services staff request approval of a budget amendment to transfer \$200,000 in Park In-Lieu reserves to the Playground Refurbishment CIP Project (18P01) for the purchase and installation of playground improvements to include shade structures, play elements and surfacing.

RECOMMENDATION:

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines because this project has no potential to have a significant effect on the environment; and
- b) Approve Budget Amendment No. 18BA-011 to transfer \$200,000 in Park In-Lieu reserves from Fund 513 to the Playground Refurbishment CIP project (56201-980000-18P01) in Fund 562 for purchase and installation of playground shade structures, play elements and surfacing improvements.

FUNDING REQUIREMENTS:

There is sufficient funding available in Park In-Lieu reserves to facilitate the purchase and installation of shade structures, play elements and accessibility surfacing improvements for five playgrounds. The requested budget amendment would transfer \$200,000 from these reserves in Fund 513 over to the Parks & Community Centers Capital Improvement Fund (Fund 562); the proposed costs will be expensed to the Playground Refurbishment CIP Project (56201-980000-18P01) within Fund 562.

DISCUSSION:

Five City playgrounds were identified as having the greatest need for shade based on community feedback, volume of use and in geographically dispersed locations in the City. They include Buffalo Hills, Mariners, 38th Street, Irvine Terrace and Coastal Peak Parks. The proposed accessibility improvements consist of new surfacing to provide greater access to existing elevated playground components and additional ground level components within the rubberized surfacing on the playground. Buffalo Hills and 38th Street Park will receive replacement play equipment.

Park In-Lieu reserves are requested to fund these improvements. In accordance with Council Policy B-1 Park Fee Policy, Park In-Lieu reserves can be used to rehabilitate existing community, neighborhood and view parks.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. Section 15301 exempts the minor alteration of existing public or private structures, facilities involving negligible or no expansion of use. The shade structures and disability-related improvements do not expand the existing playgrounds.

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 – Cost Estimates for Playground Improvements

Attachment B – Budget Amendment No. 18BA-011

ATTACHMENT A

COST ESTIMATES FOR PLAYGROUND IMPROVEMENTS

Buffalo Hills Park

▪ 1 Shade structure, ground equipment to meet ADA standard & equipment replacement	\$24,175
▪ Installation	\$12,500
▪ Pour In Place (PIP) install to meet ADA standard	\$20,000
Subtotal for Buffalo Hills Park	\$56,675

Mariners Park

▪ 2 Shade structures	\$31,380
▪ Installation	\$23,500
Subtotal for Mariners Park	\$54,880

38th Street Park

▪ 2 Shade structures & equipment replacement	\$16,573
▪ Installation	\$7,750
Subtotal for 38th Street Park	\$24,323

Irvine Terrace Park

▪ 1 Shade structure	\$14,140
▪ Installation	\$20,000
Subtotal for Irvine Terrace Park	\$34,140

Coastal Peak Park

▪ 2 Shade structures	\$9,262
▪ Installation	\$8,500
Subtotal for Coastal Peak Park	\$17,762

Estimated Total for Five Parks	\$187,780
Contingency	\$12,220
Estimated Total Cost With Contingency	\$200,000

City of Newport Beach

ATTACHMENT B

NO. BA- 18BA-011

BUDGET AMENDMENT 2017-18

AMOUNT: \$200,000.00

EFFECT ON BUDGETARY FUND BALANCE:

<input type="checkbox"/>	Increase	Revenue Estimates
<input checked="" type="checkbox"/>	Increase	Expenditure Appropriations
<input type="checkbox"/>	Transfer	Budget Appropriations

AND

<input checked="" type="checkbox"/>	Increase in Budgetary Fund Balance
<input checked="" type="checkbox"/>	Decrease in Budgetary Fund Balance
<input type="checkbox"/>	No effect on Budgetary Fund Balance

SOURCE:

<input type="checkbox"/>	from existing budget appropriations
<input type="checkbox"/>	from additional estimated revenues
<input checked="" type="checkbox"/>	from/to unappropriated fund balance/reserves

ONE-TIME?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No

EXPLANATION:

This budget amendment is requested to provide for the following:

To transfer funds from the Park In-Lieu reserves in the FFP Fund (513) unappropriated fund balance to increase expenditure appropriations in the Parks & Community Centers Capital Improvement Fund for the purchase and installation of shade structures, play elements and accessibility surfacing improvements for 5 playgrounds, as part of the Playground Refurbishment Program CIP Project.

ACCOUNTING ENTRY:

BUDGETARY FUND BALANCE

Fund	Object	Description	Amount	
			Debit	Credit
513	300000	Facilities Financing Plan (FFP) fund balance	\$200,000.00 *	

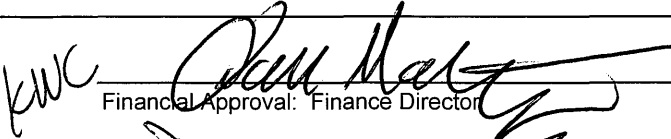
REVENUE ESTIMATES

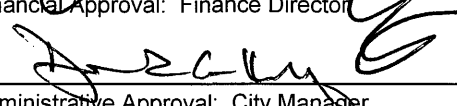
Org	Object	Project	Description	
56299	691513		Parks & Community Centers Transfers-Transfer In FFP	\$200,000.00

EXPENDITURE APPROPRIATIONS

Description				
Org	Number	56201	Parks & Community Centers CIP	
Object	Number	980000	CIP Expenditures	\$200,000.00
Project	Number	18P01	Playground Refurbishment Program	
Project	String	E-18P01-UNASSIGNED-562-UNASSIGNED		
Org	Number	51399	FFP Transfers	
Object	Number	991562	Transfer Out Parks & Community Centers	\$200,000.00

* Automatic System Entry.

Signed:  11-2-17
Date

Signed:  11/3/17
Date

Signed: _____ _____
Date

City Council Approval: City Clerk



CITY OF

NEWPORT BEACH

City Council Staff Report

November 14, 2017
Agenda Item No. 13

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Tim Hetherton, Library Services Director - 949-717-3801,
thetherton@newportbeachca.gov

PREPARED BY: Tim Hetherton, Library Services Director,

TITLE: Cultural Arts Grants 2017/18

ABSTRACT:

The sum of \$40,000 (Cultural and Arts, City Grants Account # 01060603-821006) is provided annually for specific cultural or artistic planning or projects as approved by the City Council. The City Arts Commission has the responsibility to review all programs and requests for support from arts groups and make recommendations for funding to the City Council for final approval.

RECOMMENDATION:

- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
- b) Approve recommended recipients for FY 2017/18 Cultural Arts Grants as selected by the City Arts Commission in accordance with City Council Policy I-10 – *Financial Support for Culture and the Arts*.

FUNDING REQUIREMENTS:

The current adopted budget includes sufficient funding for this purchase. It will be expensed to the City Grants account in the Cultural and Arts Department, 01060603-821006.

DISCUSSION:

City Council Policy I-10 recognizes the importance of promoting culture and the arts within the City and establishes a Reserve Fund for Culture and Arts. The sum of \$40,000 is provided annually for specific cultural or artistic planning or projects as approved by the City Council. The City Arts Commission has the responsibility to review all programs and requests for support from arts groups and make recommendations for funding to the City Council for final approval.

The Commission received written grant proposals from 14 organizations for funding of approximately \$85,500.00 in free cultural arts programming for the Newport Beach community in fiscal year 2017/18. Grant applicants include:

Balboa Island Improvement Association	\$3,000.00
Balboa Island Museum and Historical Society	\$5,000.00
Baroque Music Festival, CdM	\$6,500.00
Chuck Jones Center for Creativity	\$8,000.00
Crystal Cove Conservancy	\$2,500.00
Festival Ballet Theatre	\$1,500.00
KOCI Radio	\$1,500.00
Kontrapunktus	\$2,500.00
MuseMe	\$5,000.00
Newport Beach Film Festival	\$25,000.00
Newport Beach Public Library Foundation	\$5,000.00
Orange County Museum of Art	\$10,000.00
Pacific Symphony	\$5,000.00
South Coast Repertory	\$5,000.00
	\$85,500.00

Council Policy I-10 defines arts groups as those involved in visual, musical, theatre, dance, crafts, performing and literary activities. The City Arts Commission considers the following in order of preference for granting support:

1. Local arts groups located within the City of Newport Beach and offering programs to City residents;
2. Regional arts groups located in Orange County and offering programs to City residents; and
3. Arts groups located in California and performing or offering programs to City residents.

Groups not offering programs or services to local residents are not eligible for support from the City. In past years, the City Arts Commission grants a portion of funds back to itself to provide for annual programs. For fiscal year 2017/18, the Arts Commission has requested and approved \$ 25,500 for Arts Commission programming.

After careful deliberation, the following recommendations, totaling \$40,000 were approved at the City Arts Commission Meeting held on October 26, 2017:

Balboa Island Improvement Association (BIIA)**\$1,000**

The Balboa Island Arts and Music Committee of the Balboa Island Improvement Association produces quality musical events on Balboa Island and assists in promoting local and regional art in collaboration with the Balboa Island Home Tour, Balboa Island Art Walk, and Balboa Island Brush Off. These grant funds will be used to help promote concerts for children, residents and visitors at St. John Vianney Chapel. BIIA will also offer Concerts in the Park, a free series of performances featuring country, folk and blues on Friday evenings, in late July and August. Families with children, pets and Newport Beach visitors will be able to enjoy music and sing-a-long in this park-side setting located at Balboa Island Park on Agate adjacent to the Beek Community Center.

Chuck Jones Center for Creativity**\$1,000**

The Chuck Jones Center for Creativity will present "Food for Thought: Creativity Workshops with Brain Health in Mind", a program intended to benefit residents by encouraging brain health through creativity. Dr. William R. Shankle is a widely recognized expert in the field of brain aging, and has received many research grants and awards. He is considered a pioneer in using creativity to delay the effects of early onset dementia. Dr. Shankle and the Hoag Hospital Center for Neurosciences, Orange County Vital Brain Aging Program (OCVBA), has collaborated with the Center for Creativity to develop and conduct a series of programs that served an estimated 500 people at 15 events. Based on these results, OCVBA has decided to expand the program in 2017. Through this collaboration with OCVBA, the Center is uniquely qualified to provide this program to the senior community in Newport Beach. In addition, the Center has the ability (subject to the trademark and copyright provisions of Warner Bros. Entertainment, Inc.) to use characters created by Chuck Jones for the programs as a key tool for enhancing reminiscence therapy in this age demographic.

Newport Beach Film Festival**\$7,500**

The Newport Beach Film Festival's goal is to provide cultural enrichment, family entertainment, and education to the residents of Newport Beach and surrounding areas through the medium of cinema. With this funding, the Newport Beach Film Festival is planning a multi-program series covering several days of the Festival similar to the 2017 Seminar Series. The Newport Beach Film Festival will hold the seminars at key locations in Newport Beach and surrounding area. Past seminar topics have included directing, screenwriting, production design, cinematography, film music composition, animation, documentary filmmaking, editing, virtual reality, and special effects. The program will be similar to the 2017 event. The seminar topics and panelists will continue to change annually, in order to expand and improve this program to meet the needs of the community.

Orange County Museum of Art**\$5,000**

The mission of Orange County Museum of Art (OCMA) is to enrich the lives of a diverse and changing community through modern and contemporary art. OCMA provides arts education for the community that both children and adults can enjoy and is the only modern and contemporary art museum in Newport Beach. This funding will be used for three programs: OCMA's *Free Fridays* program removes barriers to access and provides the Orange County community with greater opportunities for meaningful arts education and experiences through lectures, panel discussions, films, and other programs at no cost. *Free Fridays* occur every Friday at OCMA where admission is free to the museum and its programs with extended hours from 11 a.m. to 8 p.m. with programs scheduled for two of the four Fridays per month during each exhibition cycle to complement the exhibitions on view. *Free Fridays* are enhanced with a series of exciting activities, including artist talks, panel discussions, and a range of thematic "culture nights" that offer the community the opportunity to attend music or dance performances deepening visitor experiences in a fun and casual social setting. Continuing OCMA's longstanding partnership with the Newport Beach Film Festival, now celebrating its 11-year anniversary, the museum also presents the cinematic works of emerging artists and established independent filmmakers on select Fridays as part of the Cinema Orange series. For the fall 2017 season for example, the film series will offer programming that engages diverse themes such as spirituality in art, innovation in creative practices as well as timely topics that relate to California and the Pacific Rim region and to exhibitions and artists on view.

City Arts Commission**\$25,000**

The City of Newport Beach Arts Commission is dedicated to providing a range of free cultural programming that enriches the entire community, including children and families. The Arts Commission sponsors multidisciplinary arts programs funded by the Cultural Arts Grant Program such as arts lectures, performing arts, and visual art exhibitions in Central Library and at City Hall. The Arts Commission extends the range of arts programming by providing additional funding for the annual Concerts on the Green series, and the annual Newport Beach Art Exhibition.

Grantees and amounts granted for 2017/18 are:

Balboa Island Improvement Association	\$1,000.00
Chuck Jones Center for Creativity	\$1,000.00
Newport Beach Film Festival	\$7,500.00
Orange County Museum of Art	\$5,000.00
Newport Beach City Arts Commission	\$25,500.00
	\$40,000.00

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:

None



CITY OF

NEWPORT BEACH

City Council Staff Report

November 14, 2017
Agenda Item No. 14

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Dave Kiff, City Manager - 949-644-3001,
dkiff@newportbeachca.gov

PREPARED BY: Mary Locey, Management Analyst/BID Liaison

PHONE: 949-644-3031

TITLE: Approval of the Corona del Mar Business Improvement District's
Revised Fiscal Year 2017-2018 Budget

ABSTRACT:

The Corona del Mar Business Improvement District (CdM BID) Board of Directors recommends revising the BID's annual budget to reflect the increased costs of several projects and to include additional retained earnings from last fiscal year (FY). The proposed changes involve incorporating additional retained earnings from Fiscal Year 2016-2017 and adjusting the amount of funding allocated in certain budget expense categories. The proposed revised budget remains balanced. The City Council's review and approval of the proposed revisions is required.

RECOMMENDATIONS:

- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
- b) Approve the revised FY 2017-2018 budget for the Corona del Mar Business Improvement District.

FUNDING REQUIREMENTS:

There is no financial impact for approving the proposed changes to the CdM BID's FY 2017-2018 budget. It is maintained separately from the City's budget.

DISCUSSION:

The Corona del Mar Business Improvement District (CdM BID) was formed in 1997 pursuant to the Parking and Business Improvement Area Law of 1989 (1989 Law), codified in Streets and Highways Code Sections 36500 *et seq.*, for the purpose of financing activities and programs to benefit businesses located and operating in the area.

The CdM BID territory encompasses the area generally located along East Coast Highway from Hazel Drive to Avocado Avenue in Corona del Mar.

In accordance with the 1989 Law, the CdM BID's Advisory Board of Directors (Board) submits its FY budget for City Council approval at the time of renewal each year. The CdM BID's budget is comprised of revenue collected from member assessments and \$40,000 in City support funding. The BID's annual expenditures include marketing, public relations, administration, holiday decorations, street light banners, website and social media management, landscape maintenance and improvement and beautification projects.

Why Revise the Budget?

The CdM BID Board prepared and approved its FY 2017-2018 budget in April for submittal to the City Council for approval in May 2017. When the Board developed the budget, it had several projects in the early stages of development and the City was in the process of conducting a request for proposals (RFP) for landscape services.

The Board now has final costs for the projects and the landscape contract has been awarded. To cover the increased expenses, the Board conducted a comprehensive review of the budget to ensure adequate funding for its remaining planned projects and goals.

Changes are proposed to three budget categories: landscape maintenance, improvement projects and streetscapes. Below are details of the proposed revisions to the budget and the reasons why the adjustments are required. A side-by-side comparison of the City Council approved CdM BID FY 2017-2018 budget and the proposed revised budget is Exhibit A.

Tree-Well Landscape Maintenance

As noted above, the City conducted an RFP for the continued tree-well landscape maintenance services in the CdM business district last spring. In mid-June (after Council adoption of the BID's FY 2018 budget), the CdM BID Board and the City agreed to award a contract to Mariposa Landscapes, Inc. (Mariposa) for the services. Though the City negotiated a fair contract, the cost was a significant increase compared to the previous vendor, from \$1,040 per month to \$1,991 per month. Staff believes a major component of the increase is the prevailing wage requirement, which was not included in the previous vendor's contract.

After Mariposa started work in July, it became apparent that the irrigation system needed to be updated for proper watering of the tree wells. The cost to the CdM BID was \$7,000. The budget has been revised to reflect the one-time expense with a new line item.

The landscape maintenance budget difference is shown in the chart on the next page.

Landscaping-Mariposa	Approved Budget	Revised Budget
Landscaping contingency	\$6,000	\$6,000
Landscaping/tree wells	\$15,600	\$23,880
Irrigation repairs (one-time)	<u>\$7,000</u>	<u>\$7,000</u>
<i>TOTAL</i>	<i>\$21,600</i>	<i>\$36,880</i>

Improvement Projects

The proposed revisions to the CdM BID's improvement budget category are as follows:

1. Flower Street Sign Project

The CdM BID's Flower Street Sign project was envisioned as a way to recognize the community flower street names. When final quotes were received from the different vendors for design, fabrication and installation of the signs, the project exceeded the original budget estimate by \$5,000. Not wanting to delay the project, the CdM BID Board recommended approval of the project. The new flower street signs have been installed along East Coast Highway at 14 intersections.

2. Gateway Electrical Improvement Project

With the completion of the Gateway (CdM Entry) project, the Board wanted to add lights in front of the monument sign in the MacArthur Boulevard median and a source of power for holiday decorations.

The Board originally budgeted \$5,000 for the project, believing that electrical wires simply needed to be pulled through an existing conduit from the southbound East Coast Highway sidewalk area to the median. However, it was later discovered that providing power to the monument sign required additional steps. This included removing the median landscaping for trenching, installing new conduit from the median pull box to the monument sign, pulling wires and making the electrical connections, and purchasing and installing the lighting and electrical outlets. The final quotes from the City's on-call vendors increased the project budget to approximately \$10,000. Construction is underway and will be completed in advance of the holiday decoration installation.

3. Improvement Funding Reduced

To accommodate the cost increases for the street sign and electrical improvement projects, funding was reduced for the proposed south entry improvements and eliminated for the news racks.

Several months ago, the City's Code Enforcement Division was tasked with checking the Corona del Mar area and tagging newspaper racks that were not in compliance with the City's Municipal Code Section 5.70. This has proven to be successful in gaining compliance from the various vendors. Therefore, the Board chose to eliminate the budget allocation.

The below chart reflects the proposed revisions to the improvement budget category.

Improvements	Approved Budget	Revised Budget
Flower Street Signs	\$10,000	\$15,000
Gateway Electrical Improvements	\$5,000	\$10,000
News Racks	\$1,000	\$0
South Entry Improvements	\$5,000	\$4,020
<i>TOTAL</i>	<i>\$21,000</i>	<i>\$29,020</i>

Streetscape

The CdM BID originally budgeted funds for the as-needed purchase of new street furniture (benches, bicycle racks, trash receptacles) and for the maintenance of the existing street furniture. The Board does not foresee needing to purchase additional street furniture this fiscal year and decided to reduce the budget line item from \$5,000 to \$1,000.

Streetscape	Approved Budget	Revised Budget
Street furniture (benches)	\$5,000	\$1,000
Street furniture (maintenance)	\$1,000	\$1,000
<i>TOTAL</i>	<i>\$6,000</i>	<i>\$2,000</i>

Retained Earnings

Since the CdM BID's budget was estimated in April and projects were delayed into the new fiscal year, the Board closed the books in June 2017 with an additional \$20,000 in retained earnings. The revised budget includes the additional retained earnings and allocates the funds to several of the budget categories listed above.

Retained Earnings	Approved Budget	Revised Budget
Retained earnings (carry over)	\$95,929	\$115,229
<i>TOTAL</i>	<i>\$95,929</i>	<i>\$115,229</i>

Conclusion

The CdM BID Board members are good stewards of the BID's finances and have taken appropriate measures to align the budget to reflect the cost of the contracted services and projects. Therefore, City staff recommends approval of the revised CdM BID's FY 2017-2018 budget.

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 – Revised CdM BID FY 2017-2018 Budget

ATTACHMENT A

Revised CdM BID FY 2017-2018 Budget

	Approved by Council	Revised FY 2018 Budget
Corona del Mar BID FY 2018 Budget		
Income		
City Matching Funds	40,000.00	40,000.00
Late Fees	2,000.00	2,000.00
Member Assessments	100,000.00	100,000.00
Total Income	142,000.00	142,000.00
Expense		
Highway Décor: Dekra-lite		
Contingency	3,000.00	3,000.00
Holiday Décor	24,000.00	24,000.00
Banner Program	7,000.00	7,000.00
Total Highway Décor	34,000.00	34,000.00
Website Maintenance/Support		
Maintenance & Management	7,200.00	7,200.00
Hosting	240.00	240.00
Contingency	1,000.00	1,000.00
Total Website	8,440.00	8,440.00
Marketing & Administration		
Contingency	5,000.00	5,000.00
Consulting (Reporting)	23,000.00	23,000.00
Membership Decals	1,200.00	1,200.00
Annual Meeting	1,000.00	1,000.00
Social Media/Communications	1,000.00	1,000.00
Office Facilities/Storage/Phone	4,000.00	4,000.00
Beautification Award Program	1,000.00	1,000.00
Dolphins	1,000.00	1,000.00
Christmas Walk	4,000.00	4,000.00
Directory	7,500.00	7,500.00
Collateral/Brochures	1,600.00	1,600.00
Marketing Campaigns & Programs	25,000.00	25,000.00
Total Marketing & Administration	75,300.00	75,300.00
Streetscape		
Street Furniture (Benches)	5,000.00	1,000.00
Street Furniture (Maintenance)	1,000.00	1,000.00
Total Streetscape	6,000.00	2,000.00
Landscaping-Mariposa		
Landscaping Contingency	6,000.00	6,000.00
Landscaping/Tree Wells	15,600.00	23,880.00
*Irrigation Repairs		7,000.00
Total Landscaping	21,600.00	36,880.00

Revised CdM BID FY 2017-2018 Budget

	Approved by Council	Revised FY 2018 Budget
Corona del Mar BID FY 2018 Budget		
Administration & Accounting		
Accounting Service Fee (bill.com)	2,400.00	2,400.00
Admin Bank Service Charge	120.00	120.00
Accounting & Financial Reporting	15,600.00	15,600.00
Mailing	1,000.00	1,000.00
Total Administration	19,120.00	19,120.00
Improvements		
Flower Street Signs	10,000.00	15,000.00
Newsracks	1,000.00	0.00
Gateway Electrical Improvements	5,000.00	10,000.00
Gateway Electrical Maintenance	1,000.00	1,000.00
South Entry Improvements	5,000.00	4,020.00
Consulting/Studies	5,000.00	5,000.00
Parking	45,469.00	45,469.00
Total Improvements	72,469.00	80,489.00
Outreach		
Community Workshops	1,000.00	1,000.00
Total Outreach	1,000.00	1,000.00
Total Expense	237,929.00	257,229.00
Net Ordinary Income	-95,929.00	-115,229.00
Other Income/Expense		
Retained Earnings (carry over)	95,929.00	115,229.00
Net Income	0.00	0.00

*New Budget Line Item

Budget Changes



CITY OF

NEWPORT BEACH

City Council Staff Report

November 14, 2017
Agenda Item No. 15

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Dan Matusiewicz, Finance Director - 949-644-3123,
dmatusiewicz@newportbeachca.gov

PREPARED BY: Rukshana Virany, Accounting Manager
rvirany@newportbeachca.gov

PHONE: 949-644-3146

TITLE: Annual Reporting on Development Impact Fees & Development Agreements

ABSTRACT:

Pursuant to the Mitigation Fee Act (Government Code Section 66000, et seq.), the City is required to report on the receipt and use of development impact fees.

Regarding Development Agreements (Government Code Section 65865(e)), the City is required to comply with the reporting requirements in Government Code Section 66006 with respect to any fee the City receives or cost it recovers.

RECOMMENDATION:

- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
- b) Receive, review and file the Annual Reports on Development Impact Fees.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

The Mitigation Fee Act (hereafter "the Act") requires each agency that imposes development impact fees to submit annual and five-year reports providing specific information about the receipt and use of such fees. Fees collected must be placed in separate accounts and not commingled with other sources of general revenues. Interest on each account must be credited to that account and used only for the purpose for which the fees were collected. The Act also requires that the City make periodic findings in order to justify continued receipt of unexpended funds, or possibly be subject to refunding a portion of such funds.

Although the Act does not apply to Developer Agreements, the reporting requirements on both the Development Impact Fee and Developer Agreements are the same and fall under Government Code Section 66006.

Section 66006(b) of the Act requires that within 180 days after the close of the fiscal year, the City must make available to the public a brief description of the fee, amount of the fee, beginning and ending balances of the account or fund for the fiscal year, and amount of fees collected and the interest earned. The Act also requires identification of each public improvement on which the fees were expended and the amount of the expenditures on each improvement, an approximate date by which the construction of the public improvement will commence, a description of each inter-fund transfer or loan made from the account or fund, and the amount of any refunds made due to the inability to expend impact fees. Section 66001(d) provides that, for the fifth fiscal year following the first deposit into the account or fund and every five years thereafter, the City shall make findings with respect to any portion of the fee remaining unexpended, whether committed or uncommitted.

The City is in conformance with the Act, is not subject to any refunding requirements, and the City has Fair Share Fees as the only source of reportable impact fees. Regarding Development Agreements, the City has three sources of reportable Development Agreements: the New Home Company Development Agreement, the Newport Beach Country Club Development Agreement and Uptown Newport Development Agreement.

On March 26, 2013, Council adopted Policy I-13, which established a funding source for and the creation of the Public Arts and Cultural Facilities Fund. Two percent of all public benefit fees received pursuant to future Development Agreements, would be transferred to this fund, for the acquisition, installation and maintenance of art structures in public places throughout the City. On August 8, 2017, the City Council approved Resolution No. 2017-55 which deleted, among others, Policy I-13. The attached reports cover the period of financial activity (July 1, 2016 and June 30, 2017) prior to when Policy I-13 was deleted. While the report makes several references to the transfer of developer funds into the Public Arts and Cultural Facilities Fund, no such transfers will appear in subsequent reports starting in Fiscal Year 2017-2018. On September 12, 2017, the City Council authorized the transfer of the total remaining balance of funds in the Public Arts and Cultural Fund to the Fire Station Fund per the Facilities Financing Plan. These funds will be used in part for the purchase of land to build the new Lido Fire Station 2. The Public Arts and Cultural Fund is currently no longer active.

With the exception of the transfers to the Public Art and Cultural Facilities Fund and the Uptown Newport Development Agreement, in which the first deposit was received during the current reporting period, all funds have been expended in the last year and, as a result, the City has nothing to report under the five-year reporting requirement.

Attachments A and B provide additional narrative and all the required information related to the annual review and accounting of applicable development impact fees and Development Agreements, as well as periodic findings concerning unexpended funds.

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 – Development Impact Fee Report Fiscal Year 2016-2017

Attachment B – Development Agreements Report Fiscal Year 2016-2017

Attachment A

City of Newport Beach Development Impact Fee Report Fiscal Year 2016-2017

City of Newport Beach
Development Impact Fee Report
Fiscal Year 2016-2017

Background

The City's Fair Share Fee program was originally adopted in 1984, updated in 1994 and adjusted periodically based upon the consumer price index. The purpose of the Fair Share Fee program is to equitably distribute the cost of traffic congestion reduction improvements to the future development that generates the need for such projects. The fair share traffic contribution is based upon the unfunded portion of the estimated construction cost of the total circulation system roadway improvements necessary to implement the master plan of streets and highways (net roadway costs), and the total number of vehicle trips anticipated as a result of trend growth.

The Mitigation Fee Act, *Government Code §66000 et seq.*, (the "Act"), the bulk of which were adopted as 1987's AB 1600 and contains what are commonly referred to as "AB 1600 requirements". The Act governs the establishment and administration of development impact fees paid by new development projects for public facilities needed to serve new development. Fees must be separately accounted for and used for the specific purpose for which the fee was imposed.

Annual Reporting

The Act requires that the City prepare an annual report detailing the status of collected development impact fees as defined in the Act. The annual report must be made available to the public and presented to the City Council not less than fifteen (15) days after it is made available to the public at the next regularly scheduled City Council meeting. The meeting before the City Council must be held within one hundred eighty (180) days of the end of the fiscal year. The report must include the type of fee, beginning and ending balances, the amount of fees collected and interest earned, expenditures by type, a description of interfund transfers or loans, and the amount of any refunds made.

Excluded from this report are types of developer fees that are not subject to the reporting requirements of the Act. For example, fees collected pursuant to the City's zoning powers, rather than pursuant to the Act, are in-lieu housing fees, public art-in-lieu fees and park-in-lieu fees.

Annual Report

To comply with *Government Code §66006*, the following information regarding AB 1600 fees is presented:

- 1) A brief description of the type of fee in the account or fund:

Fair Share Fees - These fees provide funding to accommodate traffic generated by future development within the City and are separately accounted for in the Circulation & Transportation Fund.

- 2) The amount of the Fair Share Fee:

Fair Share rate is \$203.29 per trip for Fiscal Year 2016-2017.

- 3) The Beginning & Ending balance of the account or fund:

See attached Financial Report.

- 4) The amount of fees collected and interest earned:

See attached Financial Report.

- 5) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with the fees:

See attached Financial Report.

- 6) An identification of an approximate date by which the construction of the public improvements will commence if the City determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in the City's master plans, and the public improvement remains incomplete:

New Fiscal Year 2016-2017 public improvement projects are underway and expected to be completed in 2019.

- 7) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan:

No interfund transfers or loans were made during the fiscal year.

- 8) The amount of refunds or any allocation made pursuant to subdivision (f) of Section 66001.

No refunds were made during the fiscal year.

Financial Report

Fair Share Revenues, Expenditures & Changes in Fund Balance FY 2016-2017			
		Total Project Costs (FY Only)	% Fair Share Funded
Revenues:			
Fair Share Fees	\$ 397,525		
Investment Income	3,669		
Total Revenues	401,195		
Expenditures:			
Capital Improvement Projects			
Traffic Signal Modernization Phase 8 (14001-980000-15T11)	\$ (17,784)	(76,366)	23.3%
CDM Bypass Plan Studies (14001-980000-16T11)	(33,420)	(33,420)	100.0%
Total Expenditures	(51,204)	(109,786)	
Net Change in Fund Balance	349,991		
Fund Balance, Beginning	\$ 1,309,452		
Fund Balance, Ending	\$ 1,659,443		

Description of Projects

Traffic Signal Modernization Phase 8 (Project 15T11)

Traffic Signal Modernization is a multi-year, multi-phased program to update the City's traffic signal system. Phase 8 is the final phase of the improvement program. It includes installation of new hardware, fiber optic cable upgrades and CCTV cameras to intersections. The project will also complete gaps in the fiber optic communication network and is expected to be completed by the end of 2017.

Corona del Mar (CDM) Bypass Plan Studies (Project 16T11)

This project studies traffic patterns and routes around Corona del Mar and prepares a signage plan to use electronic changeable message signs to provide real-time data to motorists. The aim is to address congestion on Coast Highway in Corona del Mar. The study also reviews infrastructure and tolling information on SR73 to encourage alternate routes around Corona del Mar. The study is expected to be completed in 2018 and construction expected to start soon after.

Attachment B

City of Newport Beach Development Agreements Report Fiscal Year 2016-2017

City of Newport Beach
Development Agreements Report
Fiscal Year 2016-2017

Background

A Development Agreement (“DA”) is a contract between a local jurisdiction and a person who has ownership or control of property within the jurisdiction. The purpose of the agreement is to specify the standards and conditions that will govern development of the property. The development agreement provides assurance to the developer that he/she may proceed to develop the project subject to the rules and regulations in effect at the time of approval - the development will not be subject to subsequent changes in regulations.

DA should also benefit the local jurisdiction. The city or county may include conditions (mitigation measures) that must be met to assure that a project at a specific location does not have unacceptable impacts on neighboring properties or community infrastructure. The agreement may clarify how the project will be phased, the required timing of public improvements, the developer's contribution toward funding system-wide community improvements, and other conditions. The agreement can also facilitate enforcement of requirements, since it is a contract that details the obligations of the developer and local jurisdiction.

In March 2013, the City Council adopted Council Policy I-13 establishing a Public Art and Cultural Facilities Fund, and a funding source for the acquisition, installation, management and maintenance of Public Art without adopting or imposing new fees or charges. With the adoption of the policy, the council authorized the deposit of two percent of the unallocated public benefit fees received by the City from development agreements into the Public Arts and Cultural Facilities Fund. These funds were originally established to provide for the acquisition and maintenance of permanent art structures and installations as identified in the Newport Beach Master Arts and Culture Plan. On August 8, 2017, the City Council approved Resolution No. 2017-55 which deleted, among others, Policy I-13. This report covers the period of financial activity (July 1, 2016 and June 30, 2017) prior to when Policy I-13 was deleted. While the report makes several references to the transfer of developer funds into the Public Arts and Cultural Facilities Fund, no such transfers will appear in subsequent reports starting in FY 2017-18. On September 12, 2017, the City Council authorized the transfer of the total remaining balance of funds (\$804,393) in the Public Arts and Cultural Fund to the Facilities Financing Plan Fund. These funds will be used in part for the purchase of land to build the new Lido Fire Station 2. The Public Arts and Cultural Fund is currently no longer active.

Annual Reporting

For DAs entered into or after January 1, 2004, *Government Code §65865 (e)* requires that the City shall comply with the reporting requirements pursuant to *Government Code §66000*, with respect to any fee the City receives or cost it recovers. *Government Code §66006* requires the City to submit annual and five-year notices detailing the status of collected public benefit fees, and be placed on the agenda for review at a public meeting not less than fifteen (15) days after the report is made available to the public. The meeting before the City Council must be held within one hundred eighty (180) days of the end of the fiscal year. The report must include the beginning and ending balances, the amount of fees collected and interest earned, expenditures by type, a description of interfund transfers or loans, and the amount of any refunds made. Excluded from this report are types of developer fees that are not subject to the reporting requirements under *Government Code §65865(e)*. For example, these include fees collected pursuant to the City's zoning powers, such as in-lieu housing fees, and park-in-lieu fees.

Annual Report

To comply with *Government Code §66006*, the following information regarding DA Fee is presented:

- 1) A brief description of the type of public benefit fee in the account or fund:
 - a) New Home Company Development Agreement – On January 10, 2006, the City Council adopted Resolution No. 2006-2 permitting the development of 79 condominiums (Santa Barbara Condominium project) on a 4.25-acre site located at 900 Newport Center Drive. Subsequently the City Council adopted a new Housing Element and approved the Affordable Housing Implementation Plan on August 14, 2007, per Resolution No. 2007-058. The resolution also approved the Memorandum of Understanding (“MOU”) between the City and the Developer establishing an understanding that a development agreement would be prepared outlining the provisions to be included in the development agreement. On February 28, 2012, the City Council adopted Resolution No. 2012-19 approving a Memorandum of Agreement (“MOA”) between the City Council and New Home Company, waiving the requirement of a development agreement for the Santa Barbara Condominium project. The MOA specifies the term, permitted uses, public benefits fee, in addition to the housing and park fees. Public benefit fees were required to be paid by New Home Company as part of the MOA, and are accounted for in the Facilities Financing Replacement Fund.
 - b) Newport Beach Country Club Development Agreement – On January 24, 2012, the City Council adopted Ordinance No. 2012-5 approving and adopting a Development Agreement between the City and Newport Beach Country Club permitting the reconstruction of the golf clubhouse to a maximum of 56,000 square feet. The DA specifies the term, permitted uses, public benefits and

dedication of street right-of-way and open space. Public benefit fees were required to be paid by Newport Beach Country Club as part of the DA approval, and are accounted for in the Facilities Financing Replacement Fund.

- c) Uptown Newport Development Agreement – On March 12, 2013 the City Council adopted Ordinance No. 2013-6 approving the Development Agreement for the development of a 25-acre, mixed-use residential project consisting of 1,244 residential dwelling units, two one-acre public parks, and 11,500 square feet of retail use located at 4311-4321 Jamboree Road. On April 28, 2015 the City Council approved the First Amendment to the Development Agreement that delayed the timing of payment of public benefit fees and park in-lieu fees. The DA specifies the term, permitted uses, public benefits fees, park in-lieu fees, dedication of park land and open space. Public benefit fees were required to be paid by Uptown Newport, LP as part of the DA approval, and are accounted for in the Facilities Financing Replacement Fund.

2) The amount of the DA fees:

- a) New Home Company Development Agreement – \$63,291 per residential unit for 79 units concurrent with certificate of occupancy. Total of \$3,354,434 was received in September 2015. Two percent of this, \$67,089, was transferred to the Public Arts and Cultural Facilities Fund. The balance at June 30, 2016 was \$2,761,324.
- b) Newport Beach Country Club Development Agreement – \$10 per-square-foot of construction for the proposed gold clubhouse at the issuance of the first building permit. Total of \$562,196 was received in December 2014. Two percent of this, \$11,244, was transferred to the Public Arts and Cultural Facilities Fund. They added a 903-square foot addition at \$10.25 per-square-foot for an additional amount of \$9,256, which was received in August 2016. Two percent of this, \$185, was transferred to the Public Arts and Cultural Facilities Fund.
- c) Uptown Newport Development Agreement – \$34,826 per residential unit for 462 units at the issuance of building permits for construction. Total of \$16,089,612 was received in May 2017. Two percent of this, \$321,792, was transferred to the Public Arts and Cultural Facilities Fund.

3) The Beginning and Ending balance of individual DAs:

See attached Financial Report.

4) The amount of DA fees collected and interest earned:

See attached Financial Report.

- 5) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with the fees:

See attached Financial Report.

- 6) An identification of an approximate date by which the construction of the public improvements will commence if the City determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in the City's master plans, and the public improvement remains incomplete:

New Home and Newport Beach Country Club development agreement funds have all been expended. Uptown Newport development agreement funds are expected to be expended by 2019. The portion of funds transferred to the Public Art and Cultural Facilities Funds will be expended in 2018.

- 7) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan:

- a) New Home Company Development Agreement – Two percent of the public benefit fees, \$67,089, was transferred to the Public Arts and Cultural Facilities fund in FY 2015-16. There were no interfund loans made during this fiscal year.
- b) Newport Beach Country Club Development Agreement – Two percent of the public benefit fees, \$11,244 and \$185, was transferred to the Public Arts and Cultural Facilities fund in FY 2015-16 and 2016-17 respectively. There were no interfund loans made during the fiscal year.
- c) Uptown Newport Development Agreement – Two percent of the public benefit fees, \$321,792, was transferred to the Public Arts and Cultural Facilities fund. There were no interfund loans made during the fiscal year.

The amount of refunds made pursuant to subdivision (f) of *Government Code §66001* any allocation pursuant to subdivision (f) of *Government Code §66001*.

No refunds were made during the fiscal year.

Financial Reports

New Home Company Development Agreement FY 2016-17

		Total Project Costs (FY Only)	% Developer Agreement Funded
Revenues:			
Developer Fees	\$ -		
Interest Income	-		
Total Revenues	<u>-</u>		
Expenditures:	\$ -		
Transfers In/(Out):			
Transfer Out - Marina Park fund	\$ (2,761,324) ¹	(43,062) ¹	6412.4%
Total Transfers	<u>(2,761,324)</u>	<u>(43,062)</u>	
Net Change in Fund Balance	(2,761,324)		
Fund Balance, beginning	\$ 2,761,324		
Fund Balance, ending	<u>\$ -</u>		

¹ Costs for capital projects that are funded by the Facilities Financing Plan Fund, such as Marina Park, are reimbursed by the Facilities Financing Plan Fund after all costs have been incurred. The transfer out recognizes costs incurred in prior fiscal years.

Newport Beach Country Club Development Agreement FY 2016-17

		Total Project Costs (FY Only)	% Developer Agreement Funded
Revenues:			
Developer Fees	\$ 9,256		
Interest Income	107		
Total Revenues	<u>9,363</u>		
Expenditures:	\$ -		
Transfers In/(Out):			
Transfer Out - West Newport Community Center	\$ (9,178)	(130,028)	7.1%
Transfer Out - Public Arts and Cultural Facilities Fund	(185)		
Total Transfers	<u>(9,363)</u>	<u>(130,028)</u>	
Net Change in Fund Balance	-		
Fund Balance, beginning	\$ -		
Fund Balance, ending	<u>\$ -</u>		

**Uptown Newport Development Agreement
FY 2016-17**

		Total Project Costs (FY Only)	% Developer Agreement Funded
Revenues:			
Developer Fees	\$ 16,089,612		
Interest Income	28,603		
Total Revenues	<u>16,118,215</u>		
Expenditures:	\$ -		
Transfers In/(Out):			
Transfer Out - Marina Park fund	\$ (5,828,681) ¹	(43,062) ¹	13535.6%
Transfer Out - West Newport Community Center	(120,849)	(130,028)	92.9%
Transfer Out - Public Arts and Cultural Facilities Fund	(321,792)		
Total Transfers	<u>(6,271,322)</u>	<u>(173,090)</u>	
Net Change in Fund Balance	9,846,892		
Fund Balance, beginning	\$ -		
Fund Balance, ending	<u><u>\$ 9,846,892</u></u>		

¹ Costs for capital projects that are funded by the Facilities Financing Plan Fund, such as Marina Park, are reimbursed by the Facilities Financing Plan Fund after all costs have been incurred. The transfer out recognizes costs incurred in prior fiscal years.

**Public Arts And Cultural Facilities Revenues
FY 2016-17**

Revenues:	
Developer Fees	\$ -
Interest Income	1,471
Total Revenues	<u>1,471</u>
Expenditures:	\$ -
Transfers In/(Out):	
Transfer In - Uptown Newport DA	\$ 321,792
Transfer In - Newport Beach Country Club DA	185
Total Transfers	<u>321,977</u>
Net Change in Fund Balance	323,448
Fund Balance, beginning	\$ 481,130
Fund Balance, ending	<u><u>\$ 804,578</u></u>

¹ On September 12, 2017, the City Council authorized the transfer of the total remaining balance of funds in the Public Arts and Cultural Fund to the Fire Station Fund per the Facilities Financing Plan. These funds will be used in part for the purchase of land to build the new Lido Fire Station 2. The Public Arts and Cultural Fund is currently no longer active.



CITY OF

NEWPORT BEACH

City Council Staff Report

November 14, 2017
Agenda Item No. 16

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Chip Duncan, Fire Chief - 949-644-3101, cduncan@nbfd.net

PREPARED BY: Angela Crespi, Administrative Manager, acrespi@nbfd.net

PHONE: 949-644-3352

TITLE: Approval of Budget Amendment for Paramedic Training

ABSTRACT:

On January 26, 2016, the City approved Resolution 2016-11 adopting a Memorandum of Understanding (MOU) between the City of Newport Beach and the Newport Beach Firefighters Association (NBFA) for the period January 1, 2015 through December 31, 2018. As a part of that MOU, the City agreed to send up to four current Firefighters to Paramedic school based on operational needs. The Fire Department requests funding to support the attendance of one unit member in January of 2018.

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 Budget Amendment No. 18BA-012 appropriating \$95,000 from the General Fund unappropriated surplus fund balance to account 01040401-713003.

FUNDING REQUIREMENTS:

The Budget Amendment records and appropriates \$95,000 in increased expenditure appropriations from General Fund unappropriated fund balance to Fire Operations Planned Overtime account 01040401-713003.

DISCUSSION:

Due to recent promotions, the Fire Department has identified an operational need to train additional personnel for possible future Paramedic assignments. As a result, the Fire Department enacted Section 2 (J) Paramedic Training of the current NBFA MOU establishing a competitive process to select a maximum of four current Firefighters to attend Paramedic school. At this time, only one current Firefighter has expressed interest in pursuing the optional training.

The Fire Department is requesting the necessary funds to support the attendance of one unit member in January of 2018. The funding will support increased overtime hours necessary to backfill the employee's position. The employee attending Paramedic School will continue to be compensated at their regular rate of pay.

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 – Budget Amendment

City of Newport Beach

ATTACHMENT A
NO. BA- 18BA-012

BUDGET AMENDMENT 2017-18

AMOUNT: \$95,000.00

EFFECT ON BUDGETARY FUND BALANCE:

<input type="checkbox"/>	Increase	Revenue Estimates
<input checked="" type="checkbox"/>	Increase	Expenditure Appropriations AND
<input type="checkbox"/>	Transfer	Budget Appropriations

<input type="checkbox"/>	Increase in Budgetary Fund Balance
<input checked="" type="checkbox"/>	Decrease in Budgetary Fund Balance
<input type="checkbox"/>	No effect on Budgetary Fund Balance

SOURCE:

<input type="checkbox"/>	from existing budget appropriations
<input type="checkbox"/>	from additional estimated revenues
<input checked="" type="checkbox"/>	from unappropriated fund balance

ONE-TIME?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No

EXPLANATION:

This budget amendment is requested to provide for the following:

To increase expenditure appropriations from the General Fund unappropriated fund balance for Fire Operations - Planned Overtime per NBFA MOU Agreement. Dept. has identified the operational need to train one additional paramedic. This covers increased overtime hours to backfill the employee's position. The employee attending paramedic school will continue to be compensated at their regular rate..

ACCOUNTING ENTRY:

BUDGETARY FUND BALANCE

Fund	Object	Description	Amount	
			Debit	Credit
010	300000	General Fund - Fund Balance	\$95,000.00 *	

REVENUE ESTIMATES

Org	Object	Description
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EXPENDITURE APPROPRIATIONS

Org/Object	Description	
01040401-713003	Fire Operations - Planned Overtime	\$95,000.00

* Automatic System Entry.

Signed:  Financial Approval: Finance Director

11-2-17
Date

Signed:  Administrative Approval: City Manager

11/3/17
Date

Signed: _____ City Council Approval: City Clerk

Date



CITY OF
NEWPORT BEACH
City Council Staff Report

November 14, 2017
Agenda Item No. 17

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Ben Davis, Associate Civil Engineer
bdavis@newportbeachca.gov

PHONE: 949-644-3317

TITLE: Citywide ADA Curb Access Ramp Improvements – Award of Contract
No. 7154-1 (18R11)

ABSTRACT:

Staff has received construction bids for the Citywide ADA Improvements project to install curb access ramps in various areas of the City and is requesting City Council's approval to award the construction contract to Victor Concrete, Inc. of Riverside, California.

RECOMMENDATION:

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(c) Class 2, (reconstruction of existing facility involving negligible or no expansion of capacity) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment;
- b) Approve the project plans and specifications;
- c) Award Contract No. 7154-1 to Victor Concrete, Inc. for the total bid amount of \$1,239,100.00, and authorize the Mayor and City Clerk to execute the contract; and
- e) Approve Budget Amendment No. 18BA-__ appropriating \$65,755.00 from the Community Development Block Grant unappropriated fund balance to Account No. 12001-980000-18R11 and transferring \$7,335.00 from project savings from Account No. 01201927-980000-15R14 (Concrete Replacement Program) to Account No. 01201927-980000-18R11 for Citywide ADA Improvements.

FUNDING REQUIREMENTS:

Upon approval of the proposed budget amendment, sufficient funding is available for the award of this contract. The following funds will be expensed:

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
Community Dev Block Grant	12001-980000-18R11	\$ 1,265,755.00
General Fund	01201927-980000-18R11	\$ 7,335.00
	Total:	\$ 1,273,090.00

Proposed fund uses are as follows:

<u>Vendor</u>	<u>Purpose</u>	<u>Amount</u>
Victor Concrete, Inc.	Construction Contract	\$ 1,239,100.00
LDM Associates, Inc.	CDBG Compliance	\$ 30,990.00
Various	Printing and Incidentals	\$ 3,000.00
Total:		\$ 1,273,090.00

DISCUSSION:

The Americans with Disabilities Act (ADA) was enacted in 1990 and mandated that Agencies develop and maintain a plan as to how different obstructions identified by a citywide facilities ADA compliance review will be remedied. Since that time, the City developed an ADA Transition Plan and has completed thousands of physical improvements to its facilities (streets and buildings) through a number of capital improvement projects to improve public access. Staff continues to put forth great efforts and includes ADA improvements on nearly all capital and maintenance projects.

During last year's budget process, Community Development Block Grant (CDBG) became available as a funding source for construction of additional accessibility improvements. With these funds, staff recommended a one-time project to construct a large quantity of curb access ramps and City Council approved it as part of the Capital Improvement Program. This project involves constructing approximately 200 concrete curb access ramps in the Harbor View, Newport Hills, Eastbluff, Spyglass and Corona del Mar communities in order to remove physical barriers and improve pedestrian access. Currently, the many sidewalk corners within these locations do not have curb access ramps to accommodate disability access. The existing concrete sidewalk corners/curb returns will be removed and new concrete access ramps utilizing the latest standards will be installed.

At 10 a.m. on October 24, 2017, the City Clerk opened and read the following bid for this project:

	<u>BIDDER</u>	<u>TOTAL BID AMOUNT</u>
Low	Victor Concrete, Inc.	\$1,239,100.00
2nd	S&H Civilworks	\$1,305,000.00
3rd	All American Asphalt	\$1,707,707.00
4th	Beador Construction Company, Inc.	\$1,723,300.00
5th	Gentry General Engineering, Inc.	\$1,815,500.00
6th	Hardy & Harper, Inc.	\$1,828,000.00
7th	Nobest, Inc.	\$1,848,500.00
8th	EBS General Engineering, Inc.	\$1,968,400.00
9th	Calpromax Engineering, Inc.	\$1,986,360.00
10th	CT&T Concrete Paving, Inc.	\$2,618,600.00

The City received multiple bids for this project and the low bid is within 5 percent of the engineer's estimate of \$1,185,000.00. The cost differential is likely associated with the current very busy construction market and the upward pressure on bid cost.

The low bidder, Victor Concrete, Inc., possesses a California State Contractors License Classification "C-8" as required by the project specifications. A check of the contractor's references indicates satisfactory completion of similar projects for other public agencies.

This proposed project consists of removing existing concrete sidewalk, curb and gutter, spandrel, performing necessary site grading and constructing new access ramps, as well as associated concrete work necessary to complete the work. Pursuant to the contract documents, the Contractor will have 80 consecutive working days to complete the work and must comply with all Federal regulations associated with the project funding.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(c) Class 2, (reconstruction of existing facility involving negligible or no expansion of capacity) of the CEQA Guidelines, 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).

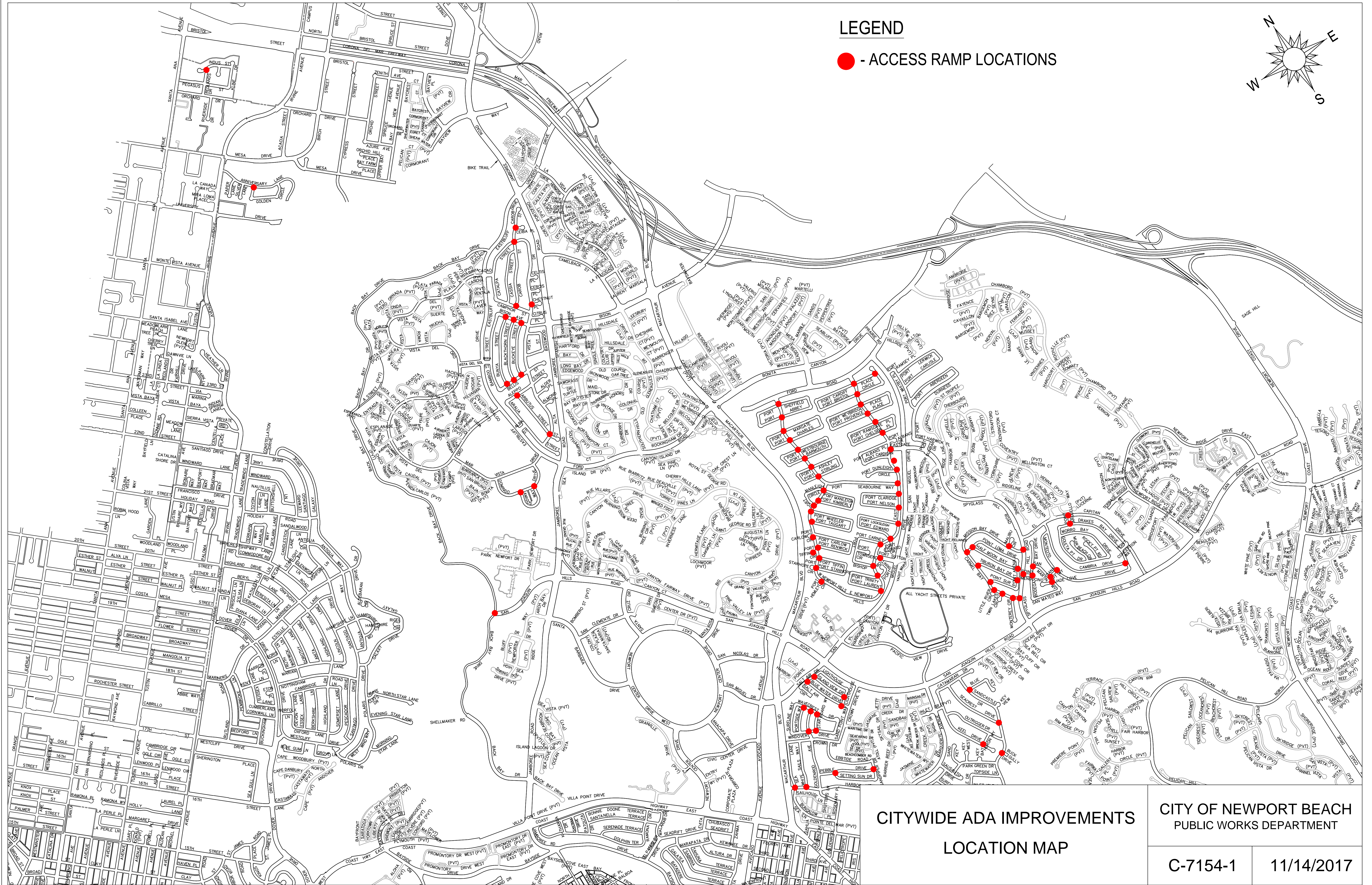
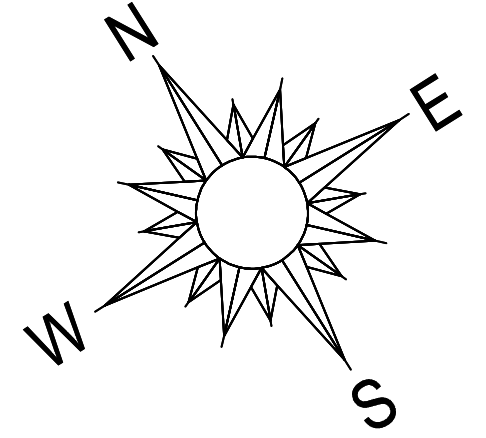
ATTACHMENTS:

Attachment A – Location Map
Attachment B – Budget Amendment

ATTACHMENT A

LEGEND

● - ACCESS RAMP LOCATIONS



CITYWIDE ADA IMPROVEMENTS

LOCATION MAP

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

C-7154-1

11/14/2017

City of Newport Beach

BUDGET AMENDMENT 2017-18

ATTACHMENT B

NO. BA- 18BA-013

AMOUNT: \$73,090.00

EFFECT ON BUDGETARY FUND BALANCE:

X
X

Increase Revenue Estimates
Increase Expenditure Appropriations AND
Transfer Budget Appropriations

X
X

Increase in Budgetary Fund Balance
Decrease in Budgetary Fund Balance
No effect on Budgetary Fund Balance

SOURCE:

X
X

from existing budget appropriations
from additional estimated revenues
from unappropriated fund balance

EXPLANATION:

This budget amendment is requested to provide for the following:

To increase expenditure appropriations from the CDBG Fund unappropriated fund balance and transfer
expenditure appropriations from the CDM Concrete Pavement Reconstruction Phase 2 project
for the Citywide ADA Improvements project.

ACCOUNTING ENTRY:

BUDGETARY FUND BALANCE

Fund	Object	Description	Amount	
			Debit	Credit
120	300000	CDBG - Unapprop. Fund Bal.	\$65,755.00 *	

REVENUE ESTIMATES

Org	Object	Description
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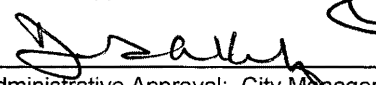
EXPENDITURE APPROPRIATIONS

			Description	
Org	Number	12001	CDBG CIP	
Object	Number	980000	CIP Exp	
Project	Number	18R11	Citywide ADA Improvements	\$65,755.00
Project String				E-18R11-CONSTRUCT-120-UNASSIGNED
Org	Number	01201927	General Fund CIP - Streets	
Object	Number	980000	CIP Exp	
Project	Number	15R14	CDM Concrete Pavement Recon: Phase 2	\$7,335.00
Project String				E-15R14-UNASSIGNED-012-UNASSIGNED
Org	Number	01201927	General Fund CIP - Streets	
Object	Number	980000	CIP Exp	
Project	Number	18R11	Citywide ADA Improvements	\$7,335.00
Project String				E-18R11-UNASSIGNED-012-UNASSIGNED

* Automatic System Entry.

Signed: 
Financial Approval: Finance Director

11-2-17
Date

Signed: 
Administrative Approval: City Manager

11/3/17
Date

Signed: _____
City Council Approval: City Clerk

Date



CITY OF

NEWPORT BEACH

City Council Staff Report

November 14, 2017
Agenda Item No. 18

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: James Campbell, Deputy Community Development Director
jcampbell@newportbeachca.gov

PHONE: 949-644-3210

TITLE: General Plan Update Process (PA2017-141)

ABSTRACT:

The City is about to embark on a comprehensive update to its General Plan (GP). In the last decade, extensive development has occurred throughout the City in conformance to the 2006 General Plan. Given the amount of development, it is important to review the GP and possibly update it to reflect the community's vision of the future. A very important part of the update process is to gain input from the residents, property owners, and the many stakeholders throughout the City. Outlined in this staff report is a collaborative process of updating the GP by the use resident based committees, a work plan that includes the use of outside consultants, and an overall project schedule.

RECOMMENDATION:

- a) Determine the recommended action exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 because the recommended action has no potential to have a significant effect on the environment;
- b) Initiate the General Plan update process;
- c) Adopt Resolution No. 2017-73, *A Resolution of the City Council of the City of Newport Beach, California, Establishing the General Plan Steering Committee (Steering Committee) and General Plan Advisory Committee (GPAC) to Assist in a Comprehensive Review and Update of the General Plan*;
- d) Authorize the Mayor to appoint the following members to the Steering Committee: City Council Members William O'Neill and Jeff Herdman, and former Mayor Nancy Gardner, and appoint a chairperson; and
- e) Authorize the City Clerk to begin accepting applications for the GPAC, and forward the applications for review by the Steering Committee.

FUNDING REQUIREMENTS:

The adopted budget includes \$1,000,000 for the current fiscal year ending June 30, 2018. Expenses would be charged to the Capital Improvement Program, General Plan Update, account 01201928-980000. Staff anticipates requesting an additional \$1,000,000 during future budget adoption processes.

DISCUSSION:**What is a general plan?**

A general plan is the framework for decision-making regarding the management and growth of a city. It is a blueprint for our City providing goals and policies to guide the City to achieve the community's future vision. State law mandates that every California city and county adopt "a comprehensive, long-term general plan." The Newport Beach General Plan includes ten elements consisting of the following:

- Land Use • Housing • Historical Resources • Safety • Harbor and Bay
- Circulation • Recreation • Natural Resources • Noise • Arts & Culture

Background

In July 2006, the City replaced its then 28-year old General Plan establishing a policy blueprint with a planning horizon until year 2025. In November 2006, consistent with Charter Section 423, the electorate voted to amend the Land Use Element of the new General Plan increasing residential dwelling units, and decreasing both non-residential square footage and peak hour traffic.

State law encourages cities and counties to periodically review the various elements of their general plans to ensure they are both current and reflect the community's vision and goals. Changes in state law also require updates to the Circulation and Safety Elements and the City must now include policies related to environmental justice. Most recently, the City went through the process of updating the Land Use Element in 2014; however, the electorate did not approve the resulting increases in density, intensity, and peak hour traffic. The outcomes of several recent development projects suggest the community's vision might need to be re-examined and possibly refreshed. These factors, as well as the progress over the past eleven years, supported the City Council's decision to budget \$1,000,000 this fiscal year to start the process.

General Plan Steering Committee

Staff recommends the formation of a three-person Steering Committee to help guide the process. The Steering Committee would be subject to the Brown Act. The Steering Committee will be comprised of two City Council members and one at-large member who is not a City Council member. The Mayor will make member appointments; name a chairperson and the City Council would review and approve them. The Steering Committee will have the following responsibilities:

1. Receive direction from the City Council;
2. Provide direction to the GPAC regarding the General Plan update;
3. Present progress updates to the City Council;
4. Make recommendations to the City Council for membership changes to the GPAC;
5. Review membership applications for the GPAC and make a recommendation to the City Council on GPAC membership composition;
6. Assist staff by performing duties, which include, but are not limited to the following:
 - a. Provide guidance and recommendations to City staff;
 - b. Review Requests for Proposals and responsive proposals for consultant services related to the General Plan;
 - c. Establish time schedules for the General Plan update; and
 - d. Review invoices and budgets related to the General Plan update.

Additional details of the Steering Committee are provided in the attached draft Resolution (Attachment A).

General Plan Advisory Committee (GPAC)

The update process cannot be accomplished without active community input and oversight. Staff recommends the establishment of a General Plan Advisory Committee that would be subject to the Brown Act. The GPAC would meet regularly and provide a public forum to review, discuss, and guide updates to policies. The GPAC would take direction and report to the Steering Committee. The composition and operation of the GPAC is intended to ensure the process is open and transparent.

GPAC members would be limited to City residents or organizations that operate in the City. GPAC shall consist of a minimum of 15 members but no more than 29 members. Membership may be composed of the following categories and no member may represent more than one (1) category:

- a. Up to three (3) residents from each City Council District;
- b. One (1) member from the Planning Commission;
- c. One (1) member from the Finance Committee;
- d. One (1) member from the Harbor Commission;
- e. One (1) member from the Parks, Beaches and Recreation Commission;
- f. Member(s) from local community organizations.

All prospective members would be required to submit a complete application for appointive positions to the City Clerk's Office. The City Clerk would forward qualifying applications to the Steering Committee for review and then the committee would make recommendations to the City Council for appointments. Additional details about the GPAC are in the attached draft Resolution (Attachment A).

Initial Work Plan

The initial work plan is a draft that may be modified by the Steering Committee and GPAC with community involvement. A summary of tasks are:

1. Community Engagement and Outreach

The single most important part of the GP update is civic engagement. Community feedback and input is necessary as it brings out a vision for the City.

Community engagement takes place by both inviting community members to participate and staff proactively reaching out to the community for input. This is accomplished by setting up community meetings at different locations throughout the City and inviting community members to attend and provide their input. Additionally, it is important for staff to reach out and attend regular community meetings, HOA meetings, and business association groups.

The City, with consultant assistance, will create and implement a community engagement and outreach plan to accomplish the overall update goals in an open and transparent process.

2. Consultant Selection

A consultant will need to be hired to help with the following: technical analysis, draft documents, community engagement draft amendments and the Environmental Impact Report (EIR) to the GP. A market and fiscal analysis will be conducted to provide foundational information for land use and circulation discussions. A consultant will also help understand economic changes of various land use alternatives.

The consultant will be selected through a Request for Proposal (RFP) process. The RFP will be drafted by staff and reviewed by the Steering Committee.

3. Review and Create Draft Update

All elements of the GP will be reviewed by the consultant and GPAC. Some of the elements may be rewritten in their entirety, while others may be amended or left unchanged.

4. Environmental Review

The update requires a thorough analysis of its potential environmental impacts. The results of the community visioning process, the market and fiscal analysis, and the GPAC process will lead to the creation of a preferred draft GP update. The land use plan and several viable alternatives will need to be evaluated in the environmental impact report (EIR) to inform the community and decision-makers.

How the work program changes is dependent on inputs received during the process including information from the consultants, staff, technical studies and analysis, stakeholder discussions, public outreach efforts and direction from the Steering Committee, the GPAC, and commissions and boards.

Project Schedule

The GP update would begin immediately with the initiation, appointment of the Steering Committee, and the establishment of the GPAC. The overall timeline is:

Establish Steering Committee & GPAC	Nov. 14, 2017
Advertise and Accept GPAC Membership Applications	Nov. 18, 2017
Publish Request for Proposals (RFP) for consulting services	December 2017
Appoint GPAC Members	Feb. 13, 2018
Select consultant team	Feb. 27, 2018
Public outreach, stakeholder meetings, GPAC meetings	March 2018 to March 2019
Preparation of draft update, alternatives and EIR	April 2019 to Oct. 2019
Public hearings and update adoption	Nov. 2019 and May 2020
Vote (unless deemed unnecessary)	November 2020

ENVIRONMENTAL REVIEW:

The City Council's creation of advisory bodies and the initiation of amendments to the General Plan, Coastal Land Use Plan and Zoning Code/Map are exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because the recommended actions have no potential to have a significant effect on the environment. No final action on the proposed update will be taken and the initiation of the amendments does not have any legally binding effect upon future consideration of the update themselves. An Environmental Impact Report (EIR) will be prepared in accordance with CEQA prior to the approval of any amendments.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item). Additionally, staff posted information about this meeting on the City's website and sent an email alert to those individuals requesting email notifications. The City also used social media to alert the community.

ATTACHMENTS:

Attachment A – Resolution No. 2017-73

Attachment B – Correspondence

ATTACHMENT A

RESOLUTION NO. 2017-73

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ESTABLISHING THE GENERAL PLAN STEERING COMMITTEE AND THE GENERAL PLAN ADVISORY COMMITTEE TO ASSIST IN A COMPREHENSIVE REVIEW AND UPDATE OF THE GENERAL PLAN

WHEREAS, in 2006 the City of Newport Beach ("City") adopted a new General Plan;

WHEREAS, the General Plan provides a framework for the City's future development and requires comprehensive updates from time-to-time to ensure it matches the desires of the community;

WHEREAS, the City Council recognizes a comprehensive General Plan update requires active community participation and the guidance and oversight of a focused advisory committee and steering committee;

WHEREAS, the City desires to create a general plan advisory committee to provide opportunities for the public to engage and participate in the City's General Plan update; and

WHEREAS, the City further desires to create a steering committee to provide direction and act as a liaison between the City Council and the general plan advisory committee.

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

Section 1: The City Council does hereby create the General Plan Steering Committee ("Steering Committee") and the General Plan Advisory Committee ("GPAC") to assist the residents, City staff, Planning Commission, and City Council in reviewing and updating the City's General Plan. The Steering Committee and GPAC shall automatically sunset, without further action, upon the submittal and acceptance of a General Plan update by the City Council.

Section 2: A full description and listing of responsibilities of the Steering Committee is set forth in Exhibit A, which is attached and incorporated herein by reference.

Section 3: A full description and listing of responsibilities of the GPAC is set forth in Exhibit B, which is attached and incorporated herein by reference.

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

Section 5: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

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

Section 7: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting this resolution.

ADOPTED this 14th day of November, 2017.

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

 (Gr)

Aaron C. Harp
City Attorney

Attachments: Exhibit A- General Plan Steering Committee
Exhibit B – General Plan Advisory Committee

EXHIBIT A

GENERAL PLAN STEERING COMMITTEE (STEERING COMMITTEE)

AUTHORIZATION: Established by Resolution No. 2017-____ adopted on the 14th of November, 2017.

MEMBERSHIP:

The following membership criteria applies to the Steering Committee:

1. The Steering Committee shall have no more than three (3) members.
2. Members shall be appointed by the Mayor, and confirmed by the City Council.
3. Membership shall be composed of the following:
 - a. Two (2) City Council Members; and
 - b. One (1) at-large non-Council Member who shall be a resident of the City.
 - c. The Mayor shall select the chairperson of the Steering Committee.

TERM: Unless removed earlier by the Mayor, with the consent of the City Council, the membership term shall end upon the submittal and acceptance of a General Plan update by the City Council.

MEETINGS: The Steering Committee shall hold meetings at such frequency as required by its workload.

BROWN ACT: The Steering Committee shall be subject to the Ralph M. Brown Act.

PURPOSE AND RESPONSIBILITIES:

The purpose of the Steering Committee is to provide direction to the General Plan Advisory Committee (GPAC) on matters related to the General Plan update and to act as a liaison between the City Council and the GPAC. The Steering Committee shall:

1. Receive direction from the City Council;
2. Provide direction to the GPAC regarding the General Plan update;
3. Present progress updates to the City Council;
4. Make recommendations to the City Council for membership changes to the GPAC;
5. Review membership applications for the GPAC and make a recommendation to the City Council on GPAC membership composition;
6. Assist staff by performing duties, which include, but are not limited to the following:
 - a. Provide guidance and recommendations to City staff;
 - b. Review Requests for Proposals and responsive proposals for consultant services related to the General Plan;
 - c. Establish time schedules for the General Plan update; and
 - d. Review invoices and budgets related to the General Plan update.

EXHIBIT B
GENERAL PLAN ADVISORY COMMITTEE
(GPAC)

AUTHORIZATION: Established by Resolution No. 2017-____ adopted on the 14th of November, 2017.

MEMBERSHIP:

The following membership criteria shall apply to the GPAC:

1. The GPAC shall consist of a minimum of fifteen (15) members but no more than twenty-nine (29) members.
2. Membership shall be limited to City residents, or organizations that operate in the City.
3. Membership may be composed of the following categories and no member may represent more than one (1) category:
 - a. Up to three (3) residents from each City Council District;
 - b. One (1) member from the Planning Commission;
 - c. One (1) member from the Finance Committee;
 - d. One (1) member from the Harbor Commission;
 - e. One (1) member from the Parks, Beaches and Recreation Commission;
 - f. Member(s) from local community organizations.
4. Prospective members shall submit a complete application for an appointive position to the City Clerk. The City Clerk shall forward applications to the Steering Committee for review. The Steering Committee shall make recommendations to the City Council regarding GPAC appointments. The City Council shall have final discretion on whom to appoint to the GPAC, which appointment shall be made at an open and public City Council meeting.

TERM: Unless removed earlier by the City Council, the membership term shall end upon the submittal and acceptance of a General Plan update by the City Council.

MEETINGS: The GPAC shall hold meetings at such frequency as required by its workload.

BROWN ACT: The GPAC shall be subject to the Ralph M. Brown Act. A quorum shall be comprised of the attendance of a majority of the appointed members at a GPAC meeting (e.g., if there are only fifteen (15) appointed members, the attendance of eight (8) members shall be required to comprise a quorum).

PURPOSE AND RESPONSIBILITIES:

The purpose of the GPAC is to provide opportunities for public participation and to guide and shape a comprehensive review and update of the General Plan in an open and transparent manner. The GPAC shall:

1. Review information received from the community outreach and public engagement program and GPAC meetings;
2. Review information provided by City staff and Consultants;
3. Strive to create a balanced, effective, conscientious, and civic-minded group, that actively listens to build a consensus on how to address the variety of issues affecting the City that are within the scope of a General Plan;
4. Take direction from and make recommendations to the Steering Committee;
5. Act in a professional and courteous manner towards City staff, consultants, fellow GPAC members, the Steering Committee, residents, and other persons that appear before the GPAC.
6. The GPAC chairperson shall be the non-Council Member appointee to the Steering Committee, and shall act as liaison between the Steering Committee and GPAC; and
7. Update its members' respective interest groups and/or City Commissions regarding the progress of the General Plan update.

ATTACHMENT B

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

From: Lynn Lorenz [<mailto:lynnierlo@aol.com>]

Sent: Monday, November 06, 2017 1:01 PM

To: Kramer, Kory <kkramer@newportbeachca.gov>; Dunlap, Bill <bdunlap@newportbeachca.gov>; Koetting, Peter <pkoetting@newportbeachca.gov>; Kleiman, Lauren <kleiman@newportbeachca.gov>; Lowrey, Lee <llowrey@newportbeachca.gov>; Weigand, Erik <eweigand@newportbeachca.gov>; Zak, Peter <pzak@newportbeachca.gov>; Biddle, Jennifer <JBiddle@newportbeachca.gov>; Campagnolo, Daniel <DCampagnolo@newportbeachca.gov>; Jurjis, Seimone <sjurjis@newportbeachca.gov>; info@spon-newportbeach.org

Subject: Comments: General Plan Update Process

To: Planning Commission Members

Please stop allowing buildings which deviate from established planning rules and guidelines set up to protect the residents of Newport from oversized structures which either block their already established views and/or degrade the balance, symmetry and beauty of Newport Beach neighborhoods and commercial districts.

Thank you, Lynn Lorenz
434 Redlands Avenue

Sent from my iPad

From: Caren Laing [<mailto:caren.laing@gmail.com>]

Sent: Monday, November 06, 2017 6:04 PM

To: Kramer, Kory <kkramer@newportbeachca.gov>; Dunlap, Bill <bdunlap@newportbeachca.gov>; Koetting, Peter <pkoetting@newportbeachca.gov>; Kleiman, Lauren <kleiman@newportbeachca.gov>; Lowrey, Lee <lowrey@newportbeachca.gov>; Weigand, Erik <ewigand@newportbeachca.gov>; Zak, Peter <pzak@newportbeachca.gov>; Biddle, Jennifer <JBiddle@newportbeachca.gov>; Campagnolo, Daniel <DCampagnolo@newportbeachca.gov>; Jurjis, Seimone <sjurjis@newportbeachca.gov>; Stop Polluting Our Newport <info@spon-newportbeach.org>

Subject: Comments: General Plan Update Process

Planning Commissioners,

Please be more aware of our community of homes and do not let mansionization take over! Curb appeal should be considered and harmony within a block should be of utmost importance! We are starting to look like a jumble!

Caren Laing