



CITY OF NEWPORT BEACH SPECIAL JOINT MEETING OF THE CITY COUNCIL AND FINANCE COMMITTEE AGENDA

**COUNCIL CHAMBERS - 100 CIVIC CENTER DRIVE, NEWPORT BEACH
TUESDAY, MAY 14, 2019, 4:00 P.M.**

City Council Members:

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

Finance Committee Members:

**Will O'Neill, Chair / Mayor Pro Tem
Diane B. Dixon, Mayor
Joy Brenner, Council Member
William Collopy, Committee Member
John Reed, Committee Member
Joseph Stapleton, Committee Member
Larry Tucker, Committee Member**

This City Council and Finance Committee are subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that their agenda be posted at least twenty-four (24) hours in advance of a special meeting and that the public be allowed to comment on agenda items before the City Council and Finance Committee, and items not on the agenda but are within the subject matter jurisdiction of the City Council and Finance Committee. The City Council and Finance Committee may limit public comments to a reasonable amount of time, generally three (3) minutes per person.

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).

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 meeting.

I. CALL MEETING TO ORDER

II. ROLL CALL

III. CURRENT BUSINESS

A. Review of the Proposed Fiscal Year 2019-20 Operating Budget (the proposed budget is available online at newportbeachca.gov/budget)

Staff will be reviewing the general construct and underpinnings of the overall budget, including sources and uses of funds, major program enhancements that were incorporated into the proposed budget, as well as proposed budget revisions that were not initially incorporated into the proposed budget.

IV. PUBLIC COMMENTS

Public comments are invited on agenda and non-agenda items generally considered to be within the subject matter jurisdiction of the City Council and Finance Committee. Speakers must limit comments to three (3) minutes. Before speaking, we invite, but do not require, you to state your name for the record. The City Council and Finance Committee have the discretion to extend or shorten the speakers' time limit on agenda or non-agenda items, provided the time limit adjustment is applied equally to all speakers.

V. ADJOURNMENT



**CITY OF NEWPORT BEACH
CITY COUNCIL AGENDA**

STUDY SESSION AND REGULAR MEETING

MAY 14, 2019

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

**STUDY SESSION - 5:00 P.M. (PUBLIC WELCOME)
CLOSED SESSION FOLLOWS STUDY SESSION
REGULAR MEETING - 7:00 P.M.**

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

**GRACE K. LEUNG, City Manager
AARON C. HARP, City Attorney
LEILANI I. BROWN, City Clerk
CAROL JACOBS, Assistant City Manager**

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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. Agendas, minutes and staff reports are also available on the City's webpage at newportbeachca.gov/agendas.

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NEWPORT BEACH CITY COUNCIL AGENDA
CITY COUNCIL CHAMBERS
100 CIVIC CENTER DRIVE, NEWPORT BEACH, CA 92660
MAY 14, 2019
STUDY SESSION - 5:00 P.M. (PUBLIC WELCOME)
CLOSED SESSION FOLLOWS STUDY SESSION
REGULAR MEETING - 7:00 P.M.

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NOTE: A Special Joint Meeting of the Newport Beach City Council and the Finance Committee will be held at 4:00 p.m. in the same location (City Council Chambers) to go over the Proposed FY 2019-20 Budget. Please see the separate agenda for this meeting. The public is welcome to attend the Special Joint Meeting, as well as the City Council Study Session and Regular Meeting.

* * * * *

I. ROLL CALL – 5:00 p.m. (or shortly thereafter, following the Special Joint Meeting of the City Council and Finance Committee)

II. CURRENT BUSINESS

SS1. Clarification of Items on the Consent Calendar

SS2. *Public Works Week Proclamation*

SS3. City Emergency Council Update

Staff will provide background on the City's Emergency Council and an update on disaster preparedness activities. Staff will also seek City Council input on proposed recommendations to enhance communications with the City Council and the community regarding the City's emergency plans and activities.

III. PUBLIC COMMENTS

The City provides a yellow sign-in card to assist in the preparation of the minutes. The completion of the card is not required in order to address the City Council. If the optional sign-in card has been completed, it should be placed in the box provided at the podium.

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: Grace K. Leung, City Manager, Carol Jacobs, Assistant City Manager, and Barbara Salvini, Human Resources Director; Labor Negotiators.

Employee Organizations: Lifeguard Management Association (LMA).

B. CONFERENCE WITH LEGAL COUNSEL

ANTICIPATED LITIGATION – INITIATION OF LITIGATION

(Government Code § 54956.9(d)(4)): 1 matter

C. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Government Code § 54956.8): 1 matter

Property: 1 Newport Pier, Newport Beach, California 92663

Agency Negotiator: Seimone Jurjis, Community Development Director
Lauren Wooding, Real Property Administrator

Negotiating Parties: Blue Water Grill

Under Negotiation: Instruct negotiator as to price and terms of payment

V. RECESS

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

VII. ROLL CALL

VIII. CLOSED SESSION REPORT

IX. INVOCATION – Pastor Cindy William, Newport Center United Methodist

X. PLEDGE OF ALLEGIANCE

XI. NOTICE TO THE PUBLIC

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The City Council of Newport Beach welcomes and encourages community participation. Public comments are generally limited to three (3) minutes per person to allow everyone to speak. Written comments are encouraged as well. The City Council has the discretion to extend or shorten the time limit on agenda or non-agenda items. As a courtesy, please turn cell phones off or set them in the silent mode.

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

XIII. PUBLIC COMMENTS ON CONSENT CALENDAR

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

*All matters listed under **CONSENT CALENDAR** are considered to be routine and will all be enacted by one motion in the form listed below. Council Members have received detailed staff reports on each of the items recommending an action. There will be no separate discussion of these items prior to the time the City Council votes on the motion unless members of the City Council request specific items to be discussed and/or removed from the Consent Calendar for separate action.*

XIV. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. Minutes for the April 9, 2019 and April 23, 2019 City Council Meetings

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. Confirmation of Citizen Appointments and Increase in the Number of Council Member Representatives to the Homeless Task Force

- 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 Mayor Diane B. Dixon's appointments of Helen Cameron, John Heffernan, Terry Moore, Thomas Peterson, David Snow, Cindy Voorhees and Jean Wegener to the Homeless Task Force;
- c) Adopt Resolution No. 2019-42, *A Resolution of the City Council of the City of Newport Beach, California, Amending the Membership of the Homeless Task Force*; and
- d) Confirm Mayor Diane B. Dixon's appointment of Council Member Joy Brenner to serve as the third City Council representative to the Homeless Task Force.

4. Resolution No. 2019-43: Initiation of Building and Construction Code, Zoning Code and LCP Amendments Related to Residential Massing and Cottage Preservation (PA2019-070)

- a) Determine this action exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3; and
- b) Adopt Resolution No. 2019-43, *A Resolution of the City Council of the City of Newport Beach, California, Initiating Amendments to Title 20 Entitled "Planning and Zoning" and Title 21 Entitled "Local Coastal Program Implementation Plan" of the City of Newport Beach Municipal Code Related to Massing of Three Story Residential Structures and Development Standards for Small Beach Cottages (PA2019-070).*

CONTRACTS AND AGREEMENTS

5. Jamboree Road Median Landscape Turf Replacement Project – Notice of Completion for Contract No. 8151-2 (16L02)

- a) On November 13, 2018, the City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(c);
- b) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project; and
- c) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code, and release Faithful Performance Bond one year after acceptance by the City Council.

6. Traffic Signal Rehabilitation Project – FY2017-18 – Notice of Completion for Contract No. 7314-1 (18T01)

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 Class 1 (maintenance of existing facilities involving no expansion of an existing use) of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment;

- b) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
 - c) 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
 - d) Release Faithful Performance Bond one (1) year after acceptance by the City Council.
- 7. Big Canyon Reservoir Flow Metering Vault and Treatment Improvements – Notice of Completion for Contract No. 6104 (16W13)**
- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project. On August 8, 2017, City Council found this project 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 year after acceptance by City Council.
- 8. Newport Beach Junior Lifeguard Building Design – Approval of Professional Services Agreement (19F13)**
- a) Determine this action of hiring a design consultant is not subject to the California Environmental Quality Act (“CEQA”) pursuant to 15060(c)(3), in that the activity is not a project as defined in Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3. The retention of a design consultant does not authorize any specific development or project and would only provide preliminary conceptual design options for a potential future project that would be subject to subsequent environmental review; and
 - b) Approve a Professional Services Agreement with JKA of San Diego, California, for Newport Beach Junior Lifeguard Building project at a not-to-exceed price of \$420,000.00, and authorize Mayor and City Clerk to execute the Agreement.
- 9. Approval and Award of Three (3) Maintenance and Repair Services Agreements for As-Needed Painting Services**
- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
 - b) Approve three (3) on-call maintenance and repair and painting services agreements for three-year terms with Black and White Painting, Inc., Piana Construction & Painting, Inc., and TL Veterans Construction, Inc. for a total of \$300,000 per agreement, and authorize the Mayor and City Clerk to execute the agreement(s).
- 10. Amendment No. One for As-Needed Plant Healthcare Services with RPW Services, Inc. (C-7116-1)**
- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
 - b) Approve Amendment No. One with RPW Services, Inc. for As-Needed Plant Healthcare Services to extend the expiration date by two years and increase the contract amount by \$120,000, for a new multi-year not-to-exceed total of \$240,000, and authorize the Mayor and City Clerk to sign the amendment.
- 11. Approve Two Professional Services Agreements with Red 88 Media, LLC for Video Production Services**
- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
 - b) Approve a five-year Professional Services Agreement with Red 88 Media, LLC for production of the annual Junior Lifeguard program video for a total not-to-exceed amount of \$235,953.52 (\$45,000 to \$50,000 per year), and authorize the Mayor and City Clerk to execute the agreement; and

- c) Approve a one-year On-Call Professional Services Agreement with Red 88 Media, LLC to provide the City Manager's Office with strategic, comprehensive, and educational video production services for a not-to-exceed amount of \$9,000, and authorize the City Manager and City Clerk to execute the agreement.

12. Professional Services Agreement for the Collection of Delinquent Accounts

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Authorize the Mayor to execute the attached Agreement in an amount not to exceed \$500,000 over a five-year term with Ray Klein, Inc., dba Professional Credit Service, a Washington company, for professional services.

MISCELLANEOUS

13. Planning Commission Agenda for the May 9, 2019 Meeting

Receive and file.

14. Ground Emergency Medical Transport (GEMT) Quality Assurance Fee (QAF)

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- b) Approve Budget Amendment No. 19BA-045 appropriating expenditures of \$182,000 to the GEMT QAF (account 01040404-821009 of the Fire Department) and increasing estimated revenues by \$171,000 in Fiscal Year 2019/20; and
- c) Authorize Finance Department staff to execute an administrative budget amendment appropriating approximately \$145,000 to the GEMT QAF (account 01040404-821009 of the Fire Department) and increasing estimated revenues by approximately \$135,000 in the Paramedic Service Fee (account 01040404-521245 of the Fire Department) in the Fiscal Year 2019/20 budget upon the state's establishment of the annual quality assurance fee rate.

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

XV. ITEMS REMOVED FROM THE CONSENT CALENDAR

XVI. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the City Council. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record.

XVII. CURRENT BUSINESS

15. Proposed Revisions to City Council Policy B-17 – Parks, Facilities and Recreation Program Donations

- 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) Consider the Parks, Beaches, and Recreation Commission's recommendations and approve revisions to Council Policy B-17; and
- c) Adopt Resolution No. 2019-44, *A Resolution of the City Council of the City of Newport Beach, California, Amending City Council Policy B-17 "Parks, Facilities, and Recreation Program Donations."*

16. Approval and Adoption of the 2019 Water Master Plan (17W02)

- 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) Review, approve and adopt the 2019 Water Master Plan.

17. Grant Howald Park Rehabilitation Project – Acceptance of Conceptual Design

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 Class 1 (Existing Facilities) and Section 15302 Class 2 (Replacement or Reconstruction) of CEQA Guidelines, because this project involves the maintenance of existing facilities and will be reconstructing existing facilities on the same site as the structure [facility] replaced. The project will have substantially the same purpose as the structure [facility] replaced. A categorical exemption was filed with the Orange County Clerk-Recorder's office on March 15, 2019;
- b) Review and approve the Conceptual Design and Project Budget; and
- c) Direct staff to proceed with the final park rehabilitation construction documents.

XVIII. 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.

XIX. ADJOURNMENT - In memory of Dick Dale and Beth Morley

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.**

PLEASE TURN CELL PHONES OFF OR SET IN SILENT MODE

**City Council Minutes
Study Session and Regular Meeting
April 9, 2019**

I. ROLL CALL - 4:02 p.m.

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

II. CURRENT BUSINESS

SS1. Clarification of Items on the Consent Calendar – None

SS2. *Community College Awareness Month (discussed after Item SS5)*

Mayor Dixon introduced Leticia Clark, District Director, Public Affairs and Government Relations, who accepted the proclamation on behalf of her organization.

SS3. *National Library Week Proclamation*

Mayor Dixon introduced Paul Watkins, Vice Chair of the Board of Library Trustees and Library Services Director Tim Hetherton who said a few words and accepted the proclamation in honor of *National Library Week*.

SS4. *DMV/Donate Life California Month Proclamation (discussed after Council Announcements during the regular meeting)*

Mayor Dixon introduced Angela Betts who accepted the proclamation on behalf of her organization.

SS5. Junior Lifeguard Building Proposal

Public Works Director Webb and Civil Senior Engineer Tauscher utilized a PowerPoint presentation to discuss the status of the Newport Beach Junior Lifeguard (NBJG) Building project and possible alternatives to the building location, project cost, and design team selection.

Discussion ensued between City staff, NBJG Foundation representative Graham Harvey, and Council regarding three site proposals, building on stilts, expanding the existing parking lot, the process of hiring an architect, the overall size of the building, amenities, allowing other City departments and organizations to use the facility when not in use by NBJG, the timeline for the project, including when it would go in front of the California Coastal Commission, fundraising to date, the City's fundraising policy, implementing a donor wall, and the importance of the building connecting with the sand.

Bob May, representing David Pyle, expressed support for the NBJG program and improving the facility, discussed contributions and fundraising, and requested that the project move forward.

Council provided staff with direction to move forward with Building Site 2, keep the costs as low as possible, add the project to the Capital Improvement Project list, have the project stay parking neutral, and work with NBJG to support donor contributions.

III. PUBLIC COMMENTS

Alexis Portillo displayed a slide to discuss her sixth grade project and requested the City make parks and beaches more accessible to children with special needs.

David Grant provided recommendations and suggestions regarding the issues at the Newport Aquatic Center (NAC).

Bruce Ibbetson noted issues at the NAC, the City's responsibilities, and requested assistance from the City.

Jim Mosher took issue that no information was provided to the public about Item IV.B. and discussed recent court decisions.

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

IV. CLOSED SESSION

A. CONFERENCE WITH LABOR NEGOTIATORS

(Government Code § 54957.6): 1 matter

Agency Designated Representatives: Grace K. Leung, City Manager, Carol Jacobs, Assistant City Manager, and Barbara Salvini, Human Resources Director; Labor Negotiators.

Employee Organizations: Newport Beach Fire Management Association (NBFMA) and Part Time Employees Association of Newport Beach (PTEANB).

**B. CONFERENCE WITH LEGAL COUNSEL
ANTICIPATED LITIGATION – INITIATION OF LITIGATION**

(Government Code § 54956.9(d)(4)): 3 matters

V. RECESSED – 5:15 p.m.

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

VII. ROLL CALL – 7:00 p.m.

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

VIII. CLOSED SESSION REPORT – None

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

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

XI. NOTICE TO THE PUBLIC

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

Council Member Avery:

- Attended the Newport Beach Police Officers Appreciation Breakfast, a luncheon at St. Andrews Presbyterian Church regarding the Newport Harbor High School's mentor program, an Orange County Sanitation District meeting, and the John Wayne Airport Town Hall meeting
- Recognized Mike Stewart for his 55 years of dedication to the Newport Sea Scouts

Council Member Muldoon:

- Attended the Newport Beach Police Officers Appreciation Breakfast and the John Wayne Airport Town Hall meeting

Council Member Brenner:

- Attended the John Wayne Airport Town Hall meeting, and meetings regarding the Koll and Aerie projects
- Announced the upcoming Speak Up Newport meeting on April 10, 2019

Council Member Herdman:

- Attended the Newport Beach Police Officers Appreciation Breakfast, the John Wayne Airport Town Hall meeting, the Water Quality/Coastal Tidelands Committee monthly meeting, the messaging and strategy airport working group meeting, On-Demand Micro Transit System meeting, Balboa Museum and Historical Society's Vietnam Recognition Day, and the Newport-Mesa Unified School District's workshop on diversity
- Announced the restructuring of the Aviation Committee and the application period for the committee is currently open
- Utilized a slide to indicate the Bayside Drive improvement project is nearing completion and is on schedule
- Recognized Police Officer Tony Yim for his work with the local homeless community

Mayor Pro Tem O'Neill

- Attended the Newport Coast Elementary School STEAM Expo, a transportation conference at Chapman University, the Newport Harbor High School's mentor luncheon, the Newport Beach Police Officers Appreciation Breakfast, and the Anti-Defamation League dinner
- Utilized slides to discuss National Library Week, the Special Olympics on Parade, and the upcoming Special Olympics Basketball Tournament on April 20, 2019

Mayor Dixon:

- Attended the Newport Beach Police Officers Appreciation Breakfast, the John Wayne Airport Town Hall meeting, Mayor's Youth Council meetings at all Newport Beach high schools, a tour of City Hall with fourth graders from Our Lady Queen of Angels School, and an Eagle Scout Court of Honor for Matt Eimers
- Utilized slides to announce the upcoming hearing of the Board of Supervisors to discuss the JWA General Aviation Improvement Project and the upcoming Mayor's 5th Annual Egg Race

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

- **Consideration of reinstating the Public Art and Cultural Fund (Herdman)**

Mayor Dixon and Council Members Herdman, Brenner and Avery concurred with placing the matter on a future agenda.

XIV. PUBLIC COMMENTS ON CONSENT CALENDAR

Mike Hewitt referenced his correspondence and requested his comments be incorporated into the minutes (Item 1).

Jim Mosher asked what the actual employee salaries are and questioned the one-time bonus (Item 7).

Denys Oberman asked that the City properly characterize any employee compensation (Item 7).

XV. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. Minutes for the March 12, 2019 City Council Meeting [100-2019]

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

2. Reading of Ordinances

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

ORDINANCES FOR ADOPTION

3. Pulled from the Consent Calendar

RESOLUTIONS FOR ADOPTION

4. **Resolution No. 2019-32: Proposed Revisions to City Council Policy A-12, *Discretionary Grants* [69/100-2019]**
- 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. 2019-32, *A Resolution of the City Council of the City of Newport Beach, California, Amending City Council Policy A-12 "Discretionary Grants" to Include Cultural and Arts Programs, Adjusting Priorities for Funding and Other Revisions.*
5. Pulled from the Consent Calendar
6. Pulled from the Consent Calendar
7. **Resolution No. 2019-35: Adopting the 2019 Key and Management Compensation Plan for the Period January 1, 2019 through December 31, 2021, and Amending the City's Salary Schedule [100-2019]**
- 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 amended Resolution No. 2019-35, *A Resolution of the City Council of the City of Newport Beach, California, Adopting the 2019 Key and Management Compensation Plan, Which Shall be Effective from January 1, 2019, and Amending the City's Salary Schedule;*
 - c) Approve Budget Amendment No. 19BA-034 appropriating \$372,742.95 to salary and benefit accounts from unappropriated General Fund surplus fund balance for the remainder of FY 2018/19 representing the first, six months of the three-year Key and Management Compensation Plan; and
 - d) Approve and adopt the revisions to the Citywide salary schedule as reflected in the 2019 Key and Management Compensation Plan.
8. **Resolution No. 2019-36: Authorizing the Submittal of an Application for the WaterSMART: Water and Energy Efficiency Grant for 2019 (C-8553-2) [38/100-2019]**
- 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. 2019-36, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing the Submittal of an Application for the WaterSMART: Water and Energy Efficiency Grants for Fiscal Year 2019 to Fund the City's Advanced Meter Infrastructure Project.*

CONTRACTS AND AGREEMENTS

9. **Public Works Inspection and Construction Administration Services – Approval of On-call Professional Services Agreements (C-8589) [38/100-2019]**
- 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 three separate 5-year term on-call Professional Services Agreements with Interwest Consulting Group, Inc., Project Partners, Inc., and Willdan Engineering at a not-to-exceed amount of \$300,000 per agreement, and authorize the Mayor and City Clerk to execute the agreements.

Council Member Muldoon recused himself from Item 9 due to business interest conflicts.

10. Bayside Drive and Jamboree Road/Marine Avenue Improvements – Increased Contingency Authority and Budget Amendment (16R12) (C-7224-1) [38/100-2019]

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15060 c(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060c(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment;
- b) Establish a contingency amount up to \$656,946 (approximately 23%) for Contract No. 7224-1 to cover the cost for unforeseen work not included in the original contract; and
- c) Approve Budget Amendment No. 19BA – 039 appropriating \$300,000 from the Water Reserve Fund unappropriated fund balance to the Water System Rehabilitation project (Account No. 70201932-980000-19W05); recognize \$56,946 in new revenue from Orange County Sanitation District (OCSO) (13501-431075-16R12) and appropriate \$56,946 in expenditures to the Bayside Drive improvement project (Account No. 13501-980000-16R12).

11. MacArthur Boulevard and University Drive Pavement Rehabilitation – Award of Contract No. 7183-2 (18R23) [38/100-2019]

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301, Class 1, (b), (c) (maintenance of existing public facilities involving negligible or no expansion of use) of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment;
- b) Approve the project drawings and specifications;
- c) Award Contract No. 7183-2 to R.J. Noble Company, Inc. for the total bid price of \$2,319,580.00, and authorize the Mayor and City Clerk to execute the contract;
- d) Establish a contingency of \$232,000.00 (approximately 10 percent of total bid) to cover the cost of unforeseen work not included in the original contract; and
- e) Approve Budget Amendment No. 19BA-035 appropriating \$940,907.00 from the CIP General Fund unappropriated fund balance and new revenue and expenditures from the Irvine Ranch Water District and Mesa Water District into the project account.

MISCELLANEOUS

12. Budget Amendment to Accept a Check from the California State Library for Literacy Services (CLLS) and Appropriate Funds to the Library's FY 2018/19 Maintenance and Operation Budget [100-2019]

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Accept a check in the amount of \$23,666 from the California State Library for Literacy Services (CLLS) and approve Budget Amendment No. 19BA-033 to increase expenditures by the same amount in the Literacy accounts indicated.

Motion by Mayor Pro Tem O'Neill, seconded by Council Member Herdman, to approve the Consent Calendar, except for the items removed (3, 5 and 6); and noting the recusal by Council Member Muldoon on Item 9, and the amendments to Items 1 and 7.

The motion unanimously carried.

XVI. ITEMS REMOVED FROM THE CONSENT CALENDAR

3. Introduction of an Ordinance Amending Title 15 of the Newport Beach Municipal Code Setting Time Limits to Complete Construction [100-2019]

In response to Council questions and concerns, Community Development Director Jurjis discussed the ordinance language, project size limitations and confirmed that this code would not apply to the Aerie project since this applies mainly to single family dwellings and duplexes only.

Laura Curran discussed construction project signage.

Susan Skinner requested the time limit be reduced to two years.

Adam Wood, Building Industry Association (BIA), thanked the City for their hard work.

Jim Mosher noted the community meeting to further garner public input conflicts with the Planning Commission meeting and expressed concern regarding the review authority's decisions not being appealable.

Motion by Mayor Pro Tem O'Neill, seconded by Council Member Muldoon, to 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) introduce amended Ordinance No. 2019-8, *An Ordinance of the City Council of the City of Newport Beach, California, Adding Section 15.02.095 to the Newport Beach Municipal Code, Setting Time Limits to Complete Construction*, and pass to second reading on April 23, 2019.

The motion carried 6-1 with Council Member Duffield voting no.

5. Resolution No. 2019-33: Formation of Ad Hoc Committee on Election Reform [24/100-2019]

Council Member Herdman voiced his concerns regarding not being selected to sit on this committee and asked that this ad hoc committee be combined with the Local Lobbyist Registration committee.

Motion by Council Member Herdman, seconded by Mayor Pro Tem O'Neill, to a) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; b) adopt Resolution No. 2019-33, *A Resolution of the City Council of the City of Newport Beach, California, Creating an Ad Hoc Committee on Election Reform*; and c) confirm Mayor Diane Dixon's appointments of Mayor Pro Tem Will O'Neill, Council Member Brad Avery and Council Member Joy Brenner to the Ad Hoc Committee on Election Reform.

Susan Skinner suggested placing Council Member Herdman on the committee and discussed election reform.

Lynn Lorenz read a letter from *Stu News* that supports appointing Council Member Herdman to the committee.

Jennifer McDonald provided reasons that Council Member Herdman should be appointed to the committee.

Marko Popovich agreed that Council Member Herdman should be appointed to the committee or the public should be provided with an explanation as to why he is not.

Jim Mosher believed reforms could be made to how elections are actually conducted in the City.

Philip Greer reviewed election reform history in the County and recommended changing the makeup of the committee.

Bob Rush provided a handout to discuss a Fair Political Practices Commission (FPPC) investigation regarding Council Member Herdman and questioned the constitutionality of the committee.

Denys Oberman believed Council Member Herdman should be appointed to the committee and discussed transparency.

Discussion continued between Council Members that included why the Mayor made the selections she did and possibly looking at including members from the public on the committee in the future.

The motion carried 6-1 with Council Member Herdman voting no.

6. Resolution No. 2019-34: Formation of an Ad Hoc Committee on Local Lobbyist Registration [24/100-2019]

Motion by Mayor Pro Tem O'Neill, seconded by Council Member Duffield, to table the item indefinitely.

The motion unanimously carried.

XVII. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Susan Skinner expressed support for the City Council, especially Council Member Herdman.

Ron Yeo expressed concern for the future of Mariners Mile and West Coast Highway.

Ryan Farsai read a letter he sent regarding his business.

Luke Dru highlighted the City's population and transient occupancy tax ranking in the County.

Marko Popovich asked why Council Member Herdman was not placed on the Election Reform Committee and how long lobbyist registration will be tabled.

Denys Oberman provided photos, requested that Council restore her property rights, and discussed the problem she is experiencing.

XVIII. PUBLIC HEARING

13. Resolution No. 2019-37: Amending the Local Coastal Program Implementation Plan to Include Balboa Village Parking Management Overlay District (PA2017-046) [100-2019]

Community Development Director Jurjis introduced Planning Manager Alford who provided a brief description of the item and responded to Council questions and comments.

Mayor Dixon opened the public hearing.

Jim Mosher discussed why he believes there will be a cost related to this item and pointed out a typographical error in the resolution.

Mary Zmuidzinas requested Council approve the item.

Kelly Carlson, President of the Balboa Village Merchants Association, thanked staff and expressed support for the item.

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

Discussion continued between Council and staff regarding the impact parking restrictions have on small businesses and the possibility of hiring a Coastal Commission consultant to assist the City.

Motion by Mayor Dixon, seconded by Council Member Brenner, to a) find the action statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15265(a)(1) of the California Code of Regulations, Title 14, and Chapter 3 of the Coastal Act, Section 15265(a)(1), which exempts local governments from the requirements of preparing an environmental impact report or otherwise complying with CEQA in connection with the adoption of a Local Coastal Program; and b) adopt amended Resolution No. 2019-37, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing the Submittal of Local Coastal Program Amendment No. LC2017-001, Adding the Balboa Village Parking Management Plan Overlay to the Certified Local Coastal Program, to the California Coastal Commission (PA2017-046).*

The motion unanimously carried.

XIX. CURRENT BUSINESS

14. Sculpture Exhibition in Civic Center Park – Phase IV (C-8590) [38/100-2019]

Library Services Manager Basmacyan discussed the sculpture selection process and introduced Rick Stein, President of Arts Orange County, who utilized a PowerPoint presentation to display the ten selected art sculptures and three alternates for the Civic Center Park exhibition – Phase IV, along with the installation process.

Jim Mosher discussed a sculpture that was removed from the list of selected art.

Ron Yeo commended the sculpture garden project.

Arlene Greer, Chair of the City Arts Commission, explained the selection process and confirmed that some artists receive an honorarium to offset the costs of delivering the sculptures to the park.

Council Member Herdman commented on the future maintenance of the art sculptures and indicated he is working with Assemblywoman Cottie Petrie-Norris to receive future funding for the sculpture exhibits.

Motion by Mayor Pro Tem O'Neill, seconded by Mayor Dixon, to a) determine this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and b) approve the ten sculptures, three alternates, and the proposed locations within Civic Center Park as recommended by the City Arts Commission for the temporary sculpture exhibit.

The motion unanimously carried.

15. Assessment District Nos. 116 and 116b and Underground Utilities District No. 22 Phase I – Award of Contract No. 7572-1 (19A11) [89/100-2019]

Council Member Muldoon recused himself due to business interest conflicts.

Public Works Director Webb provided a brief overview of this item and introduced Assistant City Engineer Sinacori who responded to Council comments and questions regarding the City's negotiations with utility companies, utilizing general fund money for the project, the amount of funds the City is saving by managing a large portion of the work in-house, and what roads and sidewalks will be impacted during the installation.

Motion by Council Member Herdman, seconded by Mayor Dixon, to a) find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Class 2 Section 15302 (d) (conversion of overhead electrical utility distribution lines where the surface is restored to the condition existing prior to the undergrounding) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it will not have an adverse effect on the environment; b) approve the project plans and specifications; c) award Contract No. 7572-1 to Asplundh Construction Corp. for the bid amount of \$3,813,399.61 for Underground Utility Assessment District Nos. 116, 116b and Underground Utility District No. 22 - Phase I, and authorize the Mayor and City Clerk to execute the contract; d) establish a \$400,000 (approximately 10 percent) contingency amount to cover the cost of unforeseen work not included in the original contract; e) authorize the City Manager to execute reimbursement agreements with utility companies for the Underground Utilities District No. 22 - Phase I portion of the project on forms approved by the City Attorney; f) approve Professional Services Agreement with NV5 of Irvine, California, for a not-to-exceed fee of \$197,255 for Construction Administration and Residential Permit Support Services; and g) approve Budget Amendment No. 19BA-036 recognizing \$2,122,732 in contribution revenue funding from multiple utility companies and appropriate the same to the Contributions Fund (Account No. 13501-980000-19A11); and appropriating \$250,000 from the General Fund unappropriated fund balance for City costs and related construction support services for UUD No. 22 – Phase 1 (Account No. 01201928-980000-19A11).

The motion unanimously carried.

16. Acquisition of Rule 20A Credits from the City of Lynwood (C-8591-1) [38/100-2019]

Council Member Muldoon recused himself due to business interest conflicts.

At Council's request, Public Works Director Webb provided a brief explanation of this item.

James Peterson, Government Relations Manager for Southern California Edison, commended staff and indicated he looks forward to working with the City.

Dick Armstrong requested that Council support this item.

Motion by Mayor Pro Tem O'Neill, Council Member Herdman, to a) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; b) approve Budget Amendment No. 19BA-040 transferring \$1,428,885 from the FY 2017/18 General Fund surplus to the Neighborhood Enhancement Fund and appropriates this amount for the purchase of SCE Rule 20A Credits; c) authorize the City Manager to execute the Memorandum of Understanding (MOU) between the City of Newport Beach and City of Lynwood documenting details of the transaction for the Rule 20A credit acquisition; and d) authorize staff to process the Rule 20A credit transfer between the City of Newport Beach and City of Lynwood with SCE.

The motion unanimously carried.

17. Appointment of a New City Arts Commissioner to Fill an Unscheduled Vacancy [24/100-2019]

Assistant City Clerk Nelson provided a brief explanation of how the selection process works and that the successful candidate must receive at least four votes.

Jim Mosher noted the differences between the two applications and discussed the Commission's duties.

With Mayor Dixon, Council Member Avery, Council Member Duffield, Council Member Muldoon, Council Member Brenner and Council Member Herdman voting in favor of Ritch LeGrand and Mayor Pro Tem O'Neill voting for Maureen Flanagan, Ritch LeGrand was appointed to the City Arts Commission to fill the unscheduled vacancy ending June 30, 2021.

18. Amended and Restated Employment Agreements for the City Manager, City Attorney, and City Clerk (C-8568-2, C-7034-3 and C-7032-3) [38/100-2019]

City Attorney Harp and City Manager Leung recused themselves due to potential impacts on their finances.

Human Resources Director Salvini provided a brief summary of the three employment agreements and responded to Council questions and comments regarding LIUNA and the \$2,700 one-time bonus.

Jim Mosher took issue with the one-time bonus and retroactive pay.

In response to public comments, Edward Zappia, outside Counsel for the City, explained that the \$2,700 one-time bonus is not considered a gift, but is part of the compensation contract.

Council Member Muldoon remarked on the positive way the City is handling its pension liability.

Motion by Mayor Pro Tem O'Neill, Council Member Avery, to a) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; b) approve and authorize the Mayor to execute a First Amended and Restated Employment Agreement between the City of Newport Beach and City Manager Grace K. Leung, subject to the terms and conditions approved by the City Council; c) approve and authorize the Mayor to execute a Fifth Amended and Restated Employment Agreement between the City of Newport Beach and City Attorney Aaron Harp, subject to the terms and conditions approved by the City Council; d) approve and authorize the Mayor to execute a Fifth Amended and Restated Employment Agreement between the City of Newport Beach and City Clerk Leilani Brown, subject to the terms and conditions approved by the City Council; and e) approve Budget Amendment No. 19BA-037 for \$20,184 to enhance salary and benefit accounts for the last six months of FY19 (January 1, 2019 through June 30, 2019).

The motion unanimously carried.

19. Amended and Restated Employment Agreements for Fire Chief and Police Chief (C-8549-2, C-7098-3) [38/100-2019]

City Manager Leung provided a brief summary of the two agreements.

Jim Mosher questioned providing the one-time bonus to safety employees.

Human Resources Salvini clarified the specifics of the \$2,700 one-time bonus.

Motion by Council Member Herdman, Mayor Pro Tem O'Neill, to a) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; b) authorize the City Manager to Execute a First Amended and Restated Employment Agreement Between the City of Newport Beach and Charles (Chip) Duncan for Services of Fire Chief; c) authorize the City Manager to Execute a Second Amended and Restated Employment Agreement Between the City of Newport Beach and Jon Lewis for Services of Police Chief; and d) approve Budget Amendment No. 19BA-038 for \$13,580.00 to enhance the salary and benefit accounts for the last six months of FY2018/19 (January 1, 2019 through June 30, 2019).

The motion unanimously carried.

XX. MOTION FOR RECONSIDERATION – None

XXI. ADJOURNMENT – 9:55 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 April 4, 2019, at 4:00 p.m.

Diane B. Dixon
Mayor

Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH

City Council Minutes Study Session and Regular Meeting April 23, 2019

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

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

II. CURRENT BUSINESS

SS1. **Clarification of Items on the Consent Calendar**

Mayor Dixon announced she will be requesting that the minutes (Item 1) be continued to the May 14, 2019 City Council meeting.

In response to Council Member Muldoon's questions, Public Works Director Webb indicated the contract for Item 7 would need to be modified if organics were to be used and there would be no pesticide usage related to Item 8.

Prior to responding to Council Member Brenner's question regarding Item 5, ***Council Member Muldoon recused himself due to property interest conflicts.*** City Manager Leung and Public Works Director Webb noted Item 5 is for playground equipment replacement and only new equipment requests need to be discussed at a Parks, Beaches and Recreation Commission meeting.

SS2. ***Poppy Month Proclamation***

Carolyn Whitlinger and Debbie Schubert, American Legion Auxiliary, provided the background on *Poppy Month* and received the proclamation from Mayor Dixon. Council Member Brenner expressed the importance of *Poppy Month*.

SS3. ***CASA of Orange County Day Proclamation***

Stefanie Gillett provided Court Appointed Special Advocate's (CASA's) background, gave pinwheels to each of the Council Members, discussed *Foster Care Awareness Month* and the CASA Pinwheel Project (CASAoc.org/events), and received the proclamation from Mayor Dixon.

SS4. **Recognition of Ford W. Fairon**

Chief Lewis, on behalf of the Police and Fire Departments, commended Ford Fairon for his bravery and heroic actions on January 21, 2019. Ford Fairon thanked the Police and Fire Departments for being our everyday heroes, and received the proclamation from Mayor Dixon.

SS5. **Potential Changes to Residential Development Standard to Preserve Cottages and Address 3rd Story Massing**

Community Development Director Jurjis and Principal Planner Ramirez utilized a PowerPoint presentation to display the location map and discuss reasons the City is losing beach cottages, cottage sizes, the number of cottages in the City, standards for Council to study, and the amendment process.

Discussion ensued relative to increasing buildable square footage for cottage owners if they maintain a single story, finding incentives to keep the cottages, conducting extensive outreach before any code amendment occurs, streamlining the process, considering amending parking requirements for cottages, and discussed how many cottages have been replaced with larger homes.

Ron Yeo provided a handout, indicated he inventoried the current cottages in Corona del Mar, believed parking is the biggest issue, and expressed hope the City could assist with keeping the cottages in the City.

Jerry Jansen, past President of the Balboa Island Improvement Association, expressed support for retaining cottages and allowing them to rebuild in the same or similar footprint without requiring parking.

Tanya, cottage owner, indicated she would like to expand a little but cannot due to the parking restrictions.

Nancy Orazi expressed concern with setbacks and amending parking standards in high density areas.

Mark Becker expressed support for preserving Balboa Island's uniqueness.

David Tanner believed parking exceptions should be made to preserve the cottages.

Gary Cruz requested and received clarification that redevelopment does not have to be done by the original cottage owner and there is no restriction to the number of people living in a home.

Andrew Goetz believed an owner should be able to fix other parts of the home without triggering a complete teardown.

Karen Tringali expressed support for the cottage community.

Denys Oberman believed parking problems are created by the larger buildings and that this issue should be considered with the City's total housing stock.

Regarding residential height and massing, Senior Planner Ramirez utilized a PowerPoint presentation to display a map of high density neighborhoods and discuss the goals of the 2010 code amendments, R-1 and R-2 height and bulk standards, third story covered decks, issues in the RM Zoning District, changes for Council to consider, and the amendment process.

Discussion ensued relative to how staircases and vaulted ceilings are counted toward the total square footage, setbacks, third story decks, height and floor area standards in RM Zoning Districts, and design articulation.

Ron Yeo discussed third stories and suggested counting covered deck areas as square footage.

Mark Becker believed the large envelopes are destroying the intimacy in neighborhoods and provided his recommendations.

Vicky Swanson indicated she cannot enjoy her home because the houses next to her are too large and she loses light.

Andrew Goetz expressed concern with the wall heights relative to the roof and suggested minimizing the wall area around cabanas or minimizing the amount of ridge area that sits on the lot.

Denys Oberman took issue with the 2010 code changes and highlighted confusing terminology.

David Tanner requested that any change to the code not make areas worse, questioned how height limits will account for sea level rise, and believed single family homes are being rented as duplexes.

Linda Watkins questioned how a large home was built in a gated community and requested the City tighten the zoning codes.

Jim Mosher noted that the code contains a section about ministerial design criteria that applies to all areas of the City and asked how they are being applied.

Karen Tringali indicated the City may adjust the code to preserve the nature and qualities of certain neighborhoods.

Council indicated that potential considerations moving forward include counting two-story vaulted ceilings, all levels of staircases and anything with a roof as square footage; maintaining the setback that was allowed between multiple lots; ensuring property rights are maintained; revisiting how third story decks are handled with preference of having all sides open; and expediting the simpler issues.

With Mayor Pro Tem O'Neill dissenting, the majority of Council requested the City Attorney look into implementing a moratorium on RM Zoning District conversions to single-family homes, believing a standard height limit should be set for all single-family homes.

SS6. On-Street Parking Impacts Due to Construction Activities

Community Development Director Jurjis and Deputy Community Development Director Ghosn utilized a PowerPoint presentation to provide the background and discuss the public outreach meetings, feedback received, and staff suggestions.

Discussion ensued relative to implementing rules only in areas that are most impacted by this issue, not allowing Saturday construction, the importance of code enforcement, determining if all parts of the City would want to utilize the signage, and looking at short term lodging impacts separately.

Council Member Herdman expressed his gratitude to staff for the attempt, but felt it best not to move forward with this effort.

Nancy Orazi expressed concerns with the number of short term lodging on the Peninsula and Balboa Island, and noted that parking issues are also due to other sources, not just contractors.

Jeff Stoleron discussed parking impacts and safety concerns due to construction on Lido Isle.

Gary Cruz expressed concerns regarding parking impacts and disturbances due to construction on Newport Island, and requested notification about meetings regarding this issue.

Vicky Swanson believed the City should require construction management plans.

David Tanner believed short term lodging adds to the parking issues and the City should identify how the code is being gamed.

Mayor Dixon indicated short term lodging issues will be coming before Council at a later date.

Council unanimously concurred to bring back an item to add a parking enforcement person through AmeriPark for seasonal parking enforcement; Mayor Dixon and Council Members Duffield, Herdman and Brenner concurred that no construction should occur on Saturdays; and all Council Members, except for Council Member Avery, concurred that the restrictions should only apply in high density areas.

SS7. City Emergency Council Update

The item was continued to a future meeting.

III. PUBLIC COMMENTS

Dan Daley, Healthcare Outreach Specialist with Alzheimer's Orange County, provided a handout and invited Council to the OC Leadership Forum on Aging on April 25, 2019, in Garden Grove.

Jeff Stoleron thanked Council for their service.

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

IV. CLOSED SESSION

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

Agency Designated Representatives: Grace K. Leung, City Manager, Carol Jacobs, Assistant City Manager, and Barbara Salvini, Human Resources Director; Labor Negotiators.

Employee Organizations: Part Time Employees Association of Newport Beach (PTEANB).

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

V. RECESSED – 6:47 p.m.

VI. RECONVENED AT 7:07 P.M. FOR REGULAR MEETING

VII. ROLL CALL

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

VIII. CLOSED SESSION REPORT – None

IX. INVOCATION – Monsignor Douglas Cook, Our Lady of Mt. Carmel Catholic Church

X. PLEDGE OF ALLEGIANCE – Council Member Avery

XI. NOTICE TO THE PUBLIC

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

Council Member Avery:

- Attended the 7th Annual Gala and Auction for the OASIS Senior Center

Council Member Duffield:

- Attended the 5th Annual Mayor's Egg Race
- Utilized slides to announce the 3rd Annual Underwater Clean-up Event on June 1, 2019

Council Member Brenner:

- Attended Speak-Up Newport, the OASIS Sailing Club opening day ceremony, the WiNN (Women in Newport Networking) event, the OASIS Annual Volunteer Luncheon, the Aviation Committee meeting, and spoke at the Corona del Mar Resident's Association annual meeting

- Met with Supervisor Doug Chaffee, along with City Manager Leung and Mayor Dixon, to discuss John Wayne Airport (JWA) issues, and with Assemblywoman Cottie Petrie-Norris, along with Mayor Pro Tem O'Neill, Council Member Herdman, and a Hoag Hospital representative, regarding the benefactor program
- Toured Fire Station #3 and the City Yard to see the new emergency trailer for the Fire Department

Council Member Herdman:

- Utilized slides to discuss the General Aviation Improvement Program, thanked the community for attending the JWA Town Hall, and announced the upcoming JWA Airport Commission meeting on May 1, 2019 and the May 7, 2019 Orange County Board of Supervisors meeting
- Attended a messaging and strategy meeting about JWA, and spoke at the Airport Commission meeting and the Newport Beach Chamber of Commerce Government Affairs meeting

Mayor Pro Tem O'Neill

- Attended the 5th Annual Mayor's Egg Race, the OASIS Annual Volunteer Luncheon, the Corona del Mar Resident's Association annual meeting, the San Joaquin Hills Transportation Corridor Joint Powers Agency Board of Directors meeting, and the Special Olympics Basketball Tournament held at the Newport Coast Community Center
- Utilized a slide to announce the upcoming Unity Torch Walk, Mini Hoop Shoot Challenge & BBQ on May 9, 2019 at the Civic Center
- Announced the Finance Committee meeting being held on Thursday April 25, 2019

Mayor Dixon:

- Utilized slides to announce the City is accepting applications on several boards, committees, and commissions that are due May 8, 2019 by noon, the Special Event Support Program applications due by April 25, 2019, the upcoming shred event on May 11, 2019 at Big Canyon Reservoir, and to recap the 5th Annual Mayor's Egg Race
- Announced the upcoming screening of *Big Sonia* in the Main Library's Friends Meeting Room
- Attended the OASIS Annual Volunteer Luncheon, the Corona del Mar Resident's Association annual meeting and the installation of the Association of California Cities Orange County (ACC-OC) board of directors where she has been appointed First Vice President of the board

XIII. PUBLIC COMMENTS ON CONSENT CALENDAR

Jim Mosher expressed concern that the ordinance does not allow for an appeal process relative to the zoning hearing decision (Item 3) and that on-call contracts are being used beyond what they were intended for and about the spending increase (Item 8). He suggested the letter of proposal be submitted to the City Clerk's Office, along with the contract, to allow public access.

Regarding Item 3, Community Development Director Jurjis explained the construction extension hearing process and confirmed that these hearings would be open to the public.

XIV. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. **Minutes for the April 9, 2019 City Council Meeting [100-2019]**
Continued to the May 14, 2019 City Council meeting.

2. **Reading of Ordinances**

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

ORDINANCES FOR ADOPTION

3. **Adopt Ordinance No 2019-8: Amending the Newport Beach Municipal Code, Setting Time Limits to Complete Construction [100-2019]**

- 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) Conduct second reading and adopt Ordinance No. 2019-8, *An Ordinance of the City Council of the City of Newport Beach, California, Adding Section 15.02.095 to the Newport Beach Municipal Code, Setting Time Limits to Complete Construction.*

RESOLUTIONS FOR ADOPTION

- 4. **Resolution No. 2019-38: Specifying Uses for FY 2019-20 RMRA Funding from the Road Repair and Accountability Act of 2017 [100-2019]**
 - 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. 2019-38, *A Resolution of the City Council of the City of Newport Beach, California, Adopting a List of Projects for Fiscal Year 2019-2020 Funded by SB 1, the Road Repair and Accountability Act of 2017.*

CONTRACTS AND AGREEMENTS

- 5. **2018-2019 Playground Improvements Project – Award of Contract No. 7582-1 (19P01) [38/100-2019]**
 - a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301_Class 1 (Existing Facilities) and Sec. 15302_Class 2 (Replacement or Reconstruction) of the CEQA Guidelines, because this involves maintenance of existing facilities and will be reconstructing existing facilities on the same site as the structure [facility] replaced. The project will have substantially the same purpose and capacity as the structure [facility] replaced;
 - b) Approve the project drawings and specifications;
 - c) Award Contract No. 7582-1 to R.E. Schultz for the total bid price of \$188,645.00, and authorize the Mayor and City Clerk to execute the contract;
 - d) Establish approximately \$20,000.00 (approximately 10 percent), contingency amount to cover the cost of unforeseen work not included in the original contract; and
 - e) Approve Budget Amendment No. 19BA-042 transferring \$28,000.00 of project savings in Jasmine Creek Maintenance Road Reconstruction to 2018-2019 Playground Improvements.

Council Member Muldoon recused himself on Item 5 due to property interest conflicts.

- 6. **Slurry Seal Program – Award of Contract No. 7432-1 (19R04) [38/100-2019]**
 - 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 this project has no potential to have a significant effect on the environment;
 - b) Approve the project specifications;
 - c) Award Contract No 7432-1 to Roy Allen Slurry Seal, Inc. for the total bid amount of \$946,629.00;
 - d) Establish a contingency of \$95,000.00 (approximately 10 percent of total bid) to cover the cost of unforeseen work not included in the original contract; and
 - e) Approve Budget Amendment No. 19BA-043 appropriating \$168,600.00 from the General Fund Capital Projects unappropriated fund balance (cost savings from completed CIP projects) to Account No. 0121927-980000-19R04.

Council Member Muldoon recused himself on Item 6 due to property interest conflicts.

- 7. **Approval and Award of Agreement for Weed Abatement Services to Natures Image, Inc. (C-8537-1) [38/100-2019]**
 - a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;

- b) Approve a five-year term agreement with Natures Image, Inc. for weed abatement and vegetation management services for a total not-to-exceed amount of \$1,974,933.24, and authorize the Mayor and City Clerk to execute the agreement; and
- c) Approve Budget Amendment No. 19BA-044 appropriating \$40,000 from General Fund unappropriated fund balance to the Parks Division, Hazard Mitigation Account No. 0109031-841055 within the Public Works Department operating budget for weed abatement and vegetation management services with funding to be continued with each annual operating budget proposal.

Council Members Avery and Duffield recused themselves on Item 7 due to property interest conflicts.

8. Approval of Amendments to Four On-Call Professional Engineering and Landscape Architectural Services Agreements [38/100-2019]

- 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 four separate Amendments to current on-call Professional Services Agreements with Walden and Associates (C-8140-1), Civiltec Engineering (C-8304-1) and Psomas (C-8170-1) for Professional Engineering services increasing the total not-to exceed amount to \$300,000 per agreement; and with BGB Design Group (C-7133-1) for Professional Landscape Architectural services increasing the total not-to-exceed amount to \$250,000, and authorize the Mayor and City Clerk to execute the amendments.

MISCELLANEOUS

9. Planning Commission Agenda for the April 18, 2019 Meeting [100-2019]

Receive and file.

10. Grants and Donations Report for the Quarter Ending March 31, 2019 [100-2019]

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

11. Storm Drain Operations Fiscal Year 2018/2019 Budget Amendment [100-2019]

- 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. 19BA-041 appropriating \$550,000 from FY 2018/19 General Fund unappropriated fund balance to the Storm Drain Program.

12. City's Position in Opposition to a State Drinking Water Tax; Support for Alternative State Legislative Measures SB 414 and SB 669 [100-2019]

- 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) Oppose a State Drinking Water Tax and authorize the City Council and staff to communicate with legislators and join coalition letters in opposition to new water taxes; and
- c) Support alternative State Legislative measures SB 669 Safe Drinking Water Trust and SB 414 Small System Water Authority Act; and authorize the City Council and staff to communicate with legislators and join coalition letters in support of these measures.

Motion by Mayor Pro Tem O'Neill, seconded by Council Member Duffield, to approve the Consent Calendar; and noting the recusals by Council Member Muldoon on Items 5 and 6, recusals by Council Members Avery and Duffield on Item 7, and the continuance of Item 1.

The motion unanimously carried.

XV. ITEMS REMOVED FROM THE CONSENT CALENDAR – None

XVI. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Carly Zamani, representing Juan and Diana Dang, requested the City Council grant a short term lease permit that City staff originally denied.

Diana Miner voiced concerns regarding lack of parking, crime increase, and safety issues on Lido Isle.

Denys Oberman requested that Council restore her property rights and discussed the problem she is experiencing due to a property dispute with her neighbor.

Sharon Courson voiced concerns regarding the increase of crime and parking issues near Newport Harbor High School and the lack of response she is getting from Newport Beach Police.

Council Member Muldoon announced that, since AT&T owns the Ford Road Residential project property and out of an abundance of caution, he recused himself due to business interest conflicts.

Janice Grace, Liz Morgan, Bobbi Robinson, Carol Hatch, and Jake Furgatch expressed reasons for opposing the Ford Road Residential project, requested the City maintain the open spaces for parks and recreation, and expressed confusion about the process.

Jim Mosher noted the mitigated negative declaration is currently open for public comment until May 8, 2019, and Community Development Director Jurjis announced it can be viewed at the City Clerk's Office and online. Mayor Dixon highlighted the public process for the project.

Sandra Ayres noted there will be two vacancies on the Planning Commission and asked Council to listen to what their constituents want and appoint people who will assist in preserving the City's quality of life.

XVII. PUBLIC HEARING

13. Resolution No. 2019-39: Community Development Block Grant – 2019-2020 Action Plan (C-8482) [38/100-2019]

Community Development Director Jurjis and Real Property Administrator Whitlinger utilized a PowerPoint presentation to review the action plan process, funding, suggested allocations, and further explained the next five-year cycle and the consolidated action plan.

Discussion ensued relative to allocating no less than \$10,000 per organization during the next cycle due to the cost of the mandatory audit.

Mayor Dixon opened the public hearing.

Jim Mosher questioned the amount of the administration fee, the purpose of the maps in the resolution, the additional areas of the City that are lower income, the Section 108 loan repayment, if this item would correlate with the Orange County Housing Financial Trust (Item 14), and the cover photo on the front of the Action Plan.

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

Community Development Director Jurjis reported an additional \$1,349 that could be used for nonprofit organization allocations.

In response to Council questions, Clint Whited, Vice President, LDM Associates, reported Court Appointed Special Advocates(CASA) also receives CDBG funds from other Orange County cities.

Mayor Pro Tem O'Neill announced that, in his motion, he recommends removing Second Chance Orange County's funding and finding another funding source to assist them, and reallocating those funds to CASA, including the additional \$1,349.

Motion by Mayor Pro Tem O'Neill, seconded by Council Member Muldoon, to a) find the approval of 2019-2020 Action Plan exempt from the National Environmental Policy Act (NEPA) pursuant to 24 CFR Part 58, Section 58.34; b) find the approval of 2019-2020 Action Plan exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; c) adopt Resolution No. 2019-39, *A Resolution of the City Council of the City of Newport Beach, California, Approving the 2019-2020 Action Plan for the Allocation of the Federal Community Development Block Grant for the 2019-2020 Fiscal Year*; and d) authorize the City Manager to:

1. Adjust appropriations to specific programs and projects as necessary to conform with the final 2019-2020 formula grant allocation of CDBG funds from HUD;
2. Submit the 2019-2020 Action Plan to HUD;
3. Execute the 2019-2020 CDBG Program Grant Agreement and all related documents on behalf of the City (C-8482-1B);
4. Execute sub-recipient agreements, as amended, with the nonprofit organizations receiving allocations of CDBG funds in the Action Plan (C-8482-2B, 3B, 4B, 6B and 8); and
5. Authorize the Community Development Director, or his/her designee, to be the official representative of the City of Newport Beach to submit required environmental documentation for CDBG projects.

The motion unanimously carried.

XVIII. CURRENT BUSINESS

14. Consideration of Joint Powers Authority with County of Orange and Other Orange County Cities to Create a Housing Finance Trust (C-8528-1) [38/100-2019]

Dave Kiff, Interim Executive Director for the Association of California Cities, Orange County (ACC-OC), utilized a PowerPoint presentation to explain the Orange County Housing Finance Trust and the joint power authority, how the Orange County Housing Finance Trust was formed, the goals of the trust, major issues and questions, cost scenarios, the board makeup, the difference between public and private trusts, money the trust will likely have, and reasons why the City should join.

In response to Council questions, Mr. Kiff noted they would like to keep contracts to a minimum and avoid big bureaucracy, and discussed the competition for Proposition 1 funds and the process to apply for funding.

Jim Mosher noted an error in the resolution and believed it should be specified when and where the board will be meeting.

Motion by Mayor Dixon, seconded by Mayor Pro Tem O'Neill, to a) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and b) adopt Resolution No. 2019-40, *A Resolution of the City of Newport Beach, California, Entering into the Joint Exercise of Powers Agreement to become a Member of the Orange County Housing Finance Trust*.

The motion unanimously carried.

15. Initiation of Zoning Code and LCP Amendments (PA2019-055) [100-2019]

Mayor Pro Tem O'Neill and Clerk Brown recused themselves due to real property interest conflicts.

Denys Oberman questioned the amendments to the planning and zoning code and recommended that they be individually listed and not bundled with the Local Coastal Plan (LCP) so the public can clearly understand what changes are being made.

Community Development Director Jurjis detailed the steps that will be taken during the process to ensure the City remains open and transparent.

Jim Mosher commented on the history of housing height restrictions and the codes that govern those, as he believes the codes are inconsistent and need to be reviewed.

Motion by Council Member Herdman, seconded by Council Member Duffield, to a) determine this action exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3; and b) adopt Resolution No. 2019-41, *A Resolution of the City Council of the City of Newport Beach, California, Initiating Amendments to Title 20 Entitled "Planning and Zoning" and Title 21 Entitled "Local Coastal Program Implementation Plan" of the City of Newport Beach Municipal Code Related to Minimum Lot Size and Dimensions, Overlay Zoning Districts, Public Hearing Notification, Corrections to Setback Maps and the Transfer of Development Rights (PA2019-055).*

The motion unanimously carried 6-0.

16. Software License Agreement with Tyler Technologies Inc. for Replacement of the City's Land Management System [38/100-2019]

Community Development Director Jurjis provided a brief background of the item and introduced, Systems and Administration Manager Campagnolo, Purchasing Agent Nguyen, and IT Manager Luengas-Alwafai who used a PowerPoint presentation to discuss what the software will be used for, why it needed to be replaced, the software selection process, the enhanced features of the product, the scope of work, the project expense, and the hiring of a third party project manager to help with the transition that will take approximately 18 months.

In response to Council Member Herdman's questions, Systems and Administration Manager Campagnolo indicated that the third party project manager would advocate with Tyler Technologies for the City and work with IT Manager Luengas-Alwafai and himself to assist with staff training.

Jim Mosher questioned why three of the six proposers were not interviewed, if the software is used by other cities, and what the maintenance costs will be over the next 25 years.

In response to Mayor Dixon's request, Community Development Director Jurjis and IT Manager Luengas-Alwafai explained that three of the proposals were not complete and, therefore, did not qualify to move forward in the selection process and that the future maintenance costs will be saving the City \$1,000 a year by year three.

Mayor Dixon was pleased with staff's financial planning and emphasized that General Fund money would not be used.

Motion by Mayor Pro Tem O'Neill, seconded by Mayor Dixon, to a) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; b) authorize the Mayor and City Clerk to execute a Software License and Professional Services Agreement with Tyler Technologies Inc. (C-8399-1) for the purchase, installation, and implementation services of a Land Management System in an amount not to exceed \$1,355,853; and c) authorize the Mayor and City Clerk to execute a Professional Services Agreement with Park Consulting Group, Inc. (C-8266-1) for project management services and change management processes in an amount not to exceed \$200,000.

The motion unanimously carried.

XIX. MOTION FOR RECONSIDERATION – None

XX. ADJOURNMENT – Adjourned at 9:11 p.m. in memory of the victims of the Easter Sri Lanka attack

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 April 18, 2019, at 4:00 p.m.

Diane B. Dixon
Mayor

Leilani I. Brown
City Clerk



CITY OF

NEWPORT BEACH

City Council Staff Report

May 14, 2019
Agenda Item No. 3

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Jennifer Nelson, Assistant City Clerk

TITLE: Confirmation of Citizen Appointments and Increase in the Number of
Council Member Representatives to the Homeless Task Force

ABSTRACT:

At the March 26, 2019 City Council Meeting, the City Council formed a Homeless Task Force that consists of seven (7) community members and two (2) Council Member representatives all appointed by the Mayor and confirmed by the City Council. The Homeless Task Force is responsible for (1) developing strategies to integrate all services needed to address homelessness, (2) developing a list of community partners to assist in addressing homelessness, (3) reviewing temporary housing solutions, (4) developing a metrics system to monitor the reduction of homeless, and (5) periodically reporting findings back to the City Council. For consideration is the confirmation of the community members appointed by the Mayor and increasing the membership from two (2) to three (3) Council Members.

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;
- b) Confirm Mayor Diane B. Dixon's appointments of Helen Cameron, John Heffernan, Terry Moore, Thomas Peterson, David Snow, Cindy Voorhees and Jean Wegener to the Homeless Task Force;
- c) Adopt Resolution No. 2019-42, *A Resolution of the City Council of the City of Newport Beach, California, Amending the Membership of the Homeless Task Force*; and
- d) Confirm Mayor Diane B. Dixon's appointment of Council Member Joy Brenner to serve as a third City Council representative to the Homeless Task Force.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

As noted in Resolution No. 2019-25, the Homeless Task Force is an ad hoc committee with limited terms and is subject to the Brown Act. Pursuant to City Council Policy A-2 (*Boards, Commissions & Committees*) and the Maddy Act, the City Clerk prepared and posted a Notice of Opportunity to be Appointed to the Homeless Task Force on Wednesday, March 27, 2019, in the City Clerk's Office, at the Central Library, on the bulletin board in the City Council Chambers, and on the City's webpage; and also had the Notice published in the *Daily Pilot* on Saturday, March 30, 2019. As provided in the Notice, applications were accepted until noon on Wednesday, April 10, 2019. The City Clerk's Office received 27 applications.

Mayor Diane B. Dixon appointed herself, Mayor Pro Tem Will O'Neill and Council Member Brad Avery to the ad-hoc Appointments Committee to review the applications. At the conclusion of the application period, the applications were forwarded to the ad-hoc Appointments Committee for their review and scheduling of interviews, which took place on Monday, April 29, 2019.

Mayor Diane B. Dixon considered the recommendations of the ad-hoc Appointments Committee and is recommending that Helen Cameron, John Heffernan, Terry Moore, Thomas Peterson, David Snow, Cindy Voorhees and Jean Wegener be appointed to the Homeless Task Force. Copies of their applications are attached hereto as Attachment A.

In addition, the Mayor desires to increase the membership of the Task Force to three (3) Council Members (Attachment B). The additional Council Member is appointed by the Mayor and requires confirmation by the City Council. Mayor Diane B. Dixon recommends Council Member Joy Brenner for this appointment.

The Homeless Task Force's term will sunset once the responsibilities are complete but no later than December 21, 2020.

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 – Applications

Attachment B – Resolution No. 2019-42

ATTACHMENT A

RECEIVED APPLICATION FOR APPOINTIVE POSITION

FOR OFFICE USE ONLY

Residence District No. 6

Verified by RR

ROV

2019 APR 10 PM 12:31 8:49am NR

OFFICE OF
THE CITY CLERK
CITY OF NEWPORT BEACH

CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, CA 92660
City Clerk (949) 644-3005
Fax (949) 644-3039

DIRECTIONS: One application can be used for all the appointive positions you are applying for. Applications should be filled out completely so that the City Council may fully evaluate your qualifications. It is the responsibility of the applicant to familiarize themselves with the duties and responsibilities of the position(s) applied for. Detailed information outlining the responsibilities of the positions can be obtained from the City Clerk's Office or on the City's website: www.newportbeachca.gov (City Government/Boards, Commissions and Committees). Applications will be kept on file for two years for the position(s) applied for. If you are not selected for appointment during that period of time, it will be necessary for you to re-submit an application if you are still interested in being considered.

NOTICE: Section 702 of the City Charter requires that members of Boards or Commissions appointed by the City Council shall be from the qualified electors of the City. This document is a public record and may be posted on the internet.

NAME OF BOARD, COMMISSION OR COMMITTEE: Newport Beach Homeless Task Force

Name: Cameron (Last) Helen (First) Thirlby (Middle)

Residence Address (required): Zip Code:

How long have you lived in Newport Beach? 25 Home/Cell #:

Business Address: Business Phone:

Email Address:

Have you ever been convicted of any crime or violation of any law or statute other than minor traffic violations?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

NOTICE: Pursuant to Section 702 of the City Charter, no members of boards or commissions shall hold any paid office or employment in the City government.

Do you currently hold any paid office or employment with the City of Newport Beach, including but not limited to contracted services?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

If applying for a position on the Finance Committee, have you declared bankruptcy in the last 10 years? ☐ NO ☐ YES

Please state any past, current or foreseeable future financial interests of any kind that may conflict with the Board, Commission or Committee you are applying for.

N/A

CONTINUE TO PAGE TWO

Name and Location of Colleges/ Universities Attended	Major	Degree	Last Year Attended
Sydney Teachers College	Teaching Certificate	Certificate	1962
Monash University	English/History	B.A.	1968

Prior or Current Civic Experience (Include membership in professional, charity or community organization)	Office Held (If any)	Dates of Membership
Irvine Unified School District	Board Member	1983-1991
ital Health Services Act Steering Commi	Committee Chair	1995-present
Orange County Alliance for Just Change	Board member	20017-present
Be Well	Committee Member	20016-present

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
Jamboree Housing Corp.	Affordable Housing	Director	2010-Present

References. Include names of at least two residents of Newport Beach who are not officially connected with the City.

1. Name Address Phone No.
2. Name Address Phone No.

Summarize why you wish to serve the City of Newport Beach on a board, commission or committee. Include any special qualifications you have which are particularly appropriate to the position for which you are applying.

I would like to serve the City of Newport in ending homelessness in our City by working with other community leaders. Together we can explore

I certify that all statements made on this application are true and correct to the best of my knowledge. I have read and understand the duties and responsibilities of the particular position(s) that I am applying for and authorize the release of this information on the internet.

[BOX MUST BE CHECKED IF SUBMITTING ELECTRONICALLY]



Signature

Date

APPLICATION FOR APPOINTIVE POSITION

FOR OFFICE USE ONLY

Residence District No. 5

Verified by [Signature]

ROV

2019 APR -8 PM 3:37

OFFICE OF
THE CITY CLERK
CITY OF NEWPORT BEACH

CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, CA 92660
City Clerk (949) 644-3005
Fax (949) 644-3039

DIRECTIONS: One application can be used for all the appointive positions you are applying for. Applications should be filled out completely so that the City Council may fully evaluate your qualifications. It is the responsibility of the applicant to familiarize themselves with the duties and responsibilities of the position(s) applied for. Detailed information outlining the responsibilities of the positions can be obtained from the City Clerk's Office or on the City's website: www.newportbeachca.gov (City Government/Boards, Commissions and Committees). Applications will be kept on file for two years for the position(s) applied for. If you are not selected for appointment during that period of time, it will be necessary for you to re-submit an application if you are still interested in being considered.

NOTICE: Section 702 of the City Charter requires that members of Boards or Commissions appointed by the City Council shall be from the qualified electors of the City. This document is a public record and may be posted on the internet.

NAME OF BOARD, COMMISSION OR COMMITTEE:

NEWPORT BEACH HOMELESS TASK FORCE

Name:

HEFFERNAN

(Last)

JOHN

(First)

B.

(Middle)

Residence Address (required):

[Redacted Address]

Zip Code:

[Redacted Zip Code]

How long have you lived in Newport Beach?

SINCE 1976

Home/Cell #:

[Redacted Home/Cell #]

Business Address:

[Redacted Business Address]

Business Phone:

[Redacted Business Phone]

[Redacted Business Address]

Email Address:

[Redacted Email Address]

Have you ever been convicted of any crime or violation of any law or statute other than minor traffic violations?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

NOTICE: Pursuant to Section 702 of the City Charter, no members of boards or commissions shall hold any paid office or employment in the City government.

Do you currently hold any paid office or employment with the City of Newport Beach, including but not limited to contracted services?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

If applying for a position on the Finance Committee, have you declared bankruptcy in the last 10 years? ☒ NO ☐ YES

Please state any past, current or foreseeable future financial interests of any kind that may conflict with the Board, Commission or Committee you are applying for.

NONE.

[Signature]

CONTINUE TO PAGE TWO

Name and Location of Colleges/ Universities Attended	Major	Degree	Last Year Attended
STANFORD UNIV.	HISTORY	B.A.	1972
UNIV. OF SAN DIEGO	LAW	J.D.	1975

Prior or Current Civic Experience (Include membership in professional, charity or community organization)	Office Held (if any)	Dates of Membership
SECOND HARVEST FOOD BANK	BOARD CHAIR	1987-1993
HOAG HOSPITAL	BOARD MEMBER	1994-2001
GOODWILL INDUSTRIES OF O.C.	VICE-CHAIR	2007-2011
CATHOLIC CHARITIES OF O.C.	VICE-CHAIR	2017-PRESENT

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
HEFFERNAN & BOORTZ	LAW	CO-OWNER	1986-PRESENT

References. Include names of at least two residents of Newport Beach who are not officially connected with the City.

1. Name **DAVID SEIDNER** Address Phone No.
2. Name **DONALD BOORTZ** Address Phone No.

Summarize why you wish to serve the City of Newport Beach on a board, commission or committee. Include any special qualifications you have which are particularly appropriate to the position for which you are applying.

I have served in various poverty-related Orange County charities since the 1980's, many of which provide services to our Orange County homeless - including food, rental assistance, medical, dental and vision services, employment and employment placement, clothing, suicide prevention, consoling and immigration services. I served on the NB City Council from 2001 - 2006, and was also Mayor in 2005, and therefore have a sense of City governance and how future services and funds our City and other agencies might provide in this area need to be balanced against possible resistance from our own residents and businesses who rightfully want to protect their own personal and property rights. Homelessness is a growing concern in our City which needs to be addressed. I am pleased the City is starting this Task Force Committee.

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

John B. Heffernan

Date

APRIL 8, 2019

APPLICATION FOR APPOINTIVE POSITION

FOR OFFICE USE ONLY

Residence District No. 3

Verified by [Signature]

2019 MAR 29 AM 9:52

OFFICE OF
THE CITY CLERK
CITY OF NEWPORT BEACH

CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, CA 92660
City Clerk (949) 644-3005
Fax (949) 644-3039

DIRECTIONS: One application can be used for all the appointive positions you are applying for. Applications should be filled out completely so that the City Council may fully evaluate your qualifications. It is the responsibility of the applicant to familiarize themselves with the duties and responsibilities of the position(s) applied for. Detailed information outlining the responsibilities of the positions can be obtained from the City Clerk's Office or on the City's website: www.newportbeachca.gov (City Government/Boards, Commissions and Committees). Applications will be kept on file for two years for the position(s) applied for. If you are not selected for appointment during that period of time, it will be necessary for you to re-submit an application if you are still interested in being considered.

NOTICE: Section 702 of the City Charter requires that members of Boards or Commissions appointed by the City Council shall be from the qualified electors of the City. This document is a public record and may be posted on the internet.

NAME OF BOARD, COMMISSION OR COMMITTEE:

Homeless Task Force

Name:

Moore

(Last)

Terry

(First)

L

(Middle)

Residence Address (required):

[Redacted Address]

Zip Code:

[Redacted Zip Code]

How long have you lived in Newport Beach?

30 years

Home/Cell #:

[Redacted Home/Cell Number]

Business Address:

retired

Business Phone:

[Redacted Business Phone]

Email Address:

[Redacted Email Address]

Have you ever been convicted of any crime or violation of any law or statute other than minor traffic violations?



NO



YES (If yes, attach separate sheet with explanation)

NOTICE: Pursuant to Section 702 of the City Charter, no members of boards or commissions shall hold any paid office or employment in the City government.

Do you currently hold any paid office or employment with the City of Newport Beach, including but not limited to contracted services?



NO



YES (If yes, attach separate sheet with explanation)

If applying for a position on the Finance Committee, have you declared bankruptcy in the last 10 years?



NO



YES

Please state any past, current or foreseeable future financial interests of any kind that may conflict with the Board, Commission or Committee you are applying for.

None

CONTINUE TO PAGE TWO

Name and Location of College/ Universities Attended	Major	Degree	Last Year Attended
UCLA	International Relations	BA	1970

Prior or Current Civic Experience (include membership in professional, charity, or community organization)	Office Held (if any)	Dates of Membership
LOTS (Life on the Streets) Costa Mesa homeless outreach	Volunteer Coordinator	Jan/2012-current
The Crossing Church - Dir. of Local Outreach		2005-2008

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
Retired			
Serving People In Need (SPIN)	Non-profit homeless housing	Case Manager	10/2012 - 2/2013

References. Include names of at least two residents of Newport Beach who are not officially connected with the City.

1. Name Address Phone No.
2. Name Address Phone No.

Summarize why you wish to serve the City of Newport Beach on a board, commission or committee. Include any special qualifications you have which are particularly appropriate to the position for which you are applying.

I have been involved at some level with homeless outreach for the past decade. I would take teams to Santa Ana on Fridays to work with Isaiah House, feeding 400-500 people in Civic Center Plaza. When Trellis (Costa Mesa-based NGO) started Life On The Streets (LOTS) I became involved at a deep level, eventually taking on the role of volunteer coordinator, creating a data base of over 1200 volunteers and visitors with a goal of educating and encouraging further engagement. I recognize the community tension in determining how best to serve/deal with the issue of homelessness, and I have come to truly be able to look at unhoused people as individuals, not just statistics. With judicial mandates to OC cities to become part of the solution, Newport Beach has the opportunity and resources to create a state-of-the-art program.

I certify that all statements made on this application are true and correct to the best of my knowledge. I have read and understand the duties and responsibilities of the particular position(s) that I am applying for and authorize the release of this information on the internet.

[BOX MUST BE CHECKED IF SUBMITTING ELECTRONICALLY]



Signature

Date

RECEIVED APPLICATION FOR APPOINTIVE POSITION

FOR OFFICE USE ONLY

Residence District No. 4

Verified by ROU

2019 APR -9 PM 4: 56

OFFICE OF
THE CITY CLERK
CITY OF NEWPORT BEACH

CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, CA 92660
City Clerk (949) 644-3005
Fax (949) 644-3039

DIRECTIONS: One application can be used for all the appointive positions you are applying for. Applications should be filled out completely so that the City Council may fully evaluate your qualifications. It is the responsibility of the applicant to familiarize themselves with the duties and responsibilities of the position(s) applied for. Detailed information outlining the responsibilities of the positions can be obtained from the City Clerk's Office or on the City's website: www.newportbeachca.gov (City Government/Boards, Commissions and Committees). Applications will be kept on file for two years for the position(s) applied for. If you are not selected for appointment during that period of time, it will be necessary for you to re-submit an application if you are still interested in being considered.

NOTICE: Section 702 of the City Charter requires that members of Boards or Commissions appointed by the City Council shall be from the qualified electors of the City. This document is a public record and may be posted on the internet.

NAME OF BOARD, COMMISSION OR COMMITTEE: Homeless Task Force

Name: Peterson

(Last)

Thomas

(First)

John

(Middle)

Residence Address (required):

Zip Code:

How long have you lived in Newport Beach?

30 + years

Home/Cell #:

Business Address: not applicable

Business Phone:

Email Address:

Have you ever been convicted of any crime or violation of any law or statute other than minor traffic violations?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

NOTICE: Pursuant to Section 702 of the City Charter, no members of boards or commissions shall hold any paid office or employment in the City government.

Do you currently hold any paid office or employment with the City of Newport Beach, including but not limited to contracted services?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

If applying for a position on the Finance Committee, have you declared bankruptcy in the last 10 years? ☐ NO ☐ YES

Please state any past, current or foreseeable future financial interests of any kind that may conflict with the Board, Commission or Committee you are applying for.

None

CONTINUE TO PAGE TWO

Name and Location of Colleges/ Universities Attended	Major	Degree	Last Year Attended
University of So California	Business - Finance	MBA	1980
University of Pittsburgh	Politics & Philosophy	BA	1978

Prior or Current Civic Experience (include membership in professional, charity or community organization)	Office Held (if any)	Dates of Membership
OC HIV Planning Council (appointed by Board of Supervisors)	Policy Committee Chair	1997 - 2004

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
Riverside University Health System - Behavioral Health (successor to Riverisde County Mental Health)	County mental health agency	Public Info Officer and Development Specialist	2007 - present

References. Include names of at least two residents of Newport Beach who are not officially connected with the City.

1. Name Address Phone No.
2. Name Address Phone No.

Summarize why you wish to serve the City of Newport Beach on a board, commission or committee. Include any special qualifications you have which are particularly appropriate to the position for which you are applying.

I have worked for many years in both a volunteer and professional capacity in the areas of providing social services and policy advocacy on behalf of low income, vulnerable and homeless communities. In addition to my current position at Riverside University Health System - Behavioral Health (formerly Riverside County Department of Mental Health), I am currently an Associate Professor teaching policy courses in integrated healthcare, social programs and behavioral health/substance abuse treatment at USC's Graduate School of Social Work, having joined the faculty in 2010. I am the point person for the No Place Like Home program in Riverside County (rcdmh.org/Admin/NPLH) and processed more than \$ 25 million in Round 1 state funding applications in January 2019 to generate permanent supportive housing for people with mental illness. I am interested in this position to help guide the formation of a response and the development of a series of solutions by the City of Newport Beach to the address problem of homelessness and the issues that surround it with practical, compassionate, sustainable solutions that reflect the integrity, commitment and values of this city and its residents.

I certify that all statements made on this application are true and correct to the best of my knowledge. I have read and understand the duties and responsibilities of the particular position(s) that I am applying for and authorize the release of this information on the internet.

[BOX MUST BE CHECKED IF SUBMITTING ELECTRONICALLY]



Signature

Date

APPLICATION FOR APPOINTIVE POSITION

RECEIVED

CITY OF NEWPORT BEACH

2019 APR 10 AM 8:28 100 Civic Center Drive
Newport Beach, CA 92660

City Clerk (949) 644-3005

Fax (949) 644-3039

OFFICE OF
THE CITY CLERK
CITY OF NEWPORT BEACH

FOR OFFICE USE ONLY

Residence District No. 4

Verified by [Signature]

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:

Newport Beach Homeless Task Force

Name:

Snow

(Last)

David

(First)

A.

(Middle)

Residence Address (required):

[Redacted Address]

Zip Code:

[Redacted Zip Code]

How long have you lived in Newport Beach?

18 years

Home/Cell #:

[Redacted Home/Cell #]

Business Address:

[Redacted Business Address]

Business Phone:

[Redacted Business Phone]

Email Address:

[Redacted Email Address]

[Redacted Email Address]

Have you ever been convicted of any crime or violation of any law or statute other than minor traffic violations?

☒

NO

☐

YES (If yes, attach separate sheet with explanation)

NOTICE: Pursuant to Section 702 of the City Charter, no members of boards or commissions shall hold any paid office or employment in the City government.

Do you currently hold any paid office or employment with the City of Newport Beach, including but not limited to contracted services?

☒

NO

☐

YES (If yes, attach separate sheet with explanation)

If applying for a position on the Finance Committee, have you declared bankruptcy in the last 10 years?

☒

NO

☐

YES

Please state any past, current or foreseeable future financial interests of any kind that may conflict with the Board, Commission or Committee you are applying for.

None

CONTINUE TO PAGE TWO

Name and Location of Colleges/ Universities Attended	Major	Degree	Last Year Attended
UCLA	Sociology	PhD	1976
University of Akron	Urban Studies	MA	1971
Ohio University	Sociology/Psychology	BA	1966

Prior or Current Civic Experience (include membership in professional, charity or community organization)	Office Held (if any)	Dates of Membership
Primavera Foundation, Tucson, AZ	Vice President	1995-2001
Orange County Alliance for Just Change	Founding Board Member	2016-present
Share Our Selves, Costa Mesa	Member of Bd of Directors	2017-present
Families Forward, Irvine	Member of Bd of Directors	2018-present

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
UCI	Educational	Distinguished Professor	2001-present
University of Arizona, Tucson	Educational	Professor and Dept. Head	1987-2001
University of Texa, Austin	Educational	Assist. to Assoc. Professor	1976-1987

References. Include names of at least two residents of Newport Beach who are not officially connected with the City.

1. Name Address Phone No.
2. Name Address Phone No.

Summarize why you wish to serve the City of Newport Beach on a board, commission or committee. Include any special qualifications you have which are particularly appropriate to the position for which you are applying.

I wish to serve on the city Homeless Task Force in order to work with other residents to deal effectively and humanely with the persistent problem of homelessness. I have conducted research on homelessness in Austin, TX, Tucson, AZ, and elsewhere in the country, including Orange County, where I was the lead researcher for the 2017 OC United Way/Jamboree Housing/UCI report, "Homelessness in Orange County: The Costs to Our Community." I have also written numerous professional, academic articles on various aspects of homelessness and was the lead author of the book, "Down on Their Luck: A Study of Homeless Street People" (University of California Press, 1993).

I certify that all statements made on this application are true and correct to the best of my knowledge. I have read and understand the duties and responsibilities of the particular position(s) that I am applying for and authorize the release of this information on the internet.

[BOX MUST BE CHECKED IF SUBMITTING ELECTRONICALLY]



Signature



Date

APPLICATION FOR APPOINTIVE POSITION

RECEIVED

FOR OFFICE USE ONLY

Residence District No. 3

Verified by MR
ROV

2019 APR -3 PM 2: 52

OFFICE OF
THE CITY CLERK
CITY OF NEWPORT BEACH

CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, CA 92660
City Clerk (949) 644-3005
Fax (949) 644-3039

INSTRUCTIONS: 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 is 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 a 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 qualified electors of the City. This document is a public record and may be posted on the internet.

NAME OF BOARD, COMMISSION OR COMMITTEE:

Newport Beach Task Force on Homelessness

Name: Voorhees

(Last)

Cindy

(First)

E.

(Middle)

Residence Address (required):

Zip Code:

How long have you lived in Newport Beach?

5 years

Home/Cell #:

Business Address:

Business Phone:

Email Address:

Have you ever been convicted of any crime or violation of any law or statute other than minor traffic violations?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

NOTICE: Pursuant to Section 702 of the City Charter, no members of boards or commissions shall hold any paid office or employment in the City government.

Do you currently hold any paid office or employment with the City of Newport Beach, including but not limited to contracted services?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

If you are applying for a position on the Finance Committee, have you declared bankruptcy in the last 10 years? ☒ NO ☐ YES

Please state any past, current or foreseeable future financial interests of any kind that may conflict with the Board, Commission or Committee you are applying for.

Signature

Golden West College	Gen. Ed	AA	1974
CSU Fullerton	BA	Art	1978
Claremont School Of Theology	Theology	Certificate of Theology	2004

ASID, IDS, AIA		1985 to present
Building AFRICA - charity	Founder	2004-2014
Purple Industries	Founder	2000 -2016
General Contractor "B" License		1989 to present

Occupational History. Begin with your present or most recent position. List all positions separately held for the last five years.

St. James Episcopal Church	Church	Priest	2013- present
Voorhees Design	Church Design	Principal/Owner	1999-2013

References. Include names of at least two residents of Newport Beach who are not officially connected with the City.

1. Name Address Phone No.
2. Name Address Phone No.

Summarize why you wish to serve the City of Newport Beach on a board, commission or committee. Include any special qualifications you have which are particularly appropriate to the position for which you are applying.

Thank you for this opportunity to submit this application for the Newport Beach Homeless Task Force. As a priest of a large church on Lido, I have direct interaction with the homeless almost every day. I am also a resident of Newport Beach and see homelessness growing by the week. I feel it is important to find permanent solutions to our homeless crisis and believe housing is key. I also feel technology should be leveraged to share information across a broad spectrum with other communities, non profits, and civic entities. This will facilitate best practices faster and more effectively. I also feel I would be effective speaking to the NIMBY's from an ethical and moral perspective. Thank you for your consideration. Peace,
The Rev. Canon Cindy Evans Voorhees

I certify that all statements made on this application are true and correct to the best of my knowledge. I have read and understand the duties and responsibilities of the particular position(s) that I am applying for and authorize the release of this information on the internet.

[BOX MUST BE CHECKED IF SUBMITTING ELECTRONICALLY]



Signature

Date

APPLICATION FOR APPOINTEE POSITION

RECEIVED

CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, CA 92660
City Clerk (949) 644-3005
Fax (949) 644-3039

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Residence District No. 4
Verified by RR
ROV

2019 APR -3 PM 2: 52

OFFICE OF
THE CITY CLERK
CITY OF NEWPORT BEACH

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: Newport Beach Homeless Task Force

Name: Wegener

(Last)

Jean

(First)

Henderson

(Middle)

Residence Address (required):

Zip Code:

How long have you lived in Newport Beach?

47 years

Home/Cell #:

Business Address:

Business Phone:

Email Address:

Have you ever been convicted of any crime or violation of any law or statute other than minor traffic violations?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

NOTICE: Pursuant to Section 702 of the City Charter, no members of boards or commissions shall hold any paid office or employment in the City government.

Do you currently hold any paid office or employment with the City of Newport Beach, including but not limited to contracted services?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

If applying for a position on the Finance Committee, have you declared bankruptcy in the last 10 years? ☐ NO ☐ YES

Please state any past, current or foreseeable future financial interests of any kind that may conflict with the Board, Commission or Committee you are applying for.

None

CONTINUE TO PAGE TWO

Name and Location of Colleges/ Universities Attended	Major	Degree	Last Year Attended
USC	Political Science	Bachelor of Arts	1968
Colby-Sawyer College	Undeclared	Associate of Arts	1966

Prior or Current Civic Experience (include membership in professional, charity or community organization)	Office Held (if any)	Dates of Membership
Family Solutions Collaborative	Executive Committee	2018-Present
Bluffs Community Homeowners Assoc.	President	1989-1991
City of Newport Beach, Airport Committee		1979-1983
City of Newport Beach, Environmental Quality Control Committee		1975-1977

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
Serving People In Need (SPIN)	Nonprofit	Executive Director	1991-Present

References. Include names of at least two residents of Newport Beach who are not officially connected with the City.

1. Name Address Phone No.

2. Name Address Phone No.

Summarize why you wish to serve the City of Newport Beach on a board, commission or committee. Include any special qualifications you have which are particularly appropriate to the position for which you are applying.

I wish to serve on the Newport Beach Homeless Task Force because I have worked with the homeless and its different populations for 28+ years. I am pleased that the City is addressing this issue, which is increasing in its complexity and numbers in recent years. I am very familiar with the County's efforts, its plans for addressing the homeless issue and attend many meetings related to the homeless throughout Orange County. In addition, the agency for which I work is a designated Access Point for the cities of Newport Beach, Costa Mesa, Fountain Valley, Tustin, Santa Ana and Huntington Beach for homeless families with children.

I certify that all statements made on this application are true and correct to the best of my knowledge. I have read and understand the duties and responsibilities of the particular position(s) that I am applying for and authorize the release of this information on the internet.

[BOX MUST BE CHECKED IF SUBMITTING ELECTRONICALLY]



Signature

Date

ATTACHMENT B

RESOLUTION NO. 2019- 42

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING THE MEMBERSHIP OF THE NEWPORT BEACH HOMELESS TASK FORCE

WHEREAS, on March 26, 2019, the City Council adopted Resolution No. 2019-25, establishing a City Council/Citizens' Committee known as the Newport Beach Homeless Task Force ("Committee") to study the impacts of homelessness on the City and develop solutions to end homelessness;

WHEREAS, Resolution No. 2019-25 provided that the Committee is comprised of two (2) councilmembers and seven (7) residents, appointed by the Mayor and confirmed by the City Council;

WHEREAS, at the March 26, 2019 meeting, the Mayor appointed and the City Council confirmed Mayor Pro Tem O'Neill and Council Member Avery to the Committee; and

WHEREAS, the City Council desires to increase the membership of the Committee to three (3) councilmembers with the additional council member appointed by the Mayor and confirmed by the City Council.

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

Section 1: The City Council hereby modifies the Committee to increase the membership of the Committee to three (3) councilmembers. Mayor Pro Tem O'Neill and Council Member Avery shall continue to serve as members of the Committee. The third council member shall be appointed by the Mayor and confirmed by the City Council.

Section 2: The Committee shall continue to function as an ad hoc committee and the term, qualification of appointees, selection of appointees, appointment process, membership, and responsibilities of the Committee shall be done in conformance with this resolution and Attachment 1, which is incorporated herein by reference.

Section 3: The City Council hereby repeals Resolution No. 2019-25.

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 substantive portion of this resolution.

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

Section 7: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting this resolution.

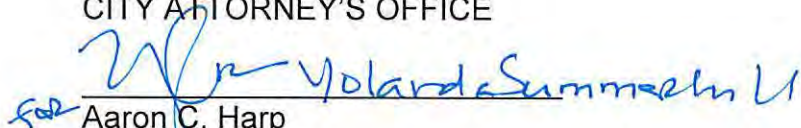
ADOPTED this 14th day of May 2019.

Diane B. Dixon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachment A: Newport Beach Homeless Task Force Description

ATTACHMENT A

Newport Beach Homeless Task Force

AUTHORIZATION: Established by Resolution No. 2019-25 adopted on March 26, 2019. Amended by Resolution No. 2019-__ adopted on May 14, 2019.

MEMBERSHIP: The Task Force shall be comprised of three (3) councilmembers and seven (7) residents appointed by the Mayor and confirmed by the City Council. Council Policy A-2 is waived as it pertains to the term of Council and Committee members appointed to the Task Force. As provided herein, the term of the appointed members of the Task Force shall be indefinite pending City Council action or expiration of the Task Force's term listed above.

**QUALIFICATIONS
OF MEMBERS:**

In addition to the criteria set forth in Council Policy A-2, the Task Force shall be comprised of three (3) councilmembers and seven (7) residents appointed by the Mayor and confirmed by the City Council. The Task Force shall include residents with an interest in working to create a vision and plan to respond to the issues of homelessness in Newport Beach, have expertise in housing, mental health services, social services, public safety, health services, or education.

TERM: The Task Force shall expire upon completion of the Purpose & Responsibilities listed below, but not later than December 31, 2020.

MEETINGS: The Task Force is an ad hoc committee. Meetings shall be held as required by the business needs of the Task Force in such locations, dates and times in accordance with the Ralph M. Brown Act.

**PURPOSE &
RESPONSIBILITIES:**

- A. Develop strategies/plan to integrate all services needed to address homelessness.
- B. Develop a list of community partners willing to assist in addressing homelessness.
- C. Review and consider temporary housing solutions.
- D. Develop appropriate metrics system to monitor reduction of homeless.
- E. Periodically report to City Council.



CITY OF

NEWPORT BEACH

City Council Staff Report

May 14, 2019
Agenda Item No. 4

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Gregg Ramirez, Principal Planner
PHONE: 949-644-3219, gramirez@newportbeachca.gov

TITLE: Resolution No. 2019-43: Initiation of Planning and Zoning Code and Local Coastal Program Amendments Related to Residential Massing and Beach Cottage Preservation (PA2019-070)

ABSTRACT:

The City Council will consider initiating amendments to Newport Beach Municipal Code (NBMC) Title 20 (Planning and Zoning) and NBMC Title 21 (Local Coastal Program Implementation Plan). The purpose of the amendments is to: 1) reduce the massing of three story residential structures by reducing the impact caused by covered patio roof decks and 2) change the design standards to allow more opportunities to preserve residential beach cottages by increasing the amount of floor area that can be added to an existing unit before code compliant parking is required.

RECOMMENDATION:

- a) Determine this action exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3; and
- b) Adopt Resolution No. 2019-43, *A Resolution of the City Council of the City of Newport Beach, California, Initiating Amendments to Title 20 Entitled "Planning and Zoning" and Title 21 Entitled "Local Coastal Program Implementation Plan" of the City of Newport Beach Municipal Code Related to Massing of Three Story Residential Structures and Development Standards for Small Beach Cottages (PA2019-070).*

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

At the conclusion of the April 23, 2019 City Council study session item titled “Potential Changes to Residential Development Standards to Preserve Cottages and Address 3rd Story Massing” the City Council directed staff to return with a resolution to initiate code amendments related to both study session items.

Three Story Roof Decks

The current zoning code allows a covered roof deck to be enclosed on all three sides as long as one side of the deck remains open. The floor area of the enclosed roof deck is not counted towards the maximum floor area. If approved to initiate code amendments, staff will propose changes to reduce the bulk and mass of new three-story dwellings.

Preserving Beach Cottages

The municipal code will also be amended to address the loss of smaller beach cottages due to the requirement of providing a two-car parking garage. Currently, the zoning code requires a conforming two-car garage when 10 percent or more of the existing floor area is added to the existing dwelling unit. The current code provision has forced many of the smaller beach cottages to be torn down because the existing garages do not conform to current code requirements. Staff will propose an increase to the amount of floor area allowed for existing dwelling units before the unit would have to conform to the current parking requirements.

Public Outreach and Timing

This agenda item is not a public hearing. Should the City Council choose to initiate the proposed amendments, the specific text changes will be drafted and staff will reach out to the community and local design professionals to get their feedback on the new proposed code language. Staff will then present the item to both the Planning Commission and then City Council at noticed public hearings. Additionally, amendments to the certified LCP will require certification by the California Coastal Commission. Staff estimates the draft code language to be ready for community input in the month of July 2019.

Zoning Code Section 20.66.020 (Initiation of Amendment) provides that a code amendment may be initiated by the City Council, with or without a recommendation from the Planning Commission. City Council Policy K-1 (General Plan and Local Coastal Program) provides that a City-sponsored amendment to the certified Local Coastal Program (LCP) shall be initiated by the City Council. Title 15 of NBMC regulates building and construction and will need to also be amended as part of the process. Title 15 does not require City Council initiation to be amended, but has been included in the attached resolution to provide the full scope of municipal code amendments needed to address the issues.

ENVIRONMENTAL REVIEW:

The initiation of zoning and LCP amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. No final action on any amendments will occur at this meeting and the initiation of the amendment does not have any legally binding effect upon future consideration of the amendments themselves. The City will conduct an environmental review prior to the consideration and potential approval of the amendments.

NOTICING:

The Municipal Code does not require notice for the initiation of amendments. Notice of this item appeared on the agenda for this meeting, which was posted at City Hall and on the City website. Should the City Council initiate the amendment, public notice will be provided for subsequent public hearings before the Planning Commission and the City Council as required by the Municipal Code. Additionally, notice of the LCP amendments will be sent to all persons and agencies on the Notice of the Availability mailing list.

ATTACHMENT:

Attachment A – Resolution No. 2019-43

ATTACHMENT A

RESOLUTION NO. 2019- 43

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, INITIATING AMENDMENTS TO TITLE 20 ENTITLED "PLANNING AND ZONING" AND TITLE 21 ENTITLED "LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN" OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE RELATED TO MASSING OF THREE STORY RESIDENTIAL STRUCTURES AND DEVELOPMENT STANDARDS FOR SMALL BEACH COTTAGES (PA2019-070)

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

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

WHEREAS, the City Council desires to modify regulations related to third story residential building massing and provide flexibility in certain development standards that may allow more improvements to smaller beach cottages; and

WHEREAS, in order to implement the aforementioned modifications, amendments to Title 15, Title 20 and Title 21 are required.

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

Section 1: The City Council hereby initiates amendments to NBMC Title 20 "Planning and Zoning" and Title 21 "Local Coastal Program Implementation Plan" to modify regulations relating to nonconforming structures, nonconforming parking, off-street parking spaces required, residential development standards and design criteria and associated definitions of specialized terms and phrases. Modifications to Title 15 may be implemented as authorized by the NBMC.

Section 2: 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 3: The recitals provided in this resolution are true and correct and are incorporated into the substantive portion of this resolution.

Section 4: The City Council finds the adoption of this resolution is categorically exempt pursuant to Title 14, Division 6, Chapter 3, of the California Code of Regulations, Section 15262 (Feasibility and Planning Studies) Guidelines for Implementation of the California Environmental Quality Act ("CEQA"). Section 15262 exempts projects involving feasibility or planning studies for possible future actions which the agency, board, or commission has not approved or adopted.

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


ADOPTED this 14TH day of May, 2019.

Diane B. Dixon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

for  Yolanda Sumnerhill
Aaron C. Harp
City Attorney



CITY OF

NEWPORT BEACH

City Council Staff Report

May 14, 2019
Agenda Item No. 5

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Patrick Arciniega, Senior Civil Engineer
parciniega@newportbeachca.gov

PHONE: 949-644-3347

TITLE: Jamboree Road Median Landscape Turf Replacement Project –
Notice of Completion for Contract No. 8151-2 (16L02)

ABSTRACT:

On November 13, 2018, City Council awarded Contract No. 8151-2 for the Median Landscape Turf Replacement project on Jamboree Road from Ford Road to University Drive to Conserve LandCare. The work is complete and staff requests City Council acceptance and close out of the contract. The maintenance period will end on June 10, 2019.

RECOMMENDATION:

- a) On November 13, 2018, the City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(c);
- b) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project; and
- c) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code, and release Faithful Performance Bond one year after acceptance by the City Council.

FUNDING REQUIREMENTS:

The construction contract was expensed from the following accounts:

<u>Account Description</u>	<u>Account Number</u>		<u>Amount</u>
Environmental Contributions	13801-980000-16L02	\$	223,180.90
Neighborhood Enhancement	53601-980000-16L02	\$	283,352.01
	Total:	\$	506,532.91

The City anticipated up to \$225,000 in total rebate revenue from the Municipal Water District of Orange County (MWDOC) for this project; however, based on reduced square footage calculations during the final inspection, the City received \$223,180.90 in rebates.

DISCUSSION:

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
\$501,089.61	\$506,532.91	10% or less	1.1%	0.48%	0.53%
Allowed Contract Time + Approved Extensions (days) =		74	Actual Time Under (-) or Over (+)		-7

During the recent drought, state regulations were enacted prohibiting use of potable water to irrigate medians planted with turf grass. To comply with this new requirement as well as reduce water demand, the irrigation on this median was turned off and staff proposed this project to remove the existing turf grass and replace it with a new California friendly drought tolerant landscape palette.

The work necessary for the completion of this contract consisted of clearing and grubbing, landscape replacement and maintenance, irrigation system improvements, and all other incidental items of work necessary to complete the work in place.

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

Original bid amount:	\$501,089.61
Actual Cost of Bid Items Constructed:	\$494,688.15
Total Change Orders:	\$11,844.76
Final Contract Cost:	\$506,532.91

Less plants were needed than originally estimated, resulting in a \$6,401.46 cost reduction. In an effort to reduce initial project cost, the project strived to reuse the majority of the existing irrigation system rather than installing a completely new system. However, additional minor modifications to the irrigation system were required once construction began to insure the system was sound and operated within expectations. Four change orders totaling \$11,844.76 were approved that were related to modifications to the existing irrigation system. With the completion of the project, the final contract cost is approximately 1.1 percent above the original bid amount.

A summary of the project schedule is as follows:

Estimated Start of Construction per Annual Baseline Schedule	November 26, 2018
Actual Start of Construction Per Notice to Proceed	December 3, 2018
Extended Contract Completion Date Inclusive of Extra Work	March 18, 2019
Actual Substantial Construction Completion Date	March 11, 2019

The project was substantially complete on March 11, 2019 with all landscaping improvements completed to the satisfaction of the Public Works Department. Due to several rainy days during the project construction, the original contract completion date was extended to March 18, 2019.

ENVIRONMENTAL REVIEW:

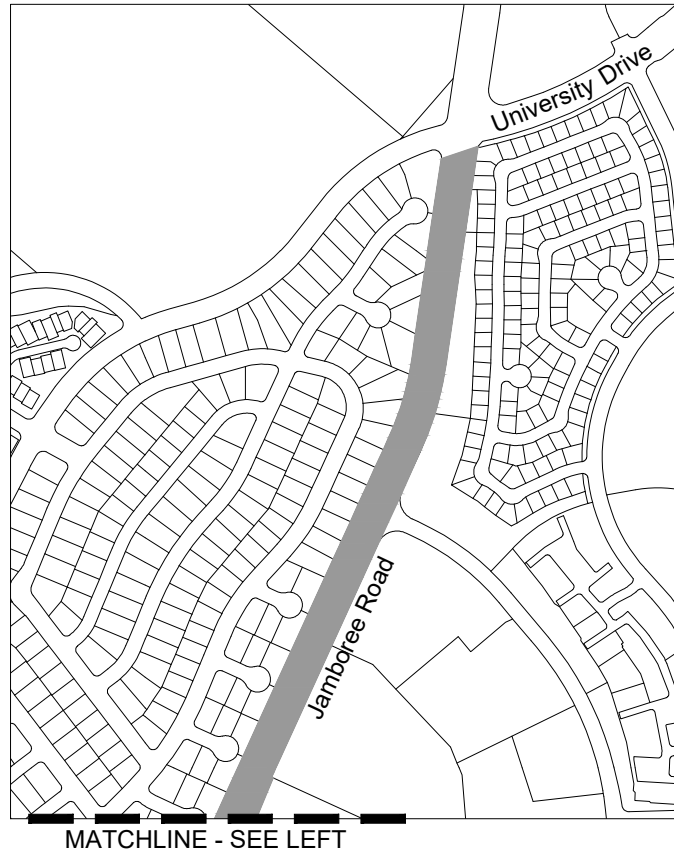
On November 13, 2018, City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(c) Class 2 (reconstruction of existing public facilities involving negligible or no expansion of capacity) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

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



5/14/19



CITY OF NEWPORT BEACH

City Council Staff Report

May 14, 2019
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: Eric Loke, Senior Civil Engineer, eloke@newportbeachca.gov
PHONE: 949-644-3336

TITLE: Traffic Signal Rehabilitation Project – FY2017/18 – Notice of Completion for Contract No. 7314-1 (18T01)

ABSTRACT:

On April 10, 2018, City Council awarded Contract No. 7314-1 for the Traffic Signal Rehabilitation Project for Fiscal Year 2017/18 to California Professional Engineering. The work is now complete and staff requests City Council acceptance and close out of the contract.

RECOMMENDATION:

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 Class 1 (maintenance of existing facilities involving no expansion of an existing use) of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment;
- b) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
- c) 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
- d) 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>
Traffic Signal Rehab. Program	01201927-980000-18T01	\$354,777.54
	Total:	<u>\$354,777.54</u>

DISCUSSION:

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
\$359,684.00	\$354,777.54	10% or less	-3.5%	0.0%	2.1%
Allowed Contract Time + Approved Extensions (days)		228*	Actual Time Under (-) or Over (+)		0

*Includes suspension of contract days due to critical equipment delay as detailed below.

The work for this project consisted of traffic signal rehabilitation at the intersection of Irvine Avenue and East 17th Street/Westcliff Drive. Work included the replacement of signal poles, cabinet, controller, electrical service, street name signs, access ramps, and all associated traffic signal system equipment and wiring. The Notice to Proceed was issued to the contractor to begin work on May 14, 2018.

The contract has now been completed to the satisfaction of the Public Works Department. A summary of the contract cost are as follows:

Original Bid Amount:	\$359,684.00
Actual Cost of Bid Items Constructed:	\$347,124.00
Total Change Orders:	\$7,653.54
Final Contract Cost:	\$354,777.54

One change order totaling \$7,653.54 was issued, and represented a 2.1 percent increase over the original contract amount. This change order provided payment for removal of an unknown and abandoned underground concrete signal pole foundation which conflicted with the proposed new signal pole foundation location. Despite the change order cost increase, the final contract cost at completion was 3.5 percent lower than the awarded contract amount due to less sidewalk replacement than originally planned for as well as lower expenses associated with temporary traffic signal operation. The project was substantially complete on March 14, 2019.

A summary of the project schedule is as follows:

Estimated Completion Date per 2018 Baseline Schedule	October 31, 2018
Project Award for Construction:	April 10, 2018
Contract Completion Date with Approved Extensions	March 14, 2019
Actual Substantial Construction Completion Date	March 14, 2019

Due to the recent loss of one of the primary signal pole manufacturers, our signal pole orders placed with the remaining two nationwide manufacturers resulted in extremely long lead times for traffic pole fabrication and subsequent delivery. This materials delay, which was further magnified by the rainstorm events occurring during this past winter, resulted in the City granting the Contractor a suspension of progression for 128 contract working days. At the end of the suspension period, the Contractor diligently completed the work.

ENVIRONMENTAL REVIEW:

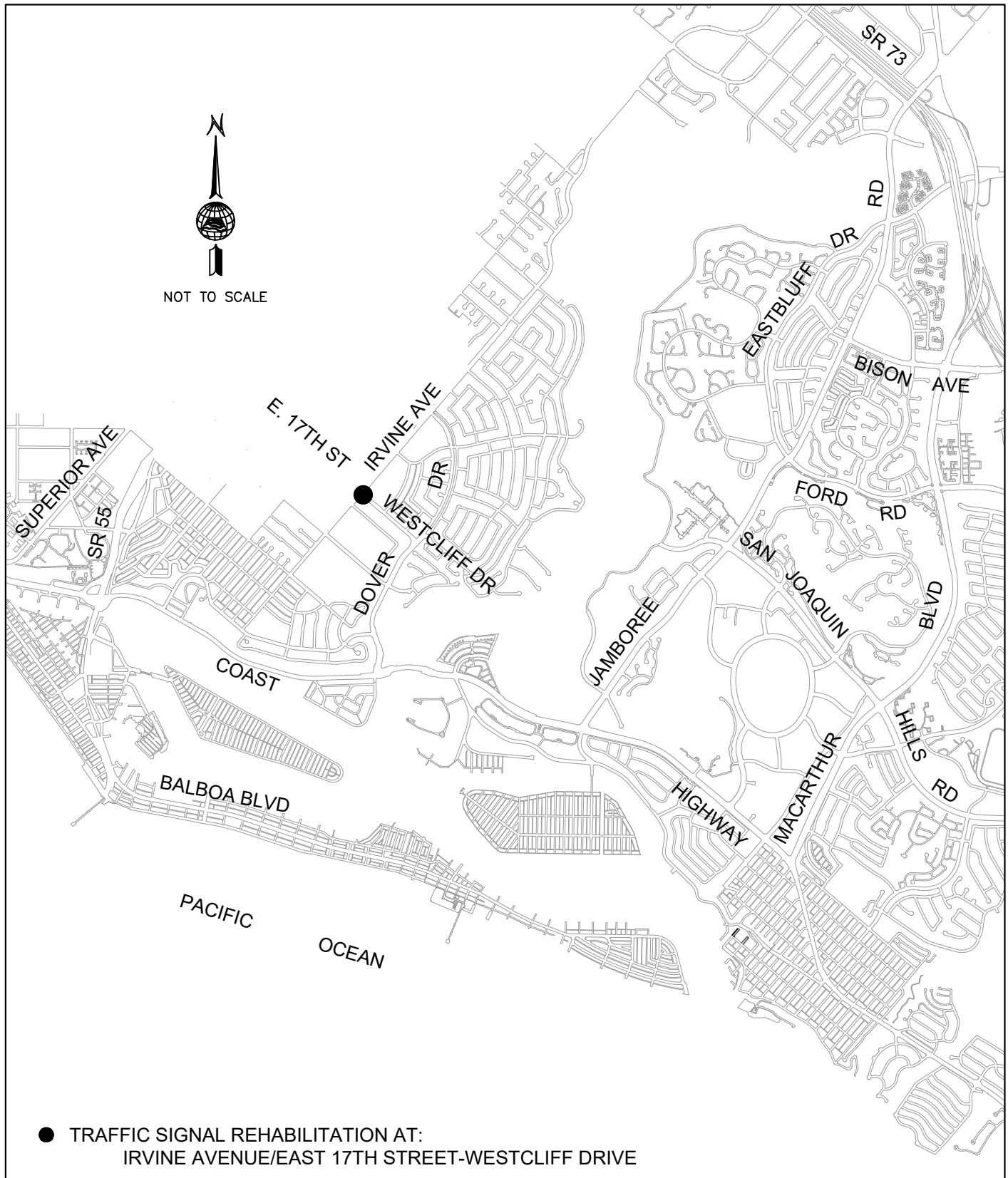
On April 10, 2018, City Council found this project to be exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 Class 1 (c) (maintenance of existing public facilities involving negligible or no expansion of use) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

NOTICING:

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

ATTACHMENT:

Attachment A – Location Map



TRAFFIC SIGNAL REHABILITATION PROGRAM
FY 2017-18

LOCATION MAP

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

C-7314-1

05/14/2019



CITY OF

NEWPORT BEACH

City Council Staff Report

May 14, 2019
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: Benjamin Davis, Associate Civil Engineer
bdavis@newportbeachca.gov

PHONE: 949-644-3317

TITLE: Big Canyon Reservoir Flow Metering Vault and Treatment Improvements – Notice of Completion for Contract No. 6104 (16W13)

ABSTRACT:

On August 8, 2017, City Council awarded Contract No. 6104 for the Big Canyon Reservoir Flow Metering Vault and Treatment Improvements project to Schuler Constructors, Inc. The work is 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 August 8, 2017, City Council found this project 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 year after acceptance by City Council.

FUNDING REQUIREMENTS:

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

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
Water Enterprise	70101-980000-16W13	\$ 850,500.00
Water Capital NMP	70201932-980000-16W13	\$ 923,052.03
	Total:	\$1,773,552.03

Big Canyon Reservoir Flow Metering Vault and Treatment Improvements –
Notice of Completion for Contract No. 6104 (16W13)

May 14, 2019
Page 2

DISCUSSION:

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
\$1,610,500.00	\$1,773,552.03	10% or less	10.1%	5.8%	4.3%
Allowed Contract Time + Approved Extensions (days) =		351	Actual Time Under (-) or Over (+)		-2

The work necessary to complete this contract included the construction of a concrete vault to house a new 30-inch magnetic flow meter, construction of two new potable water mixing systems and replacement of an existing 8-ton crane. Potable water mixing is now achieved with the mixing systems that handle high and low flow conditions. The first mixing device is a 42-inch Ultra Tab static mixer that handles the medium to high flow conditions. The second device is a hydraulic mixing system that uses three jet nozzles to address low flow conditions.

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

Original Bid Amount:	\$1,610,500.00
Actual Cost of Bid Items Constructed:	\$1,610,500.00
Total Change Orders:	<u>\$163,052.03</u>
Final Contract Cost:	\$1,773,552.03

The actual cost of bid items constructed matched the original bid amount. There were a total of four change orders that added \$163,052.03 to the final cost. The first change order replaced a critical 30-inch butterfly valve that was found inoperable due to age and corrosion build up. The second change order was for an unforeseen condition on a new gate valve that required modifications to meet the design requirements. The third change order was for additional paving at the Big Canyon Reservoir site. This paving work is identified as part of a separate capital improvement project and was added into this contract to reduce overhead and logistic costs associated with bringing in a separate contractor to do the planned paving. The last change order covered a directed change to improve the chlorine resistant coating of the static mixer. The total cost of construction, including all change orders, was \$1,773,552.03, which is approximately 10 percent above the original bid amount.

Utilities Department staff tested the new mixing systems and reported success during all flow conditions. The new magnetic flow meter is operating and giving staff improved accuracy monitoring flows in and out of the reservoir. This project has succeeded in

Big Canyon Reservoir Flow Metering Vault and Treatment Improvements –
Notice of Completion for Contract No. 6104 (16W13)

May 14, 2019
Page 3

delivering all the design goals for improving mixing, improving water quality and delivering accurate flow measurement.

The project was substantially complete as of February 21, 2019. A summary of the project schedule is as follows:

Estimated Start of Construction per Annual Baseline Schedule	September 9, 2017
Actual Start of Construction Per Notice To Proceed	September 9, 2017
Contract Completion Date Including Approved Time Extensions	February 25, 2019
Actual Substantial Construction Completion Date	February 21, 2019

The long construction duration for this project was necessary since the reservoir had to be operational during peak water demand, which is from March to September. Therefore, the contractor was not able to work during this time period and was allowed additional time to complete the contract after the peak water demand period.

ENVIRONMENTAL REVIEW:

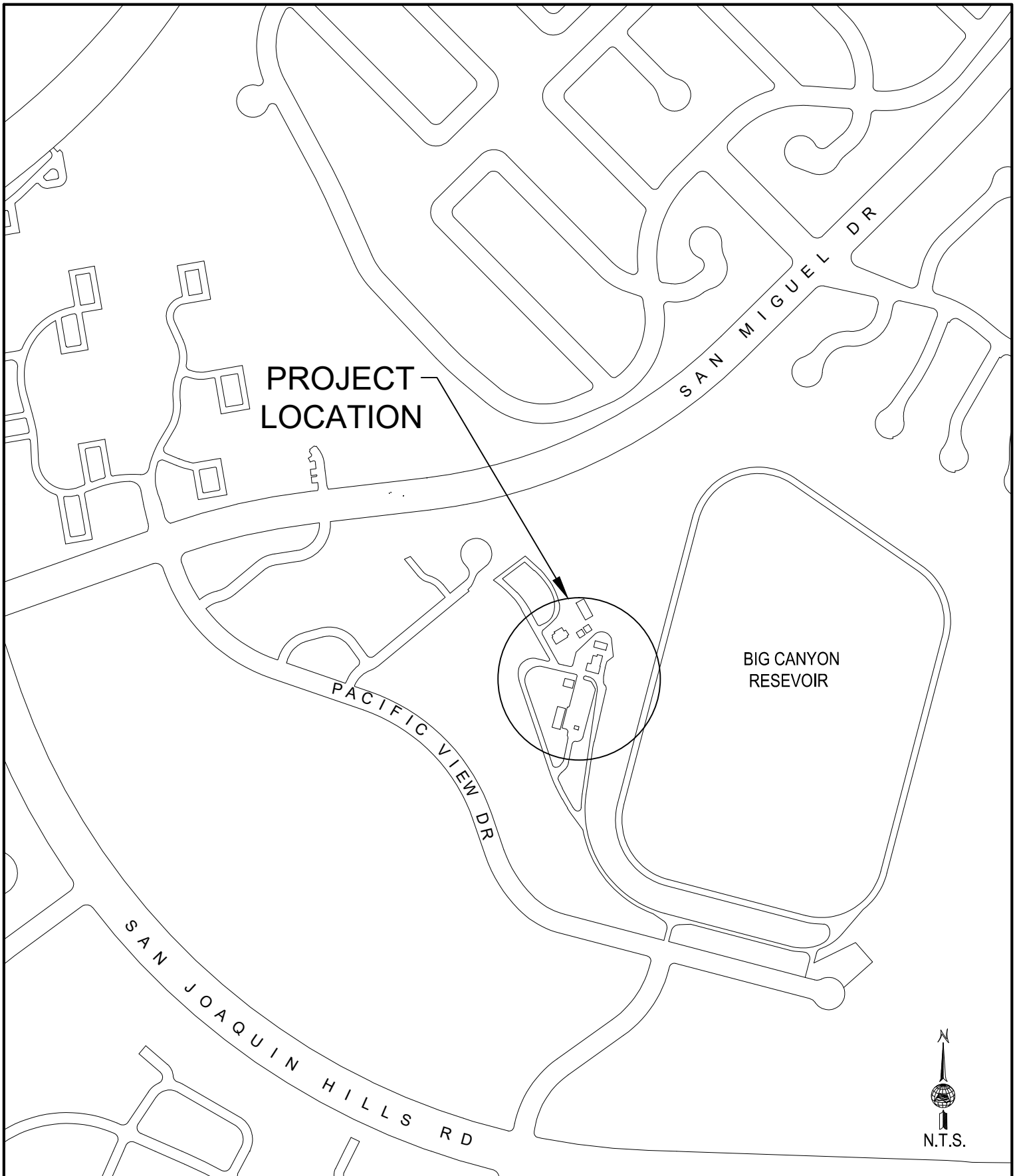
On August 8, 2017, City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(c) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

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



**BIG CANYON RESERVOIR FLOW METERING VAULT
AND TREATMENT IMPROVEMENTS
LOCATION MAP**

**CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT**

05/14/2019



CITY OF

NEWPORT BEACH

City Council Staff Report

May 14, 2019
Agenda Item No. 8

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

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

Peter Tauscher, Senior Civil Engineer - 949-644-3316,
ptauscher@newportbeachca.gov

TITLE: Newport Beach Junior Lifeguard Building Design – Approval of
Professional Services Agreement (19F13)

ABSTRACT:

Staff issued a Request for Proposals (RFP) for professional architectural, conceptual planning and engineering services to prepare concept plans, project permitting and construction documents for a Newport Beach Junior Lifeguard Building near the Balboa Pier. Staff requests City Council's approval to enter into a Professional Services Agreement with Jeff Katz Architecture (JKA).

RECOMMENDATION:

- a) Determine this action of hiring a design consultant is not subject to the California Environmental Quality Act ("CEQA") pursuant to 15060(c)(3), in that the activity is not a project as defined in Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3. The retention of a design consultant does not authorize any specific development or project and would only provide preliminary conceptual design options for a potential future project that would be subject to subsequent environmental review; and
- b) Approve a Professional Services Agreement with JKA of San Diego, California, for Newport Beach Junior Lifeguard Building project at a not-to-exceed price of \$420,000.00, and authorize Mayor and City Clerk to execute the Agreement.

FUNDING REQUIREMENTS:

The current adopted budget includes sufficient funding for the concept development (Phase 1) of this agreement. It will be expensed to the Junior Lifeguard Building account in the Capital Improvement Program budget, 53101-980000-19F13. Funding for the remaining design is included in the Proposed Budget Revisions Checklist for the FY 2019/20 Capital Improvement Program budget for City Council consideration.

DISCUSSION:

The Newport Beach Junior Lifeguard program was established in 1984 and quickly expanded over the years, becoming one of the City's most popular youth education programs. The program now employs about 60 instructors and averages over 1,400 program participants each summer. Several current lifeguards and full-time staff members started their lifeguarding experience as junior lifeguards. The current facility consists of a 2,160 square foot modular trailer system that has no water or sewer connections.

At the April 9, 2019 study session, staff presented the Junior Lifeguard Building project to Council, providing a program history, possible future building locations, building restrictions/options, preliminary costs estimates, and Junior Lifeguard Foundation fiduciary commitment. At the meeting, the Junior Lifeguard Foundation committed \$1,250,000 toward the cost of construction. Council directed staff to proceed with awarding the design contract for development of concept and replacement parking plans with the preferred project location nearest the current junior lifeguard facility in the A Street Parking lot. Additional considerations included that the design should account for junior lifeguard usage, off-season building rentals, and providing a parking neutral solution.

The FY 2018/19 Capital Improvement Program provides funding for conceptual planning and design. Consequently, staff invited seven (7) architectural design firms to submit proposals for consideration of the junior lifeguard building concept and final designs. Staff received four proposals and formed a review team consisting of staff from the Fire and Public Works Departments. Using a qualification-based selection process, each of the four proposals were evaluated and scored based on the consultant team's experience and qualifications, planning and design approach, design ideas, and projected level of effort. Through this process Jeff Katz Architecture (JKA) was unanimously selected as the most qualified and responsive firm for this project (scoring table below). JKA has an impressive record of accomplishments, having successfully completed several life safety building projects for various agencies throughout California.

RANK	PROPOSER	SCORE
1	JKA	92 / 100
2	RM Architecture	83 / 100
3	Gensler	80 / 100
4	Brandon Architects/MVE + Partners	71/100

The proposed not-to-exceed fee of \$420,000.00 is consistent with the level of design effort (work hours) that is required to complete this project. This work scope includes development of two conceptual designs: one for the Junior Lifeguard Building and another for the Main Street Parking Lot reconfiguration.

Upon completion and approval of these two concept plans, this contract then continues work to develop only the Junior Lifeguard Building concept: refining spaces, selecting materials, and working with utility companies on designs; preparing the environmental documents (e.g. CEQA, Coastal); and obtaining permits from regulatory agencies, preparing construction documents and providing contact administration. The Main Street Parking Lot will be separated from the building project, with construction documents generated reconfiguring the parking lot as a stand-alone construction project.

The time necessary to complete the concept design, obtain all the necessary regulatory approvals, complete the project design and award a project for construction is estimated at around 26 months. It is projected construction can start fall 2021.

ENVIRONMENTAL REVIEW:

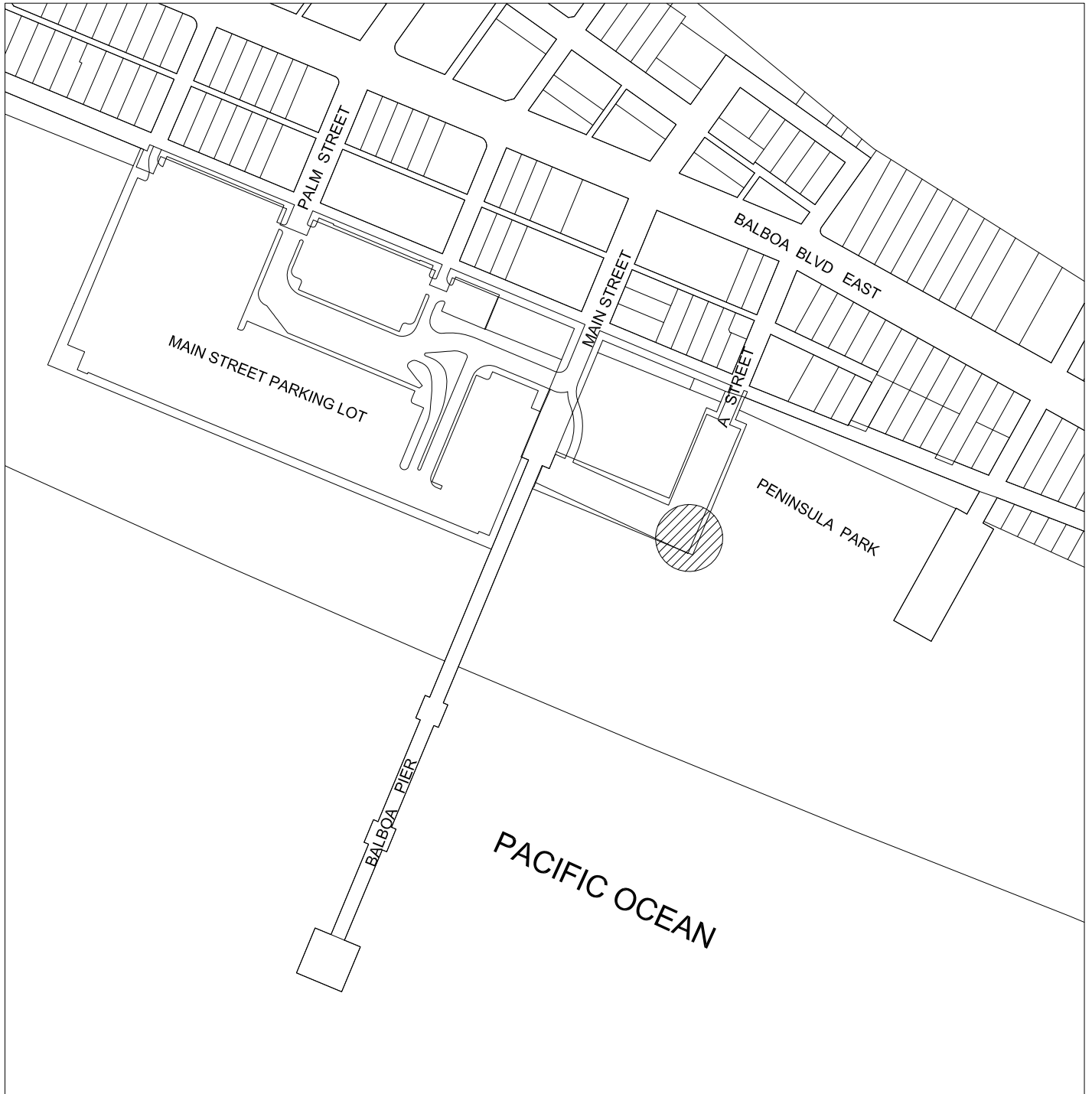
Staff recommends the City Council find this action of hiring a design consultant is not subject to the California Environmental Quality Act (“CEQA”) pursuant to 15060(c)(3), in that the activity is not a project as defined in Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3. The retention of a design consultant does not authorize any specific development or project and would only provide preliminary conceptual design options for a potential future project that would be subject to subsequent environmental review.

NOTICING:

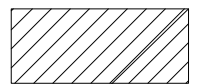
The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Location Map
Attachment B – Professional Services Agreement



NOT TO SCALE



PROJECT LIMITS

NEWPORT BEACH
JUNIOR LIFEGUARD BUILDING

LOCATION MAP

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

C-7261-01

5/14/2019

ATTACHMENT B

PROFESSIONAL SERVICES AGREEMENT WITH JEFF KATZ ARCHITECTURAL CORPORATION FOR NEWPORT BEACH JUNIOR LIFEGUARD BUILDING ENGINEERING AND ARCHITECTURE SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 14th day of May, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and JEFF KATZ ARCHITECTURAL CORPORATION, a California corporation ("Consultant"), whose address is 6353 Del Cerro Blvd, San Diego, California 92120, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to provide evaluation and design engineering and architectural services for the Newport Beach Junior Lifeguard Building 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 June 30, 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 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 **Four Hundred Twenty Thousand Dollars and 00/100 (\$420,000.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

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

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

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

5. PROJECT MANAGER

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

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

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

6. ADMINISTRATION

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

7. CITY'S RESPONSIBILITIES

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

8. STANDARD OF CARE

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably

competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws, and legally recognized professional standards.

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

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

9. HOLD HARMLESS

9.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, 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 (collectively, the "Indemnified Parties), from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), and which relate (directly or indirectly) to the negligence, recklessness, or willful misconduct of the Consultant or its principals, officers, agents, employees, vendors, suppliers, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them.

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

10. INDEPENDENT CONTRACTOR

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 CADD data delivered to City shall include the professional stamp of the engineer or architect in charge of or responsible for the Work. City agrees that Consultant shall not be liable for claims, liabilities or losses arising out of, or connected with (a) the

modification or misuse by City, or anyone authorized by City, of CADD data; (b) the decline of accuracy or readability of CADD data due to inappropriate storage conditions or duration; or (c) any use by City, or anyone authorized by City, of CADD data for additions to this Project, for the completion of this Project by others, or for any other Project, excepting only such use as is authorized, in writing, by Consultant. By acceptance of CADD data, City agrees to indemnify Consultant for damages and liability resulting from the modification or misuse of such CADD data. All original drawings shall be submitted to City in the version of AutoCAD used by the City in .dwg file format, on a CD, and should comply with the City's digital submission requirements for improvement plans available from the City's Public Works Department. The City will provide Consultant with City title sheets as AutoCAD file(s) in .dwg file format. All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

17.4 All improvement and/or construction plans shall be prepared with indelible waterproof ink or electrostatically plotted on standard twenty-four inch (24") by thirty-six inch (36") Mylar with a minimum thickness of three (3) mils. Consultant shall provide to City 'As-Built' drawings and a copy of digital Computer Aided Design and Drafting ("CADD") and Tagged Image File Format (.tiff) files of all final sheets within ninety (90) days after finalization of the Project. For more detailed requirements, a copy of the City of Newport Beach Standard Design Requirements is available from the City's Public Works Department.

18. OPINION OF COST

Any opinion of the construction cost prepared by Consultant represents the Consultant's judgment as a design professional and is supplied for the general guidance of City. Since Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinions as compared to Consultant or contractor bids or actual cost to City.

19. CONFIDENTIALITY

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

20. INTELLECTUAL PROPERTY INDEMNITY

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

21. RECORDS

Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate

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

22. WITHHOLDINGS

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

23. ERRORS AND OMISSIONS

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

24. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

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

25. CONFLICTS OF INTEREST

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

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

26. NOTICES

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

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

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

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

Attn: Jeff Katz, AIA
Jeff Katz Architectural Corporation
6353 Del Cerro Blvd.
San Diego, CA 92120

27. CLAIMS

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

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

Consultant shall be required to file such claim with the City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

28. TERMINATION

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

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

29. PREVAILING WAGES

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

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

subcontractor will engage in the performance of the Services unless currently registered and qualified to perform public work.

30. STANDARD PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON NEXT PAGE]

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

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

Date: 4/30/2019

By: *Aaron C. Harp*

For: Aaron C. Harp *new 4-30-19*
City Attorney

ATTEST:

Date: _____

By: _____

Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____

Diane B. Dixon
Mayor

CONSULTANT: Jeff Katz Architectural
Corporation, a California corporation

Date: _____

By: _____

Jeff Katz
Chief Executive Officer and Chief
Financial Officer

[END OF SIGNATURES]

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

EXHIBIT A SCOPE OF SERVICES

NEWPORT BEACH JUNIOR LIFEGUARD BUILDING ENGINEERING AND ARCHITECTURE SERVICES

Consultant shall perform the following Services:

PHASE 1

Phase 1 is based on developing a concept design for a single location, and developing a Pros and Cons summary of two alternate site locations for near the Balboa Pier area (to be determined). Detailed design drawings will not be prepared for the two alternate site locations. The Phase 1 scope will consist of:

- Conduct field observation of existing Junior Lifeguard facilities and surrounding areas.
- Meet with Project Team / stakeholders to discuss budget, program and design issues. The intent is to develop a detailed design program.
- Develop Preliminary Building Floor Plans and Building Elevations.
- Prepare conceptual site drawings indicating placement of structures and amenities on site. This will include the following: building site orientation, site ingress and egress, and miscellaneous site information.
- Preliminary Civil Plans including preliminary grading and utility plans.
- Provide topographic survey and Geotechnical Investigation for the single selected site.
- Prepare preliminary landscape and hardscape plans.
- Coordinate with City, systems requirements for existing or new equipment to be incorporated.
- Develop structural system consistent with design concept and prepare "Basis of Design" level narrative.
- Develop building mechanical, plumbing and electrical systems consistent with design concept and prepare Basis of Design level narrative.
- Conceptual Main Street Parking Lot Plan: Provide Conceptual Plans to replace the parking City is removing from the A Street Parking Lot, located at A Street west of Peninsula Park, to be even or increase parking in the Main Parking Lot located at Main Street directly west of the Balboa Pier. The Concept is to redesign the Main Street Parking Lot by removing the pay kiosk area and restripe the lot, to get more

parking and add 25 to 35 parking spaces, and to be able to show that if the Main Street Parking Lot is reconfigured, the JGLG Building will not leave a parking deficit.

- Develop Preliminary Cost Estimates based upon building systems. The estimates prepared at this phase will be generally square foot cost estimates for the various building components, and will include a design development contingency (to allow for potential increases as the design is refined further in the later stages of the project).
- Make required submissions to the City for review and approval. Drawings required for this submittal would include:
 - Site Plan;
 - Schematic Floor Plans;
 - Preliminary Grading Plan;
 - Preliminary Utility Plan;
 - Schematic Building Elevations; and
 - Conceptual Landscape Plans.

These drawings will include color and material callouts, as well as a colored building elevation drawings. No physical models are included in this submittal.

After approval of the concept design we will move into Phase 2, which will be further design refinement.

PHASE 2

- Refine design of Floor Plans, Building Elevations and Site Plan.
- Develop structural foundation and framing plans.
- Develop building mechanical, plumbing and electrical plans.
- Coordinate with City, systems for phone/data/cable requirements.
- Prepare preliminary Interior Elevations, Building Sections, Reflected Ceiling Plan and Roof Plan.
- Develop preliminary fixture and furniture layouts. A detailed Fixtures, Furniture and Equipment (“FFE”) package is not anticipated, but can be provided at a later date as an additional service.
- Prepare preliminary interior and exterior materials and color boards for review and selection.
- Develop detailed grading and utility plans.

- Prepare Storm Water Hydrology calculations and plans in accordance with local requirements.
- Develop preliminary line item Construction Cost Estimate based on actual building components. This estimate will be more detailed than the systems estimate prepared during schematic design.
- For Phase 2 we have included sixteen (16) team meetings.
- Attend and present at six evening or weekend community meetings with the public.

PHASE 3

- Prepare a schedule and pathway for obtaining all required permits.
- Prepare a preliminary Water Quality Management Plan ("WQMP").
- Prepare CEQA documentation for up to a Mitigated Negative Declaration.
- Assist the City in submitting plans to City Planning and to Coastal Commission. Scope under this proposal will include:
 - Prepare all required drawings;
 - Prepare written narratives to describe project design and design impacts;
 - Update Construction Cost Estimate;
 - Attend up to two meetings each for Planning/City Council and Coastal Commission related to CUP or Coastal approval; and
 - Make requested modifications to design and plans based on comments from Planning or Coastal. These modifications are assumed to be design oriented adjustments. Should significant redesign be required such as alternate site or building footprint then additional services and fees will be required.
- After receiving approvals on all required Discretionary permits we will proceed into Phase 4 – Construction Documents/Construction Administration.

PHASE 4

- Prepare drawings and specifications suitable for bidding to clearly delineate the Contractor's scope of work, including required civil, architectural, structural, mechanical, plumbing, electrical, and landscape design. It is assumed for this proposal that the City will provide all required General and Supplementary

Conditions and Bidding Information. Submittals will be made at 75%, 95% and Final and will include plans, calculations and specifications.

- Construction Documents will incorporate Geotechnical requirements and recommendations for soils preparation, foundation and paving design.
- Submit plans to local utility companies for review and approval. (Note: any required Utility Company fees are not included).
- Submit plans to City Building Department for Building permit plan check, and perform all required revisions to construction documents based on Building Department's plan check comments (Note: plan check and permit fees are not included).
- Update Construction Cost Estimate.
- Attend progress meetings with City staff (assume three meetings for this phase).
- Provide final original drawings and specifications (and electronic copies) for use in bid packages.
- Interpret and clarify contract documents for contractors, and assist in issuing addenda as required.
- Attend a Pre-Bid walk-thru at the site with all interested contractors.
- Participate in bid opening, review contractor's detailed cost breakdown, and assist the City in evaluation of the bids.

CONSTRUCTION CONTRACT ADMINISTRATION SERVICES

Construction contract administration services are based on an eight-month construction period, from Authorization to Proceed through Punchlist Inspection. The following services will be provided:

- Attend Pre-Construction conference.
- Review and approve or take other appropriate action upon Contractor's submittals and shop drawings as required by contract documents.
- Interpret contract documents (including all sub-consultant disciplines) for proper execution and progress of construction, including responding to contractor's requests for information and clarification, and issuing ASI's (Architect's Supplemental Instructions).
- Attend bi-weekly meetings (total of 16) during the course of construction to observe the project, and prepare site visit reports accordingly. Meetings shall include the

contractor and City representative to review progress of construction, review pending RFI and Change Order information, and observe the construction to verify work is proceeding in accordance with construction documents.

- Provide one site visit per discipline (by the respective engineers) for civil, structural, electrical, mechanical and landscape architecture, to review progress of construction and conformance with construction documents.
- Make one additional site visit to perform Punchlist Inspection, and one additional visit to perform Final Inspection. Punchlist Inspection will include a detailed listing of all items remaining to be completed by the Contractor. Final Inspection will certify that all work has been completed in accordance with construction documents.
- Assist City in review of contractor's initial and progress schedules and Schedule of Values.
- Assist in reviewing and processing contractor's progress payment requests, and certifying the amounts due to the contractor.
- Process contractor's building As-Built drawings, warranty information and related information by forwarding them to the City.

ADDITIONAL SERVICES TO BE PROVIDED AS REQUESTED BY CITY

The following items are not included in the Basic Services and will be provided as additional services only after written authorization is provided by City in advance. Unless a subsequent fixed fee proposal is provided, the work will be done on an hourly basis per the attached Hourly Rate Schedule. Additional Services not included in the basic scope of work include:

- Revisions to Concept Design resulting from City requested changes to documents previously approved by the City, or due to code or zoning changes made subsequent to City approval.
- Preparing separate construction document packages for "fast-tracking" construction work and/or preparing additional documents for alternate bid items.
- Services required because of significant changes in the project (not due to the design team's acts or omissions) including, but not limited to, size, quality, complexity, schedule, or the method for bidding and contracting for construction.
- Processing change requests for Owner requested changes, and for unforeseen site conditions, after bid, including revisions to Contract Documents, processing approval of revisions through the Building Department, and Change Order negotiation.

- Providing services in conjunction with evaluating substitutions proposed by the Contractor, and making subsequent revisions to Contract Documents resulting from such.
- Providing services made necessary by the default of the Contractor, by major deficiencies in the work of the Contractor, or by failure of performance of either the Owner or the Contractor under the Contract for Construction.
- Providing services in conjunction with arbitration proceedings or legal proceedings, except where the Architect is a party to such proceedings.
- Providing "Special Inspection" services required by law or the Contract Documents.
- Providing Phase One Environmental services for Soils, Asbestos or Lead survey and remediation.
- Preparation of drawings for work beyond project boundaries (site and immediate street frontage).
- Preparation of Public Improvement Plans.
- Traffic Engineering.
- Preparation of documentation to process the project through the US Green Building Council as a LEED project.
- Design of photo-voltaic electrical generation systems.
- Detailed line item construction cost estimates.
- Reimbursable expenses in excess of the amount provided below.
- Plan check and permit fees (if paid by the consultant) will be a reimbursable expense, charged at 1.1 times the Consultant's cost.
- All delivery, printing and reproduction costs will be a reimbursable expense, charged at 1.1 times the Consultant's cost.

**EXHIBIT B
SCHEDULE OF BILLING RATES**

**NEWPORT BEACH JUNIOR LIFEGUARD BUILDING
ENGINEERING AND ARCHITECTURE SERVICES**

Consultant shall provide the following:

Phase 1	\$ 65,000.00
Phase 2	\$ 90,000.00
Phase 3	\$ 35,000.00
Phase 4 – Construction Documents	\$135,000.00
Phase 4 – Construction Administration	\$ 50,000.00
Geotechnical Investigation	\$ 15,000.00
Topographic Survey	\$ 20,000.00
 Sub-Total	 \$410,000.00
 Reimbursable Expenses	 \$ 10,000.00
 Total Not to Exceed ("NTE"):	 \$420,000.00

HOURLY RATE SCHEDULE

The following rates apply to work performed on an hourly basis.

Principal Architect	\$ 230.00 per hour
Project Executive	\$ 190.00 per hour
Project Manager	\$ 180.00 per hour
Job Captain	\$ 145.00 per hour
Specification Writer	\$ 185.00 per hour
Construction Administrator	\$ 185.00 per hour
Drafter	\$ 115.00 per hour
Secretarial	\$ 85.00 per hour
Structural Engineer.....	\$ 200.00 per hour
Civil Engineer	\$ 200.00 per hour
Mechanical Engineer	\$ 200.00 per hour
Electrical Engineer	\$ 200.00 per hour
Landscape Architect	\$ 200.00 per hour

Reimbursable Expenses will be charged at 1.1 times the direct cost.

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 Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- 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.



CITY OF

NEWPORT BEACH

City Council Staff Report

May 14, 2019
Agenda Item No. 9

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Kyle Brodowski, Equipment Maintenance Superintendent,
kbrodowski@newportbeachca.gov

PHONE: 949-644-3059

TITLE: Approval and Award of Three (3) Maintenance and Repair Services
Agreements for As-Needed Painting Services

ABSTRACT:

The City currently utilizes three (3) on-call contractors to perform as-needed maintenance and repair and painting services at various City facilities. The current agreements expired on March 31, 2019. Upon completion of a recent request for proposal and selection process, staff requests City Council's approval to enter into three (3) new three-year agreements with Black and White Painting, Inc., Piana Construction & Painting, Inc., and TL Veterans Construction, Inc. to provide these services.

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 three (3) on-call maintenance and repair and painting services agreements for three-year terms with Black and White Painting, Inc., Piana Construction & Painting, Inc., and TL Veterans Construction, Inc. for a total of \$300,000 per agreement, and authorize the Mayor and City Clerk to execute the agreement(s).

FUNDING REQUIREMENTS:

Expenses for as-needed maintenance and repair and painting services are anticipated to be approximately \$300,000 per year for the next three years. The current and proposed budget includes sufficient funding for these services. It will be expensed to the Maintenance & Repair Building account in the Public Works Department, Account No. 0109041-851016, for most Facilities Maintenance projects.

DISCUSSION:

The City utilizes multiple on-call repair and maintenance and painting contractors in order to perform as-needed painting services at various City facilities. Many City structures (buildings, sheds, fences, gates, etc.) are affected by the corrosive nature of the sun, salt air, and high level of public use. Beach and park restrooms, Lifeguard towers, Lifeguard Headquarters, and our public piers require frequent painting due to the heavy usage and sea spray. In order to maintain all City structures in good working conditions and extend their useful life, regular painting is necessary. Having contractors on-call to perform this service ensures that all facilities around the City remain in good and presentable condition.

The City's current agreement(s) with Fox Painting Contractors, Piana Construction & Painting, Inc., and Tony Painting for as-needed repair and maintenance and painting services expired on March 31, 2019. Request for Proposals (RFP) was sent out in January 2019 and the City received seven proposals in response. A committee of three evaluators from the Public Works Department, as well as the City's Purchasing Agent reviewed the proposals and costs. Evaluators reviewed technical expertise based on responsiveness and experience. Three of the seven proposals received less than a score of 70 and were removed from consideration. Of the four remaining, technical ability was comparable; however, there was a wide range in pricing. The top three rated proposers scored well in technical and were the most competitive; therefore, staff recommends award, as shown below.

RANK	PROPOSER	TOTAL SCORE	Hourly Rate
1	Piana Construction & Painting, Inc.	93.33 / 100	\$52.00
2	Black and White Painting, Inc.	79.13 / 100	\$61.00
3	TL Veterans Construction, Inc.	77.88 / 100	\$67.22
4	Corner Keystone Construction Corporation	71.42/100	\$84.34

Staff recommends award of three new agreements for a three-year term for as-needed painting services with Piana Construction & Painting, Inc., Black and White Painting, Inc., and TL Veterans Construction, Inc. for a total not-to-exceed amount of \$900,000, or \$300,000 per 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 – Agreement with Black and White Painting, Inc.

Attachment B – Agreement with Piana Construction & Painting, Inc.

Attachment C – Agreement with TL Veterans Construction, Inc.

ATTACHMENT A

ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH BLACK AND WHITE PAINTING, INC. FOR AS-NEEDED PAINTING SERVICES

THIS ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 14th day of May, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and BLACK AND WHITE PAINTING, INC., a California corporation ("Contractor"), whose address is 21618 Saticoy St. #204 Canoga Park, California 91304, and is made with reference to the following:

RECITALS

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

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

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on May 1, 2022, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

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

2.1.1 A detailed description of the Services to be provided;

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

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

2.1.4 The time needed to finish the specific project.

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

3. TIME OF PERFORMANCE

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

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

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

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

4. COMPENSATION TO CONTRACTOR

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

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

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

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

5. PROJECT MANAGER

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

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

6. ADMINISTRATION

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

7. CITY'S RESPONSIBILITIES

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

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

8. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

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

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

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

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

9. RESPONSIBILITY FOR DAMAGES OR INJURY

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

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

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

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

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

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

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

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

10. INDEPENDENT CONTRACTOR

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

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

11. COOPERATION

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

12. CITY POLICY

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

13. PROGRESS

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

14. INSURANCE

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

15. BONDING

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

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

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

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

16. PREVAILING WAGES

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

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

17. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

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

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

18. SUBCONTRACTING

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

19. OWNERSHIP OF DOCUMENTS

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

20. CONFIDENTIALITY

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

21. RECORDS

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

22. WITHHOLDINGS

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

23. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

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

24. CONFLICTS OF INTEREST

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

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

25. NOTICES

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

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

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

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

Attn: Saul Lopez
Black and White Painting, Inc.
21618 Saticoy St. #204
Canoga Park, CA 91304

26. CLAIMS

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

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

27. TERMINATION

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

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

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

28. LABOR

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

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

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

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

29. STANDARD PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON NEXT PAGE]

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

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

Date: 4/1/2019

By: Aaron C. Harp

For: Aaron C. Harp
City Attorney

PD 4-1-19

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____

Diane Dixon
Mayor

ATTEST:

Date: _____

**CONTRACTOR: Black and White
Painting, Inc.,** a California corporation

Date: _____

By: _____

Leilani I. Brown
City Clerk

By: _____

Saul Lopez Velasco
Chief Executive Officer

Date: _____

By: _____

Saul Lopez
Secretary

[END OF SIGNATURES]

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

EXHIBIT A

SCOPE OF SERVICES

- To provide as-needed painting services at City facilities, including but not limited to, office buildings, community centers, fire stations and public restrooms.
- **DESCRIPTION OF PROJECT**
 - The Contractor shall furnish all material, labor, equipment and supervision necessary to perform the as-needed painting services at various City locations as requested by the City.
- **WORKING HOURS**
 - Normal working hours shall be between the hours of 7:00 a.m. and 4:30 p.m., Monday through Thursday; and 7:00 a.m. to 3:30 p.m., Friday.
- **WORKMANSHIP AND SUPERVISION**
 - All work shall meet with the approval of the Project Administrator. Any specific problem area which does not meet the conditions of the specifications set forth herein shall be called to the attention of the Contractor and if not corrected, payment to the Contractor will not be made until condition is corrected in a satisfactory manner as set forth in the specifications.
 - Unless otherwise stated, Contractor shall be responsible to provide all labor and materials to allow for successful project completion.
 - Contractor shall maintain a C-33 Painting and Decorating license at all time for the duration of the agreement.
 - Contractor shall maintain all work sites free of hazards to persons and/or property resulting from the Contractor's operations. Any hazardous condition noted by the Contractor, which is not a result of the Contractor's operations, shall be immediately reported to the City. Contractor shall be responsible for removing and cleaning any and all debris that occurs as a result of its operations under this Agreement.
 - Contractor shall comply with all hazardous materials disposal laws, rules, regulations and ordinances.
 - At all times, the Contractor will ensure at least one English speaking person is on site of any City assigned project.
 - Contractor shall be compensated for reasonable and allowable materials costs detailed in the billing rates and/or otherwise incurred under a particular letter proposal. Materials costs must be substantiated with invoices submitted by the contractor for materials used in performing the approved tasks issued under the subject letter proposal.

- Contractor's markup on materials required to perform the services described herein shall be fixed for the term of the agreement. In no case shall contractor's mark up for materials exceed fifteen percent (15%).
 - Receipts will be required and shall be provided by the Contractor to substantiate costs incurred by the contractor for all materials included in each invoice submitted to the City for payment.
 - **Contractor shall designate a specific employee or employees to provide services to the Police Department Headquarters, who shall be required to undergo a background check process prior to commencement of work.**
- **QUALITY OF MATERIALS**
 - The actual cost of all materials passed on to the City shall be wholesale cost of the material, plus the maximum overhead identified in the billing rates. The wholesale cost shall be the actual cost paid by the Contractor reflecting the best price, including discounts available. Receipts shall be required for reimbursements. City reserves the right to specify what type of material that will be purchased per project. All material purchases shall be preapproved by the City's Project Administrator. At no time shall the cost of materials exceed retail cost plus the approved overhead charge identified.
 - The City reserves the right to purchase materials directly and make them available to the Contractor. In the event the City exercises the option to purchase the materials, the following conditions will apply:
 - Contractor shall conform to all City practices and procedures.
 - All City purchases will be for the sole expressed use of and for the City.
 - The Contractor shall secure, store, inventory, distribute and control all materials entrusted to the Contractor's representatives. All materials and inventories shall be made available to the City upon request.

Technical Specifications

- The Contractor will provide cleaning, surface preparation, paint repair and repaint services at City Facilities, including but not limited to performance of the following tasks:
 - All surfaces being prepared for paint and the surrounding area are to be cleaned.
 - Protect other surfaces whether to be painted or not, against damage by painting and finishing work.
 - Preparation of painted surfaces shall include hand removal of damaged paint to primer or bare metal which shall be included in the cost of repainting.
 - All painted surfaces that require spot paint repair will have a complete paint application applied after spot repairs are completed. The complete element that

has received a spot repair shall be repainted, not just the location of the spot repair.

- Inspect all surfaces to be treated prior to the application of painting material and correct or repair all defects that might affect the work. Repairs shall include removal and replacement of rusted and/or damaged materials.
- Provide in advance of their use, Materials Safety Data Sheets (MSDS) for all products used by the Contractor under this agreement.
- All materials required to complete the services under this agreement shall be furnished by the contractor, unless agreed otherwise in writing by the parties.
- Upon approval of a letter proposal, the contractor shall notify the City's Project Administrator of the proposed source of supply of all materials to be used in the work and shall furnish samples of such materials as may be required by the City's Project Administrator.
- All work and materials covered by this scope and associated letter proposals shall be subject to inspection at any and all times by the City's designated Project Administrator.

- **SURFACE PREPARATION**

- Contractor shall:
 - Ensure that all repairs and repainting match all exterior or interior colors to existing color schemes of the building, facility, or item being painted unless the City directs otherwise.
 - Clean all surfaces to be painted or primed of all foreign material, including loose paint, chipped paint, rust scale, oil, grease, dirt, mildew, chemicals, attached or applied items or materials, and minor defects removed by light sanding, or any other material that may interfere with the proper application, adhesion, and longevity of the paint or applied material. Contractor shall not apply paint or other materials to wet, dusty, damp, dirty, finger marked, unfinished, rough or otherwise defective surfaces until such conditions have been properly remedied.
 - Remove all hardware items before painting including but not limited to electrical and telephone plates and covers, hardware from doors and frames, removable door numbers and signs, graphic letters and numbers, etc., and replace all items on completion of the painting work.
- Not apply paint in damp or rainy weather or at temperature below 50 degrees Fahrenheit.
- Provide undercoat paint when required, produced by the same manufacturer as the finish coat.

- Use only thinner approved by the paint manufacturer, and use only within the recommended limits.
- Sand and wash with a solution of TSP or equal or Glossy surfaces shall be sanded, washed with a solution of TSP or equal or treated with liquid sandpaper on all glossy surfaces to provide a roughened surface for proper adhesion.
- Remove all rust and corrosion from metal surfaces. Spot prime on the day of application all bare metal primed with a primer that will withstand exposure to the elements and also be compatible with subsequent finish coats. Spot repairs and application of primer coat, base coat and finish coat in accordance with specifications provided by the designated project administrator.
- Clean galvanized metal items with peeled paint with scrapers, sandpaper or wire brush to remove all damaged paint and properly primed before painting.
- **PAINT APPLICATION**
 - Contractor shall:
 - Apply all coats of all materials to manufacturer's specifications.
 - Apply finish coats that are free of all defects including but not limited to brush marks, sanding marks, runs, sags, skips, crawls, and holidays, regardless of number of coats applied.
 - Ensure that all exposed electrical conduit, hangers, outlet boxes, junction boxes, raceways, gutters, supporting frames, piping, ductwork, grilles, registers, insulation or unprimed electrical equipment in areas calling for finishing shall be painted with two coats of adjacent finish over prime coat.
 - Apply final coats with an even finish.
 - Provide and hang a sufficient number of "Wet Paint" signs to protect all newly painted finishes.
- **LABOR AND MATERIALS**
 - Contractor shall provide all labor, materials, and tools required for the provision of the required services.
 - Provide necessary equipment (i.e., ladders, ladder trucks, aerial lifts, scaffolding, etc.) required to perform the work specified in the Agreement which shall include those tools and equipment required for repairing/replacing of all equipment regardless of height.
 - Contractor shall provide all storage space needed for performance of this work in an off- site location. City facilities shall not be used for the storage of any material, tools or equipment required to perform this work.
 - All materials shall be new, high grade (commercial grade), free of defects, suitable for the specific purpose intended, and subject to the review and approval of the Project Administrator or his designee.

- Certain small parts, such as wire, nuts, bolts, screws, tape and other consumables shall be included as overhead in the labor cost quoted for a project.
- All guarantees and warranties obtainable by the contractor from manufacturers and vendors of equipment, in the performance of this contract, shall be extended to the City to the full extent of their terms.

EXHIBIT B

SCHEDULE OF BILLING RATES

	Hourly Rate	After Hours Rate ¹	Minimum Hours	Notice ²
Supervisor/Foreman	\$ 62.00	\$75.00	2	1 Day
Journeyman Painter	\$61.00	\$74.00	2	1 Day
Apprentice	\$31.00	\$45.00	2	1 Day
Helper	\$31.00	\$45.00	2	1 Day

Note: Hourly rates shall include all tools, equipment, insurances, vehicles, transportation, etc. necessary to do the work requested in the scope of services.

1. **After Hours Rate shall be any time outside of the normal business hours of Monday – Thursday, 7:00 am – 4:30 pm and Friday, 7:00 am – 3:30 pm.**
2. **Notice is the amount of time the contractor needs to report to the job site after the initial request by the Manager.**

EXHIBIT C

INSURANCE REQUIREMENTS – MAINTENANCE/REPAIR/JANITORIAL SERVICES

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

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

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

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

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

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

- A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Contractor sixty (60) calendar days advance written notice of such change. If such change results in substantial

additional cost to Contractor, City and Contractor may renegotiate Contractor's compensation.

- C. Right to Review Subcontracts. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- D. Enforcement of Agreement Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- G. City Remedies for Non-Compliance. If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.
- H. Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's

performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

- I. Contractor's Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

EXHIBIT D

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

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

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

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

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

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

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

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

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

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

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

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

By: _____
Aaron C. Harp
City Attorney

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

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

EXHIBIT E

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

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

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

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

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

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

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

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

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

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

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

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

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

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

By: _____
Aaron C. Harp
City Attorney

*NOTARY ACKNOWLEDGMENTS OF
CONTRACTOR AND SURETY MUST BE ATTACHED*

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ATTACHMENT B

ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH PIANA CONSTRUCTION & PAINTING, INC. FOR AS-NEEDED PAINTING SERVICES

THIS ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 14th day of May, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and PIANA CONSTRUCTION & PAINTING, INC., a California corporation ("Contractor"), whose address is 16352 Barneston St. Granada Hills, California 91344, and is made with reference to the following:

RECITALS

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

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

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on May 1, 2022, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

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

2.1.1 A detailed description of the Services to be provided;

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

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

2.1.4 The time needed to finish the specific project.

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

3. TIME OF PERFORMANCE

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

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

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

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

4. COMPENSATION TO CONTRACTOR

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

4.2 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name and/or classification of employee who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date

the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Contractor no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

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

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

5. PROJECT MANAGER

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

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

6. ADMINISTRATION

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

7. CITY'S RESPONSIBILITIES

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

8. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

8.1 Contractor shall use only the standard materials described in Exhibit A in performing Services under this Agreement. Any deviation from the materials described

in Exhibit A shall not be installed or utilized unless approved in advance and in writing by the Project Administrator.

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

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

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

9. RESPONSIBILITY FOR DAMAGES OR INJURY

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

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

9.3 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation,

defects in workmanship or materials or Contractor's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

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

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

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

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

10. INDEPENDENT CONTRACTOR

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

11. COOPERATION

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

12. CITY POLICY

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

13. PROGRESS

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

14. INSURANCE

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

15. BONDING

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

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

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

16. PREVAILING WAGES

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

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

17. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

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

18. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A and the Letter Proposal. Contractor shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein,

the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

19. OWNERSHIP OF DOCUMENTS

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

20. CONFIDENTIALITY

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

21. RECORDS

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

22. WITHHOLDINGS

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

23. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

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

24. CONFLICTS OF INTEREST

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

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

25. NOTICES

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

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

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

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

Attn: Joseph Papadopoulos
Piana Construction & Painting, Inc.
16352 Barneston St.
Granada Hills, CA 91344

26. CLAIMS

26.1 Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Contractor shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. Contractor and City expressly agree that in addition to any claims filing requirements set

forth in the Agreement, Contractor shall be required to file any claim Contractor may have against City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

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

27. TERMINATION

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

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

28. LABOR

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

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

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

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

29. STANDARD PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON NEXT PAGE]

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

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

Date: 4/2/2019

By: *Aaron C. Harp*
For: Aaron C. Harp RD 4-1-19
City Attorney

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

**CITY OF NEWPORT BEACH,
a California municipal corporation**

Date: _____

By: _____
Diane Dixon
Mayor

**CONTRACTOR: Piana Construction &
Painting, Inc., a California corporation**

Date: _____

By: _____
Danica Papadopoulos
Chief Executive Officer

Date: _____

By: _____
Joseph Papadopoulos
Chief Operations Officer

[END OF SIGNATURES]

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

EXHIBIT A

SCOPE OF SERVICES

- To provide as-needed painting services at City facilities, including but not limited to, office buildings, community centers, fire stations and public restrooms.
- **DESCRIPTION OF PROJECT**
 - The Contractor shall furnish all material, labor, equipment and supervision necessary to perform the as-needed painting services at various City locations as requested by the City.
- **WORKING HOURS**
 - Normal working hours shall be between the hours of 7:00 a.m. and 4:30 p.m., Monday through Thursday; and 7:00 a.m. to 3:30 p.m., Friday.
- **WORKMANSHIP AND SUPERVISION**
 - All work shall meet with the approval of the Project Administrator. Any specific problem area which does not meet the conditions of the specifications set forth herein shall be called to the attention of the Contractor and if not corrected, payment to the Contractor will not be made until condition is corrected in a satisfactory manner as set forth in the specifications.
 - Unless otherwise stated, Contractor shall be responsible to provide all labor and materials to allow for successful project completion.
 - Contractor shall maintain a C-33 Painting and Decorating license at all time for the duration of the agreement.
 - Contractor shall maintain all work sites free of hazards to persons and/or property resulting from the Contractor's operations. Any hazardous condition noted by the Contractor, which is not a result of the Contractor's operations, shall be immediately reported to the City. Contractor shall be responsible for removing and cleaning any and all debris that occurs as a result of its operations under this Agreement.
 - Contractor shall comply with all hazardous materials disposal laws, rules, regulations and ordinances.
 - At all times, the Contractor will ensure at least one English speaking person is on site of any City assigned project.
 - Contractor shall be compensated for reasonable and allowable materials costs detailed in the billing rates and/or otherwise incurred under a particular letter proposal. Materials costs must be substantiated with invoices submitted by the contractor for materials used in performing the approved tasks issued under the subject letter proposal.

- Contractor's markup on materials required to perform the services described herein shall be fixed for the term of the agreement. In no case shall contractor's mark up for materials exceed fifteen percent (15%).
- Receipts will be required and shall be provided by the Contractor to substantiate costs incurred by the contractor for all materials included in each invoice submitted to the City for payment.
- **Contractor shall designate a specific employee or employees to provide services to the Police Department Headquarters, who shall be required to undergo a background check process prior to commencement of work.**

- **QUALITY OF MATERIALS**

- The actual cost of all materials passed on to the City shall be wholesale cost of the material, plus the maximum overhead identified in the billing rates. The wholesale cost shall be the actual cost paid by the Contractor reflecting the best price, including discounts available. Receipts shall be required for reimbursements. City reserves the right to specify what type of material that will be purchased per project. All material purchases shall be preapproved by the City's Project Administrator. At no time shall the cost of materials exceed retail cost plus the approved overhead charge identified.
- The City reserves the right to purchase materials directly and make them available to the Contractor. In the event the City exercises the option to purchase the materials, the following conditions will apply:
 - Contractor shall conform to all City practices and procedures.
 - All City purchases will be for the sole expressed use of and for the City.
 - The Contractor shall secure, store, inventory, distribute and control all materials entrusted to the Contractor's representatives. All materials and inventories shall be made available to the City upon request.

Technical Specifications

- The Contractor will provide cleaning, surface preparation, paint repair and repaint services at City Facilities, including but not limited to performance of the following tasks:
 - All surfaces being prepared for paint and the surrounding area are to be cleaned.
 - Protect other surfaces whether to be painted or not, against damage by painting and finishing work.
 - Preparation of painted surfaces shall include hand removal of damaged paint to primer or bare metal which shall be included in the cost of repainting.
 - All painted surfaces that require spot paint repair will have a complete paint application applied after spot repairs are completed. The complete element that

has received a spot repair shall be repainted, not just the location of the spot repair.

- Inspect all surfaces to be treated prior to the application of painting material and correct or repair all defects that might affect the work. Repairs shall include removal and replacement of rusted and/or damaged materials.
- Provide in advance of their use, Materials Safety Data Sheets (MSDS) for all products used by the Contractor under this agreement.
- All materials required to complete the services under this agreement shall be furnished by the contractor, unless agreed otherwise in writing by the parties.
- Upon approval of a letter proposal, the contractor shall notify the City's Project Administrator of the proposed source of supply of all materials to be used in the work and shall furnish samples of such materials as may be required by the City's Project Administrator.
- All work and materials covered by this scope and associated letter proposals shall be subject to inspection at any and all times by the City's designated Project Administrator.

- **SURFACE PREPARATION**

- Contractor shall:
 - Ensure that all repairs and repainting match all exterior or interior colors to existing color schemes of the building, facility, or item being painted unless the City directs otherwise.
 - Clean all surfaces to be painted or primed of all foreign material, including loose paint, chipped paint, rust scale, oil, grease, dirt, mildew, chemicals, attached or applied items or materials, and minor defects removed by light sanding, or any other material that may interfere with the proper application, adhesion, and longevity of the paint or applied material. Contractor shall not apply paint or other materials to wet, dusty, damp, dirty, finger marked, unfinished, rough or otherwise defective surfaces until such conditions have been properly remedied.
 - Remove all hardware items before painting including but not limited to electrical and telephone plates and covers, hardware from doors and frames, removable door numbers and signs, graphic letters and numbers, etc., and replace all items on completion of the painting work.
- Not apply paint in damp or rainy weather or at temperature below 50 degrees Fahrenheit.
- Provide undercoat paint when required, produced by the same manufacturer as the finish coat.

- Use only thinner approved by the paint manufacturer, and use only within the recommended limits.
- Sand and wash with a solution of TSP or equal or Glossy surfaces shall be sanded, washed with a solution of TSP or equal or treated with liquid sandpaper on all glossy surfaces to provide a roughened surface for proper adhesion.
- Remove all rust and corrosion from metal surfaces. Spot prime on the day of application all bare metal primed with a primer that will withstand exposure to the elements and also be compatible with subsequent finish coats. Spot repairs and application of primer coat, base coat and finish coat in accordance with specifications provided by the designated project administrator.
- Clean galvanized metal items with peeled paint with scrapers, sandpaper or wire brush to remove all damaged paint and properly primed before painting.
- **PAINT APPLICATION**
 - Contractor shall:
 - Apply all coats of all materials to manufacturer's specifications.
 - Apply finish coats that are free of all defects including but not limited to brush marks, sanding marks, runs, sags, skips, crawls, and holidays, regardless of number of coats applied.
 - Ensure that all exposed electrical conduit, hangers, outlet boxes, junction boxes, raceways, gutters, supporting frames, piping, ductwork, grilles, registers, insulation or unprimed electrical equipment in areas calling for finishing shall be painted with two coats of adjacent finish over prime coat.
 - Apply final coats with an even finish.
 - Provide and hang a sufficient number of "Wet Paint" signs to protect all newly painted finishes.
- **LABOR AND MATERIALS**
 - Contractor shall provide all labor, materials, and tools required for the provision of the required services.
 - Provide necessary equipment (i.e., ladders, ladder trucks, aerial lifts, scaffolding, etc.) required to perform the work specified in the Agreement which shall include those tools and equipment required for repairing/replacing of all equipment regardless of height.
 - Contractor shall provide all storage space needed for performance of this work in an off- site location. City facilities shall not be used for the storage of any material, tools or equipment required to perform this work.
 - All materials shall be new, high grade (commercial grade), free of defects, suitable for the specific purpose intended, and subject to the review and approval of the Project Administrator or his designee.

- Certain small parts, such as wire, nuts, bolts, screws, tape and other consumables shall be included as overhead in the labor cost quoted for a project.
- All guarantees and warranties obtainable by the contractor from manufacturers and vendors of equipment, in the performance of this contract, shall be extended to the City to the full extent of their terms.

EXHIBIT B

SCHEDULE OF BILLING RATES

	Hourly Rate	After Hours Rate ¹	Minimum Hours	Notice ²
Supervisor/Foreman	\$ 53.00	\$80.00	8	6 Hours
Journeyman Painter	\$52.00	\$79.00	8	6 Hours
Apprentice	\$31.00	\$46.00	8	6 Hours
Helper	\$30.00	\$45.00	8	6 Hours

Note: Hourly rates shall include all tools, equipment, insurances, vehicles, transportation, etc. necessary to do the work requested in the scope of services.

- 1. After Hours Rate shall be any time outside of the normal business hours of Monday – Thursday, 7:00 am – 4:30 pm and Friday, 7:00 am – 3:30 pm.***
- 2. Notice is the amount of time the contractor needs to report to the job site after the initial request by the Manager.***

EXHIBIT C

INSURANCE REQUIREMENTS – MAINTENANCE/REPAIR/JANITORIAL SERVICES

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

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

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

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

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

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

- A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Contractor sixty (60) calendar days advance written notice of such change. If such change results in substantial

additional cost to Contractor, City and Contractor may renegotiate Contractor's compensation.

- C. Right to Review Subcontracts. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- D. Enforcement of Agreement Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- G. City Remedies for Non-Compliance. If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.
- H. Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's

performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

- I. Contractor's Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

EXHIBIT D

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

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

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

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

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

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

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

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

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

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

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

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

By: _____
Aaron C. Harp
City Attorney

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

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

EXHIBIT E

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

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

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

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

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

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

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

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

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

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

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

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

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

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

By:_____
Aaron C. Harp
City Attorney

*NOTARY ACKNOWLEDGMENTS OF
CONTRACTOR AND SURETY MUST BE ATTACHED*

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ATTACHMENT C

ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH TL VETERANS CONSTRUCTION, INC. FOR AS-NEEDED PAINTING SERVICES

THIS ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 14th day of May, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and TL VETERANS CONSTRUCTION, INC., a California corporation ("Contractor"), whose address is 520 S. La Fayette Park Pl. #101, Los Angeles, California 90057, and is made with reference to the following:

RECITALS

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

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

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on May 1, 2022, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

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

2.1.1 A detailed description of the Services to be provided;

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

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

2.1.4 The time needed to finish the specific project.

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

3. TIME OF PERFORMANCE

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

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

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

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

4. COMPENSATION TO CONTRACTOR

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

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

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

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

5. PROJECT MANAGER

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

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

6. ADMINISTRATION

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

7. CITY'S RESPONSIBILITIES

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

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

8. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

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

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

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

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

9. RESPONSIBILITY FOR DAMAGES OR INJURY

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

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

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

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

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

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

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

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

10. INDEPENDENT CONTRACTOR

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

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

11. COOPERATION

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

12. CITY POLICY

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

13. PROGRESS

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

14. INSURANCE

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

15. BONDING

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

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

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

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

16. PREVAILING WAGES

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

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

17. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

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

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

18. SUBCONTRACTING

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

19. OWNERSHIP OF DOCUMENTS

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

20. CONFIDENTIALITY

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

21. RECORDS

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

22. WITHHOLDINGS

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

23. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

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

24. CONFLICTS OF INTEREST

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

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

25. NOTICES

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

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

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

Attn: Claire Kim
TL Veterans Construction, Inc.
520 S. La Fayette Park Pl. #101
Los Angeles, CA 90057

26. CLAIMS

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

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

27. TERMINATION

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

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

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

28. LABOR

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

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

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

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

29. STANDARD PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON NEXT PAGE]

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

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 4/2/2019

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

By: Aaron C. Harp
For: Aaron C. Harp 4-2-19 AD
City Attorney

By: _____
Diane Dixon
Mayor

ATTEST:
Date: _____

CONTRACTOR: TL Veterans
Construction, Inc., a California
corporation
Date: _____

By: _____
Leilani I. Brown
City Clerk

By: _____
Theodore Gregory Lee
Chief Executive Officer/Secretary

[END OF SIGNATURES]

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

EXHIBIT A

SCOPE OF SERVICES

- To provide as-needed painting services at City facilities, including but not limited to, office buildings, community centers, fire stations and public restrooms.
- **DESCRIPTION OF PROJECT**
 - The Contractor shall furnish all material, labor, equipment and supervision necessary to perform the as-needed painting services at various City locations as requested by the City.
- **WORKING HOURS**
 - Normal working hours shall be between the hours of 7:00 a.m. and 4:30 p.m., Monday through Thursday; and 7:00 a.m. to 3:30 p.m., Friday.
- **WORKMANSHIP AND SUPERVISION**
 - All work shall meet with the approval of the Project Administrator. Any specific problem area which does not meet the conditions of the specifications set forth herein shall be called to the attention of the Contractor and if not corrected, payment to the Contractor will not be made until condition is corrected in a satisfactory manner as set forth in the specifications.
 - Unless otherwise stated, Contractor shall be responsible to provide all labor and materials to allow for successful project completion.
 - Contractor shall maintain a C-33 Painting and Decorating license at all time for the duration of the agreement.
 - Contractor shall maintain all work sites free of hazards to persons and/or property resulting from the Contractor's operations. Any hazardous condition noted by the Contractor, which is not a result of the Contractor's operations, shall be immediately reported to the City. Contractor shall be responsible for removing and cleaning any and all debris that occurs as a result of its operations under this Agreement.
 - Contractor shall comply with all hazardous materials disposal laws, rules, regulations and ordinances.
 - At all times, the Contractor will ensure at least one English speaking person is on site of any City assigned project.
 - Contractor shall be compensated for reasonable and allowable materials costs detailed in the billing rates and/or otherwise incurred under a particular letter proposal. Materials costs must be substantiated with invoices submitted by the contractor for materials used in performing the approved tasks issued under the subject letter proposal.

- Contractor's markup on materials required to perform the services described herein shall be fixed for the term of the agreement. In no case shall contractor's mark up for materials exceed fifteen percent (15%).
- Receipts will be required and shall be provided by the Contractor to substantiate costs incurred by the contractor for all materials included in each invoice submitted to the City for payment.
- **Contractor shall designate a specific employee or employees to provide services to the Police Department Headquarters, who shall be required to undergo a background check process prior to commencement of work.**

- **QUALITY OF MATERIALS**

- The actual cost of all materials passed on to the City shall be wholesale cost of the material, plus the maximum overhead identified in the billing rates. The wholesale cost shall be the actual cost paid by the Contractor reflecting the best price, including discounts available. Receipts shall be required for reimbursements. City reserves the right to specify what type of material that will be purchased per project. All material purchases shall be preapproved by the City's Project Administrator. At no time shall the cost of materials exceed retail cost plus the approved overhead charge identified.
- The City reserves the right to purchase materials directly and make them available to the Contractor. In the event the City exercises the option to purchase the materials, the following conditions will apply:
 - Contractor shall conform to all City practices and procedures.
 - All City purchases will be for the sole expressed use of and for the City.
 - The Contractor shall secure, store, inventory, distribute and control all materials entrusted to the Contractor's representatives. All materials and inventories shall be made available to the City upon request.

Technical Specifications

- The Contractor will provide cleaning, surface preparation, paint repair and repaint services at City Facilities, including but not limited to performance of the following tasks:
 - All surfaces being prepared for paint and the surrounding area are to be cleaned.
 - Protect other surfaces whether to be painted or not, against damage by painting and finishing work.
 - Preparation of painted surfaces shall include hand removal of damaged paint to primer or bare metal which shall be included in the cost of repainting.
 - All painted surfaces that require spot paint repair will have a complete paint application applied after spot repairs are completed. The complete element that

has received a spot repair shall be repainted, not just the location of the spot repair.

- Inspect all surfaces to be treated prior to the application of painting material and correct or repair all defects that might affect the work. Repairs shall include removal and replacement of rusted and/or damaged materials.
- Provide in advance of their use, Materials Safety Data Sheets (MSDS) for all products used by the Contractor under this agreement.
- All materials required to complete the services under this agreement shall be furnished by the contractor, unless agreed otherwise in writing by the parties.
- Upon approval of a letter proposal, the contractor shall notify the City's Project Administrator of the proposed source of supply of all materials to be used in the work and shall furnish samples of such materials as may be required by the City's Project Administrator.
- All work and materials covered by this scope and associated letter proposals shall be subject to inspection at any and all times by the City's designated Project Administrator.

- **SURFACE PREPARATION**

- Contractor shall:
 - Ensure that all repairs and repainting match all exterior or interior colors to existing color schemes of the building, facility, or item being painted unless the City directs otherwise.
 - Clean all surfaces to be painted or primed of all foreign material, including loose paint, chipped paint, rust scale, oil, grease, dirt, mildew, chemicals, attached or applied items or materials, and minor defects removed by light sanding, or any other material that may interfere with the proper application, adhesion, and longevity of the paint or applied material. Contractor shall not apply paint or other materials to wet, dusty, damp, dirty, finger marked, unfinished, rough or otherwise defective surfaces until such conditions have been properly remedied.
 - Remove all hardware items before painting including but not limited to electrical and telephone plates and covers, hardware from doors and frames, removable door numbers and signs, graphic letters and numbers, etc., and replace all items on completion of the painting work.
- Not apply paint in damp or rainy weather or at temperature below 50 degrees Fahrenheit.
- Provide undercoat paint when required, produced by the same manufacturer as the finish coat.

- Use only thinner approved by the paint manufacturer, and use only within the recommended limits.
- Sand and wash with a solution of TSP or equal or Glossy surfaces shall be sanded, washed with a solution of TSP or equal or treated with liquid sandpaper on all glossy surfaces to provide a roughened surface for proper adhesion.
- Remove all rust and corrosion from metal surfaces. Spot prime on the day of application all bare metal primed with a primer that will withstand exposure to the elements and also be compatible with subsequent finish coats. Spot repairs and application of primer coat, base coat and finish coat in accordance with specifications provided by the designated project administrator.
- Clean galvanized metal items with peeled paint with scrapers, sandpaper or wire brush to remove all damaged paint and properly primed before painting.
- **PAINT APPLICATION**
 - Contractor shall:
 - Apply all coats of all materials to manufacturer's specifications.
 - Apply finish coats that are free of all defects including but not limited to brush marks, sanding marks, runs, sags, skips, crawls, and holidays, regardless of number of coats applied.
 - Ensure that all exposed electrical conduit, hangers, outlet boxes, junction boxes, raceways, gutters, supporting frames, piping, ductwork, grilles, registers, insulation or unprimed electrical equipment in areas calling for finishing shall be painted with two coats of adjacent finish over prime coat.
 - Apply final coats with an even finish.
 - Provide and hang a sufficient number of "Wet Paint" signs to protect all newly painted finishes.
- **LABOR AND MATERIALS**
 - Contractor shall provide all labor, materials, and tools required for the provision of the required services.
 - Provide necessary equipment (i.e., ladders, ladder trucks, aerial lifts, scaffolding, etc.) required to perform the work specified in the Agreement which shall include those tools and equipment required for repairing/replacing of all equipment regardless of height.
 - Contractor shall provide all storage space needed for performance of this work in an off- site location. City facilities shall not be used for the storage of any material, tools or equipment required to perform this work.
 - All materials shall be new, high grade (commercial grade), free of defects, suitable for the specific purpose intended, and subject to the review and approval of the Project Administrator or his designee.

- Certain small parts, such as wire, nuts, bolts, screws, tape and other consumables shall be included as overhead in the labor cost quoted for a project.
- All guarantees and warranties obtainable by the contractor from manufacturers and vendors of equipment, in the performance of this contract, shall be extended to the City to the full extent of their terms.

EXHIBIT B

SCHEDULE OF BILLING RATES

	Hourly Rate	After Hours Rate ¹	Minimum Hours	Notice ²
Supervisor/Foreman	\$ 75.78	\$89.21	2	24 Hours
Journeyman Painter	\$67.22	\$88.15	4	48 Hours
Apprentice	\$47.96	\$67.94	2	72 Hours
Helper	\$35.48	\$41.98	4	48 Hours

Note: Hourly rates shall include all tools, equipment, insurances, vehicles, transportation, etc. necessary to do the work requested in the scope of services.

1. **After Hours Rate shall be any time outside of the normal business hours of Monday – Thursday, 7:00 am – 4:30 pm and Friday, 7:00 am – 3:30 pm.**
2. **Notice is the amount of time the contractor needs to report to the job site after the initial request by the Manager.**

EXHIBIT C

INSURANCE REQUIREMENTS – MAINTENANCE/REPAIR/JANITORIAL SERVICES

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

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

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

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

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

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

- A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Contractor sixty (60) calendar days advance written notice of such change. If such change results in substantial

additional cost to Contractor, City and Contractor may renegotiate Contractor's compensation.

- C. Right to Review Subcontracts. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- D. Enforcement of Agreement Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- G. City Remedies for Non-Compliance. If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.
- H. Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's

performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

- I. Contractor's Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

EXHIBIT D

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

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

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

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

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

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

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

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

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

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

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

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

By: _____
Aaron C. Harp
City Attorney

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

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

EXHIBIT E

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

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

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

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

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

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

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

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

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

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

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

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

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

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

By: _____
Aaron C. Harp
City Attorney

*NOTARY ACKNOWLEDGMENTS OF
CONTRACTOR AND SURETY MUST BE ATTACHED*

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)



CITY OF

NEWPORT BEACH

City Council Staff Report

May 14, 2019
Agenda Item No. 10

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Kevin Pekar, City Arborist, kpekar@newportbeachca.gov
PHONE: 949-644-3197

TITLE: Amendment No. One for As-Needed Plant Healthcare Services with
RPW Services, Inc. (C-7116-1)

ABSTRACT:

The City utilizes a contractor to provide plant healthcare services for City trees and landscaping. In an effort to improve the City's level of service and to maintain a quality urban forest, staff recommends approval of an amendment to our Maintenance Agreement 7116-1 with RPW Services, Inc. to extend the expiration date by two years and increase spending authority.

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 Amendment No. One with RPW Services, Inc. for As-Needed Plant Healthcare Services to extend the expiration date by two years and increase the contract amount by \$120,000, for a new multi-year not-to-exceed total of \$240,000, and authorize the Mayor and City Clerk to sign the amendment.

FUNDING REQUIREMENTS:

The current adopted budget, and as proposed in the next fiscal year budget, includes sufficient funding for this expense. Contract cost are expensed to the Professional Services account (Parks and Trees Section) of the Public Works Department, 0109032-811008.

DISCUSSION:

The current three-year contract for tree and plant health care services with RPW Services Inc. was executed on July 1, 2017 for a total not-to-exceed amount of \$120,000. RPW primarily conducts tree health maintenance services including as-needed fertilization, growth and fruit control treatments and related pest control for the City's vast urban forest. RPW also provides professional tree and landscape inspections and consultation, and other tree and plant related services.

Pest control for City trees, palms and large shrubs provided by RPW Inc. under this contract includes such measures as organic bio-control methods, foliar treatments for insects and fungus, and growth hormones and antibiotics applications. Depending on the health services required, these treatments are typically either applied to the root zone, topically spot applied, injected directly into the tree/plant, or sprayed onto the tree/plant. Treatments are conducted on an as-needed basis, typically once or twice a year on the identified trees of concern. RPW has not provided weed control under their current contract; however, has the ability to provide this service if necessary. General City landscaping health and pest control services for parks, roadsides and streets medians is primarily included in the maintenance contracts conducted by other city contractors who directly care for those facilities.

Many new tree and landscape pests are introduced to Southern California annually. To combat these new infestations, maintaining good tree and plant health as well as early detection and preventative treatments are necessary in order to preserve the City's urban forest and natural resources. With the introduction of several new invasive pests over the last decade, we have also seen the need for new treatment methods for threatened City trees, both with active infestations that need immediate foliar treatments and those trees that can be systemically treated to prevent future outbreaks. Using integrated pest management principles, the City is utilizing new treatments, including the use of biological controls, such as the use of predatory insects (ladybugs), as the first priority to control pest insects.

The proposed amendment will extend the current contract by two additional years of service, add additional funding for said services and continue our pro-active program more effectively to protect our vast tree inventory. Additionally, the proposed amendment will allow RPW Services Inc. to include the ability to provide pest control recommendations to the City in accordance with the City's Integrated Pest Management Policy, which enable City staff and our maintenance contractors to conduct as-needed treatments in various areas of the City.

ENVIRONMENTAL REVIEW:

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

NOTICING:

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

ATTACHMENT:

Attachment A – Amendment No. One to On-Call Maintenance/Repair Agreement

ATTACHMENT A

AMENDMENT NO. ONE TO ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH RPW SERVICES, INC. FOR AS-NEEDED PLANT HEALTHCARE SERVICES

THIS AMENDMENT NO. ONE TO ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Amendment No. One") is made and entered into as of this 14th day of May, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and RPW SERVICES, INC., a California corporation ("Contractor"), whose address is P.O. Box 2342, Fullerton, California 92837, and is made with reference to the following:

RECITALS

- A. On July 1, 2017, City and Contractor entered into an On-Call Maintenance/Repair Services Agreement ("Agreement") for on-call maintenance and/or repair services for City ("Project").
- B. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the maintenance and/or repair services described in the Agreement.
- C. The parties desire to enter into this Amendment No. One to supplement the Scope of Work, increase the total compensation to Contractor due to the increased volume of Work under the Agreement, and extend the term of the Agreement to June 30, 2022.

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

1. TERM

Section 1 of the Agreement is amended in its entirety and replaced with the following: "The term of this Agreement shall commence on the Effective Date, and shall terminate on June 30, 2022, unless terminated earlier as set forth herein."

2. SERVICES TO BE PERFORMED

Exhibit A to the Agreement shall be supplemented to include the Scope of Services, attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). Exhibit A to the Agreement, and Exhibit A to this Amendment No. One shall collectively be known as "Exhibit A." The City may elect to delete certain Services within the Scope of Services at its sole discretion.

3. COMPENSATION TO CONTRACTOR

Exhibit B to the Agreement shall be supplemented to include the Schedule of Billing Rates, attached hereto as Exhibit B and incorporated herein by reference. Exhibit

B to the Agreement and Exhibit B to Amendment No. One shall collectively be known as "Exhibit B."

Section 4.1 of the Agreement is amended in its entirety and replaced with the following: "City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Two Hundred Forty Thousand Dollars and 00/100 (\$240,000.00)**, without prior written amendment to the Agreement."

The total amended compensation reflects Contractor's additional compensation for additional Services to be performed in accordance with this Amendment No. One, including all reimbursable items and subconsultant fees, in an amount not to exceed **One Hundred Twenty Thousand Dollars and 00/100 (\$120,000.00)**.

4. INTEGRATED CONTRACT

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

[SIGNATURES ON NEXT PAGE]

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

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

Date: 4/22/19

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By:  Aaron C. Harp
City Attorney *and 4-17-19*

By: _____
Diane B. Dixon
Mayor

ATTEST:

Date: _____

CONSULTANT: RPW SERVICES, INC., a
California corporation

Date: _____

By: _____
Leilani I. Brown
City Clerk

By: _____
Paul Webb
President

Date: _____

By: _____
Karla Webb
Chief Financial Officer

[END OF SIGNATURES]

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

EXHIBIT A SCOPE OF SERVICES

Contractor shall provide pest control advisor services as follows:

- Annually provide written pest control recommendations, as requested by the City, with SDS sheets and pesticide labels, for use by trained City Staff in select areas.

EXHIBIT B
SCHEDULE OF BILLING RATES

Pest Control Recommendations written by a Pest Control Advisor, for use by trained City Staff in select areas, shall be billed at the rate of \$125.00 each.



CITY OF

NEWPORT BEACH

City Council Staff Report

May 14, 2019
Agenda Item No. 11

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Angela Crespi, Administrative Manager, Fire Department
acrespi@newportbeachca.gov
Mary Locey, Administrative Analyst, City Manager's Office
mlocey@newportbeachca.gov

PHONE: 949-644-3352 | 949-644-3031

TITLE: Approve Two Professional Services Agreements with Red 88 Media, LLC for Video Production Services

ABSTRACT:

Administered by the Fire Department, the Newport Beach Junior Lifeguard program has a long-standing history of utilizing professional video production services to produce an annual video. In addition, the City Manager's Office requires the services of a professional video production firm to provide on-call strategic, comprehensive, and educational video services for major community-wide efforts. In early 2019, the City's Purchasing staff issued a formal Request for Proposal (RFP) and the procurement process identified Red 88 Media, LLC as the highest-qualified proposer for video production services. Due to the varied scopes of work, staff proposes the award of two separate professional services agreements to secure the required services.

RECOMMENDATIONS:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- b) Approve a five-year Professional Services Agreement with Red 88 Media, LLC for production of the annual Junior Lifeguard program video for a total not-to-exceed amount of \$235,953.52 (\$45,000 to \$50,000 per year), and authorize the Mayor and City Clerk to execute the agreement; and
- c) Approve a one-year On-Call Professional Services Agreement with Red 88 Media, LLC to provide the City Manager's Office with strategic, comprehensive, and educational video production services for a not-to-exceed amount of \$9,000, and authorize the City Manager and City Clerk to execute the agreement.

FUNDING REQUIREMENTS:

Fire Department

The current adopted budget includes sufficient funding for award of this service. Funding for this service is partially recovered from fees charged to the Junior Lifeguard program. The annual cost of services will be expensed to the Junior Lifeguard, Professional and Technical Services account in the Fire Department, 01040405-811008.

City Manager's Office

The current adopted budget includes sufficient funding for award of this service. It will be expensed to the Public Information Office, Professional and Technical Services account in the City Manager's Office, 01020201-811008.

DISCUSSION:

Services for the Fire Department

The Junior Lifeguard program is one of the most popular youth-based recreational programs in Newport Beach. The seven-week summer program offers education, beach environment awareness, water safety, and fun for 1,400 participants ranging in age from nine to 15. The number of returning families year-to-year is a testament to the quality of the program and the overall value relative to program cost. In addition to the popular uniform items, program participants receive an annual video highlighting various activities and events. Children, parents, and grandparents alike enjoy the family friendly, loosely storied videos that feature a unique theme each year.

Due to expiration of the previous Professional Services Agreement for the Junior Lifeguard Program video production, the Fire Department prepared specifications to solicit a new vendor to provide services beginning with the upcoming 2019 summer program. Staff is excited to change the delivery of the videos from the former 20-minute feature film to a six "episode" miniseries format where short videos will be released every one to two weeks.

The Junior Lifeguard program has many moving parts as 1,400 participants are moved in and out of activities each day. The selected vendor must independently navigate through these activities to capture live aerial footage, ground level footage, and footage in and from the water. For that reason, staff is requesting a five-year agreement with the selected vendor so that they may become accustomed to the program and work relatively independently after the first year.

Services for the City Manager's Office

The City Manager's Office has an existing agreement with Newport Beach and Company (NB&Co.) to provide video production and management of the City's government access channel, Newport Beach Television (NBTV). Per the agreement with NB&Co., the video production services are for specific items such as filming and producing City Council and Planning Commission meetings and a variety of programs highlighting City services and City sponsored community events.

Staff has identified a need to produce topic-specific educational videos that require a full-service, professional media company to assist from concept to completion. This includes working closely with staff to develop the creative strategy, scripts and storyboards, identify shooting locations, coordinate speaker appearances and make-up (if needed), and filming, editing and producing video content. These videos will be distributed through targeted social media campaigns and other resources in addition to scheduling for broadcast on NBTv.

The scope of work proposed for Red 88 exceeds the services provided by NB&Co. In addition to camera operators and video editors, Red 88 offers strategic planning and vision, a cinematographer, animator and a hair and make-up artist to round out its services. Red 88 owns a complete and comprehensive stock of professional equipment, from cameras to drones, as well as postproduction and media software to generate professional and engaging videos.

Educating the community with video would be of significant value for the City's on-going communication efforts. Having Red 88 as an on-call resource to address highly complex issues, such as the City's current efforts to minimize the impacts of John Wayne Airport, ensures that the resources are readily available.

While the contract amount of \$9,000 is within the signing authority of staff per Council Policy F-14, and funds are available for the on-call services, staff is bringing the matter to the City Council in an effort to be transparent about the award of these services.

Vendor Selection Process

Using specifications provided by the Fire Department, the City's Purchasing staff issued a formal Request for Proposal ("RFP") solicitation for video production services related to the Junior Lifeguard Program. RFP 19-52 was posted on the City's public procurement system (PlanetBids) and distributed directly to known providers of video production services. The RFP yielded a total of nine responses. Six of the responders did not meet the minimum 70% rating.

The evaluation panel assigned to this RFP consisted of City staff from the Lifeguard Division of the Fire Department and the City Manager's Office. The evaluation panel was responsible for reviewing all proposals and rating them on technical factors such as:

- Experience in providing video production services;
- Specific project history in recording in outdoor and public settings;
- Successful projects of a similar scope and nature; and
- Technical qualifications of the project team.

Proposers were also required to submit work samples of previous projects. The panel rated these samples as part of the overall evaluation process.

The City's Purchasing staff reviewed the cost submittals of the three finalists. The basis of pricing used for comparison was that of a miniseries model, requiring the proposers to price out the annual cost of professionally filming, editing and producing six episodes on the Junior Lifeguard program, with each episode running seven to 10 minutes in length.

The following table provides the final ranking; technical scores from the evaluation panel proposal review and interviews; cost scores from Purchasing staff review; and overall scores. In addition, the table provides annual costs from each of the finalists, as well as a five year cost to reflect the term of the proposed contract. The RFP stipulated that proposals needed to earn a minimum of 70% of the possible Technical Score in order to advance and have their associated costs evaluated. The proposers listed in the table are the three that met this requirement.

Rank	Proposer	Technical Score (Max 80)	Cost Score (Max 20)	Overall Score (Max 100)	Annual Cost	5-Year Cost
1	Red 88 Media, LLC	61.83	20.00	81.83	\$45,519.18	\$235,954.45*
2	GOAL Productions, Inc.	62.50	14.53	77.03	\$64,953.00	\$324,765.00
3	Dynamic Video Communications	60.33	13.96	74.29	\$67,600.00	\$338,000.00

*Includes an annual increase of three percent beginning in year three.

As a result of this formal procurement process, the City identified Red 88 Media as the highest-qualified proposer for video production services. The balance of a high technical score and lowest cost to the City compared to the other finalists makes Red 88 Media the best value to the City for this project.

Red 88 Media cited extensive project history and references in providing video production services to various public agency clients, including the City of Monrovia, Temple City, Sierra Madre, as well as the Metro Gold Line Extension program. They also possess experience filming in outdoor settings and recreational programs, which instills confidence that they can successfully handle this project.

Staff is requesting the approval of two professional services agreements with Red 88 to provide video production services for the Fire Department's Junior Lifeguard program and on-call services for the City Manager's Office.

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 – Five-year Professional Services Agreement with Red 88 Media, LLC

Attachment B – On-Call Professional Services Agreement with Red 88 Media, LLC

Attachment A

Five-year Professional Services Agreement with Red 88 Media, LLC

**PROFESSIONAL SERVICES AGREEMENT
WITH RED 88 MEDIA, LLC FOR
JUNIOR LIFEGUARD PROGRAM VIDEO PRODUCTION**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 14th day of May, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and RED 88 MEDIA, LLC, a California limited liability company ("Consultant"), whose address is 600 Parkrose Ave. Monrovia, CA 91016, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to provide video production services for the Junior Lifeguard Program ("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 August 31, 2024, 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 **Two Hundred Thirty Five Thousand Nine Hundred Fifty Three Dollars and 52/100 (\$235,953.52)**, 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 Upon the third anniversary of the Effective Date and upon each anniversary of the Effective Date thereafter, the billing rates set forth in Exhibit B ("Billing Rates") shall be adjusted in proportion to changes in the Consumer Price Index, subject to the maximum adjustment set forth below. Such adjustment shall be made by multiplying the Billing Rates in Exhibit B by a fraction, the numerator of which is the value of the Consumer Price Index for the calendar month three (3) months preceding the calendar month for which such adjustment is to be made, and the denominator of which is the value of the Consumer Price Index for the same calendar month immediately prior to Effective Date. The Consumer Price Index to be used in such calculation is the "Consumer Price Index, All Items, 1982-84=100 for All Urban Consumers (CPI-U)", for the Los Angeles-Riverside-Orange County Metropolitan Area, published by the United States Department of Labor, Bureau of Labor Statistics. If both an official index and one or more unofficial indices are published, the official index shall be used. If said Consumer Price Index is no longer published at the adjustment date, it shall be constructed by conversion tables included in such new index. In no event, however, shall the amount payable under this Agreement be reduced below the Billing Rates in effect immediately preceding such adjustment. The maximum adjustment increase to the Billing Rates, for any year where

an adjustment is made pursuant to this Section, shall not exceed the Consumer Price Index or 3.0% of the Billing Rates in effect immediately preceding such adjustment, whichever is less.

4.3 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.

4.4 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.

4.5 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 Travis Gray 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 Fire Department. City's Administrative Manager or designee shall be the Project Administrator and shall have the authority to

act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist 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

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

10.2 Consultant must submit to and pass a criminal background investigation by providing a complete set of fingerprints to City prior to commencing or performing Services or Work. Consultant is required to submit any fees for the criminal background investigation according to the City's most current administrative fee schedule or successor document. Fingerprints may be required to be updated every five (5) years.

11. COOPERATION

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

12. CITY POLICY

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

13. PROGRESS

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

14. INSURANCE

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

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

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

16. SUBCONTRACTING

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

17. OWNERSHIP OF DOCUMENTS

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

employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents, including all logins and password information to City upon prior written request.

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

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

18. CONFIDENTIALITY

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

19. INTELLECTUAL PROPERTY INDEMNITY

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

20. RECORDS

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

21. WITHHOLDINGS

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

22. ERRORS AND OMISSIONS

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

23. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

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

24. CONFLICTS OF INTEREST

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

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

25. NOTICES

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

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

Attn: Administrative Manager
Fire 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: Travis Gray
Red 88 Media, LLC
600 Parkrose Ave.
Monrovia, CA 91016

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: 4/30/2019

By: Aaron C. Harp
For: Aaron C. Harp
City Attorney
04/30/19
amd

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Diane B. Dixon
Mayor

CONSULTANT: Red 88 Media, LLC, a
California limited liability company

Date: _____

By: _____
Travis Gray
Member

[END OF SIGNATURES]

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

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT A
SCOPE OF SERVICES

1. **Film:** Consultant shall create a professional caliber video with a quality of at least 1080p resolution, capturing the highlights and common events of the Junior Lifeguard Program. The final product must be family friendly, loosely storied, and cover as wide a range of activities and as many junior lifeguards as possible.
2. **Program Information:** Each annual Junior Lifeguard program is a total of seven (7) weeks long and typically takes place Monday through Thursday (with occasional Friday events) from the end of June to mid-August. The program has two separate sessions: mornings from 9:00 a.m. to noon and afternoons from 1:00 p.m. to 4:00 p.m. Regular availability throughout the program is required. Typical program enrollment is 1,400 participants ages 9 to 15 years old.
3. **Meetings:** Consultant and program staff shall hold a minimum of one (1) pre-program and one (1) post-program onsite meeting each year.
4. **Key Elements:** Consultant is responsible for providing all pre-production, filming, editing, graphics, music licensing, digital conversion, equipment, and post-production. Consultant shall capture and incorporate both ground level footage, aerial footage, and footage in/from the water. In order to capture staff and participant interviews and sound bites, Consultant shall include a professional audio package as part of the services rendered.

Junior Lifeguard Program staff may coordinate to provide additional still photos and/or rough edited video to be included in the project. Additional "action style" still photography of various Junior Lifeguard events may be used to supplement the video presentation if requested by Junior Lifeguard Program staff.

Each final product shall include:

Six (6) Episodes (7-10 minutes each) released every one to two weeks during the program

- The topics/themes/narrative style for each year's videos shall be annually codeveloped between Consultant and Newport Beach Junior Lifeguard Program staff.

All deliverables must be screened and approved by the program administrators prior to final viewing deadline and provided to the City as high quality video files with a quality of at least 1080p resolution.

Dates for each year's deliverables will be discussed prior to the beginning of the current Newport Beach Junior Lifeguard season.

5. **Ownership:** The City shall retain the right, at its sole discretion, to use footage from any/all deliverables on social media outlets, City approved websites, and on any other promotional platform deemed by the City to be appropriate.

6. Filming: In order to capture a broad cross-section of events and participants, filming shall include a minimum of 12 key filming dates. Examples of key filming dates include:

- Uniform Handout (Pre-program. Typically, first Saturday of June)
- Junior Lifeguard Program - Opening Day
- Hot Dog Dinner (Day & Night Filming)
- Pier Jumps (2 to 3 days)
- Monster Mile
- Pier Swim
- Catalina Field Trip
- Paddle Day
- Competition Day
- Picture Day
- Ben Carlson Day
- Graduation
- Grey Lunde Ironman

EXHIBIT B

SCHEDULE OF BILLING RATES

EXHIBIT B
SCHEDULE OF BILLING RATES

The annual cost for the video services will be \$45,519.00 per year. Effective as of Year 3, the annual cost for video services may be adjusted pursuant to Section 4.2 of this Agreement.

Total Not to Exceed: Two-Hundred Thirty Five Thousand Nine Hundred Fifty Three Dollars and 52/100 (\$235,953.52)

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.

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 Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- 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

On-Call Professional Services Agreement with Red 88 Media, LLC

**ON-CALL PROFESSIONAL SERVICES AGREEMENT
WITH RED 88 MEDIA, LLC FOR
EDUCATIONAL VIDEO PRODUCTION**

THIS ON-CALL PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 14th day of May, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and RED 88 MEDIA, LLC, a California limited liability company ("Consultant"), whose address is 600 Parkrose Avenue, Monrovia, CA 91016, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to provide on-call strategic, comprehensive and educational video production services ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

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

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2020, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

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

2.1.1 A detailed description of the Services to be provided;

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

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

2.1.4 The time needed to finish the specific project.

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

3. TIME OF PERFORMANCE

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

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

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

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

4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Nine Thousand Dollars and 00/100 (\$9,000.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.2 Consultant shall submit monthly invoices to City describing the Work performed the preceding month. Consultant's bills shall include the name of the person

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

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

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

5. PROJECT MANAGER

5.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated Travis Gray 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 City Manager's Office. City's Administrative Analyst 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

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

10.2 Consultant must submit to and pass a criminal background investigation by providing a complete set of fingerprints to City prior to commencing or performing Services or Work. Consultant is required to submit any fees for the criminal background investigation according to the City's most current administrative fee schedule or successor document. Fingerprints may be required to be updated every five (5) years.

11. COOPERATION

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

12. CITY POLICY

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

13. PROGRESS

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

14. INSURANCE

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

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

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

16. SUBCONTRACTING

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

17. OWNERSHIP OF DOCUMENTS

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

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

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

18. CONFIDENTIALITY

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

19. INTELLECTUAL PROPERTY INDEMNITY

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

20. RECORDS

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

21. WITHHOLDINGS

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue Work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return

that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

22. ERRORS AND OMISSIONS

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

23. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

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

24. CONFLICTS OF INTEREST

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

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

25. NOTICES

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

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

Attn: Administrative Analyst
City Manager's Office
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: Travis Gray
Red 88 Media, LLC
600 Parkrose Avenue
Monrovia, CA 91016

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: 4/29/19

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: Aaron C. Harp
For: Aaron C. Harp
City Attorney
04.25.19
dmz

By: _____
Diane B. Dixon
Mayor

ATTEST:

Date: _____

CONSULTANT: Red 88 Media, LLC, a
California limited liability company

Date: _____

By: _____
Leilani I. Brown
City Clerk

By: _____
Travis Gray
Member

[END OF SIGNATURES]

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

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT A
SCOPE OF SERVICES

1. **Film:** Upon written request by way of Letter Proposal, as further defined in Section 2 of this Agreement, Consultant shall provide on-call services to result in professional caliber videos that are strategic, comprehensive, and educational in nature to communicate highly complex issues in an engaging manner.
2. **Key Elements:** Consultant shall be responsible for providing all pre-production, storyboarding, filming, editing, graphics, animation, music licensing, digital conversion, equipment, and post-production services. Consultant shall capture and incorporate ground-level footage, aerial footage, interviews, and other means that align with the services requested. Consultant shall provide professional quality audio for all videos created as part of the services rendered.
3. **Ownership:** The City shall retain the right, at its sole discretion, to use footage from any and all deliverables on social media outlets, City approved websites, and on any other promotional platform deemed by the City to be appropriate.
4. **Production Services:** Consultant shall render video production services that includes, but are not limited to, the following:
 - Strategic planning and visioning
 - Production management
 - Video editing
 - Camera operations
 - Cinematography
 - Graphics and animation
 - Obtaining licenses for music, etc.
 - Hair and makeup, as needed

EXHIBIT B

SCHEDULE OF BILLING RATES

EXHIBIT B
SCHEDULE OF BILLING RATES

Consultant shall provide services for on-call video production using an hourly blended rate of \$54 per hour, which includes all reimbursables and shall be billed in 15-minute increments.

TOTAL NOT TO EXCEED: \$9,000.00

EXHIBIT C

INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

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

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers, 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 Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- 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.



CITY OF

NEWPORT BEACH

City Council Staff Report

May 14, 2019
Agenda Item No. 12

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Evelyn Tseng, Revenue Manager, etseng@newportbeachca.gov

PHONE: 949-644-3153

TITLE: Professional Services Agreement for the Collection of Delinquent Accounts

ABSTRACT:

In order to enhance the City's revenue collections, the City requires professional collection agency services to pursue unpaid and delinquent account receivables. Following a Request for Proposals (RFP) selection process, staff recommends that the City Council execute the Professional Services Agreement with Ray Klein, Inc., dba Professional Credit Service, a Washington company (Contractor), for professional services.

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) Authorize the Mayor to execute the attached Agreement in an amount not to exceed \$500,000 over a five-year term with Ray Klein, Inc., dba Professional Credit Service, a Washington company, for professional services.

FUNDING REQUIREMENTS:

No budget amendment is required with this agreement. After sending delinquent accounts to collection, the contractor receives a portion (18%) of the delinquent balances recovered as an offset to the revenues collected.

DISCUSSION:

The City bills for a wide variety of services, including but not limited to: utility bills, transient occupancy tax, false alarm fines, miscellaneous permit fees, business license fees, property damage, property rents, jail booking fees, fees associated with emergency response, miscellaneous police fees, returned checks, special event fees and emergency transportation fees. The City generally requires payment on the date due, which is typically 30 days from the date of notice. Depending on the nature of the billing, there are various levels of customer outreach before an account is sent to collections. For example, utility customers are contacted no less than five times before water is shut-off. Further, utility customers are not sent to collections unless the customer has closed the account and has not paid the balance due for at least 90 days. Most other types of general billings receive monthly reminders but are then sent to collections after 90 days.

The Finance Department conducted a Request for Proposal (RFP) for collections services. The RFP was published using the City's on-line bidding site, Planet Bids. Nine proposals were received, reviewed and scored by an evaluation panel comprised of staff from the Finance and Fire Departments. Selection criteria included the firm's qualifications, experience, fees, references, services and ability to meet the City's needs with regard to collections and customer service.

Of the nine proposals, the evaluation panel identified and scored five as possessing the requisite technical expertise, relevant experience and qualifications to be considered for award. The evaluation panel invited these five proposers to an interview where each group was given an opportunity to describe their qualifications and experience. Following this first interview, the panel removed two from further award consideration. The three remaining finalists were invited to a second panel interview where each proposer was asked to provide detail about their collections methodology and provide a demonstration of their collections system and software. Both interviews were scored by the evaluation panel and the scores were incorporated into the overall evaluation process.

Concurrently, the City's Purchasing staff compared the pricing received from each finalist and compared the pricing based on the proposed service fee. The proposed service charge percentage for each finalist, as well as the results of the proposal review and interviews are shown in the following table:

	Penn Credit Corp.	Professional Credit Service	States Recovery Systems
Proposal Score	76.67	83.11	65.56
First Interview Score	78.00	82.67	76.33

Second Interview Score	66.67	71.33	62.33
Cost Score (Proposed Service Charge %)	72.00 (25%)	100.00 (18%)	90.00 (20%)
Total Score	293.34	337.11	294.22

Based on a comprehensive review by the evaluation panel, Professional Credit Service was unanimously recommended for collections services. The selection was based on the professional quality of the organization, commitment to customer service, willingness to customize services required by the City and competitive pricing for the collection services. The contractor also provides collection services for the City of Anaheim and City of Garden Grove.

Staff is requesting a five (5) year agreement, which would terminate the agreement on May 31, 2024. The City bills for approximately \$105 million for various services annually, and staff estimates that each year, approximately \$1,250,000 may become uncollectible prior to collection agency efforts. Some services (e.g., emergency medical and jail booking) are harder to collect on than others, such as utility billing. City staff and the contractor estimate a collection rate on uncollectable balances that range from 10% to 42% depending on the type of incident/service, which could result in annual Contractor fees of approximately \$94,500 ($\$1,250,000 \times 42\%$ optimistic collection rate $\times 18\%$ contractor fee) annually on the high end.

ENVIRONMENTAL REVIEW:

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

NOTICING:

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

ATTACHMENT:

Attachment A – Professional Services Agreement

ATTACHMENT A

PROFESSIONAL SERVICES AGREEMENT WITH RAY KLEIN, INC. DBA PROFESSIONAL CREDIT SERVICE FOR DELINQUENT ACCOUNT COLLECTIONS SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 14th day of May, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and RAY KLEIN, INC., a Washington corporation doing business as ("DBA") Professional Credit Service ("Consultant"), whose address is 12204 SE Mill Plain Blvd., Suite 101, Vancouver, Washington 98684, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to provide delinquent account collections services ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

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

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on May 31, 2024, 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 **Five Hundred Thousand Dollars and 00/100 (\$500,000.00)**, 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 dates of service, a brief description of the Services performed, and the total amount requested. Consultant shall also provide detailed reports, in addition to the monthly invoice, such as, a monthly cash receipt report, or alternate reports as requested by City, showing the amount, date, and organization paid, by debtor. 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 Rob Nestell 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 Finance Department. City's Revenue Manager or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

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

8. STANDARD OF CARE

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

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

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

9. HOLD HARMLESS

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

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

10. INDEPENDENT CONTRACTOR

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

shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

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

12. CITY POLICY

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

13. PROGRESS

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

14. INSURANCE

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

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

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

16. SUBCONTRACTING

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

17. OWNERSHIP OF DOCUMENTS

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

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

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

18. CONFIDENTIALITY

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

19. INTELLECTUAL PROPERTY INDEMNITY

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

20. RECORDS

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

21. WITHHOLDINGS

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

22. ERRORS AND OMISSIONS

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

23. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

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

24. CONFLICTS OF INTEREST

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

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

25. NOTICES

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

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

Attn: Revenue Manager
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: Rob Nestell
Ray Klein, Inc. dba Professional Credit Service
400 International Way, Suite 200
Springfield, OR 97477

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: 5.2.19

By:  (for)
Aaron C. Harp MM 5.2.19
City Attorney

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Diane B. Dixon
Mayor

CONSULTANT: RAY KLEIN, INC., a
Washington corporation doing business as
("DBA") **PROFESSIONAL CREDIT
SERVICE**

Date: _____

By: _____
G. Scott Purcell
Chief Executive Officer

Date: _____

By: _____
Joseph R. Hawes
Chief Financial Officer

[END OF SIGNATURES]

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

EXHIBIT A SCOPE OF SERVICES

City shall designate debts for collection by Consultant in City's sole discretion. Consultant's services shall include:

1. Reviewing, enforcing and complying with the applicable provisions of the City's municipal code and ordinances;
2. Providing acknowledgement to City of accounts placed with Consultant within ten (10) business days of placement;
3. Making contacts with debtors under the Consultant's name;
4. Mailing collection letters as approved by the City;
5. Employing skip-tracing and other standard techniques to locate debtors, and providing corrected addresses and other account information to the City;
6. Combining assigned accounts to common debtors for consolidated collection purposes;
7. Providing a Customer Service Call Center with a toll free number to assist debtors in resolving their accounts, with Consultant's employees interacting with debtors in a professional and respectful manner during all deliberations and dealings;
8. Forwarding valid disputes to the City for review and possible dismissal as necessary;
9. Establishing payment plans as necessary, in accordance with parameters set by the City for Consultant to accept payment plans;
10. Transferring funds electronically and be able to receive accounts on a daily basis, Monday through Friday;
11. Providing a remittance processing center to receive debtor payments and deposit into City account;
12. Depositing all collected funds within forty-eight (48) hours of receipt to City designated bank account;
13. Providing Social Security numbers on accounts obtained by Consultant, as necessary, where authorized by applicable law;
14. Adjusting the receivable record within forty-eight (48) hours of any information transferred by City;

15. Reporting outstanding receivables, where authorized by law, to a nationally available credit history reporting database (credit bureau) at no additional fee to City;
16. Reporting delinquent accounts to the three major credit bureaus, when permitted by law and in accordance with criteria that may be set by the City, at no additional cost to the City, including updates of previously reported information and corrections to reported information;
17. Providing management reports in electronic and hardcopy format (pdf and excel/csv), on a daily, weekly, or monthly basis, as directed by the City, including but not necessarily limited to:
 - 17.1. Monthly cash receipt file and report – a listing of all payments by debtor name (last name first), designated City account reference number, amount owed, date paid, payment amount, and such other information as City may request;
 - 17.2. Monthly new accounts acknowledgement report – listing of debtors, with City's account reference number, amount and total number and dollar value of accounts referred,
 - 17.3. Monthly spreadsheet detailing the current status of each account, including a brief recap of Consultant's efforts to collect the funds;
 - 17.4. Monthly performance analysis report – the liquidation rate of all accounts, including monthly collection total, collections to date, account referral to date, fees earned by Consultant and gross funds returned to the City, including but not limited to, monthly recovery rate per referral and accumulative totals of recovery on a monthly and ongoing basis, and track revenue received by referred month as well as by month paid;
18. Working with City to implement collection programs for other types of debt, as needed;
19. Providing a website portal for City staff to review the status and history of accounts in collections in real time, including but not limited to, bifurcating HIPAA protected accounts as directed by City;
20. Providing a dedicated staff liaison to the City who will be the City's primary contact with the Consultant;
21. Acknowledgement that Consultant shall not have full rights to the accounts and shall only be able to pursue collections on the City's behalf;
22. Acknowledgement that Consultant shall not have authority to accept a compromise settlement on any account without the written consent of the City;

23. Acknowledgement that Consultant shall maintain accurate records of all transactions, and that the City shall perform periodic audits to ensure that all amounts collected are accurately reported and remitted;
24. Acknowledgement that, where authorized by law, City shall add Consultant's fee to the unpaid debt prior to forwarding to Consultant;
25. Cease work on, and return all documentation pertaining to, any account previously assigned by the City when requested by the City;
26. Using due diligence and employing such lawful means, methods, and procedures as Consultant, in its judgment, discretion, and experience, believe will best effect the collection of accounts, including but not limited to, collection letters, telephone calls, adequate periodic follow up attempts and skip tracing;
27. Providing debtors with reasonable options to make payments, including for example, checking accounts, credit cards, debit cards, secured payment websites, pay by telephone, and a lockbox or other physical location to accept mailed payments;
28. Participating in the State of California's Interagency Intercept Collection Program on the City's behalf when requested by City, to assign, follow up, update, or remove accounts for payment in accordance with the Interagency Intercept Collection Program;
29. Communicating with City personnel as needed to (i) request supporting documentation to assist in carrying out the services to be provided under the Agreement, (ii) report any issues or other information that the City should be made aware of, and (iii) discuss any topic Consultant believes is prudent;
30. Ensuring funds collected on the City's behalf are placed in a secure account and deposited in a timely manner;
31. Providing City with a periodic list of recommended accounts for forwarding to attorneys for legal collections, including when Consultant determines that a debtor has adequate assets, employment, and/or other resources by which to pay a debt but has not satisfactorily cooperated to make payment or abide by a mutual payment agreement;
32. Providing legal collection services, upon the prior express written consent of the City, and at no additional cost to the City, such as filing civil lawsuits, recording civil judgments or other records, debtor examinations, enforcement of civil judgments, including but not limited to, service of process, legal fees, and any other costs;

33. Acknowledgement that the City reserves the right to select, at no cost to Consultant, City legal counsel to provide legal collection services, such as filing civil lawsuits, recording of civil judgments, and enforcement of civil judgments, at the sole discretion of the City;
34. Requesting written approval from the City prior to filing any legal action in the rendition of the services under this Agreement;
35. Complying with the California Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §§ 1788 et seq.;
36. Complying with the Fair Credit Reporting Act, 15 USC §§ 1681 et seq.;
37. Complying with the California Consumer Credit Reporting Agencies Act, Civ. Code §§ 1785.1 et seq.;
38. Complying with the Service members Civil Relief Act, 50 USC §§ 3901 et seq.;
39. Complying with the Telephone Consumer Protection Act, 47 USC §227 et seq.;
40. Complying with the Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. § 164.512 et seq., and the Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56 et seq., and all other laws, rules, and regulations applicable to the confidentiality of patient medical information, including where necessary, entering into a Business Associate Agreement with the City for protection of confidential patient medical information;
41. Complying with the City's Municipal Code, and all other laws, rules, or regulations applicable to the Services to be performed pursuant to this Agreement; and
42. Ensuring legal compliance in the collection of the City's debt, including but not limited to, advising the City on recommended policies, programs and procedures.

EXHIBIT B SCHEDULE OF BILLING RATES

All amounts to be collected by Consultant on behalf of the City pursuant to this Agreement shall be determined by the City in its sole and absolute discretion. Consultant shall not increase any amount to be collected without prior written approval of the City.

Consultant shall charge the City a flat fee of eighteen percent (18%) of either: the amount successfully collected by Consultant OR the amount of the original debt, whichever is lesser. This shall be the only compensation to Consultant for all Work performed in accordance with this Agreement, including all reimbursable items and any other costs and fees whatsoever.

In the event that the City requests Consultant cease to collect a debt under legal action, Consultant may charge the City the costs Consultant has incurred up to but not to exceed 25% of the original debt. The City may request Consultant cease to collect a debt not under legal action at any time, at no cost to the City.

Costs of collection shall only be added to any debt in the City's sole and absolute discretion, where authorized by law, in an amount approved by the City, and upon the prior written approval of the City. Consultant's fee shall be based on the amount of the debt before costs of collection are added.

EXHIBIT C

INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

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

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

- D. Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.
4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.
- B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.
- C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
- D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
- A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. 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 Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- 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.



CITY OF

NEWPORT BEACH

City Council Staff Report

May 14, 2019
Agenda Item No. 13

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Jim Campbell, Deputy Community Development Director, jcampbell@newportbeachca.gov

PHONE: 949-644-3210

TITLE: Planning Commission Agenda Report for May 9, 2019

ITEM NO. 1 MINUTES OF MARCH 21, 2019

SUMMARY: Draft minutes from the March 21, 2019 meeting of the Planning Commission.

The Planning Commission approved the draft minutes as presented by the following vote.

AYES: Koetting, Kramer, Lowrey and Weigand
NOES: None
ABSENT: Ellmore, Kleiman and Zak
ABSTAIN: None

ACTION: Approved

ITEM NO. 2 MINUTES OF APRIL 18, 2019

SUMMARY: Draft minutes from the April 18, 2019 meeting of the Planning Commission.

The Planning Commission considered the draft minutes and suggested amendments to the minutes. Public comments were received and the amended minutes were approved by the following vote.

AYES: Koetting, Lowrey and Weigand
NOES: None
ABSENT: Ellmore, Kleiman and Zak
ABSTAIN: Kramer

ACTION: Approved as amended

PUBLIC HEARING ITEMS:

ITEM NO. 3

ANTON AESTHETICS (PA2019-025)

Site Location: 20331 Irvine Avenue, Unit E6 and E7

SUMMARY: A conditional use permit to operate a 6,108-square-foot plastic surgery center within an existing professional office park.

The Planning Commission conducted a public hearing and approved the project as recommended.

AYES: Koetting, Kramer, Lowrey and Weigand
 NOES: None
 ABSENT: Ellmore, Kleiman and Zak
 ABSTAIN: None

ACTION: Approved

ITEM NO. 4

DR. CERNI'S MEDICAL OFFICE (PA2018-168)

Site Location: 20271 Birch Street, Suite 100

SUMMARY: The applicant requests a conditional use permit to allow a three-space reduction of the required 23 off-street parking spaces and to allow the continued operation of an existing, unpermitted 4,575-square-foot medical office use within the Birch Heights office park. The medical office established its operation in 2018, without securing approval of a use permit as required by the Business Park (BP) land use designation of the Santa Ana Height Specific Plan Area (SP-7).

The Planning Commission conducted a public hearing and approved the project as recommended.

AYES: Koetting, Kramer, Lowrey and Weigand
 NOES: None
 ABSENT: Ellmore, Kleiman and Zak
 ABSTAIN: None

ACTION: Approved

ITEM NO. 5

RMD Zoning Code Amendment (PA2019-065)

Site Location: Citywide

SUMMARY: Amend the Newport Beach Municipal Code (NBMC), Title 20 Zoning Code, to rename the RMD (Multiple Residential Detached) Zoning District to RMD (Medium Density Residential). The amendment includes revising the purpose of the zone to allow for attached units in addition to detached units, consistent with the historic pattern of development and prior version of the Zoning Code.

The Planning Commission conducted a public hearing and approved the project as recommended.

AYES: Koetting, Kramer, Lowrey and Weigand
 NOES: None
 ABSENT: Ellmore, Kleiman and Zak
 ABSTAIN: None

ACTION: Approved

NEWPORT BEACH PLANNING COMMISSION AGENDA
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, MAY 9, 2019
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 MARCH 21, 2019

Recommended Action: Approve and file

ITEM NO. 2 MINUTES OF APRIL 18, 2019

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. 3 Anton Aesthetics (PA2019-025)

Site Location: 20331 Irvine Avenue, Unit E6 and E7

Summary:

A conditional use permit to operate a 6,108-square-foot medical office use and plastic surgery center within an existing office park.

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. PC2019-010 approving Conditional Use Permit No. UP2019-012.

ITEM NO. 4 Dr. Cerni's Medical Office (PA2018-168)
Site Location: 20271 Birch Street, Suite 100

Summary:

A conditional use permit to allow a three-space reduction of the required 23 off-street parking spaces and to allow the continued operation of an existing, unpermitted 4,575-square-foot medical office use within an existing office park.

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. PC2019-011 approving Conditional Use Permit No. UP2018-016.

ITEM NO. 5 RMD Zoning Code Amendment (PA2019-065)
Site Location: Citywide

Summary:

Amend the Newport Beach Municipal Code (NBMC), Title 20 Zoning Code, to rename the RMD (Multiple Residential Detached) Zoning District to RMD (Medium Density Residential) and modify the purpose statement of the RMD zone to allow for attached and detached residential development.

Recommended Action:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15305 under Class 5 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
3. Adopt Resolution No. PC2019-012 recommending the City Council approve Zoning Code Amendment No. CA2019-003.

VIII. NEW BUSINESS:

IX. STAFF AND COMMISSIONER ITEMS

ITEM NO. 6 MOTION FOR RECONSIDERATION

ITEM NO. 7 REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE PLACED ON A FUTURE AGENDA.

ITEM NO. 8 REQUESTS FOR EXCUSED ABSENCES

X. ADJOURNMENT



CITY OF

NEWPORT BEACH

City Council Staff Report

May 14, 2019
Agenda Item No. 14

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: Ground Emergency Medical Transport (GEMT) Quality Assurance Fee (QAF)

ABSTRACT:

On October 13, 2017, the Governor approved Senate Bill No. 523, an act to add and repeal Article 3.91 "Medi-Cal Emergency Medical Transportation Reimbursement Act" of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code. The primary purpose of the regulation is to impose a quality assurance fee (QAF) on ground emergency medical transport (GEMT) providers including public agencies, like the City of Newport Beach, that provide ambulance transport services. Although the fee was authorized to begin in 2018, the state experienced a delay in implementation while program details were developed. The City was notified on April 12th that retroactive payments are now due.

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) Approve Budget Amendment No. 19BA-045 appropriating expenditures of \$182,000 to the GEMT QAF (account 01040404-821009 of the Fire Department) and increasing estimated revenues by \$171,000 in Fiscal Year 2019/20; and
- c) Authorize Finance Department staff to execute an administrative budget amendment appropriating approximately \$145,000 to the GEMT QAF (account 01040404-821009 of the Fire Department) and increasing estimated revenues by approximately \$135,000 in the Paramedic Service Fee (account 01040404-521245 of the Fire Department) in the Fiscal Year 2019/20 budget upon the state's establishment of the annual quality assurance fee rate.

FUNDING REQUIREMENTS:

The mandatory payment of \$182,000, reflecting five quarterly payments covering transport services provided between January 2018 and March 2019, requires an increase in expenditure appropriations from the General Fund. Except for the timing of required expenditure and anticipated reimbursement between fiscal years, the impact on fund balance is expected to be relatively minor, approximately \$11,000 as is currently estimated.

DISCUSSION:

The Medi-Cal program, administered by the State Department of Health Care Services (DHCS), provides qualified low-income individuals in California with healthcare services. These services include Emergency Medical Services (EMS) like those provided by the Newport Beach Fire Department. The Medi-Cal program is, in part, governed and funded by Federal Medicaid provisions. Through the creation and collection of the Quality Assurance Fee (QAF), the state intends to claim increased federal financial participation to increase the Medi-Cal payment rates to service providers.

The QAF rate is calculated annually based on specific data reported to DHCS by all providers on a quarterly basis. As required by law, the City of Newport Beach has been reporting the required data since late 2017. Once the annual rate is established, the individual QAF payment for each provider is calculated by applying the annual rate to all qualifying transports. As required by the regulation, DHCS shall deposit all QAF collections into a designated Medi-Cal Emergency Medical Transport Fund for use solely for the QAF program.

While the regulation clearly establishes increased reimbursement to providers in the form of “add-on” payments for select Medi-Cal services, the exact details and timelines of the reimbursement have not been released. Based on available information, conservative calculations indicate that Newport Beach may experience a loss of approximately \$11,000 depending on the number of Medi-Cal patients served. Currently, Medi-Cal patients make up only six percent to 14 percent of our annual calls for services where in other communities it is much higher. Those service providers with a higher number of Medi-Cal patients will experience a positive financial result from the QAF program. However, since reimbursement guidelines are still being established, it is still possible that Newport Beach could end in a more positive position.

At this time, participation in the GEMT QAF program is mandatory. However, AB 1705 introduced in February of 2019 may exempt specified governmental entities, including those operated by a city, from the Medi-Cal Emergency Medical Transportation Reimbursement Act and the quality assurance fee requirements. Staff is monitoring this bill.

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- 19BA-045

BUDGET AMENDMENT 2018-19

AMOUNT: **\$182,000.00**

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 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 checked="" 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 to GEMT QAF from the General Fund and increase revenue estimates in fiscal year 2019/20 from the Paramedic Service Fee.

ACCOUNTING ENTRY:

BUDGETARY FUND BALANCE

		Amount	
Fund	Object	Description	
			Debit Credit
010	300000	General Fund - Unappropriated Fund Balance	\$11,000.00 *

REVENUE ESTIMATES

Org	Object	Project	Description	
01040404	521245		EMS - Paramedic Service Fee	\$171,000.00

EXPENDITURE APPROPRIATIONS

Org	Object	Project	Description	
01040404	821009		EMS - GEMT QAF	\$182,000.00

* Automatic System Entry.

Signed:

Financial Approval: Finance Director

4-30-19

Date

Signed:

City Council Approval: City Clerk

Date



CITY OF

NEWPORT BEACH

City Council Staff Report

May 14, 2019
Agenda Item No. 15

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Micah Martin, Deputy Public Works Director,
mmartin@newportbeachca.gov

PHONE: 949-644-3055

TITLE: Proposed Revisions to City Council Policy B-17 – *Parks, Facilities and Recreation Program Donations*

ABSTRACT:

Council Policy B-17 promotes community involvement and active participation in quality of life components throughout the community. This policy establishes criteria for donations to assure area compatibility, attractiveness, usefulness, and ability to be maintained. Each donation considered for inclusion within the City public parks and streets system will be subject to established limitations and guidelines for the particular area. Suggested revisions to this policy have been reviewed by the Parks, Beaches and Recreation Commission (PB&R) and recommended for City Council approval on April 2, 2019.

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) Consider the Parks, Beaches, and Recreation Commission's recommendations and approve revisions to Council Policy B-17; and
- c) Adopt Resolution 2019-44, *A Resolution of the City Council of the City of Newport Beach, California, Amending City Council Policy B-17 "Parks, Facilities, and Recreation Program Donations."*

FUNDING REQUIREMENTS:

Recommended revisions to Council Policy B-17 include addressing concerns related to the resources and funding needed to support some donations. The revisions provide parameters to support the donation program in a fiscally sustainable manner.

DISCUSSION:

Council Policy B-17 “Parks, Facilities and Recreation Program Donations” provides the procedures and guidelines to staff and the public on how City Council desires to handle donations to the City. This policy was last amended on August 8, 2017. Based on recent donations, as well as several public comments, staff undertook an additional review of the portions of the Council policy pertaining to applications for donations of trees, benches or other tangible street or park furniture. Staff identified several areas of concern including:

- 1) Unanticipated large amounts of time associated with the management and maintenance of the program (particularly associated with donated benches);
- 2) Donor expectation levels;
- 3) Donation amounts are not covering the actual cost to implement, install and maintain the donated items;
- 4) Overcrowding of some areas (particularly associated with donated benches);
- 5) Growing memorialization of our Public Rights-of-Way, Parks and Spaces;
- 6) No real defined lifespan or sunset on bench and/or plaque removals.

On July 10, 2018, City Council reviewed this policy and staff’s concerns and took an action to temporarily suspended City Council Policy B-17 – *Parks, Facilities, and Recreation Program Donations*, and directed staff to work with the PB&R Commission to review, refine, and ultimately recommend any revised language back to the City Council for their review and approval.

At the August 7, 2018, the Parks, Beaches, and Recreation Commission established an Ad Hoc Committee to review Council Policy B-17 and appointed Chair Howald, and Commissioners Granoff and Daruty to the Ad Hoc Donations Program Committee. This Ad Hoc Committee met with staff on September 24, and December 4, 2018 and again on January 16, 2019. Based on their discussions, their recommended revised language was presented to the full PB&R Commission for review and consideration. At the April 2, 2019 PB&R meeting, the Commission considered the proposed changes to the policy which included: changes to the donation and maintenance period, increase of the maintenance fee, changes to the types of benches used throughout the city, disallowance of memorial language, and the option to no longer provide plaques for donated trees. The PB&R Commission voted to agree on these changes to Council Policy B-17 and recommended the changes be submitted to Council for their review and approval (Attachment B).

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 – Existing Council Policy B-17
- Attachment B – Proposed Redline Version Council Policy B-17
- Attachment C – Revised Council Policy B-17
- Attachment D – Resolution No. 2019-44

PARKS, FACILITIES, AND RECREATION PROGRAM DONATIONS***Purpose***

The City Council recognizes the need to promote community involvement and active participation in quality of life components throughout the community, and the need to establish a fair, equitable, and uniform procedure for which gifts may be donated to the City. This policy establishes criteria for donations to assure area compatibility, attractiveness, usefulness, and the capability to be maintained. Each donation considered for inclusion in the City park public improvement and street system will be subject to established limitations and guidelines for the particular area.

Policy**A. Acceptance of donations of cash or tangible items**

1. Based on the value of the donation, appropriate City staff will review the acceptability of any donation and determine if the benefits to be derived warrant acceptance of the donation.
2. Criteria for evaluation includes consideration of any immediate or initial expenditure required in order to accept the donation, the potential and extent of the City's obligation to maintain the donation, and the community benefit to be derived from the donation.
3. The cost of a tangible donation shall include a 10% maintenance fee paid for in full by the donor. This maintenance fee is in addition to any other fees or charges.

B. Types of Donations

Donations may be received in the form of cash, real, or personal property. Restricted donations are those donations that the donor specifies for a particular City location or purpose. Unrestricted donations are those donations that are given to the City for unspecified use.

1. Cash Gifts

- a. Donation of cash or items valued at or below the amount set in City Council Policy F-3 may be accepted by the City Manager. However, any donation considered a park facility improvement that would result in an installation of a permanent fixture in the parks must be in compliance with subsection 4 of this policy, *Park, Public Improvement, and Street Amenities*.

- b. Donations above the amount set in City Council Policy F-3 for the City Manager may be accepted by the Parks, Beaches and Recreation Commission.
- c. Gifts of funds may be designated for restricted or unrestricted use. Gifts of cash or items that have a restriction must first be approved by the City Council.
- d. Gifts of funds accepted by the City imply no other obligation besides using donated funds for the specified purpose.

2. Trees

Tree donations add beauty to City parks and facilities. Trees may be donated and installed at parks and parkway locations recommended by the Municipal Operations Director and approved by the Parks, Beaches and Recreation Commission. The minimum size of tree donations must be 36" boxed containers unless waived by the Commission. Tree donations are limited to specific species listed on the Parkway Tree Designation List and/or matching the landscape in park locations.

3. Benches

Bench donations may be donated and installed in different areas of placement including parks, streets, along the beachfront, within villages, commercial districts, neighborhoods, on a specific island, etc. The Parks, Beaches, and Recreation Commission, with the assistance of Municipal Operations staff, shall designate the type, style, design, and placement of City-owned benches on City property.

- a. An inventory of designated benches and available bench locations will be maintained in the City Donation Catalog.
- b. Donation requests must be submitted to the Municipal Operations Department and meet the following requirements:
 - i. Bench donations along a city street, beachfront or other public right of way will require the approval of the Municipal Operations Director.
 - ii. Bench donations within a commercial district will require notification of, and an endorsement from, the local business association, if applicable.

- iii. Bench donations for parks and facilities within a residential community will require notification of residents and an established homeowners association or common interest development, when applicable, within 300 feet of placement.

4. Park, Public Improvement, and Street Amenities

Other amenities such as drinking fountains, tables, and other equipment that will improve public places in parks, in and/or around public buildings, streets, walkways, and trails may be donated to the City.

- a. Other amenities that may be donated will be identified in the City Donation Catalog.
- b. Donation of public amenities valued at or below the amount set forth in City Council Policy F-3 may be accepted by the City Manager.
- c. Donation of public amenities valued at the amount set forth in City Council Policy F-3 and above may be accepted or declined by the Parks, Beaches and Recreation Commission.
- d. Donations to be installed on public sidewalks shall meet the criteria described in Policy L-15 Encroachments on Public Sidewalks and approved by the Public Works Director and Municipal Operations Director.

C. Naming Rights

Donors may receive naming rights on capital improvement projects for which any donation matches or exceeds 75% of the total budgeted cost for the area benefiting from the donation. All such donations will be submitted to the City Council for acceptance of the donation and the name to be applied to the project in keeping with City Council Policy B-9 — *Naming of City Parks & Facilities*.

D. Sponsorships

Special Events are recognized as fundraising activities. Where donations or sponsorship of a special event will require some form of recognition, and, in order to provide recreational opportunities, corporate or organizational sponsors may be recognized by use of logos and name on event banners and signage. Signs and literature at all such special events would be at the discretion of the appropriate Department Director. The size, scale and location of corporate logos and names should not dominate the event facilities or area. Corporate logos and/or names should not be displayed in a manner that would, in any way, suggest the

endorsement of the Department or the City. All signs must comply with the City's existing sign code and Council Policies B-3 and B-8.

E. Right to Decline

The City of Newport Beach reserves the right to decline any donation if, upon review, acceptance of the donation is determined to be not in the best interest of the City.

F. Special Privileges

Making a donation or co-sponsoring a special event does not entitle a sponsor/donor to any special privileges other than those stated in this policy such as recognition, plaques or displays at events, unless otherwise agreed upon and approved by the Department Director or the City Council when appropriate.

G. Reserved

H. Acknowledgements

1. Letter of acceptance of donation will be sent to donor.
2. In some cases, recognition of donations may be given at Commission or Council Meetings.
3. Plaques are reserved for donations meeting the following criteria:
 - a. Donors providing donations valued at \$1,000 to less than \$4,000 may elect to provide a dedicatory plaque not exceeding 2" x 6" with a name designated by the donor preceded by one of the following: "Donated by", "Donated for", "In recognition of", "In Loving Memory" or "In Memory of".
 - b. Donors providing donations valued at \$4,000 or greater may elect to provide a dedicatory plaque not exceeding 5"x7" with name, date and dedication wording not exceeding 25 words. Plaque content must be approved by the Parks, Beaches & Recreation Commission.
 - c. Donors providing donations valued at least \$1,000 that recognize individuals or organizations that have provided distinguished long term and/or significant service to the City may include a dedicatory plaque not exceeding 5"x7" with name, date and dedication wording not exceeding 25 words. Individuals can include City employees with 25 or more years of distinguished service, as determined by the PB&R Commission.

- d. Plaques are at the expense of the donor, the City will assume ownership and maintenance of the donated item and plaque however, the City does not assume replacement costs due to vandalism or theft. Plaques will remain on a donated item during its useful life. The City reserves the right to remove and/or relocate the donated item.
- e. Plaque information will be entered on the Gift Donation Catalog application form and ordered by the City.

History

Adopted I-15 – 7-22-1991 (“Park Improvement Donation”)

Amended I-15 – 1-24-1994 (changed to G-5)

Amended G-5 – 6-27-1994

Amended G-5 – 6-24-1996

Adopted B-17 – 5-9-2006 (“Park, Facilities, & Recreation Donations”, incorporation G-5)

Amended B-17 – 2-24-2009

Amended B-17 – 6-26-2012

Amended B-17 – 8-8-2017

ATTACHMENT B

PARKS, FACILITIES, AND RECREATION PROGRAM DONATIONS

Purpose

The City Council recognizes the need to promote community involvement and active participation in quality of life components throughout the community, and the need to establish a fair, equitable, and uniform procedure ~~for~~ by which gifts may be donated to the City. This policy establishes criteria for donations to assure area compatibility, attractiveness, usefulness, and ~~the capability sustainability to be maintained of~~ maintenance. Each donation considered for inclusion in the City's parks ~~public improvement~~ and streets system will be subject to established limitations and guidelines for ~~the~~ each particular area.

Policy

A. Acceptance of donations of cash or tangible items

1. Based on the value of the donation, appropriate City staff will review the acceptability of any donation and determine if the benefits to be derived warrant acceptance of the donation.
2. Criteria for evaluation includes consideration of any ~~immediate or~~ initial expenditure required in order to accept the donation, the potential and extent of the City's obligation to maintain the donation for a minimum~~maximum~~ of 10 years, and the community benefit to be derived from the donation. After 10 years, the donated item and/or plaque may be removed or replaced by the City.
3. The cost of a tangible donation shall also include a ~~10%~~ maintenance fee equal to 50% of the estimated 10 year maintenance cost of the donated item, paid for in full by the donor at the time of the donation. This maintenance fee is in addition ~~to any other fees or charges~~ to the cost and installation of the donated item.

B. Types of Donations

Donations may be received in the form of cash, real, or personal property. Restricted donations are those donations that the donor specifies for a particular City location or purpose. Unrestricted donations are those donations that are given to the City for unspecified use.

1. Cash Gifts

- a. Donation of cash or items valued at or below the amount set in City Council Policy F-3 may be accepted by the City Manager. However, any donation considered a park facility improvement that would result in an installation of a permanent fixture in the parks must be in compliance with subsection 4 of this policy, *Park, Public Improvement, and Street Amenities*.
- b. Donations above the amount set in City Council Policy F-3 for the City Manager may be accepted by the Parks, Beaches and Recreation Commission.
- c. Gifts of funds may be designated for restricted or unrestricted use. Gifts of cash or items that have a restriction must first be approved by the City Council. Gifts of funds designated for unrestricted use shall be programed and spent on City parks as determined by the City.
- d. Gifts of funds accepted by the City imply no other obligation besides using donated funds for the specified purpose.

2. Trees

Tree donations add beauty to City parks and facilities. Trees may be donated and installed at parks ~~and parkway locations~~ recommended by the Deputy Public Works Director ~~Municipal Operations Director~~ and approved by the Parks, Beaches and Recreation Commission. ~~The~~ Depending on availability, the minimum ~~size~~ cost of tree donations must be ~~36~~ equal to the price of a 48" boxed ~~containers~~ container plus maintenance costs, unless waived by the Commission. Tree donations are limited to specific species ~~listed on the Parkway Tree Designation List and/or matching~~ that match the landscape in park locations. Tree donations are not eligible for donation plaques, however the donor will be provided with a certificate acknowledging the donation and the location of the donated tree.

3. Benches

Bench donations may be donated and installed in different areas of placement including parks, streets, along the beachfront, within villages, commercial districts, neighborhoods, on a specific island, etc. The Parks, Beaches, and Recreation Commission, with the assistance of Public Works Department ~~Municipal Operations~~ staff, shall designate the type, style,

design, and placement of City-owned benches on City property.

- a. An inventory of designated benches and available bench locations will be maintained ~~in~~by the City ~~Donation Catalog~~.
- b. Donation requests must be submitted to the Public Works - Municipal Operations ~~Department~~Division and meet the following requirements:
 - i. Bench donations along a city street, beachfront or other public right of way will require the approval of the Deputy Public Works Director. ~~Municipal Operations Director~~.
 - ii. Bench donations within a commercial district will require notification of, and an endorsement from, the local business association, if applicable.
 - iii. Bench donations for parks and facilities within a residential community will require notification of residents and an established homeowners association or common interest development, when applicable, within 300 feet of placement.
 - iv. Bench donations will be maintained (as defined by the City) for a minimum period of 10 years. After 10 years, the donated item and/or plaque may be removed or replaced at the discretion of the City. For existing bench donations, the donated items will be maintained for 10 years from adoption of this policy.
 - v. Four types of benches are able to be donated, with exceptions by approval by the Parks, Beaches and Recreation Commission. Donors can choose from the following:
 1. Santa Monica Style – Standard Park Bench with concrete legs and composite bench seat slats;
 2. Huntington Beach Style - Standard Concrete Park Bench;
 3. Victoria Style – Backless Standard Concrete Park Bench; or
 4. Infinity Style – Standard Park Bench with metal

legs and composite bench slats. Comes in standard or backless.

4. Park, Public Improvement, and Street Amenities

Other amenities such as drinking fountains, tables, and other equipment that will improve public places in parks, in and/or around public buildings, streets, walkways, and trails may be donated to the City.

- a. Other amenities that may be donated will be identified and approved~~in the City by City Staff~~Donation Catalog.
- b. Donation of public amenities valued at or below the amount set forth in City Council Policy F-3 may be accepted by the City Manager.
- c. Donation of public amenities valued at the amount set forth in City Council Policy F-3 and above may be accepted or declined by the Parks, Beaches and Recreation Commission.
- d. Donations to be installed on public sidewalks shall meet the criteria described in Policy L-~~15-6~~ Encroachments ~~on-in~~ Public Sidewalks Rights-of-Way and approved by the Public Works Director, ~~and Municipal Operations Director~~.

C. Naming Rights

Donors may receive naming rights on capital improvement projects for which any donation matches or exceeds 75% of the total budgeted cost for the area benefiting from the donation. All such donations will be submitted to the City Council for acceptance of the donation and the name to be applied to the project in keeping with City Council Policy B-9 – *Naming of City Parks & Facilities*.

D. Sponsorships

Special Events are recognized as fundraising activities. Where donations or sponsorship of a special event will require some form of recognition, and, in order to provide recreational opportunities, corporate or organizational sponsors may be recognized by use of logos and name on event banners and signage. Signs and literature at all such special events would be at the discretion of the appropriate Department Director. The size, scale and location of corporate logos and names should not dominate the event facilities or area. Corporate logos and/or names should not be displayed in a manner that would, in any way, suggest ~~the~~ endorsement of the Department or the City. All signs must comply with the City's

existing sign code and Council Policies B-3 and B-8.

E. Right to Decline

The City of Newport Beach reserves the right to decline any donation if, upon review, acceptance of the donation is determined to be not in the best interest of the City.

F. Special Privileges

Making a donation or co-sponsoring a special event does not entitle a sponsor/donor to any special privileges other than those stated in this policy such as recognition, plaques or displays at events, unless otherwise agreed upon and approved by the Department Director or the City Council when appropriate.

G. ~~Reserved~~ Timeliness

All donations are limited to a period of 10 years. After 10 years, the location will become available for a new donation.

H. Acknowledgements

1. Letter of acceptance of donation will be sent to donor.
2. In some cases, recognition of donations may be given at Commission or Council Meetings.
3. Plaques are reserved for donations meeting the following criteria:
 - a. Donors providing donations valued at ~~\$15~~\$410,000 to less than ~~\$410~~\$410,000 may elect to provide a dedicatory plaque not exceeding 2" x 6" with a name designated by the donor preceded by one of the following: "Donated by" or ~~or~~ "Donated for," ~~"In recognition of", "In Loving Memory" or "In Memory of".~~ Trees are not eligible for donation plaques.
 - b. Donors providing donations valued at ~~\$410~~\$410,000 or greater may elect to provide a dedicatory plaque not exceeding 5"x7" with name, date and dedication wording not exceeding 25 words. Plaque content must be approved by the Parks, Beaches & Recreation Commission. Trees are not eligible for donation plaques.
 - c. Donors providing donations valued at least \$1,000 that recognize individuals or organizations that have provided distinguished long term and/or significant service to the City may include a dedicatory

plaque not exceeding 5"x7" with name, date and dedication wording not exceeding 25 words. Individuals can include City employees with 25 or more years of distinguished service, as determined by the PB&R Commission.

- d. Plaques are at the expense of the donor and, the City will assume ownership and maintenance of both the donated item and plaque, however, the City does not assume replacement costs due to vandalism or theft. Plaques will remain on a donated item during its useful life, or up to 10 years. If the donated item becomes unusable or unsightly within the 10-year period due to natural causes, the City does not assume responsibility to keep and/or maintain the item. The City reserves the right, without permission of the donor, to remove and/or relocate the donated item: for any reason. The year of the donation will be included on all plaques.
- e. Plaque information will be entered on the ~~Gift Donation Catalog~~ application form and ordered by the City.

History

Adopted I-15 – 7-22-1991 (“Park Improvement Donation”)

Amended I-15 – 1-24-1994 (changed to G-5)

Amended G-5 – 6-27-1994

Amended G-5 – 6-24-1996

Adopted B-17 – 5-9-2006 (“Park, Facilities, & Recreation Donations”, incorporation G-5)

Amended B-17 – 2-24-2009

Amended B-17 – 6-26-2012

Amended B-17 – 8-8-2017

Amended B-17 – 5-14-2019

ATTACHMENT C

PARKS, FACILITIES, AND RECREATION PROGRAM DONATIONS

Purpose

The City Council recognizes the need to promote community involvement and active participation in quality of life components throughout the community, and the need to establish a fair, equitable, and uniform procedure by which gifts may be donated to the City. This policy establishes criteria for donations to assure area compatibility, attractiveness, usefulness, and sustainability of maintenance. Each donation considered for inclusion in the City's parks and streets system will be subject to established limitations and guidelines for each particular area.

Policy

A. Acceptance of donations of cash or tangible items

1. Based on the value of the donation, appropriate City staff will review the acceptability of any donation and determine if the benefits to be derived warrant acceptance of the donation.
2. Criteria for evaluation includes consideration of any initial expenditure required in order to accept the donation, the potential and extent of the City's obligation to maintain the donation for a minimum of 10 years, and the community benefit to be derived from the donation. After 10 years, the donated item and/or plaque may be removed or replaced by the City.
3. The cost of a tangible donation shall also include a maintenance fee equal to 50% of the estimated 10 year maintenance cost of the donated item, paid for in full by the donor at the time of the donation. This maintenance fee is in addition to the cost and installation of the donated item.

B. Types of Donations

Donations may be received in the form of cash, real, or personal property. Restricted donations are those donations that the donor specifies for a particular City location or purpose. Unrestricted donations are those donations that are given to the City for unspecified use.

1. Cash Gifts

- a. Donation of cash or items valued at or below the amount set in City Council Policy F-3 may be accepted by the City Manager. However, any donation considered a park facility improvement that would

result in an installation of a permanent fixture in the parks must be in compliance with subsection 4 of this policy, *Park, Public Improvement, and Street Amenities*.

- b. Donations above the amount set in City Council Policy F-3 for the City Manager may be accepted by the Parks, Beaches and Recreation Commission.
- c. Gifts of funds may be designated for restricted or unrestricted use. Gifts of cash or items that have a restriction must first be approved by the City Council. Gifts of funds designated for unrestricted use shall be programed and spent on City parks as determined by the City.
- d. Gifts of funds accepted by the City imply no other obligation besides using donated funds for the specified purpose.

2. Trees

Tree donations add beauty to City parks and facilities. Trees may be donated and installed at parks recommended by the Deputy Public Works Director and approved by the Parks, Beaches and Recreation Commission. Depending on availability, the minimum cost of tree donations must be equal to the price of a 48" boxed container plus maintenance costs, unless waived by the Commission. Tree donations are limited to specific species that match the landscape in park locations. Tree donations are not eligible for donation plaques, however the donor will be provided with a certificate acknowledging the donation and the location of the donated tree.

3. Benches

Bench donations may be donated and installed in different areas of placement including parks, streets, along the beachfront, within villages, commercial districts, neighborhoods, on a specific island, etc. The Parks, Beaches, and Recreation Commission, with the assistance of Public Works Department staff, shall designate the type, style, design, and placement of City-owned benches on City property.

- a. An inventory of designated benches and available bench locations will be maintained by the City.
- b. Donation requests must be submitted to the Public Works - Municipal Operations Division and meet the following requirements:

- i. Bench donations along a city street, beachfront or other public right of way will require the approval of the Deputy Public Works Director.
- ii. Bench donations within a commercial district will require notification of, and an endorsement from, the local business association, if applicable.
- iii. Bench donations for parks and facilities within a residential community will require notification of residents and an established homeowners association or common interest development, when applicable, within 300 feet of placement.
- iv. Bench donations will be maintained (as defined by the City) for a minimum period of 10 years. After 10 years, the donated item and/or plaque may be removed or replaced at the discretion of the City. For existing bench donations, the donated items will be maintained for 10 years from adoption of this policy.
- v. Four types of benches are able to be donated, with exceptions by approval by the Parks, Beaches and Recreation Commission. Donors can choose from the following:
 - 1. Santa Monica Style – Standard Park Bench with concrete legs and composite bench seat slats;
 - 2. Huntington Beach Style - Standard Concrete Park Bench;
 - 3. Victoria Style – Backless Standard Concrete Park Bench; or
 - 4. Infinity Style – Standard Park Bench with metal legs and composite bench slats. Comes in standard or backless.

4. Park, Public Improvement, and Street Amenities

Other amenities such as drinking fountains, tables, and other equipment that will improve public places in parks, in and/or around public buildings, streets, walkways, and trails may be donated to the City.

- a. Other amenities that may be donated will be identified and approved by City Staff.
- b. Donation of public amenities valued at or below the amount set forth in City Council Policy F-3 may be accepted by the City Manager.
- c. Donation of public amenities valued at the amount set forth in City Council Policy F-3 and above may be accepted or declined by the Parks, Beaches and Recreation Commission.
- d. Donations to be installed on public sidewalks shall meet the criteria described in Policy L-6 Encroachments in Public Rights-of-Way and approved by the Public Works Director.

C. Naming Rights

Donors may receive naming rights on capital improvement projects for which any donation matches or exceeds 75% of the total budgeted cost for the area benefiting from the donation. All such donations will be submitted to the City Council for acceptance of the donation and the name to be applied to the project in keeping with City Council Policy B-9 – *Naming of City Parks & Facilities*.

D. Sponsorships

Special Events are recognized as fundraising activities. Where donations or sponsorship of a special event will require some form of recognition, and, in order to provide recreational opportunities, corporate or organizational sponsors may be recognized by use of logos and name on event banners and signage. Signs and literature at all such special events would be at the discretion of the appropriate Department Director. The size, scale and location of corporate logos and names should not dominate the event facilities or area. Corporate logos and/or names should not be displayed in a manner that would, in any way, suggest the endorsement of the Department or the City. All signs must comply with the City's existing sign code and Council Policies B-3 and B-8.

E. Right to Decline

The City of Newport Beach reserves the right to decline any donation if, upon review, acceptance of the donation is determined to be not in the best interest of the City.

F. Special Privileges

Making a donation or co-sponsoring a special event does not entitle a sponsor/donor to any special privileges other than those stated in this policy such as recognition, plaques or displays at events, unless otherwise agreed upon and approved by the Department Director or the City Council when appropriate.

G. Timeliness

All donations are limited to a period of 10 years. After 10 years, the location will become available for a new donation.

H. Acknowledgements

1. Letter of acceptance of donation will be sent to donor.
2. In some cases, recognition of donations may be given at Commission or Council Meetings.
3. Plaques are reserved for donations meeting the following criteria:
 - a. Donors providing donations valued at \$5,000 to less than \$10,000 may elect to provide a dedicatory plaque not exceeding 2" x 6" with a name designated by the donor preceded by one of the following: "Donated by" or "Donated for." Trees are not eligible for donation plaques.
 - b. Donors providing donations valued at \$10,000 or greater may elect to provide a dedicatory plaque not exceeding 5"x7" with name, date and dedication wording not exceeding 25 words. Plaque content must be approved by the Parks, Beaches & Recreation Commission. Trees are not eligible for donation plaques.
 - c. Donors providing donations valued at least \$1,000 that recognize individuals or organizations that have provided distinguished long term and/or significant service to the City may include a dedicatory plaque not exceeding 5"x7" with name, date and dedication wording not exceeding 25 words. Individuals can include City employees with 25 or more years of distinguished service, as determined by the PB&R Commission.
 - d. Plaques are at the expense of the donor and the City will assume ownership and maintenance of both the donated item and plaque, however, the City does not assume replacement costs due to vandalism or theft. Plaques will remain on a donated item during its

useful life, or up to 10 years. If the donated item becomes unusable or unsightly within the 10-year period due to natural causes, the City does not assume responsibility to keep and/or maintain the item. The City reserves the right, without permission of the donor, to remove and/or relocate the donated item for any reason. The year of the donation will be included on all plaques.

- e. Plaque information will be entered on the application form and ordered by the City.

History

Adopted I-15 – 7-22-1991 (“Park Improvement Donation”)

Amended I-15 – 1-24-1994 (changed to G-5)

Amended G-5 – 6-27-1994

Amended G-5 – 6-24-1996

Adopted B-17 – 5-9-2006 (“Park, Facilities, & Recreation Donations”, incorporation G-5)

Amended B-17 – 2-24-2009

Amended B-17 – 6-26-2012

Amended B-17 – 8-8-2017

Amended B-17 – 5-14-2019

ATTACHMENT D

RESOLUTION NO. 2019- 44

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING CITY COUNCIL POLICY B-17 “PARKS, FACILITIES, AND RECREATION PROGRAM DONATIONS”

WHEREAS, the City of Newport Beach (“City”) is governed, in part, by its Charter, Municipal Code, and adopted City Council Policies;

WHEREAS, at its August 7, 2018 meeting, the City Council directed the Parks, Beaches and Recreation Commission to review City Council Policy B-17 (Parks, Facilities and Recreation Program Donations) for future Council consideration;

WHEREAS, the Parks, Beaches and Recreation Commission formed an ad hoc committee to review City Council Policy B-17 with interested parties and presented recommendations to the entire Parks, Beaches and Recreation Commission regarding revisions to improve readability and efficiency;

WHEREAS, on April 2, 2019, the Parks, Beaches and Recreation Commission approved for submission to City Council revisions to City Council Policy B-17, as shown in the revised policy attached to this resolution as Exhibit 1 and incorporated herein by reference;

WHEREAS, the Parks, Beaches and Recreation Commission’s revisions increase the maintenance fee of donations, include options for bench donations, provide clarity and avoid ambiguity on remaining provisions; and

WHEREAS, the Parks, Beaches and Recreation Commission recommends the City Council revise City Council Policy B-17 as shown in Exhibit 1.

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

Section 1: The City Council hereby amends City Council Policy B-17 (Parks, Facilities and Recreation Program Donations) as provided in Exhibit 1, attached hereto and incorporated herein by reference.

Section 2: All prior versions of City Council Policy B-17 that are in conflict with the revisions adopted by this resolution are hereby repealed.

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 recitals provided in this resolution are true and correct and are incorporated into the substantive portion of this resolution.

Section 5: Except as expressly modified in this resolution, all other City Council Policies, sections, subsections, terms, clauses and phrases set forth in the Council Policy Manual shall remain unchanged and shall be in full force and effect.

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

Section 7: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 14th day of May, 2019.

Diane B. Dixon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



For: Aaron C. Harp
City Attorney

Attachment: Exhibit 1 – Revised City Council Policy B-17

PARKS, FACILITIES, AND RECREATION PROGRAM DONATIONS

Purpose

The City Council recognizes the need to promote community involvement and active participation in quality of life components throughout the community, and the need to establish a fair, equitable, and uniform procedure by which gifts may be donated to the City. This policy establishes criteria for donations to assure area compatibility, attractiveness, usefulness, and sustainability of maintenance. Each donation considered for inclusion in the City's parks and streets system will be subject to established limitations and guidelines for each particular area.

Policy

A. Acceptance of donations of cash or tangible items

1. Based on the value of the donation, appropriate City staff will review the acceptability of any donation and determine if the benefits to be derived warrant acceptance of the donation.
2. Criteria for evaluation includes consideration of any initial expenditure required in order to accept the donation, the potential and extent of the City's obligation to maintain the donation for a minimum of 10 years, and the community benefit to be derived from the donation. After 10 years, the donated item and/or plaque may be removed or replaced by the City.
3. The cost of a tangible donation shall also include a maintenance fee equal to 50% of the estimated 10 year maintenance cost of the donated item, paid for in full by the donor at the time of the donation. This maintenance fee is in addition to the cost and installation of the donated item.

B. Types of Donations

Donations may be received in the form of cash, real, or personal property. Restricted donations are those donations that the donor specifies for a particular City location or purpose. Unrestricted donations are those donations that are given to the City for unspecified use.

1. Cash Gifts

- a. Donation of cash or items valued at or below the amount set in City Council Policy F-3 may be accepted by the City Manager. However, any donation considered a park facility improvement that would

result in an installation of a permanent fixture in the parks must be in compliance with subsection 4 of this policy, *Park, Public Improvement, and Street Amenities*.

- b. Donations above the amount set in City Council Policy F-3 for the City Manager may be accepted by the Parks, Beaches and Recreation Commission.
- c. Gifts of funds may be designated for restricted or unrestricted use. Gifts of cash or items that have a restriction must first be approved by the City Council. Gifts of funds designated for unrestricted use shall be programed and spent on City parks as determined by the City.
- d. Gifts of funds accepted by the City imply no other obligation besides using donated funds for the specified purpose.

2. Trees

Tree donations add beauty to City parks and facilities. Trees may be donated and installed at parks recommended by the Deputy Public Works Director and approved by the Parks, Beaches and Recreation Commission. Depending on availability, the minimum cost of tree donations must be equal to the price of a 48" boxed container plus maintenance costs, unless waived by the Commission. Tree donations are limited to specific species that match the landscape in park locations. Tree donations are not eligible for donation plaques, however the donor will be provided with a certificate acknowledging the donation and the location of the donated tree.

3. Benches

Bench donations may be donated and installed in different areas of placement including parks, streets, along the beachfront, within villages, commercial districts, neighborhoods, on a specific island, etc. The Parks, Beaches, and Recreation Commission, with the assistance of Public Works Department staff, shall designate the type, style, design, and placement of City-owned benches on City property.

- a. An inventory of designated benches and available bench locations will be maintained by the City.
- b. Donation requests must be submitted to the Public Works - Municipal Operations Division and meet the following requirements:

- i. Bench donations along a city street, beachfront or other public right of way will require the approval of the Deputy Public Works Director.
- ii. Bench donations within a commercial district will require notification of, and an endorsement from, the local business association, if applicable.
- iii. Bench donations for parks and facilities within a residential community will require notification of residents and an established homeowners association or common interest development, when applicable, within 300 feet of placement.
- iv. Bench donations will be maintained (as defined by the City) for a minimum period of 10 years. After 10 years, the donated item and/or plaque may be removed or replaced at the discretion of the City. For existing bench donations, the donated items will be maintained for 10 years from adoption of this policy.
- v. Four types of benches are able to be donated, with exceptions by approval by the Parks, Beaches and Recreation Commission. Donors can choose from the following:
 - 1. Santa Monica Style – Standard Park Bench with concrete legs and composite bench seat slats;
 - 2. Huntington Beach Style - Standard Concrete Park Bench;
 - 3. Victoria Style – Backless Standard Concrete Park Bench; or
 - 4. Infinity Style – Standard Park Bench with metal legs and composite bench slats. Comes in standard or backless.

4. Park, Public Improvement, and Street Amenities

Other amenities such as drinking fountains, tables, and other equipment that will improve public places in parks, in and/or around public buildings, streets, walkways, and trails may be donated to the City.

- a. Other amenities that may be donated will be identified and approved by City Staff.
- b. Donation of public amenities valued at or below the amount set forth in City Council Policy F-3 may be accepted by the City Manager.
- c. Donation of public amenities valued at the amount set forth in City Council Policy F-3 and above may be accepted or declined by the Parks, Beaches and Recreation Commission.
- d. Donations to be installed on public sidewalks shall meet the criteria described in Policy L-6 Encroachments in Public Rights-of-Way and approved by the Public Works Director.

C. Naming Rights

Donors may receive naming rights on capital improvement projects for which any donation matches or exceeds 75% of the total budgeted cost for the area benefiting from the donation. All such donations will be submitted to the City Council for acceptance of the donation and the name to be applied to the project in keeping with City Council Policy B-9 – *Naming of City Parks & Facilities*.

D. Sponsorships

Special Events are recognized as fundraising activities. Where donations or sponsorship of a special event will require some form of recognition, and, in order to provide recreational opportunities, corporate or organizational sponsors may be recognized by use of logos and name on event banners and signage. Signs and literature at all such special events would be at the discretion of the appropriate Department Director. The size, scale and location of corporate logos and names should not dominate the event facilities or area. Corporate logos and/or names should not be displayed in a manner that would, in any way, suggest the endorsement of the Department or the City. All signs must comply with the City's existing sign code and Council Policies B-3 and B-8.

E. Right to Decline

The City of Newport Beach reserves the right to decline any donation if, upon review, acceptance of the donation is determined to be not in the best interest of the City.

F. Special Privileges

Making a donation or co-sponsoring a special event does not entitle a sponsor/donor to any special privileges other than those stated in this policy such as recognition, plaques or displays at events, unless otherwise agreed upon and approved by the Department Director or the City Council when appropriate.

G. Timeliness

All donations are limited to a period of 10 years. After 10 years, the location will become available for a new donation.

H. Acknowledgements

1. Letter of acceptance of donation will be sent to donor.
2. In some cases, recognition of donations may be given at Commission or Council Meetings.
3. Plaques are reserved for donations meeting the following criteria:
 - a. Donors providing donations valued at \$5,000 to less than \$10,000 may elect to provide a dedicatory plaque not exceeding 2" x 6" with a name designated by the donor preceded by one of the following: "Donated by" or "Donated for." Trees are not eligible for donation plaques.
 - b. Donors providing donations valued at \$10,000 or greater may elect to provide a dedicatory plaque not exceeding 5"x7" with name, date and dedication wording not exceeding 25 words. Plaque content must be approved by the Parks, Beaches & Recreation Commission. Trees are not eligible for donation plaques.
 - c. Donors providing donations valued at least \$1,000 that recognize individuals or organizations that have provided distinguished long term and/or significant service to the City may include a dedicatory plaque not exceeding 5"x7" with name, date and dedication wording not exceeding 25 words. Individuals can include City employees with 25 or more years of distinguished service, as determined by the PB&R Commission.
 - d. Plaques are at the expense of the donor and the City will assume ownership and maintenance of both the donated item and plaque, however, the City does not assume replacement costs due to vandalism or theft. Plaques will remain on a donated item during its

useful life, or up to 10 years. If the donated item becomes unusable or unsightly within the 10-year period due to natural causes, the City does not assume responsibility to keep and/or maintain the item. The City reserves the right, without permission of the donor, to remove and/or relocate the donated item for any reason. The year of the donation will be included on all plaques.

- e. Plaque information will be entered on the application form and ordered by the City.

History

Adopted I-15 - 7-22-1991 ("Park Improvement Donation")

Amended I-15 - 1-24-1994 (changed to G-5)

Amended G-5 - 6-27-1994

Amended G-5 - 6-24-1996

Adopted B-17 - 5-9-2006 ("Park, Facilities, & Recreation Donations", incorporation G-5)

Amended B-17 - 2-24-2009

Amended B-17 - 6-26-2012

Amended B-17 - 8-8-2017

Amended B-17 - 5-14-2019



CITY OF

NEWPORT BEACH

City Council Staff Report

May 14, 2019
Agenda Item No. 16

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Andy Tran, Senior Civil Engineer, atran@newportbeachca.gov
PHONE: 949-644-3315

TITLE: Approval and Adoption of the 2019 Water Master Plan (17W02)

ABSTRACT:

The 2019 Water Master Plan (WMP) is an engineering and planning document that evaluates the condition of the City's water infrastructure, models the hydraulic system to evaluate delivery capacity and fire flow requirements, and recommends Capital Improvement Program (CIP) projects over the next 30 years so as to maintain the desired performance and integrity of the City's water system. This document has now been completed to the satisfaction of staff and is recommended for City Council's review, approval and adoption.

RECOMMENDATIONS:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Review, approve and adopt the 2019 Water Master Plan.

FUNDING REQUIREMENTS:

This plan identifies necessary capital improvement projects and their anticipated cost over the next 30 years in order to maintain the desired performance and integrity of the City's water system. The completion of this Water Master Plan document is an important element and one of the primary factors considered in determining City water rates. Funding for each of the recommended projects in the master plan will require separate approvals as part of the annual budget process with funds generated by current and future water rate fees.

This 2019 WMP recommends increases to annual spending levels for water CIP projects over the next 30 years. This amounts to an average annual spending increase of \$2.2 million on water capital projects over current levels in order to properly maintain the system. Upon City Council review and approval of this WMP, the increased capital funding needs will be factored with other operational, maintenance and reserve funding needs into the 2019 Water Rate Study, currently underway by the Utilities Department, with support by the Public Works and Finance Departments.

DISCUSSION:

The City entered into a Professional Services Agreement with Arcadis on February 14, 2017 to prepare and complete the 2019 WMP. The last comprehensive WMP for the City was completed in 1999 followed by an update in 2008. Because substantial time has elapsed since the last comprehensive WMP was completed and there have been many system changes since 2008, a new WMP is needed to reflect completed water infrastructure projects since the last update, current and projected water supply and demand information, and advancements in hydraulic water system modeling capabilities. In general, it is good practice for municipalities to update its WMP on a regular basis (every 10-20 years) in order to assess the current condition of its water infrastructure and plan for future water infrastructure improvements. Priorities and schedules for planned projects change based on new condition data becoming available, coordination with other City projects such as street paving or utility undergrounding district formations, and new technologies such as state of the art leak detection and artificial intelligence.

The 2019 WMP is comprised of an Executive Summary and fourteen (14) chapters including many tables and figures. The executive summary was posted on the City of Newport Beach Public Works website for public review on March 13th, with the entire document available for review on April 30th (see link under Attachments).

In summary, the City's water system is in very good condition in terms of emergency storage, pumping capacities, ability to meet or exceed water demand, and providing adequate fire flow protection. This is largely attributed to the City's proactive approach to infrastructure maintenance and improvements as demonstrated by the completion of many water CIP projects over the past years. Some of the major completed water CIP projects since the 2008 update include:

1. Big Canyon Reservoir Flow Metering Vault and Treatment Improvements
2. Balboa Island Water Main Replacement (Phase 1)
3. Lido Village Water Main Replacement
4. Several Water Well Rehabilitation Projects
5. Newport Boulevard Transmission Water Main Replacement
6. Corona del Mar Transmission Water Main Improvements
7. 16th Street (Utilities Yard) Pump Station Modifications

Several minor deficiencies were identified in the 2019 WMP. All of these minor deficiencies will be addressed in the proposed 30-year water CIP (FY 2019/20 through FY 2048/49). Suggested water CIP projects are separated into three categories. The following summarizes estimated costs for each category and the total estimated costs for the entire 30-year water CIP:

<u>Project Category</u>	<u>2019 Estimated Cost</u>
Pipeline Replacement and Relinings	\$103,540,000*
Facilities Projects	\$60,451,000*
Pressure Reducing Stations	\$1,207,000*
Total (without inflation)	\$165,198,000*
Total (30 year with 2.5% inflation per year)	\$216,715,000
Estimated Average Annual Expenditure	\$7,223,833

*Current 2019 dollars and includes FY 2018/19 CIP projects

As shown above, an estimated \$7.2 million per year in water CIP projects over the next 30 years is recommended to provide for proper water system supply, major maintenance and replacement. The current average annual water CIP funding has been approximately \$5 million for the last 10 years. The primary factors that contribute to this higher annual expenditure level are the annual cost of inflation, inclusion of asbestos concrete pipe replacement, and incorporation of the advanced metering infrastructure. To accomplish this recommended new level of major maintenance and replacement, an increase to annual water CIP funding will be reviewed and considered as part of the 2019 Water Rate Study currently underway by the Utilities Department.

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 – 2019 Water Master Plan Executive Summary

The entire 2019 Water Master Plan is available on the City Website at:

<https://www.newportbeachca.gov/government/departments/public-works/water-master-plan>



2019 Water Master Plan

April 5, 2019



WATER MASTER PLAN



Sarina Sriboonlue, PE



Jim Cooper, PE



Kevin Hernandez

Prepared for:

City of Newport Beach
Public Works Department
100 Civic Center Drive
Newport Beach, CA 92660

Prepared by:

Arcadis U.S., Inc.
320 Commerce
Suite 200
Irvine
California 92602
Tel 714 730 9052
Fax 714 730 9345

Our Ref.:

05317005.0000

Date:

April 5, 2019

EXECUTIVE SUMMARY

Introduction

Background

The City of Newport Beach (City) provides water services to a population of approximately 84,270 over 11 square miles of the land located within its boundaries.

The City's last comprehensive Water Master Plan (WMP) was completed in 1999 followed by an update in 2008 to revise the hydraulic model and conduct additional modeling of completed pipeline improvement projects. Because there have been many changes since 1999 and 2008, the WMP needs to be updated again to reflect current water use and future infrastructure needs. The prolonged drought in California from 2010-2016 and Bay-Delta water reliability issues have been major drivers of regulatory changes in California water law. The Water Conservation Act of 2009 (Senate Bill X7-7) mandated urban water suppliers reduce water usage by 20 percent by 2020. The California Governor's State of Emergency ordered urban water suppliers to cut back water use with a collective state goal of 25 percent reduction (based on 2013 usage). Additionally, California passed Senate Bill 555 requiring urban water suppliers to submit a water loss audit annually beginning in 2016. Many changes are occurring, and the regulatory landscape is evolving in response.

Project Purpose and Scope

This 2019 WMP represents the City's water infrastructure planning efforts based on the new reality of the California water climate. The project began in 2017 with the following scope:

- Develop water demand projections and determine the impact of recent water consumption and resultant effect on system demand and peaking factors based on the most recent 10 years of water use trends (2007 – 2016).
- Incorporate the City's 2006 General Plan and subsequent amendments for land use projections and housing density into the water demand analysis.
- Develop a calibrated hydraulic model, using current water demands to analyze the City's water supply and distribution system.
- Conduct a risk analysis to provide the basis for a prioritized pipeline and facilities rehabilitation and replacement program.
- Develop and prioritize recommendations for system improvements over the next 30 years as part of the City's Capital Improvement Program (CIP).

Water Supply Analysis

The City relies on a combination of local groundwater and imported water to meet its potable water demands. Recycled water was added in 1997 to the City's water supply portfolio for irrigation purposes.

The City relies on 70 to 75 percent groundwater, 22 to 27 percent imported water, and approximately 3 percent recycled water. The City, along with the agencies managing the water supplies, ensure that a safe and high-quality water supply will be available during periods of drought or supply shortage.

Groundwater - The City's main water supply source is groundwater from the Orange County Groundwater Basin (OC Basin). Groundwater has been the least expensive and most reliable source of supply for the City. The City has four active wells that pump from the OC Basin. Orange County Water District (OCWD) is the entity that manages the OC Basin. OCWD regulates groundwater levels in the OC Basin by implementing and managing various aquifer recharge projects and by regulating the annual amount of pumping within a safe basin operating range to protect the long-term sustainability of the basin. Pumping is managed through a process that uses financial incentives referred to as Basin Pumping Percentage (BPP) to encourage groundwater producers to pump a sustainable amount of water.

Imported Water - The City supplements its local groundwater with imported water purchased from Metropolitan Water District of Southern California (MWD) through the Municipal Water District of Orange County (MWDOC). MWD's principal sources of water are the Colorado River via the Colorado River Aqueduct and the Lake Oroville watershed in northern California through the State Water Project. The water obtained from these sources is treated at the Robert B. Diemer Filtration Plant located in Yorba Linda for delivery to MWDOC customers.

Recycled Water - The City owns and operates recycled water pump stations for Big Canyon Country Club and the Newport Beach Country Club. In addition to these two sites, there are currently 12 other recycled water connections that supply three different customers. Recycled water is purchased from OCWD and sold to the City's customers. Recycled water is managed in a distribution system separate from the potable distribution system and is, therefore, not further addressed in this WMP and is not included in the City's hydraulic model.

Water Demand Analysis

Water demand analysis for this 2019 WMP includes a review of the City's historic water production and water consumption to determine water usage factors that are used in projecting water demands, and in evaluating existing and future water system performance to identify required system improvements. The developed water usage factors include existing water demands by customer class, non-revenue water (NRW), and peaking factors for maximum month, maximum day, and peak hour water demand variations.

Water Demand Trends

A review of the water production data of the most recent 10 years of water production data (2007 to 2016) indicates the following:

- Although the City population increased by approximately 26 percent since 1990, total water demand has continued to decrease. The 10-year average annual demand for 2007-2016 (15,991 AF) is 14 percent less than the 1986-1996 average annual demand (18,626 AF).
- The decrease in demand starting in 2008 is likely due to the national economic downturn.
- The decrease in demand starting in 2014 is due to the mandatory drought restrictions that were set in place by the State.

Non-Revenue Water

The annual water production data was compared to water consumption records (extracted from the City's water billing system) to determine water that is lost in the system before reaching the customer. This lost water is termed non-revenue water (NRW) and is the difference between the distribution system input volume (i.e. production) and billed authorized consumption. During 2007 to 2016, the City's NRW ranged from 2.1 percent to 7.2 percent, and averaged 5.1 percent.

Water Demand Peaking Factors

Water demands vary on a seasonal and daily basis. The adequacy of existing infrastructure and needed system improvements are based on analyses of the system during peak demand periods. The peak demands needed for the analysis include the average demand during maximum demand month (maximum month), the average demand during the maximum demand day (maximum day), and the average demand during the peak demand hour (peak hour).

- **Maximum month peaking factor** represents the maximum monthly production divided by the annual average monthly production. Based on water production data from 2007 to 2016, the maximum month peaking factor ranged from 1.25 to 1.33. To add a degree of conservatism, a factor of 1.35 was used for this WMP.
- **Maximum day peaking factor** represents the maximum day demand (MDD) divided by average day demand (ADD) for the maximum demand month. While daily production data was available for the City wells, corresponding data was not available for the imported water connections to provide a complete depiction of daily demands during the maximum demand month. For this WMP, the peak day demand factor of 1.85 was determined by comparing values used by neighboring communities which ranged from 1.5 to 1.8. This MDD factor is also consistent with the 1999 WMP.
- **Peak hour factor** represents the peak hour demand (PHD) divided by ADD. Peak hour factors were calculated for each of pressure zone based on the City's supervisory control and data acquisition (SCADA) data from July and August 2017. The peak hour factors were 2.6 for Zones 1 and 2; 3.1 for Zone 3, and 4.0 for Zones 4 and 5.

Water Demand Projections

One objective of this WMP was to develop water demand projections to determine the impact of the change in water demand on future distribution system capacities. The water demand projection methodology used in this WMP to project future water demands involved developing water demand factors based on areal use patterns expressed as gallons per acre per day (gpad) for the range of land uses present in the water service area, and applying the water demand factors to existing and anticipated future land use acreages. This methodology provides water demand projections that are spatially distributed throughout the water service area sufficient for hydraulic modeling and determination of required system improvements and expansions.

Land Use Categories and Water Demand Factors

Land use categories from the 1999 WMP and the 2006 General Plan were recategorized for this WMP to establish a manageable 14 land use categories and a land use demand factor for each. The land use categories established for the 2019 WMP are similar to those used in 1999. Examples of new land use categories added in this WMP as identified in the 2006 General Plan include “Residential Very High” to reflect residential densities over 25 dwelling units per acre (DU/ac), and “Office” and “Mixed Use” were separated out from “General Commercial”.

Projected Water Demands

Projected water demands were calculated by multiplying water demand factors to projected total acreage for each land use category. This WMP conservatively assumes that the Banning Ranch tract will be developed. The top ten largest water users were assumed to be point loads. The total projected water demands at build out including Banning Ranch development and adjusted for NRW of 5.1 percent was estimated to be approximately 16,818 acre feet per year (AFY) i.e. a 5.2 percent increase from the 10-year (2007-2016) average of 15,991 AFY.

Existing System Infrastructure

The City’s distribution system consists of approximately 300 miles of distribution pipelines and is divided into five main pressure zones: Zone 1 through Zone 5 with 16 minor zones. Zones 1 and 2 are the largest and cover most of the system demands. Zones 3, 4 and 5 are smaller pumped zones. The system infrastructure consists of four wells, three storage reservoirs, five pump stations and 43 pressure reducing stations (PRS) that manage pressure across the system. Figure ES-1 illustrates the water system schematic.



Pressure Zones

Interconnects &
Pressure Regulators

City of Newport Beach
Utilities Department

FIGURE ES-1

Zone 1 - Regulated

01 Coastal Newport

Zone 2

02 B.C.R. / 16th Street Pump Station

Zone 2 - Regulated

12 China Cove

16 Dover Shores

18 Hoag/Newport Hieghts

Zone 3

03 B.C.R. Zone 3 Pump Station / CM 11

Zone 3 - Regulated

06 Alta Vista

08 Harbor View

09 Granville

10 Big Canyon

11 North Ford

15 Bren Tract

17 Cameo Highlands

Zone 4

04 Spy Glass - Harbor Ridge

Zone 4 - Regulated

07 Ocean Birch

Zone 5 - Closed System

05 Spy Glass - Harbor Ridge Booster



Pump Station



Reservoir



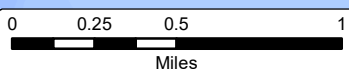
Pressure Reducing Stations



Interconnects



MWD Turnouts



Pressure Reducing Stations

PRS No.	Name	MSL
1	Arches	5.4
2	2121 Bayside	4
3	Bayside/Marine	9.5
4	Dover/PCH	2.4
5	Riverside	5.5
6	Superior	6.2
7	Tustin	6.8
8	Dover Shores #1	54
9	Dover Shores #2	64.7
10	Monrovia	105
11	Pomona	74.9
12	San Bernardino	86
13	Irvine/15th	75.3
14	Castaways	11.9
15	Eastbluff #1	123
16	Eastbluff #2	116
17	Eastbluff #3	98
18	Eastbluff #4	89
19	Corporate Plaza #1	134
20	Corporate Plaza #2	134
21	Cameo Highlands #1	180
22	Alta Vista #1	216
23	Alta Vista #2	173
24	Newport Center	165
25	Newport North #1	116
26	Newport North #2	24.3
27	Avocado/Civic Center	162
28	Bren Tract #1	170
29	Bren Tract #2	260
30	Big Canyon #1	150
31	Big Canyon #2	204
32	Big Canyon #3	184
33	Crown	262
34	Marguerite	253
35	Cameo Highlands #2	153
36	Sandcastle	257
37	Ocean Birch	360
38	Harbor Ridge	491
39	Seaview	348
40	De Anza Trailer Park	17
41	Baypoint	27.6
42	China Cove	16
43	Ridgeway	2.4

Interconnects

Name	Meter Size	Meter Type
IRWD #1	8	1 Way
IRWD #3	12	2 Way
IRWD #4	12	2 Way
IRWD #5	8	2 Way
IRWD #6	8	2 Way
IRWD #7	6	2 Way
MESA #1	8	2 Way
MESA #2	12	2 Way
MESA #3	N/A	Non-Metered
MESA #4	N/A	Non-Metered
MESA #5	16	2 Way
MESA #7	6	2 Way

MWD Turnouts

Name	Meter Size	Meter Type
CM #1	30	Venturi
CM #11	12	Venturi
CM #13	8	Venturi
CM #6	12	Venturi
CM #8	48	Venturi
CM #9	12	Venturi

Legend

IRWD	Irvine Ranch Water District
MESA	Mesa Water District
CM	Metropolitan Water District

Hydraulic Model Development

As part of this 2019 WMP development, a new geographic information system (GIS) integrated hydraulic model of the City's existing water system, which includes all pipelines, was developed with the Innovyze InfoWater software to effectively model the water system conveyance and distribution improvements. Data from previous modeling and master planning efforts were also used, along with projections of future water use and land use development to also help prioritize future facility needs. The hydraulic model included all components of the City's distribution system including wells, reservoirs, pressure reducing stations (PRS), pump stations, interconnections, and pipes.

Demand Allocations

Customer water use throughout the system is converted to model demands at nodes (or junction points) along pipelines. These water demands were developed and allocated based upon land use parcel. Each parcel was given a unit demand factor based on the land use category in gallons per minute per acre (gpm/ac) and are based on a 10-year (2007-2016) average consumption. For each parcel, consumption was calculated by multiplying the unit demand factor by the acreage. Parcel centroids were then defined and used to spatially allocate the water use to the hydraulic model junctions using parcel centroids as GIS meter point data and the InfoWater's demand allocator add-on tool. Demands were allocated to model junctions by pressure zone using the closest pipe methodology in the demand allocator.

Demand Patterns

A diurnal water use pattern represents typical daily fluctuation in customer water use over a 24-hour period. Diurnal curves were developed using the City's SCADA data for storage and incoming and outgoing flows for each pressure zone. A 15-minute increment was used to capture peak water use during the day and establish a more accurate diurnal pattern. Diurnal curves were developed per zone for use during calibration.

Hydraulic Model Calibration

The purpose of the hydraulic model calibration is to compare simulated results to actual measured data and make necessary adjustments to achieve a reasonable match to produce a model that can be used with confidence to predict system performance for the purpose of system planning. The City's water system model was calibrated for steady-state and extended period simulation (EPS) conditions. The model results were compared against 10 fire hydrant flow tests for steady-state and 13 hydrant pressure recorder (HPR) locations for EPS. In addition, available SCADA data were used as additional comparisons for EPS model analysis.

Calibration Procedures and Results

After model construction, system controls and setpoints were added to accurately represent actual system operations based on observed HPR data, SCADA data and/or input from City operations staff. The calibration procedure was an iterative process that required a trial-and-error approach to resolve differences between hydrant test, HPR, and SCADA data and the model. Model simulations were run, and the results were compared graphically to the hydrant test, HPR, and SCADA data. Where obvious differences existed between the model and observed data, these differences were investigated and

adjustments to pipe roughness coefficients (C-factors) and distribution facility setpoints and controls were explored. The City's staff provided additional information when available to help reconcile the differences.

Calibration Results

The hydraulic model was validated using calibration criteria and comparing field testing to the model's results. Overall, the model results matched the measured data reasonably well, and the model can confidently be used as a tool to perform system evaluation and predict future hydraulic conditions.

- **Steady-state calibration** was performed using hydrant flow test data collected on July 18 and 19, 2017. For each test, a flow hydrant was used to record flow and an observation hydrant used to record static and residual pressures. Steady-state calibration results show excellent results at all ten hydrant test locations with the difference in pressure drop (between static and residual) of 3 psi or less.
- **EPS calibration** was performed using HPR data at 13 locations and available SCADA data from July 19, 2017. EPS calibration results at the HPR locations showed excellent results at 8 of the 13 locations and very good results at the remaining 5 locations. EPS calibration results at the SCADA locations overall showed very good to excellent results with few exceptions.

Hydraulic System Analysis

The calibrated hydraulic model and design criteria were used to evaluate the existing and future system under current and built-out demands to assess system performance. Deficiencies, if any, were identified during this hydraulic analysis and were incorporated in the CIP development process.

System Performance and Design Criteria

The City has established performance and design criteria for its water system as summarized in Table ES-1.

Table ES-1: System Performance and Design Criteria

Parameters		Criteria
Pipes	Velocity	< 8 ft/s for pipe ≤ 10 inch
		< 5 ft/s for pipe ≥ 12 inch
	Headloss	10 ft/s during Fire Flow < 5 ft/1000 ft for all pipe sizes
Storage (per Zone)	Regulatory Storage	25% of MDD ¹
	Fire Storage	Depends on area of

Parameters		Criteria
System Pressure		influence of Zone
	Emergency Storage*	7 average days' demand
	Maximum Pressure	140 psi
	Peak Hour Demands	40 psi minimum
	Max Day + Fire Flow Demands	20 psi minimum
	Minimum Day Demand	60-90 psi
Wells	Capacity of direct supply wells	ADD ²
Booster Pump Station Capacity	Demand Conditions	Assuming the largest pump within the station is out of service, the higher between the PHD ³ or MDD plus fire flow or MDD plus fire flow in case of available floating storage.
Peaking Factors	Maximum Month	1.35
	Maximum Day	1.85
	Peak Hour	Zone 1 & 2 – 2.6 Zone 3 – 3.1 Zone 4 & 5 – 4.0
Fire Flow	Single Family	1,000 gpm for 2 hours
	Community Facilities	1,500 gpm for 2 hours
	Multiple Family & Closely Built Residential (one & two stories)	2,000 gpm for 2 hours
	Multiple Family & Closely Built Residential (three stories or more)	2,500 gpm for 3 hours
	Multiple Family Attached Residential	3,000 gpm for 3 hours
	Commercial (≤ two stories)	3,000 gpm for 3 hours
	Commercial (> two stories)	5,000 gpm for 5 hours

Parameters	Criteria
High-Rise Residential	5,000 gpm for 5 hours
Business Park/Industrial Park	5,000 gpm for 6 hours
Regional Shopping Center	6,000 gpm for 6 hours

Note: ¹MDD = Maximum Day Demand, ²ADD = Average Day Demand, ³PHD = Peak Hour Demand

*Emergency Storage is based on MWD Administrative Code Section 4503 b1

Existing System Analysis

The system was analyzed under existing demands against the design criteria. The system storage and pumping were compared against the criteria to identify any deficiencies. The distribution system was analyzed using the hydraulic model under ADD, MDD and fire flow scenarios.

- Existing Storage and Pumping Analysis** - The storage in the system is used to meet operational daily demand peaks, fire flow, and emergency storage. The sum of these three criteria must be met by the available storage in each pressure zone. Sub-pressure zones that are hydraulically connected and are served by the same facilities are grouped together. Based on the system analysis, the City's available storage (202.5 MG) significantly exceeds the City's storage criteria (108.3 MG). For the pumping analysis, the firm capacity (largest pump out of service) of a pump station in a pressure zone must be greater than the higher of the MDD plus fire flow or the PHD. The analysis shows a small pumping deficiency (0.8 mgd) in Zones 1 and 2. This is not a true deficiency because when demands in Zones 1 and 2 exceeds the capacity of 16th Street Pump Station, the water from Big Canyon Reservoir flows via gravity to make up the difference.
- Maximum and Minimum Day Demand Analysis** - The distribution system was analyzed under MDD to identify minimum pressures. Three nodes were found to have pressure marginally below 40 psi. These locations were further evaluated with help from the City's staff. All three locations are next to closed pressure zone division valves which the City intends to keep closed, and no low-pressure complaints have been received from these locations. It is recommended that the City monitor pressures at these locations and adjust strategy if pressures decrease over time. No improvements are suggested to improve pressures at these locations. The distribution system was evaluated for high pressures using the minimum day demand scenario (0.66 times ADD) in the hydraulic model (greater than 140 psi). There were a few locations with pressure greater than 140 psi, and most of them were on transmission pipes. These locations do not need any improvements as no customers are directly connected to these high-pressure pipes.
- Fire Flow Analysis** - The available fire flow across the City was calculated at each node and compared with the requirement using the automated fire flow routine in the hydraulic model. Only four locations were identified where available fire flow at 20 psi residual pressure was less than the City's requirements. Three of the four locations have a 4- or 6-inch pipes. Upsizing these pipes to 8 inches will increase the available fire flow and exceed the City's requirements. The fourth location is next to a pressure zone division valve which is closed. Under emergencies such as a fire, this

valve can be opened to provide the required fire flow. No improvement is recommended for this site.

Future System Analysis

The City's water distribution system was also analyzed for future build-out demands using the City's system performance criteria.

- **Future Storage and Pumping Analysis** – The City has enough available storage in the system under future build out demands as well. Proper and regular maintenance of this available storage should suffice to maintain its reliability to the City. The pumping analysis showed a deficit in available pumping in Zones 1 and 2 under build-out demands similar to the one seen under existing system demands. As with the existing storage and pumping analysis, this is not a true deficiency as water from Big Canyon Reservoir can flow to Zones 1 and 2 via gravity to make up the difference.
- **Maximum and Minimum Day Demand Analysis** – The analysis under future build-out demands showed similar results consistent with the existing system demand analysis. The same three locations show low pressures as seen under existing system analysis as they are at dead end zone boundaries near closed valves. Since pressures at these locations are just slightly (3-5 psi) below 40 psi, therefore no improvements are recommended to address them, but the City should continue to monitor these areas for low pressure. Similar to existing system analysis, the few locations that violate maximum pressure criteria under minimum day future demands are on transmission lines and not directly connected to customers. No improvements are recommended for these.
- **Fire Flow Analysis** - Fire flow analysis was performed using the hydraulic model under maximum day future demands. The same four nodes, as found in the existing system analysis, were found deficient in this analysis. Upsizing these pipes to 8 inches will address the City's fire flow criteria.

System Improvements

Hydraulic modeling of the City's distribution system under existing and future build-out demands revealed the necessity for very few improvements. The only system improvements identified in this WMP involves upsizing three pipes from 4 or 6-inch to 8 inches to meet fire flow criteria.

Risk Analysis Methodology

The City's 30-year CIP was developed using a risk-based approach. Both horizontal assets (i.e. pipelines) and vertical facilities were analyzed using a risk method to determine their priority in the CIP. To identify projects that should be incorporated into the City's CIP, a field assessment was performed to evaluate all facilities and a desktop analysis was performed on all pipes within the distribution system.

Information from both efforts were combined to assess the physical condition, performance, and impact of failure of the City's individual assets. The scoring of an asset's physical and performance condition is represented as Likelihood of Failure (LoF) and impact to the City if a failure were to occur is referred to as Consequence of Failure (CoF). The LoF and CoF were used to calculate the risk score for each individual asset.

$$\text{Risk Score} = \text{Likelihood of Failure (LoF)} \times \text{Consequence of Failure (CoF)}$$

Pipeline (Horizontal Asset) Assessment Methodology

For this WMP, assessment was performed only on system pipes (distribution and transmission) and not on the appurtenances along the pipes. An asset's risk was determined by quantifying the LoF score (1-5) based on its physical and performance condition and the CoF score (1-5) based on the impact of the asset failure on the City's water operations and ability to serve its customers. Physical condition was defined as the current state of operation and repair of an asset that is influenced by age, breaks, historical maintenance, and operating environment. It was inferred using the pipe characteristics like age (install year), number of breaks, and material documented in the City's GIS. Performance condition was assigned based on how well assets are accomplishing their designed tasks. This was inferred from the hydraulic analysis of the pipes. CoF was assigned through proximity analysis of pipes to environmentally sensitive areas, critical customers, and pipe characteristics. The risk of an asset (1 through 25) was calculated as the product of the LoF multiplied by the CoF.

Facility (Vertical Asset) Assessment Methodology

A vertical asset was defined as a single item that relates to the storage, transmission, or distribution of potable water. The vertical assets in the City includes valves, pumps, buildings, storage reservoirs, and flowmeters. This WMP established a complete inventory of all assets within the City's water distribution system. To catalogue assets within the system, hierarchies were developed for vertical assets. Hierarchies help filter and find asset records within the database and allow information to be summarized at various hierarchical levels. For vertical assets, a seven-tiered system was used to store component information and accommodate the variety of assets seen in the City's system. Asset attributes and physical condition assessment criteria were also defined for each asset classifications. The classifications include structural, electrical, and mechanical.

Facility Assessment

Every asset that is a part of the City's water system was visually inspected to help prioritize their rehabilitation or replacement and inclusion in the CIP. The sites inspected include the City's interconnections and turnouts with other agencies, 5 pump stations, 3 reservoirs, 2 well buildings, and 43 PRS accounting for 734 assets in total.

Likelihood of Failure for Vertical Assets

- **Physical Condition** – Seventy-seven percent of inspected assets scored either very good condition or minor defects only. Nineteen percent received a score of maintenance required leaving only three percent of assets requiring renewal or asset being unserviceable (e.g. CM-9 turnout, IRWD-7 interconnect, and Zone 5 Auxiliary Pump Station).
- **Performance Condition** – Based on hydraulics evaluation and interview of City staff, 91 percent of the inspected assets are in very good condition to minor defects only. Six percent require maintenance and three percent require renewal. The two assets deemed unserviceable were the pump and motor located at the Zone 5 Auxiliary Pump Station due to missing bolts and equipment, high pressures, and proximity to electrical panel.

Consequence of Failure for Vertical Assets

Ninety-eight percent of the City's assets were assigned a low to medium consequence score as most of the assets have redundancies in the system. All sixteen assets with a high consequence are located at the 16th street reservoir and pump station. As the first major pump station and reservoir after the City's wells, the assets within the facility play a crucial role in the operation of the City's water system. No assets were scored as very high consequence.

Risk for Vertical Assets

There are no high or very high-risk assets in the inspected facilities. Only three assets were identified to have moderate risk which were prioritized to be included in the City's CIP. This includes the Zone 5 Auxiliary Pump Station and Zone 4 Pump No. 4 that runs on an old motor and requires renewal.

Vertical Assets for CIP Inclusion

The assessment of vertical assets identified 25 assets that were found to require renewal or be in unserviceable condition. Three assets in Zone 5 Auxiliary Pump Station and Zone 4 Pump Station were identified as moderate risk, the highest risk calculated for all vertical assets assessed. These assets are included in the CIP to address these elevated risk scores.

Water Mains Assessment

The City's water mains were assessed using the risk framework and criteria where a risk score was assigned to every pipe. The desktop analysis included assessment of the City's break data, identification of pipe cohorts, and development of effective useful life (EUL) by pipe material to assign a LoF score for each pipe segment.

Likelihood of Failure for Horizontal Assets

Physical condition score was assigned to each pipe segment using the EUL estimates for each material. The pipe segments were also assigned a performance score based on the hydraulic constraints. The majority of the City's pipes were installed in the second half of the 20th century, and hence most of them are predicted to be in excellent condition (94.4 percent).

Consequence of Failure for Horizontal Assets

The Triple Bottom Line approach was used to assign CoF scores for each pipe segment using GIS tools. To evaluate each individual criterion, GIS calculated the proximity to roads and environmentally sensitive areas, identified pipes that served critical customers, and related the pressure output from the model to pipes. Only 10 percent of the City's pipes are highly critical.

Risk for Horizontal Assets

Overall the system has only 3.3 percent of its pipes at an elevated risk score (high or very high) as shown in Table ES-2. While this shows the City's system is at low risk overall, as pipes continue to age, the risk score will continue to rise. Therefore, the riskiest pipes will be targeted in the CIP followed by older pipes that will eventually raise the risk score.

Table ES-2: Pipe Risk Score Breakdown

Risk	Segments of Pipes	Pipe Length (miles)	Percentage of Pipe Length
Very Low	5,954	171.5	57.6
Low	3,092	86.7	29.1
Medium	787	30.1	10.1
High	171	7.4	2.5
Very High	38	2.3	0.8

Capital Improvement Program

The City's 30-year CIP was developed based on risk analysis and inclusion of projects requested by the City to maintain the level of service and operation of the distribution system. Planning level budgets were assigned to the developed CIP projects using unit costs developed from recent projects the City has completed and contacting vendors. The level of accuracy for the cost estimates corresponds to the Class 4 estimate as defined by the Association for the Advancement of Cost Engineering (AACE) International. The accuracy range of a Class 4 estimate is minus 15 percent to plus 20 percent in the best case and minus 30 percent to plus 50 percent in the worst case.

The 30-year CIP covers facilities projects, pressure reducing stations (PRS) projects, and pipeline projects assuming an escalation factor of 2.5 percent per year. Over the 30-year period an average of \$7.2M will be needed each year. The majority of projects in the CIP cover the water main replacement projects (64.6 percent), followed by facilities projects (34.9 percent), and PRS projects (0.5 percent) as summarized in Table ES-3.

Table ES-3: 30-Year CIP Cost by Project Category

Project Category	2018 Cost
Pipeline Replacement and Relining	\$103,540,000
Miscellaneous	\$60,451,000
Pressure Reducing Stations	\$1,207,000
Total	\$165,198,000

Pipeline Projects

A total of 30 pipe renewal or replacement projects are included in the CIP. For larger pipes on major streets, the City preferred relining of pipes as these projects are estimated to cost 70 percent of a full replacement. Near-term projects include the Balboa Island Water Main Replacement (Phase 2) project and the design of the Bay Crossing Water Main project. Figure ES-2 shows all of the pipeline CIP projects.

Facilities Projects

Fifteen miscellaneous projects were identified in the City's 30-year CIP including facility improvements, system wide rehabilitation programs, and distribution system upgrades that fall outside of pipeline replacements or specific PRS projects. The inclusion of these projects are based on the risk assessment and insight from the City. Miscellaneous projects range from near-term projects such as installation of advanced metering infrastructure (AMI), installation of a mixing system for Spyglass Reservoir, or water well rehabilitation to long-term projects such as installation of new wells and associated pipelines.

Pressure Reducing Stations Projects

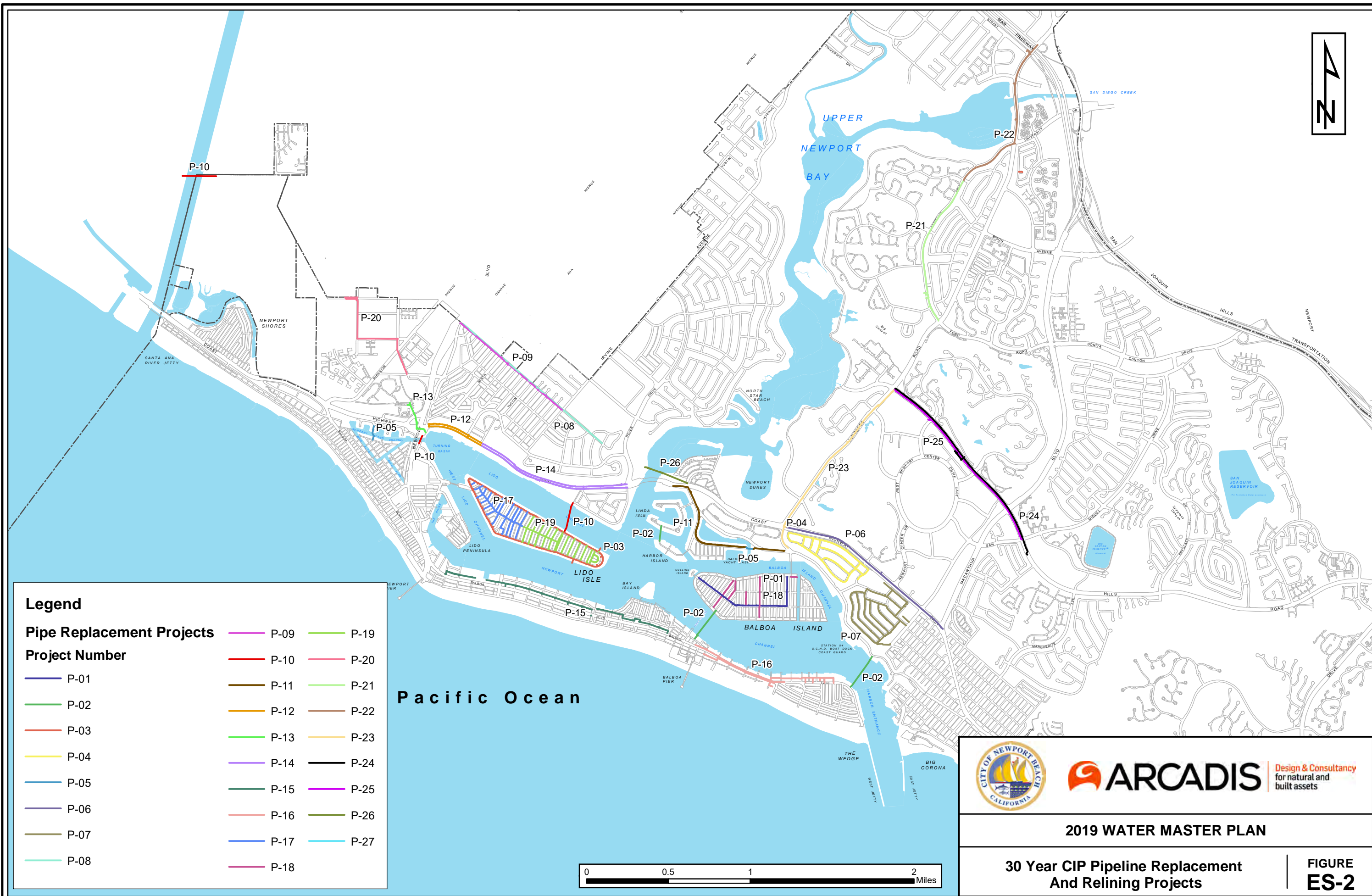
With 43 PRSs in the City's distribution network, the City needs to be proactive in their maintenance. Five PRS projects that have been included to improve system operations.

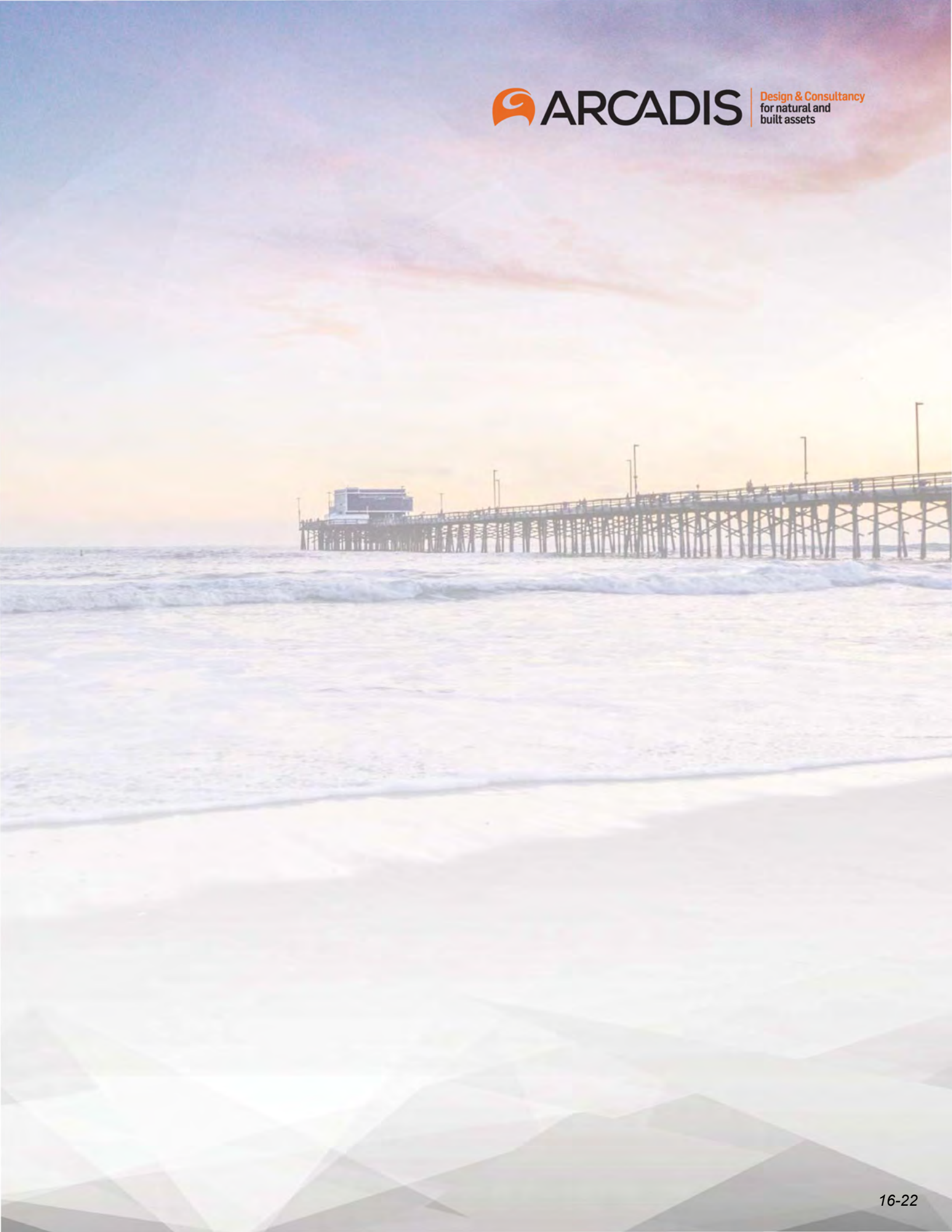
General Recommendations

Through developing the WMP, implementing the projects outlined in the CIP can be supported with continued effort by the City. This includes the following actions that can be implemented at minimal cost to support items in the CIP.

- The City should take the updated water system model from this WMP and continue to keep it current through coordination with field staff and the City's GIS department.
- The 30-year CIP identified in this WMP should be updated to reflect completed, postponed, or new projects.
- The risk calculation for the City's assets can be updated with visual inspection to better understand the appropriate replacement of aging assets in the City's system.

By beginning to perform analysis of water main breaks in this WMP, the City can now collect more information on breaks and conduct studies on pipe wall thickness to better establish a water main's estimated useful life. This information can feed into the planned replacement projects and help the City prioritize future work.







CITY OF

NEWPORT BEACH

City Council Staff Report

May 14, 2019
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: Kathyne Cho, Civil Engineer, kcho@newportbeachca.gov
PHONE: 949-644-3014

TITLE: Grant Howald Park Rehabilitation Project – Acceptance of
Conceptual Design

ABSTRACT:

On March 5, 2019, the Parks, Beaches and Recreation Commission approved the Grant Howald Park Rehabilitation Project (Project) Conceptual Design and recommended that staff forward to City Council for review and approval. Staff requests City Council's review and input on the proposed Conceptual Design for the Grant Howald Park Rehabilitation Project, and direct staff to proceed with preparation of final construction documents and award of the construction contract.

RECOMMENDATION:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 Class 1 (Existing Facilities) and Section 15302 Class 2 (Replacement or Reconstruction) of CEQA Guidelines, because this project involves the maintenance of existing facilities and will be reconstructing existing facilities on the same site as the structure [facility] replaced. The project will have substantially the same purpose as the structure [facility] replaced. A categorical exemption was filed with the Orange County Clerk-Recorder's office on March 15, 2019;
- b) Review and approve the Conceptual Design and Project Budget; and
- c) Direct staff to proceed with the final park rehabilitation construction documents.

FUNDING REQUIREMENTS:

The current Capital Improvement Program budget includes sufficient funding for the design portion of the project. Funding for construction is proposed in the Capital Improvement Program budget for FY 2019/20 to be considered by City Council in June. Additional funding to complete approved alternatives of the project can be included, if necessary, in the Capital Improvement Program budget proposed for FY 2020/21 or at the time of construction contract award.

BACKGROUND:

Grant Howald Park is a 3.1-acre site originally developed in 1954 by the Youth Center Board of Directors (Board) to provide a recreation facility for the youth of the community. The Park is generally bounded by Goldenrod Avenue, Fifth Avenue, Marguerite Avenue and Harbor View Elementary School and includes a community building with two playgrounds (also known as the Community Youth Center or CYC), two tennis courts, lighted sports fields, basketball court and other related facilities. In 1972, the Board dissolved its organization and conveyed all of the CYC facilities to the City of Newport Beach. The Park is constructed on City property, as well as a portion of Newport-Mesa Unified School District property.

DISCUSSION:

The Grant Howald Park Rehabilitation Project is currently included within the Facilities Financing Plan. A conceptual design for the rehabilitation of the Park has been developed by RJM Design Group, with input from City staff, the community, and the Parks, Beaches and Recreation Commission ad hoc committee. The preliminary design was presented to the public at a community meeting on February 13, 2019. The feedback received from residents and field user groups was favorable and used to develop the plans to ensure that this project rehabilitates the park with amenities that meet the residents' expectations and reflects the community's charm.

Staff recommends upgrading three major components of the park:

- Playground layout and equipment – Proposed design includes new 2 to 5-year old and 5 to 12-year old play equipment, new shade structures, more seating within the play areas and ramps connecting the two playgrounds, encouraging more integrated play;
- Sports field – Design includes installing a synthetic turf field and perimeter fencing, adding new shaded teaming/picnic area, updating the restroom building, removing and replacing fencing, and converting existing field lights to LED.
- Fifth Avenue Streetscape – Design includes removing the existing retaining walls, fencing and Eucalyptus trees, installing new trees and landscaping, and adding pedestrian walkways along Fifth Avenue and Iris Avenue. Additionally, staff is recommending the undergrounding of the existing utility lines and removing the poles on Fifth Avenue.

Cost Estimate

The estimated total project cost (design and construction) is \$5,500,000.00. The project has the option to underground the above-ground utilities along the Fifth Avenue and the Goldenrod Avenue frontages for approximately \$850,000 and \$500,000 respectively. Staff believes there is merit in undergrounding both frontages, but at a minimum, strong consideration for the utilities on Fifth Avenue. If Council approves both the undergrounding alternatives, with an estimated cost of \$1,350,000.00, the expected overall project cost is estimated at \$6,850,000.00.

The overall estimated project budget is as follows:

Project Design (Architect, Geotechnical, Survey, Incidentals) *	\$	350,000.00
Construction Estimate (04/15/19) **	\$	5,150,000.00
Estimated Total Project Cost	\$	5,500,000.00
Fifth Avenue Undergrounding (Optional Item)	\$	850,000.00
Goldenrod Avenue SCE Undergrounding (Optional Item)	\$	300,000.00
Goldenrod Avenue AT&T Undergrounding (Optional Item)	\$	200,000.00
Estimated Undergrounding Cost	\$	1,350,000.00
Estimated Overall Project Cost	\$	6,850,000.00

* - Includes a 10% contingency;

** - Includes a 20% contingency

Budget

The current Facilities Financing Plan (FFP) includes \$5,750,000.00 for the Grant Howald Park Rehabilitation project and an estimated 2.5 percent growth up to \$6,041,094.00 for 2020. Amounts to be budgeted in the CIP are as follows:

<u>Fiscal Year</u>	<u>Amount</u>	<u>Fund</u>
2018-19	\$ 340,000	Parks/ Community Centers FFP
2019-20	\$5,500,000	Parks/ Community Centers FFP
2020-21	<u>\$ 201,094</u>	Parks/ Community Centers FFP
Subtotal	\$6,014,094	
2020-21	<u>\$ 808,906</u>	Building Excise Tax, grants, and
Total	\$6,850,000	other sources

It is important to note that the proposed budget above is based on a Conceptual Plan and preliminary Engineering Cost Estimate; therefore, some line items may adjust due to the uncertainty of construction costs at the time of project advertisement.

ENVIRONMENTAL REVIEW:

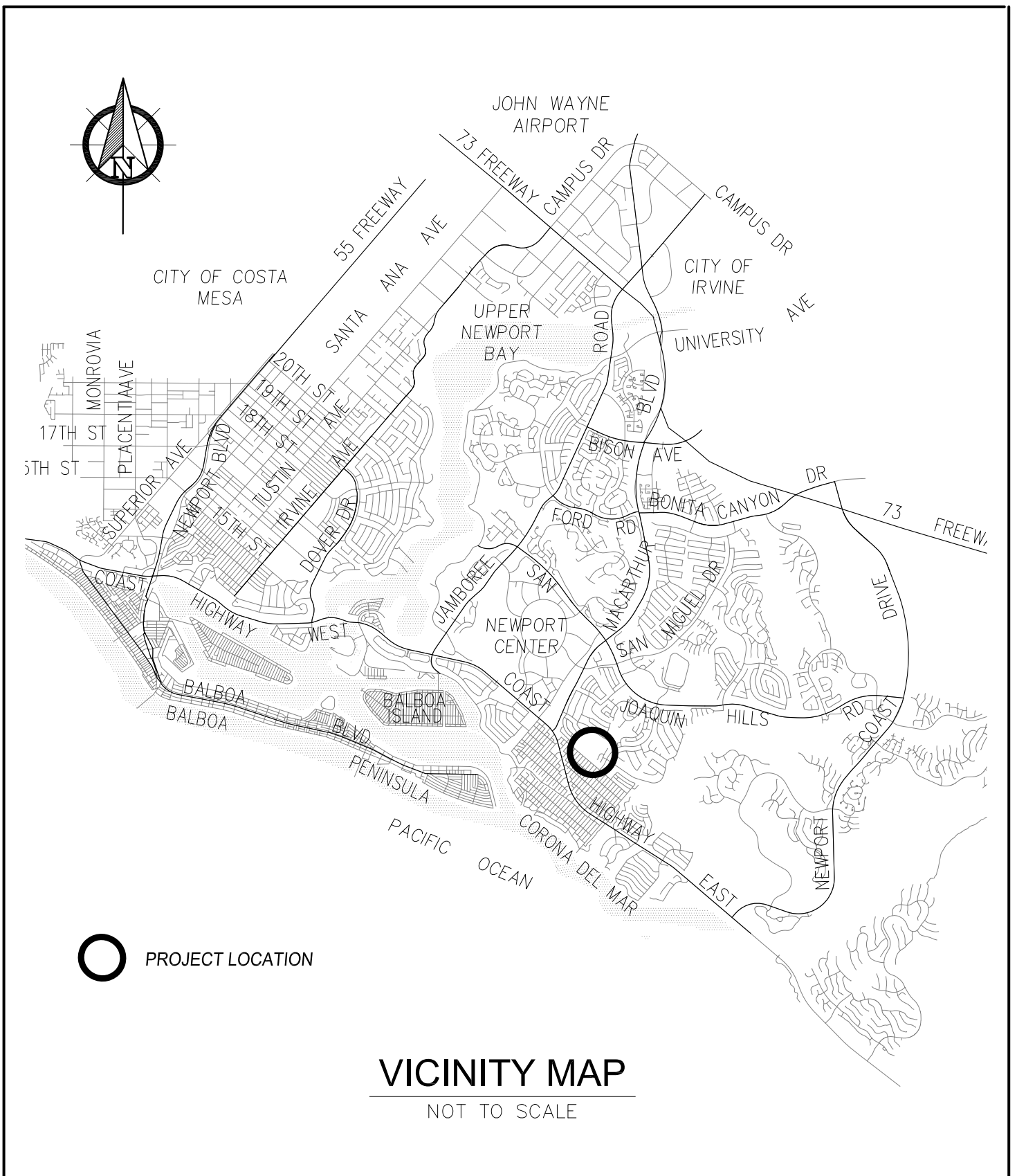
Staff finds this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301_Class 1 (Existing Facilities) and Section 15302_Class 2 (Replacement or Reconstruction) of the CEQA Guidelines, because this project involves the maintenance of existing facilities and will be reconstructing existing facilities on the same site as the structure [facility] replaced. The project will have substantially the same purpose as the structure [facility] replaced. A categorical exemption was filed with the Orange County Clerk-Recorder's office on March 15, 2019.

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



GRANT HOWALD PARK
REHABILITATION PROGRAM

LOCATION MAP

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

C-7476-1

05/14/19