



**CITY OF NEWPORT BEACH
NEWPORT BEACH PUBLIC FACILITIES CORPORATION
ANNUAL MEETING**

**AUGUST 25, 2020
3:30 P.M.**

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

Corporation Members

**Brad Avery
Joy Brenner
Diane Dixon
Duffy Duffield
Jeff Herdman
Kevin Muldoon
Will O'Neill**

Staff Members

**Grace K. Leung, President
Leilani Brown, Secretary
Dan Matusiewicz, Chief Financial Officer**

SPECIAL NOTICE REGARDING COVID-19

On March 4, 2020, Governor Newsom proclaimed a State of Emergency in California as a result of the threat of COVID-19. On March 12, 2020, Governor Newsom issued Executive Order N-25-20, which allows Corporation Members to attend the Public Facilities Corporation meetings telephonically. Please be advised that to minimize the spread of COVID-19, some, or all, of the Corporation Members may attend this meeting telephonically.

Also, please be advised that on March 17, 2020, Governor Newsom issued Executive Order N-29-20, which allows for the public to participate in any meeting of the City Council telephonically or by other electronic means. Given the health risks associated with COVID-19, the City of Newport Beach has decided to not have City Council Chambers open to the public for this meeting. As a member of the public, if you would like to participate in this meeting, you can participate via the following options:

1. You can submit your questions and comments in writing for Corporation Member consideration by sending them to the City Clerk at cityclerk@newportbeachca.gov. To give Corporation Members adequate time to review your questions and comments, please submit your written comments by **Monday, August 24, 2020, at 5:00 p.m.**
2. In addition, members of the public can participate in this meeting telephonically. Specifically, the meeting will be viewable on NBTv and live streamed on the City's website. If you are watching the meeting on NBTv or via the live stream, during the meeting, phone numbers for the public to call and to comment on specific agenda items will be posted on the screen. When you call, you will be placed on hold until it is your turn to speak. Please note that only twenty (20) people can remain on hold at a time. If you call in to speak on an item and the line is busy, please call back after a few moments. The City will ensure that it allows enough time per item for everyone to call in to comment.

Please know that it is important for the City to allow public participation at this meeting. If you are unable to participate in the meeting via the process set forth above, please contact Leilani Brown, Corporation Secretary, at (949-644-3005 or cityclerk@newportbeachca.gov) and she will attempt to accommodate you. While the City does not expect there to be any changes to the above process for participating in this meeting, if there is a change, the City will post the information as soon as possible to the City's website.

The City of Newport Beach thanks you in advance for continuing to take precautions to prevent the spread of the COVID-19 virus.

The Newport Beach Public Facilities Corporation meeting is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Newport Beach Public Facilities Corporation's agenda be posted at least seventy-two (72) hours in advance of each meeting and that the public be allowed to comment on agenda items before the Newport Beach Public Facilities Corporation and items not on the agenda but are within the subject matter jurisdiction of the Newport Beach Public Facilities Corporation. The Newport Beach Public Facilities Corporation may limit public comments to a reasonable amount of time, generally three (3) minutes per person.

The Newport Beach Public Facilities Corporation'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, Corporation Secretary, 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.

A. ROLL CALL

B. PUBLIC COMMENTS [949-270-8165]

Public comments are invited on agenda and non-agenda items. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record. The Newport Beach Public Facilities Corporation has the discretion to extend or shorten the time limit on agenda or non-agenda items.

C. ELECTION OF OFFICERS [949-270-8165]

- Mayor Will O'Neill to serve as the Chairperson of the Corporation
- Mayor Pro Tem Brad Avery to serve as the Vice Chairperson of the Corporation
- Council Members to serve as the Corporation Board of Directors

D. APPROVAL OF MINUTES

1. Minutes of the August 13, 2019 Newport Beach Public Facilities Corporation Meeting [949-270-8165]

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

E. CURRENT BUSINESS

2. Review of Annual Financial Statements [949-270-8165]

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

3. Resolution No. PFC2020-1: Approval of Release of Certain Assets Securing the City's 2010 Certificates of Participation [949-270-8165]

- 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. PFC2020-1, *A Resolution of the Board of Directors of the Newport Beach Public Facilities Corporation Approving Supplement No. 1 to Lease/Purchase Agreement, a First Amendment to the Site Lease and a First Amendment to the Assignment Agreement and Certain Additional Documents and Authorizing Certain Actions in Connection Therewith.*

F. ADJOURNMENT

Testimony given before the Public Facilities Corporation is recorded.

CITY OF NEWPORT BEACH

Newport Beach Public Facilities Corporation
Annual Meeting
August 13, 2019

A. **ROLL CALL - 4:00 p.m.**

Present: Director Brad Avery, Director Joy Brenner (arrived at 4:02 p.m.), Director Diane Dixon, Director Jeff Herdman, Director Kevin Muldoon, Vice Chairman Will O'Neill, Chairman Duffy Duffield

B. **PUBLIC COMMENTS ON AGENDA AND NON-AGENDA ITEMS – None**

C. **ELECTION OF OFFICERS**

Motion by Director Herdman, seconded by Director O'Neill, to elect Mayor Diane Dixon as Chairperson of the NBPFC, Mayor Pro Tem Will O'Neill as the Vice Chairperson of the NBPFC, and the Council Members as the NBPFC's Board of Directors for the 2019-2020 fiscal year.

The motion carried unanimously.

D. **APPROVAL OF MINUTES**

1. **Minutes of the August 14, 2018 Public Facilities Corporation Meeting**

Motion by Director Herdman, seconded by Vice Chairman O'Neill, to waive reading of subject minutes, approve as written, and order filed.

The motion carried unanimously.

E. **CURRENT BUSINESS**

2. **Review of Annual Financial Statements**

Chief Financial Officer Matusiewicz and Senior Accountant Power announced that the NBPFC is required to meet once per year, discussed the purpose of the NBPFC, and reviewed the outstanding Certificates of Participation (COP) and the NBPFC's financial activity over the year.

Motion by Vice Chairman O'Neill, seconded by Director Herdman, to receive and file the Annual Financial Statements.

The motion carried unanimously.

F. **ADJOURNMENT - 4:05 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 August 9, 2019, at 4:00 p.m.

Chair

Secretary



NEWPORT BEACH

Newport Beach Public Facilities Corporation Staff Report

August 25, 2020
NBPFC Agenda Item No. 2

TO: HONORABLE MAYOR AND MEMBERS OF THE PUBLIC
FACILITIES CORPORATION

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

PREPARED BY: Trevor Power, Senior Accountant,
tpower@newportbeachca.gov

PHONE: 949-644-3125

TITLE: Review of Annual Financial Statements

ABSTRACT:

The Bylaws of the Newport Beach Public Facilities Corporation call for an annual meeting of the Board of Directors. The Bylaws also specify that the Chief Financial Officer shall maintain adequate financial records concerning the receipts and disbursements of the Corporation and the Board of Directors are entitled to inspect the associated financial records upon request. The attached financial statements represent the financial position and financial activities of the corporation for the year ended June 30, 2020.

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) Receive and file the attached financial report.

FUNDING REQUIREMENTS:

There are no funding requirements associated with this action.

DISCUSSION:

The Newport Beach Public Facilities Corporation ("Corporation") was created on March 9, 1992, by the City of Newport Beach ("City") under the authority of California law. The purpose of the Corporation is to assist the City in the financing of public improvements, including a public library and most recently the new Civic Center project. This type of non-profit corporation is required by the Federal IRS code in order to issue a public financing instrument called a Certificate of Participation ("COP"). A COP is a typical California public financing instrument for public facilities or equipment.

It is a type of lease purchase that requires a third party, the Corporation, for the lease transaction. The Corporation assigns all of the rights, obligations and financial transactions to the Trustee for the COP.

The Corporation is governed by a Board of Directors that is comprised of the seven City Council Members of the City. Normally, the Mayor serves as Chairperson of the Board, with the Mayor Pro Tem serving as Vice-Chairperson. The City Manager serves the Corporation as President, the City Clerk serves as Secretary, and the City Treasurer serves as Chief Financial Officer.

In 1992, the City issued \$7.5 million of COPs to finance the construction of the Central Library and subsequently refinanced this obligation in 1998. In 2010, the City issued approximately \$126.7 million of new COPs. Of this financing, \$122.8 million was used for the Civic Center project and \$3.9 million was used to refinance the remaining balance of the Central Library COPs. The Corporation's financial data and transactions are included in the debt service fund in the City's financial statements. The City's debt service fund is used solely to account for the activities of the Corporation and contains no other City debt financing activities. Even though the Corporation is a separate legal entity, it is considered a component unit of the City and is included in the audit of the Comprehensive Annual Financial Report.

The main sources of revenues of the Corporation are lease payments from the City and Federal Build America Bond (BAB) Interest Subsidy payments; both of which are pledged for the sole use of paying interest and principal on the COPs. The Corporation has assigned its rights to receive and collect these payments to a trustee who makes the semi-annual debt service payments to the bondholders. Therefore, the lease and BAB subsidy payments are received directly by the Trustee. The debt is an obligation of the City, not the Corporation. The City owns the financed properties.

During the year, the Trustee received lease payments from the City totaling \$7.7 million and Federal Build America Bond (BAB) Interest Subsidy of \$2.3 million. Together with investment earnings and restricted funds already with the Trustee, there were sufficient resources available to satisfy the annual debt service requirement of \$10.5 million. The table below illustrates the remaining debt service payment and principal balance on the COPs:

Year Ending June 30	2010 COP Debt Service			Balance
	Principal	Interest	Total	
2021	3,065,000	6,895,351	9,960,351	97,630,000
2022	3,165,000	6,733,265	9,898,265	94,465,000
2023	3,275,000	6,556,869	9,831,869	91,190,000
2024	3,390,000	6,365,978	9,755,978	87,800,000
2025	3,510,000	6,142,971	9,652,971	84,290,000
2026-2030	20,165,000	26,660,418	46,825,418	64,125,000
2031-2035	25,220,000	18,624,173	43,844,173	38,905,000
2036-2040	31,660,000	8,476,518	40,136,518	7,245,000
2041	7,245,000	259,661	7,504,661	-
	<u>\$ 100,695,000</u>	<u>\$ 86,715,204</u>	<u>\$ 187,410,204</u>	

The outstanding principal of the obligation was \$100.7 million as of June 30, 2020. The remaining interest of \$86.7 million does not yet reflect the remaining expected BAB subsidy of \$28.6 million so the remaining interest net of the BAB subsidy totals \$58.1 million.

ENVIRONMENTAL REVIEW:

Staff recommends the Board of Directors of the Public Facilities Corporation 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 Board of Directors considers the item).

ATTACHMENT:

Attachment A – Financial Statements

Attachment A

Financial Statements

NEWPORT BEACH PUBLIC FACILITIES CORPORATION
Comparative Balance Sheet
June 30, 2020 and 2019

	<u>2020</u>	<u>2019</u>
Assets		
Cash with fiscal agent	\$ 6,551,417	\$ 6,977,065
Intergovernmental receivable	<u>1,148,239</u>	<u>1,171,872</u>
 Total Assets	 <u><u>\$ 7,699,656</u></u>	 <u><u>\$ 8,148,937</u></u>
 Liabilities and Fund Balances		
Liabilities:		
Accounts payable	<u>\$ -</u>	<u>\$ -</u>
 Total Liabilities	 <u>-</u>	 <u>-</u>
 Fund balances:		
Nonspendable	-	-
Restricted for:		
Debt Service	7,699,656	8,148,937
Committed	-	-
Assigned	-	-
Unassigned	<u>-</u>	<u>-</u>
 Total fund balance	 <u>7,699,656</u>	 <u>8,148,937</u>
 Total liabilities and fund balance	 <u><u>\$ 7,699,656</u></u>	 <u><u>\$ 8,148,937</u></u>

NEWPORT BEACH PUBLIC FACILITIES CORPORATION
Comparative Statement of Revenues,
Expenditures and Changes in Fund Balances
June 30, 2020 and 2019

	<u>2020</u>	<u>2019</u>
Revenues:		
Lease revenues	\$ 7,691,920	\$ 8,154,464
Investment income	21,282	39,324
Federal interest subsidy	<u>2,296,478</u>	<u>2,335,637</u>
Total revenues	<u>10,009,680</u>	<u>10,529,425</u>
 Expenditures:		
Debt service:		
Principal	3,405,000	3,310,000
Interest and fiscal charges	<u>7,053,961</u>	<u>7,209,239</u>
Total expenditures	<u>10,458,961</u>	<u>10,519,239</u>
 Excess (deficiency) of revenues over expenditures	 <u>(449,281)</u>	 <u>10,186</u>
 Fund balance, beginning	 <u>8,148,937</u>	 <u>8,138,751</u>
 Fund balance, ending	 <u><u>\$ 7,699,656</u></u>	 <u><u>\$ 8,148,937</u></u>



== CITY OF ==

NEWPORT BEACH

Newport Beach Public Facilities Corporation Staff Report

August 25, 2020
NBPFC Agenda Item No. 3

TO: HONORABLE MAYOR AND MEMBERS OF THE PUBLIC
FACILITIES CORPORATION

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

PREPARED BY: Trevor Power, Senior Accountant,
tpower@newportbeachca.gov

PHONE: 949-644-3125

TITLE: Resolution No. PFC2020-1: Approval of Release of Certain Assets
Securing the City's 2010 Certificates of Participation

ABSTRACT:

Pursuant to the Lease/Purchase Agreement securing the City's 2010 Certificates of Participation, the City upon completion of the Civic Center has the option to release all of the assets securing the 2010 Certificates of Participation with the exception of the Civic Center Site and the Central Library Site.

RECOMMENDATION:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. PFC2020-1, *A Resolution of the Board of Directors of the Newport Beach Public Facilities Corporation Approving Supplement No. 1 to Lease/Purchase Agreement, a First Amendment to the Site Lease and a First Amendment to the Assignment Agreement and Certain Additional Documents and Authorizing Certain Actions in Connection Therewith.*

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

The City and the Newport Beach Public Facilities Corporation ("Corporation"), have previously entered into a Lease/Purchase Agreement dated as of November 1, 2010 ("Lease/Purchase Agreement") relating to \$20,085,000 City of Newport Beach Certificates of Participation 2010A (Civic Center Project/Central Library Refunding) and \$106,757,000 2010B (Federally Taxable Direct Pay Build America Bonds) (Civic Center Project) (collectively, "Certificates"), the proceeds of which (i) refunded certain certificates of participation that were delivered to refinance the acquisition and construction of the City's Central Library and (ii) financed the acquisition, improvement and equipping of the City's Civic Center.

In connection with execution and delivery of the Certificates, the Corporation and the City also entered into a Site Lease, dated as of November 1, 2010 ("Site Lease"). Pursuant to an Assignment Agreement dated as of November 1, 2010 ("Assignment Agreement"), the Corporation assigned all of its rights under the Lease/Purchase Agreement to The Bank of New York Mellon Trust Company ("Trustee") for the benefit of the owners of the Certificates.

In order to not have to fund capitalized interest during the construction period of the new Civic Center, the City leased the following sites and the improvements located thereon to the Corporation which in turn leased them back to the City: the Central Library, Civic Center (1100 Avocado and 1300 Avocado), Civic Center (1450 Avocado), Mariners Library, Newport Coast Community Center, Fire Station No. 7 (Santa Ana Heights), Oasis Senior Center, Fire Station No. 3/Police Station (Newport Center) and Fire Station No. 4 (Balboa Island).

At the time the Certificates were sold, the City reserved the right upon completion of the Civic Center to release all of the assets from the Lease/Purchase Agreement and the Site Lease with the exception of the two Civic Center parcels and the Central Library parcel. Staff is recommending that Board of Directors approve the Resolution authorizing the execution of a First Amendment to the Site Lease, the Supplement No. 1 to Lease/Purchase Agreement and First Amendment to Assignment Agreement to effectuate the release of such assets.

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 Board of Directors considers the item).

ATTACHMENT:

Attachment A: Resolution No. PFC2020-1

ATTACHMENT A

RESOLUTION NO. PFC2020-1

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NEWPORT BEACH PUBLIC FACILITIES CORPORATION
APPROVING SUPPLEMENT NO. 1 TO LEASE/PURCHASE
AGREEMENT, A FIRST AMENDMENT TO THE SITE
LEASE AND A FIRST AMENDMENT TO THE
ASSIGNMENT AGREEMENT AND CERTAIN ADDITIONAL
DOCUMENTS AND AUTHORIZING CERTAIN ACTIONS IN
CONNECTION THEREWITH**

WHEREAS, the City of Newport Beach ("City") and the Newport Beach Public Facilities Corporation ("Corporation"), have previously entered into a Lease/Purchase Agreement dated as of November 1, 2010 ("Lease/Purchase Agreement") relating to \$20,085,000 City of Newport Beach Certificates of Participation 2010A (Civic Center Project/Central Library Refunding) and \$106,757,000 2010B (Federally Taxable Direct Pay Build America Bonds) ("Civic Center Project") (collectively, the "Certificates"), the proceeds of which (i) refunded certain certificates of participation that were delivered to refinance the acquisition and construction of the City's Central Library and (ii) financed the acquisition, improvement and equipping of the City's Civic Center;

WHEREAS, the Corporation and the City have previously entered into that certain Site Lease, dated as of November 1, 2010 (the "Site Lease"), in connection with the execution and delivery of the Certificates;

WHEREAS, the Corporation and The Bank of New York Mellon Trust Company, N.A., have previously entered into that certain Assignment Agreement, dated as of November 1, 2010 (the "Assignment Agreement," and together with the Lease/Purchase Agreement and the Site Lease, the "Prior Lease Documents"), in connection with the execution and delivery of the Certificates;

WHEREAS, pursuant to Section 7.12 of the Lease/Purchase Agreement, the City has the right from time to time to release a portion of the real property or improvements constituting the Leased Premises (as such term is defined in the Lease/Purchase Agreement), if they have: (i) provided the Trustee with a supplement to the Lease/Purchase Agreement; and (ii) satisfied certain conditions precedent set forth in Section 7.12 of the Lease/Purchase Agreement;

WHEREAS, the City has determined that it is necessary and desirable to release a portion of the Leased Premises from the lien created by the Lease/Purchase Agreement, such that following the release, the Leased Premises will be comprised only of the Civic Center Site (as such term is defined in the Lease/Purchase Agreement) and the Central Library Site (as such term is defined in the Lease/Purchase Agreement); and

WHEREAS, to effectuate the release of a portion of the Leased Premises, the Corporation desires to amend the Prior Lease Documents by entering into a First Amendment to the Site Lease (the "First Amendment to the Site Lease"), a Supplement No. 1 to Lease/Purchase Agreement (the "Lease Supplement No. 1") and a First Amendment to the Assignment Agreement (the "First Amendment to the Assignment Agreement").

NOW, THEREFORE, the Board of Directors of the Newport Beach Public Facilities Corporation resolves as follows:

Section 1: The forms of the First Amendment to the Site Lease, Lease Supplement No. 1 and First Amendment to the Assignment Agreement, are attached hereto as Exhibits A, B, and C, and incorporated herein by this reference, are hereby approved. Each of the Chairman of the Board of Directors, the President, Chief Financial Officer and the Secretary (the "Authorized Officers") is hereby authorized for and in the name of the City to execute the First Amendment to the Site Lease, Lease Supplement No. 1 and First Amendment to the Assignment Agreement in substantially the forms hereby approved, with such additions thereto and changes therein as are recommended or approved by the City Attorney. Approval of such changes shall be conclusively evidenced by the execution and delivery of the foregoing documents by such officers. Each of the Authorized Officers is hereby authorized to execute, acknowledge and deliver any and all documents required to consummate the transactions contemplated by the First Amendment to the Site Lease, Lease Supplement No. 1 and First Amendment to the Assignment Agreement in order to release a portion of the Leased Premises or any other property from the lien of Prior Lease Documents.

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

Section 3: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4: The Board of Directors finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 5: Each of the Authorized Officers is hereby authorized, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary and advisable in order to consummate the entry into of the First Amendment to the Site Lease, Lease Supplement No. 1, and First Amendment to the Assignment Agreement, and otherwise effectuate the purposes of this Resolution, including without limitation the substitution and release from time to time of real property and improvements constituting the Leased Premises for purposes of the Lease/Purchase Agreement, and such actions previously taken by such officers are hereby ratified and confirmed.

Section 6: This resolution shall take effect immediately upon its adoption by the Board of Directors, and the Secretary shall certify the vote adopting the resolution.

ADOPTED this 25th day of August, 2020.

President of the Board of Directors
Newport Beach Public Facilities Corporation

ATTEST:

Secretary

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachments: Exhibit A - First Amendment to the Site Lease
Exhibit B - Lease Supplement No. 1
Exhibit C - First Amendment to the Assignment Agreement

EXHIBIT A

FIRST AMENDMENT TO THE SITE LEASE

[Document follows]

NOW, THEREFORE, the Corporation and the City agree as follows:

1. Release. The Leased Premises listed on Exhibit A of the Site Lease is hereby replaced in its entirety with the Leased Premises listed on Exhibit A attached hereto. By the recording of this First Amendment, the real property listed on Exhibit B attached hereto (the "Released Leased Premises") is hereby released from the encumbrance of the Site Lease, and all interests previously granted in the Released Leased Premises pursuant to the terms of the Site Lease are hereby terminated.

2. No Other Changes. Except as expressly provided to the contrary in this First Amendment, the terms of the Site Lease shall remain in full force and effect as written. All terms used herein and not defined herein but defined in the Site Lease shall have the meaning given to such terms in the Site Lease.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Site Lease as of the date first set forth above.

CITY OF NEWPORT BEACH

[SEAL]

By: _____
Grace K. Leung, City Manager

ATTEST:

By: _____
Leilani I. Brown, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: Aaron C. Harp
Aaron C. Harp, City Attorney

NEWPORT BEACH PUBLIC FACILITIES
CORPORATION

By: _____
Its: Chief Financial Officer

ATTEST:

Secretary

EXHIBIT A

LEGAL DESCRIPTION OF THE LEASED PREMISES

Central Library:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1: (APN: 442-014-26)

THE SOUTHWESTERLY ONE-HALF OF PARCEL 2, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 90-361, FILED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND, AS RESERVED BY THE IRVINE-COMPANY IN THE DEED RECORDED MAY 8, 1992, AS INSTRUMENT NO. 92-304758, OF OFFICIAL RECORDS.

PARCEL 1A:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "PRINCIPAL ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER

Exhibit A-1

ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH PRINCIPAL ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE PRINCIPAL ACCESS EASEMENT AREA AND TO MAINTAIN THE PRINCIPAL ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 1 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 1") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 1. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 1, THE OWNER OF THE BURDENED PARCEL 1 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE PRINCIPAL ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 1 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 1; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 1 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 1 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

PARCEL 1B:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "SERVICE ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH SERVICE ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE SERVICE ACCESS EASEMENT AREA AND TO MAINTAIN THE SERVICE ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 3 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 3") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 3. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 3, THE OWNER OF THE BURDENED PARCEL 3 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF

Exhibit A-2

MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE SERVICE ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 3 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE SERVICE ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 3; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 3 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 3 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

PARCEL 2: (APN: 442-014-25)

THE NORTHWESTERLY ONE-HALF OF PARCEL 2, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 90-361, FILED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND, AS RESERVED BY THE IRVINE-COMPANY IN THE DEED RECORDED MAY 8, 1992, AS INSTRUMENT NO. 92-304759, OF OFFICIAL RECORDS.

PARCEL 2A:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "PRINCIPAL ACCESS EASEMENT AREA") FOR THE

Exhibit A-3

PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH PRINCIPAL ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE PRINCIPAL ACCESS EASEMENT AREA AND TO MAINTAIN THE PRINCIPAL ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 1 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 1") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 1. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 1, THE OWNER OF THE BURDENED PARCEL 1 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE PRINCIPAL ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 1 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 1; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 1 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 1 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

PARCEL 2B:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "SERVICE ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH SERVICE ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE SERVICE ACCESS EASEMENT AREA AND TO MAINTAIN THE SERVICE ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 3 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 3") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH

Exhibit A-4

BURDENED PARCEL 3. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 3, THE OWNER OF THE BURDENED PARCEL 3 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE SERVICE ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 3 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE SERVICE ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 3; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 3 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 3 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

Civic Center (1100 and 1300 Avocado):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 3 OF PARCEL MAP 90-361, IN THE CITY OF NEWPORT BEACH, AS PER MAP RECORDED IN BOOK 270, PAGE(S) 15 THROUGH 18, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

APN: 442-014-27

Civic Center (1450 Avocado):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF PARCEL MAP NO. 88-163, AS SHOWN ON A MAP FILED IN BOOK 253, PAGES 34 AND 35 OF PARCEL MAPS, IN THE OFFICE OF THE COUNT RECORDER OF ORANGE COUNTY, CALIFORNIA, SHOWN AS "REMAINING PARCEL".

EXCEPTING THEREFROM, ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM, ANY OTHER MATERIAL RESOURCES AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PROPERTY, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING

Exhibit A-5

THE SAME FROM THE PROPERTY OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OUTSIDE THE PROPERTY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE PROPERTY AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; BUT WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE OR OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE PROPERTY.

ALSO EXCEPTING THEREFROM, ANY AND ALL WATER, WATER RIGHTS, OR INTEREST THEREIN APPURTENANT TO, UNDERLYING OR RELATING TO THE PROPERTY, OR OWNED OR USED BY GRANTOR IN CONNECTION WITH THE PROPERTY OR FOR ANY BENEFICIAL USE, NO MATTER HOW ACQUIRED BY GRANTOR, AND INCLUDING BUT NOT LIMITED TO THE RIGHTS THAT ARE RIPARIAN, OVERLYING, APPROPRIATIVE, PRESCRIPTIVE, PERCOLATING, LITTORAL, ADJUDICATED, STATUTORY OR CONTRACTUAL, BUT WITHOUT, HOWEVER, ANY RIGHT TO ENTER UPON THE SURFACE OF THE PROPERTY IN THE EXERCISE OF SUCH RESERVED RIGHTS, AS RESERVED IN GRANT DEED RECORDED OCTOBER 17, 2008, AS INSTRUMENT NO. 2008000480500, OF OFFICIAL RECORDS.

APN: 442-014-24

[END]

Exhibit A-6

EXHIBIT B

LEGAL DESCRIPTION OF THE RELEASED LEASED PREMISES

Newport Coast Community Center:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

A PORTION OF PARCEL 1 OF LOT LINE ADJUSTMENT 94-006, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED MARCH 22, 1994, AS INSTRUMENT NUMBER 94-0202108 OF OFFICIAL RECORDS, ORANGE COUNTY RECORDERS OFFICE, STATE OF CALIFORNIA, BEING MORE PRACTICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF NEWPORT COAST DRIVE AND SAN JOAQUIN HILLS ROAD AS SHOWN ON SAID TRACT MAP; THENCE NORTH 84° 27' 16" WEST ALONG SAID CENTERLINE OF SAN JOAQUIN HILLS ROAD A DISTANCE OF 441.70 FEET; THENCE LEAVING SAID CENTERLINE NORTH 05° 32' 44" EAST A DISTANCE OF 61.49 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF LAST SAID ROAD, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 05° 32' 44" EAST A DISTANCE OF 345.01 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 142.54 FEET TO WHICH A RADIAL LINE BEARS SOUTH 48° 54' 51" WEST; THENCE CONTINUING ALONG THE NORTHERLY LINE OF SAID LOT LINE ADJUSTMENT THE FOLLOWING MULTIPLE COURSES; THENCE SOUTHEASTERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 37° 02' 25" AN ARC LENGTH OF 92.15 FEET; THENCE SOUTH 78° 07' 34" EAST A DISTANCE OF 36.87 FEET; THENCE NORTH 74° 03' 52" EAST A DISTANCE OF 79.69 FEET; THENCE NORTH 64° 42' 53" EAST A DISTANCE OF 58.38 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 50.00 FEET; THENCE EASTERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 25° 58' 33" AN ARC LENGTH OF 22.67 FEET; THENCE SOUTH 89° 18' 34" EAST A DISTANCE OF 123.01 FEET; THENCE NORTH 77° 16' 30" EAST A DISTANCE OF 18.90 FEET TO WESTERLY RIGHT OF WAY LINE OF SAID NEWPORT COAST DRIVE AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2291.00 FEET TO WHICH A RADIAL LINE BEARS SOUTH 85° 40' 34" EAST; THENCE CONTINUING ALONG LAST SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING MULTIPLE COURSES; THENCE SOUTHERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 03° 11' 42" AN ARC LENGTH OF 127.75 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE WESTERLY HAVING A RADIUS OF 201.00 FEET; THENCE SOUTHERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 8° 19' 02" AN ARC LENGTH OF 29.18 FEET; THENCE SOUTH 15° 50' 10" WEST A DISTANCE OF 30.62 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 219.00 FEET; THENCE SOUTHERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 07° 34' 07" AN ARC LENGTH OF 28.93 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2929.50 FEET TO WHICH A RADIAL LINE BEARS SOUTH 81° 23' 57" EAST; THENCE SOUTHERLY ALONG SAID REVERSE CURVE THROUGH A CENTRAL

Exhibit B-1

ANGLE OF 2° 09' 07" AND ARC LENGTH OF 110.03 FEET; THENCE SOUTH 79° 14' 50" EAST A DISTANCE OF 4.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2925.50 FEET TO WHICH A RADIAL LINE BEARS SOUTH 79° 14' 50" EAST; THENCE SOUTHERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 0° 34' 09" AN ARC LENGTH OF 29.06 FEET TO AN ANGLE POINT ON SAID WESTERLY RIGHT OF WAY LINE; THENCE LEAVING SAID RIGHT OF WAY LINE SOUTH 48° 11' 54" WEST A DISTANCE OF 29.57 FEET TO A POINT ON SAID NORTHERLY RIGHT OF WAY LINE OF SAN JOAQUIN HILLS ROAD; THENCE CONTINUING ALONG LAST SAID RIGHT OF WAY LINE SOUTH 89° 52' 33" WEST A DISTANCE OF 51.85 FEET; THENCE CONTINUING ALONG LAST SAID RIGHT OF WAY LINE NORTH 85° 17' 57" WEST A DISTANCE OF 305.86 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM, ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PROPERTY, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING, AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE PROPERTY OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM OTHER LANDS OTHER THAN THE PROPERTY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE PROPERTY AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; BUT WITHOUT THE RIGHT TO ENTER UPON OR USE THE SURFACE OF THE PROPERTY TO DRILL, MINE, STORE, EXPLORE, OR OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE PROPERTY.

ALSO EXCEPTING THEREFROM, FOR USE OF SURFACE OR SUBSURFACE WATER BY THE COUNTY FOR LOCAL PARK PURPOSES ON THE PROPERTY, ANY AND ALL WATER, SOLAR-HEATED WATER, RECLAIMED RIGHTS, WHETHER SURFACE OR SUBSURFACE, APPURTENANT OR RELATING TO THE PROPERTY, OR OWNED OR USED BY OFFEROR IN CONNECTION WITH THE PROPERTY TOGETHER WITH THE RIGHT TO EXPLORE, DRILL, REDRILL AND REMOVE SUCH WATER FROM THE PROPERTY, TO STORE SUCH WATER IN THE GROUND-WATER BASIN UNDERLYING THE PROPERTY BY PERCOLATING, SPREADING, OR INJECTING WATER INTO SUCH BASIN FROM LOCATIONS ON LANDS LYING OUTSIDE OF THE PROPERTY, AND TO DIVERT OR OTHERWISE UTILIZE SUCH WATER, RIGHTS, OR INTERESTS ON ANY OTHER PROPERTY OWNED OR LEASED BY OFFEROR, BUT WITHOUT THE RIGHT TO ENTER UPON OR USE THE SURFACE OF THE PROPERTY IN THE EXERCISE OF SUCH RIGHT, AS RESERVED BY THE IRVINE COMPANY, A MICHIGAN CORPORATION, IN IRREVOCABLE OFFER OF DEDICATION, RECORDED APRIL 8, 1993, AS INSTRUMENT NO. 93-0234810, AND IN GRANT DEED RECORDED JANUARY 2, 1997, AS INSTRUMENT NO. 19970000564, BOTH OF OFFICIAL RECORDS.

Mariner's Library:

Exhibit B-2

DOCSOC/1527383/022025-0040
NG-U9ZQVMF2/4824-7593-8755v2/022459-0014

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

A PARCEL OF LAND CONTAINING 9.019 ACRES AND BEING A PORTION OF BLOOK 53, AS SHOWN UPON A MAP OF IRVINE'S SUBDIVISION RECORDED IN MISCELLANEOUS MAPS, BOOK 1, PAGE 88, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

BEGINNING AT THE INTERSECTION OF A LINE LYING SOUTHWESTERLY OF, PARALLEL TO, AND DISTANT 17 FEET FROM THE SOUTHEASTERLY PROLONGATION OF THE CENTER LINE OF 19TH STREET AS SHOWN UPON A MAP OF NEWPORT HEIGHTS, RECORDED IN MISCELLANEOUS MAP BOOK 4, PAGE 83, RECORDS OF ORANGE COUNTY, SAID LINE ALSO BEING THE NORTHWESTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF THE ORANGE COUNTY FLOOD CONTROL CHANNEL, AS CONVEYED TO THE COUNTY OF ORANGE BY DEED RECORDED APRIL 7, 1954, IN BOOK 2705, PAGE 539, OFFICIAL RECORDS OF SAID ORANGE COUNTY, AND A LINE LYING SOUTHEASTERLY OF, PARALLEL TO, AND DISTANT 30 FEET FROM THE NORTHWESTERLY LINE OF SAID BLOCK 53; THENCE SOUTH 50° 11' 30" EAST ALONG SAID NORTHWESTERLY PROLONGATION AND ALONG SAID SOUTHWESTERLY LINE OF SAID FLOOD CONTROL CHANNEL A DISTANCE OF 277 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 868 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AND SAID SOUTHWESTERLY LINE OF THE FLOOD CONTROL CHANNEL A DISTANCE OF 713.99 FEET; THENCE SOUTH 3° 03' 42" EAST, TANGENT TO LAST MENTIONED CURVE, AND ALONG SAID SOUTHWESTERLY LINE OF THE FLOOD CONTROL CHANNEL A DISTANCE OF 58 FEET; THENCE SOUTH 16° 55' 29" EAST ALONG SAID SOUTHWESTERLY LINE OF THE FLOOD CONTROL CHANNEL A DISTANCE OF 10.46 FEET; THENCE SOUTH 86° 56' 18" WEST A DISTANCE OF 106.72 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 710 FEET; SAID LINE ALSO BEING THE SOUTHWESTERLY PROLONGATION OF THE CENTER LINE OF MARINERS DRIVE, 60 FEET IN WIDTH, AS SHOWN UPON A MAP OF TRACT NO. 3004, RECORDED IN MISCELLANEOUS MAP BOOK 92, PAGES 1 AND 2, RECORDS OF SAID ORANGE COUNTY; THENCE WESTERLY ALONG SAID CURVE A DISTANCE OF 152.14 FEET; THENCE NORTH 15° 20' 20" WEST, RADIAL TO LAST MENTIONED CURVE, A DISTANCE OF 30 FEET; THENCE NORTH 50° 11' 05" WEST A DISTANCE OF 758.99 FEET TO A POINT OF INTERSECTION WITH THE AFOREMENTIONED PARALLEL LINE LYING SOUTHEASTERLY OF, PARALLEL TO, AND DISTANT 30 FEET FROM THE NORTHWESTERLY LINE OF SAID BLOCK 53; THENCE NORTH 39° 48' 55" EAST ALONG SAID PARALLEL LINE A DISTANCE OF 495.70 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THAT PORTION OF THE LAND CONVEYED TO NEWPORT-MESA UNIFIED SCHOOL DISTRICT IN QUITCLAIM DEED RECORDED JANUARY 14, 2003 AS INSTRUMENT NO. 2003000045873, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE DESCRIBED IN DEED TO THE CITY OF NEWPORT BEACH HAVING A BEARING AND

Exhibit B-3

DISTANCE OF N 15°20'20" W 30.00 FEET, SAID NORTHWESTERLY TERMINUS BEING THE INTERSECTION OF THE SOUTHWESTERLY LINE OF SAID CERTAIN PARCEL OF LAND DEEDED TO THE CITY OF NEWPORT BEACH AND THE NORTHERLY LINE OF MARINERS DRIVE, 60.00 FEET WIDE, AS SHOWN ON MAP OF TRACT NO. 1896 FILED IN BOOK 114, PAGE 43 THROUGH 45 INCLUSIVE OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE N 50°11'06" W 498.00 FEET; THENCE N 39°48'55" E 38.00 FEET; THENCE S 50°11'05" E 526.60 FEET TO A POINT IN SAID NORTHERLY LINE OF MARINERS DRIVE, SAID NORTHERLY LINE BEING A CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 740.00 FEET, A RADIAL TO SAID POINT BEING N 11°49'06" W; THENCE WESTERLY ALONG SAID NORTHERLY LINE AND CURVE, THROUGH A CENTRAL ANGLE OF 03°41'14", AN ARC LENGTH OF 47.62 FEET TO THE POINT OF BEGINNING.

PARCEL B:

A PORTION OF THAT CERTAIN PARCEL OF LAND IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED IN DEED TO THE NEWPORT BEACH ELEMENTARY SCHOOL DISTRICT, FILED IN BOOK 3970, PAGE 3 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND SHOWN AS ASSESSOR'S PARCEL NO. 425-071-01 FILED IN BOOK 425, PAGE 7 OF ASSESSOR'S MAPS IN THE OFFICE OF THE COUNTY ASSESSOR OF SAID COUNTY, SAID PORTION MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE DESCRIBED IN SAID DEED TO THE NEWPORT BEACH ELEMENTARY SCHOOL DISTRICT HAVING A BEARING AND DISTANCE OF N 50°11'05" W 758.99 FEET, SAID CERTAIN COURSE BEING THE NORTHEASTERLY LINE OF SAID CERTAIN PARCEL DEEDED TO THE NEWPORT BEACH ELEMENTARY SCHOOL DISTRICT; THENCE ALONG SAID NORTHEASTERLY LINE S 50°11'05" E 50.00 FEET TO ITS INTERSECTION WITH THE SOUTHEASTERLY LINE OF IRVINE AVENUE AS DESCRIBED IN DEED TO THE CITY OF NEWPORT BEACH FILED IN BOOK 3978, PAGE 542 OF SAID OFFICIAL RECORDS, SAID INTERSECTION BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE S 50°11'05" E 210.99 FEET; THENCE S 39°48'55" W 92.00 FEET; THENCE N 50°11'05" W 120.99 FEET; THENCE S 39°48'55" W 10.00 FEET; THENCE N 50°11'05" W 90.00 FEET TO SAID SOUTHEASTERLY LINE OF IRVINE AVENUE; THENCE ALONG SAID SOUTHEASTERLY LINE N 39°48'55" E 102.00 FEET TO THE TRUE POINT OF BEGINNING.

APN: 425-071-03

Fire Station 7 (Santa Ana Heights):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 57 THROUGH 60 AND THE SOUTHWESTERLY 66 FEET OF LOT 56, TRACT NO. 706, PER MAP RECORDED IN BOOK 21, PAGES 25 OF MAPS, IN THE OFFICE OF THE COUNTY

Exhibit B-4

RECORDER, COUNTY OF ORANGE, CALIFORNIA.

APN: 439-391-29

Oasis Senior Center:

PARCEL 1 OF PARCEL MAP NO. 2008-161, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 367, PAGES 26, 27 AND 28 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS, AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER THE ABOVE DESCRIBED PROPERTY, TOGETHER WITH THE RIGHT TO EXPLORE FOR, DEVELOP, EXTRACT AND REMOVE THE SAME THEREFROM BY SLANT DRILLING OR OTHER LIKE METHODS, WITH DERRICKS OR DRILL RIGS LOCATED OUTSIDE OF THE BOUNDARIES OF SAID PROPERTY, AS RESERVED BY THE IRVINE COMPANY IN THE DEED RECORDED MAY 5, 1959, IN BOOK 4698, PAGE 478, OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING, AND OPERATING THEREFOR, AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE, AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AS RESERVED BY THE IRVINE COMPANY, IN THE DEED RECORDED APRIL 29, 1986, AS INSTRUMENT NO. 86-170658, OF OFFICIAL RECORDS.

APN: 458-651-02, 458-651-11, 458-651-13

Fire Station 3/Police Station (Newport Center):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 55, PAGE 31 OF PARCEL MAPS, IN

Exhibit B-5

THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND CONVENIENT RIGHT TO EXPLORE AND EXTRACT AND TAKE ON AND AT LEVELS BELOW THE DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND BY MEANS OF WELLS, DERRICK OF OTHER EQUIPMENT FROM THE SURFACE LOCATIONS AS RESERVED BY THE IRVINE COMPANY, IN DEED RECORDED JULY 28, 1970 IN BOOK 9357, PAGE 805 AND FEBRUARY 1, 1973, IN BOOK 10538, PAGE 27 OF OFFICIAL RECORDS.

APN: 442-261-07, 08 AND 09

Fire Station 4 (Balboa Island):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP 92-139, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 314, PAGES 36 AND 37 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 050-173-01

[END]

Exhibit B-6

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 ORANGE

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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 signature(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 OF NOTARY PUBLIC

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 ORANGE

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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 signature(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 OF NOTARY PUBLIC

EXHIBIT B

LEASE SUPPLEMENT NO. 1

[Document follows]

LEASE SUPPLEMENT NO. 1 TO LEASE/PURCHASE AGREEMENT

THIS LEASE SUPPLEMENT NO. 1 TO LEASE/PURCHASE AGREEMENT (this "Lease Supplement") is made and entered into as of August 1, 2020, by and between the NEWPORT BEACH PUBLIC FACILITIES CORPORATION, a 501(c)(4) nonprofit public benefit corporation duly organized and existing under the laws of the State of California, as lessor (the "Corporation"), and the CITY OF NEWPORT BEACH, a chartered city duly organized and existing under the Constitution and laws of said State, as lessee (the "City").

RECITALS

A. The Corporation and the City have entered into that certain Lease/Purchase Agreement, dated as of November 1, 2010 (the "Lease"), a memorandum of which was recorded on November 29, 2010 as instrument number 2010000635817 in the Official Records of Orange County, securing \$20,085,000 Certificates of Participation 2010A (Tax Exempt) (Civic Center Project/Central Library Refunding) and \$106,575,000 Certificates of Participation 2010B (Federally Taxable Build America Bonds) (Civic Center Project).

B. As of the date of this Lease Supplement, the City and Corporation hereby desire to supplement the Lease as set forth below.

NOW, THEREFORE, the Corporation and the City agree as follows:

1. Release. The Leased Premises listed on Exhibit B of the Lease are hereby replaced in their entirety with the Leased Premises listed on Exhibit 1 attached hereto (the "Remaining Leased Premises"). The real property listed on Exhibit 2 attached hereto (the "Released Leased Premises") is hereby released from the encumbrance of the Lease, and all interests previously granted in the Released Leased Premises pursuant to the terms of the Lease are hereby terminated.

2. Certifications of the City. The City hereby certifies that:

(i) the Remaining Leased Premises will be used by the City for authorized public purposes and can be leased under the provisions of the Lease and the Government Code;

(ii) the Remaining Leased Premises are currently owned by the City;

(iii) the Remaining Leased Premises are essential to the City; and

(iv) the Remaining Leased Premises are free and clear of all liens or claims of others, except for the lien of the Permitted Encumbrances referred to in the Lease.

3. No Other Changes. Except as expressly provided to the contrary in this Lease Supplement, the terms of the Lease shall remain in full force and effect as written. All terms used herein and not defined herein but defined in the Lease shall have the meaning given to such terms in the Lease.

IN WITNESS WHEREOF, the parties have executed this Lease Supplement No. 1 to Lease/Purchase Agreement as of the date first set forth above.

NEWPORT BEACH PUBLIC FACILITIES
CORPORATION, as Lessor

By: _____
Its: Chief Financial Officer

Attest:

Secretary

CITY OF NEWPORT BEACH,
as Lessee

By: _____
Grace K. Leung, City Manager

Attest:

By: _____
Leilani I. Brown, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: Aaron C. Harp
Aaron C. Harp, City Attorney

EXHIBIT 1

DESCRIPTION OF REMAINING LEASED PREMISES

Central Library:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1: (APN: 442-014-26)

THE SOUTHWESTERLY ONE-HALF OF PARCEL 2, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 90-361, FILED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND, AS RESERVED BY THE IRVINE-COMPANY IN THE DEED RECORDED MAY 8, 1992, AS INSTRUMENT NO. 92-304758, OF OFFICIAL RECORDS.

PARCEL 1A:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "PRINCIPAL ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH PRINCIPAL ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE PRINCIPAL ACCESS EASEMENT AREA AND TO MAINTAIN THE

PRINCIPAL ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 1 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 1") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 1. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 1, THE OWNER OF THE BURDENED PARCEL 1 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE PRINCIPAL ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 1 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 1; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 1 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 1 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

PARCEL 1B:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "SERVICE ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH SERVICE ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE SERVICE ACCESS EASEMENT AREA AND TO MAINTAIN THE SERVICE ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 3 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 3") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 3. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 3, THE OWNER OF THE BURDENED PARCEL 3 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE SERVICE ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES

THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 3 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE SERVICE ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 3; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 3 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 3 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

PARCEL 2: (APN: 442-014-25)

THE NORTHWESTERLY ONE-HALF OF PARCEL 2, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 90-361, FILED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND, AS RESERVED BY THE IRVINE-COMPANY IN THE DEED RECORDED MAY 8, 1992, AS INSTRUMENT NO. 92-304759, OF OFFICIAL RECORDS.

PARCEL 2A:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "PRINCIPAL ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS,

LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH PRINCIPAL ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE PRINCIPAL ACCESS EASEMENT AREA AND TO MAINTAIN THE PRINCIPAL ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 1 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 1") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 1. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 1, THE OWNER OF THE BURDENED PARCEL 1 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE PRINCIPAL ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 1 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 1; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 1 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 1 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

PARCEL 2B:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "SERVICE ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH SERVICE ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE SERVICE ACCESS EASEMENT AREA AND TO MAINTAIN THE SERVICE ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 3 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 3") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 3. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 3, THE OWNER OF THE BURDENED PARCEL 3 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH

CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE SERVICE ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 3 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE SERVICE ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 3; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 3 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 3 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

Civic Center (1100 and 1300 Avocado):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 3 OF PARCEL MAP 90-361, IN THE CITY OF NEWPORT BEACH, AS PER MAP RECORDED IN BOOK 270, PAGE(S) 15 THROUGH 18, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

APN: 442-014-27

Civic Center (1450 Avocado):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF PARCEL MAP NO. 88-163, AS SHOWN ON A MAP FILED IN BOOK 253, PAGES 34 AND 35 OF PARCEL MAPS, IN THE OFFICE OF THE COUNT RECORDER OF ORANGE COUNTY, CALIFORNIA, SHOWN AS "REMAINING PARCEL".

EXCEPTING THEREFROM, ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOW, GEOTHERMAL STEAM, ANY OTHER MATERIAL RESOURCES AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PROPERTY, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE PROPERTY OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OUTSIDE THE PROPERTY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS

THE SUBSURFACE OF THE PROPERTY AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; BUT WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE OR OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE PROPERTY.

ALSO EXCEPTING THEREFROM, ANY AND ALL WATER, WATER RIGHTS, OR INTEREST THEREIN APPURTENANT TO, UNDERLYING OR RELATING TO THE PROPERTY, OR OWNED OR USED BY GRANTOR IN CONNECTION WITH THE PROPERTY OR FOR ANY BENEFICIAL USE, NO MATTER HOW ACQUIRED BY GRANTOR, AND INCLUDING BUT NOT LIMITED TO THE RIGHTS THAT ARE RIPARIAN, OVERLYING, APPROPRIATIVE, PRESCRIPTIVE, PERCOLATING, LITTORAL, ADJUDICATED, STATUTORY OR CONTRACTUAL, BUT WITHOUT, HOWEVER, ANY RIGHT TO ENTER UPON THE SURFACE OF THE PROPERTY IN THE EXERCISE OF SUCH RESERVED RIGHTS, AS RESERVED IN GRANT DEED RECORDED OCTOBER 17, 2008, AS INSTRUMENT NO. 2008000480500, OF OFFICIAL RECORDS.

APN: 442-014-24

[END]

EXHIBIT 2

DESCRIPTION OF RELEASED LEASED PREMISES

Newport Coast Community Center:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

A PORTION OF PARCEL 1 OF LOT LINE ADJUSTMENT 94-006, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED MARCH 22, 1994, AS INSTRUMENT NUMBER 94-0202108 OF OFFICIAL RECORDS, ORANGE COUNTY RECORDERS OFFICE, STATE OF CALIFORNIA, BEING MORE PRACTICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF NEWPORT COAST DRIVE AND SAN JOAQUIN HILLS ROAD AS SHOWN ON SAID TRACT MAP; THENCE NORTH $84^{\circ} 27' 16''$ WEST ALONG SAID CENTERLINE OF SAN JOAQUIN HILLS ROAD A DISTANCE OF 441.70 FEET; THENCE LEAVING SAID CENTERLINE NORTH $05^{\circ} 32' 44''$ EAST A DISTANCE OF 61.49 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF LAST SAID ROAD, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE NORTH $05^{\circ} 32' 44''$ EAST A DISTANCE OF 345.01 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 142.54 FEET TO WHICH A RADIAL LINE BEARS SOUTH $48^{\circ} 54' 51''$ WEST; THENCE CONTINUING ALONG THE NORTHERLY LINE OF SAID LOT LINE ADJUSTMENT THE FOLLOWING MULTIPLE COURSES; THENCE SOUTHEASTERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF $37^{\circ} 02' 25''$ AN ARC LENGTH OF 92.15 FEET; THENCE SOUTH $78^{\circ} 07' 34''$ EAST A DISTANCE OF 36.87 FEET; THENCE NORTH $74^{\circ} 03' 52''$ EAST A DISTANCE OF 79.69 FEET; THENCE NORTH $64^{\circ} 42' 53''$ EAST A DISTANCE OF 58.38 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 50.00 FEET; THENCE EASTERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF $25^{\circ} 58' 33''$ AN ARC LENGTH OF 22.67 FEET; THENCE SOUTH $89^{\circ} 18' 34''$ EAST A DISTANCE OF 123.01 FEET; THENCE NORTH $77^{\circ} 16' 30''$ EAST A DISTANCE OF 18.90 FEET TO WESTERLY RIGHT OF WAY LINE OF SAID NEWPORT COAST DRIVE AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2291.00 FEET TO WHICH A RADIAL LINE BEARS SOUTH $85^{\circ} 40' 34''$ EAST; THENCE CONTINUING ALONG LAST SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING MULTIPLE COURSES; THENCE SOUTHERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF $03^{\circ} 11' 42''$ AN ARC LENGTH OF 127.75 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE WESTERLY HAVING A RADIUS OF 201.00 FEET; THENCE SOUTHERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF $8^{\circ} 19' 02''$ AN ARC LENGTH OF 29.18 FEET; THENCE SOUTH $15^{\circ} 50' 10''$ WEST A DISTANCE OF 30.62 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 219.00 FEET; THENCE SOUTHERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF $07^{\circ} 34' 07''$ AN ARC LENGTH OF 28.93 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2929.50 FEET TO WHICH A RADIAL LINE BEARS SOUTH $81^{\circ} 23' 57''$ EAST; THENCE SOUTHERLY ALONG

SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 2° 09' 07" AND ARC LENGTH OF 110.03 FEET; THENCE SOUTH 79° 14' 50" EAST A DISTANCE OF 4.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2925.50 FEET TO WHICH A RADIAL LINE BEARS SOUTH 79° 14' 50" EAST; THENCE SOUTHERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 0° 34' 09" AN ARC LENGTH OF 29.06 FEET TO AN ANGLE POINT ON SAID WESTERLY RIGHT OF WAY LINE; THENCE LEAVING SAID RIGHT OF WAY LINE SOUTH 48° 11' 54" WEST A DISTANCE OF 29.57 FEET TO A POINT ON SAID NORTHERLY RIGHT OF WAY LINE OF SAN JOAQUIN HILLS ROAD; THENCE CONTINUING ALONG LAST SAID RIGHT OF WAY LINE SOUTH 89° 52' 33" WEST A DISTANCE OF 51.85 FEET; THENCE CONTINUING ALONG LAST SAID RIGHT OF WAY LINE NORTH 85° 17' 57" WEST A DISTANCE OF 305.86 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM, ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PROPERTY, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING, AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE PROPERTY OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM OTHER LANDS OTHER THAN THE PROPERTY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE PROPERTY AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; BUT WITHOUT THE RIGHT TO ENTER UPON OR USE THE SURFACE OF THE PROPERTY TO DRILL, MINE, STORE, EXPLORE, OR OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE PROPERTY.

ALSO EXCEPTING THEREFROM, FOR USE OF SURFACE OR SUBSURFACE WATER BY THE COUNTY FOR LOCAL PARK PURPOSES ON THE PROPERTY, ANY AND ALL WATER, SOLAR-HEATED WATER, RECLAIMED RIGHTS, WHETHER SURFACE OR SUBSURFACE, APPURTENANT OR RELATING TO THE PROPERTY, OR OWNED OR USED BY OFFEROR IN CONNECTION WITH THE PROPERTY TOGETHER WITH THE RIGHT TO EXPLORE, DRILL, REDRILL AND REMOVE SUCH WATER FROM THE PROPERTY, TO STORE SUCH WATER IN THE GROUND-WATER BASIN UNDERLYING THE PROPERTY BY PERCOLATING, SPREADING, OR INJECTING WATER INTO SUCH BASIN FROM LOCATIONS ON LANDS LYING OUTSIDE OF THE PROPERTY, AND TO DIVERT OR OTHERWISE UTILIZE SUCH WATER, RIGHTS, OR INTERESTS ON ANY OTHER PROPERTY OWNED OR LEASED BY OFFEROR, BUT WITHOUT THE RIGHT TO ENTER UPON OR USE THE SURFACE OF THE PROPERTY IN THE EXERCISE OF SUCH RIGHT, AS RESERVED BY THE IRVINE COMPANY, A MICHIGAN CORPORATION, IN IRREVOCABLE OFFER OF DEDICATION, RECORDED APRIL 8, 1993, AS INSTRUMENT NO. 93-0234810, AND IN GRANT DEED RECORDED JANUARY 2, 1997, AS INSTRUMENT NO. 19970000564, BOTH OF OFFICIAL RECORDS.

Mariner's Library:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

A PARCEL OF LAND CONTAINING 9.019 ACRES AND BEING A PORTION OF BLOOK 53, AS SHOWN UPON A MAP OF IRVINE'S SUBDIVISION RECORDED IN MISCELLANEOUS MAPS, BOOK 1, PAGE 88, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

BEGINNING AT THE INTERSECTION OF A LINE LYING SOUTHWESTERLY OF, PARALLEL TO, AND DISTANT 17 FEET FROM THE SOUTHEASTERLY PROLONGATION OF THE CENTER LINE OF 19TH STREET AS SHOWN UPON A MAP OF NEWPORT HEIGHTS, RECORDED IN MISCELLANEOUS MAP BOOK 4, PAGE 83, RECORDS OF ORANGE COUNTY, SAID LINE ALSO BEING THE NORTHWESTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF THE ORANGE COUNTY FLOOD CONTROL CHANNEL, AS CONVEYED TO THE COUNTY OF ORANGE BY DEED RECORDED APRIL 7, 1954, IN BOOK 2705, PAGE 539, OFFICIAL RECORDS OF SAID ORANGE COUNTY, AND A LINE LYING SOUTHEASTERLY OF, PARALLEL TO, AND DISTANT 30 FEET FROM THE NORTHWESTERLY LINE OF SAID BLOCK 53; THENCE SOUTH 50° 11' 30" EAST ALONG SAID NORTHWESTERLY PROLONGATION AND ALONG SAID SOUTHWESTERLY LINE OF SAID FLOOD CONTROL CHANNEL A DISTANCE OF 277 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 868 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AND SAID SOUTHWESTERLY LINE OF THE FLOOD CONTROL CHANNEL A DISTANCE OF 713.99 FEET; THENCE SOUTH 3° 03' 42" EAST, TANGENT TO LAST MENTIONED CURVE, AND ALONG SAID SOUTHWESTERLY LINE OF THE FLOOD CONTROL CHANNEL A DISTANCE OF 58 FEET; THENCE SOUTH 16° 55' 29" EAST ALONG SAID SOUTHWESTERLY LINE OF THE FLOOD CONTROL CHANNEL A DISTANCE OF 10.46 FEET; THENCE SOUTH 86° 56' 18" WEST A DISTANCE OF 106.72 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 710 FEET; SAID LINE ALSO BEING THE SOUTHWESTERLY PROLONGATION OF THE CENTER LINE OF MARINERS DRIVE, 60 FEET IN WIDTH, AS SHOWN UPON A MAP OF TRACT NO. 3004, RECORDED IN MISCELLANEOUS MAP BOOK 92, PAGES 1 AND 2, RECORDS OF SAID ORANGE COUNTY; THENCE WESTERLY ALONG SAID CURVE A DISTANCE OF 152.14 FEET; THENCE NORTH 15° 20' 20" WEST, RADIAL TO LAST MENTIONED CURVE, A DISTANCE OF 30 FEET; THENCE NORTH 50° 11' 05" WEST A DISTANCE OF 758.99 FEET TO A POINT OF INTERSECTION WITH THE AFOREMENTIONED PARALLEL LINE LYING SOUTHEASTERLY OF, PARALLEL TO, AND DISTANT 30 FEET FROM THE NORTHWESTERLY LINE OF SAID BLOCK 53; THENCE NORTH 39° 48' 55" EAST ALONG SAID PARALLEL LINE A DISTANCE OF 495.70 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THAT PORTION OF THE LAND CONVEYED TO NEWPORT-MESA UNIFIED SCHOOL DISTRICT IN QUITCLAIM DEED RECORDED JANUARY 14, 2003 AS INSTRUMENT NO. 2003000045873, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE DESCRIBED IN DEED TO THE CITY OF NEWPORT BEACH HAVING A BEARING AND DISTANCE OF N 15°20'20" W 30.00 FEET, SAID NORTHWESTERLY TERMINUS BEING THE INTERSECTION OF THE SOUTHWESTERLY LINE OF SAID CERTAIN PARCEL OF LAND DEEDED TO THE CITY OF NEWPORT BEACH AND THE NORTHERLY LINE OF MARINERS DRIVE, 60.00 FEET WIDE, AS SHOWN ON MAP OF TRACT NO. 1896 FILED IN BOOK 114, PAGE 43 THROUGH 45 INCLUSIVE OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE N 50°11'06" W 498.00 FEET; THENCE N 39°48'55" E 38.00 FEET; THENCE S 50°11'05" E 526.60 FEET TO A POINT IN SAID NORTHERLY LINE OF MARINERS DRIVE, SAID NORTHERLY LINE BEING A CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 740.00 FEET, A RADIAL TO SAID POINT BEING N 11°49'06" W; THENCE WESTERLY ALONG SAID NORTHERLY LINE AND CURVE, THROUGH A CENTRAL ANGLE OF 03°41'14", AN ARC LENGTH OF 47.62 FEET TO THE POINT OF BEGINNING.

PARCEL B:

A PORTION OF THAT CERTAIN PARCEL OF LAND IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED IN DEED TO THE NEWPORT BEACH ELEMENTARY SCHOOL DISTRICT, FILED IN BOOK 3970, PAGE 3 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND SHOWN AS ASSESSOR'S PARCEL NO. 425-071-01 FILED IN BOOK 425, PAGE 7 OF ASSESSOR'S MAPS IN THE OFFICE OF THE COUNTY ASSESSOR OF SAID COUNTY, SAID PORTION MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE DESCRIBED IN SAID DEED TO THE NEWPORT BEACH ELEMENTARY SCHOOL DISTRICT HAVING A BEARING AND DISTANCE OF N 50°11'05" W 758.99 FEET, SAID CERTAIN COURSE BEING THE NORTHEASTERLY LINE OF SAID CERTAIN PARCEL DEEDED TO THE NEWPORT BEACH ELEMENTARY SCHOOL DISTRICT; THENCE ALONG SAID NORTHEASTERLY LINE S 50°11'05" E 50.00 FEET TO ITS INTERSECTION WITH THE SOUTHEASTERLY LINE OF IRVINE AVENUE AS DESCRIBED IN DEED TO THE CITY OF NEWPORT BEACH FILED IN BOOK 3978, PAGE 542 OF SAID OFFICIAL RECORDS, SAID INTERSECTION BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE S 50°11'05" E 210.99 FEET; THENCE S 39°48'55" W 92.00 FEET; THENCE N 50°11'05" W 120.99 FEET; THENCE S 39°48'55" W 10.00 FEET; THENCE N 50°11'05" W 90.00 FEET TO SAID SOUTHEASTERLY LINE OF IRVINE AVENUE; THENCE ALONG SAID SOUTHEASTERLY LINE N 39°48'55" E 102.00 FEET TO THE TRUE POINT OF BEGINNING.

APN: 425-071-03

Fire Station 7 (Santa Ana Heights):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 57 THROUGH 60 AND THE SOUTHWESTERLY 66 FEET OF LOT 56, TRACT NO. 706, PER MAP RECORDED IN BOOK 21, PAGES 25 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF ORANGE, CALIFORNIA.

APN: 439-391-29

Oasis Senior Center:

PARCEL 1 OF PARCEL MAP NO. 2008-161, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 367, PAGES 26, 27 AND 28 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS, AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER THE ABOVE DESCRIBED PROPERTY, TOGETHER WITH THE RIGHT TO EXPLORE FOR, DEVELOP, EXTRACT AND REMOVE THE SAME THEREFROM BY SLANT DRILLING OR OTHER LIKE METHODS, WITH DERRICKS OR DRILL RIGS LOCATED OUTSIDE OF THE BOUNDARIES OF SAID PROPERTY, AS RESERVED BY THE IRVINE COMPANY IN THE DEED RECORDED MAY 5, 1959, IN BOOK 4698, PAGE 478, OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING, AND OPERATING THEREFOR, AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE, AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AS RESERVED BY THE IRVINE COMPANY, IN THE DEED RECORDED APRIL 29, 1986, AS INSTRUMENT NO. 86-170658, OF OFFICIAL

RECORDS.

APN: 458-651-02, 458-651-11, 458-651-13

Fire Station 3/Police Station (Newport Center):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 55, PAGE 31 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND CONVENIENT RIGHT TO EXPLORE AND EXTRACT AND TAKE ON AND AT LEVELS BELOW THE DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND BY MEANS OF WELLS, DERRICK OF OTHER EQUIPMENT FROM THE SURFACE LOCATIONS AS RESERVED BY THE IRVINE COMPANY, IN DEED RECORDED JULY 28, 1970 IN BOOK 9357, PAGE 805 AND FEBRUARY 1, 1973, IN BOOK 10538, PAGE 27 OF OFFICIAL RECORDS.

APN: 442-261-07, 08 AND 09

Fire Station 4 (Balboa Island):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP 92-139, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 314, PAGES 36 AND 37 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 050-173-01

[END]

EXHIBIT C

FIRST AMENDMENT TO THE ASSIGNMENT AGREEMENT

[Document follows]

RECORDING REQUESTED BY:)
CITY OF NEWPORT BEACH)
)
AND WHEN RECORDED MAIL TO:)
STRADLING YOCCA CARLSON & RAUTH)
660 Newport Center Drive, Suite 1600)
Newport Beach, California 92660-6441)
Attn: Brian P. Forbath, Esq.)
)

[Space above for Recorder's use]

This document is recorded for the benefit of the City of Newport Beach, California, and the recording is fee-exempt under Section 27383 of the California Government Code.

FIRST AMENDMENT TO THE ASSIGNMENT AGREEMENT

THIS FIRST AMENDMENT TO THE ASSIGNMENT AGREEMENT (the "First Amendment") is made and entered into as of August 1, 2020, by and between the NEWPORT BEACH PUBLIC FACILITIES CORPORATION, a 501(c)(4) nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation"), as assignor, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized and existing under the laws of the United States, as trustee (the "Trustee"), as assignee.

RECITALS

A. The Corporation and the Trustee have entered into that certain Assignment Agreement, dated as of November 1, 2010 (the "Assignment Agreement"), and recorded on November 29, 2010 as instrument number 2010000635818 in the Official Records of Orange County (the "Official Records"), securing \$20,085,000 Certificates of Participation 2010A (Tax Exempt) (Civic Center Project/Central Library Refunding) and \$106,575,000 Certificates of Participation 2010B (Federally Taxable Build America Bonds) (Civic Center Project) (collectively, the "Certificates"), in connection with that certain Lease/Purchase Agreement by and between the City of Newport Beach (the "City"), as Lessee, and the Corporation, as Lessor, dated as of November 1, 2010, a memorandum of which was recorded on November 29, 2010 as instrument number 2010000635817 in the Official Records, as amended by that certain First Amendment to Memorandum of Lease/Purchase Agreement, dated as of August 1, 2020 (collectively, the "Lease").

B. Pursuant to Section 7.12 of the Lease, the City has the right from time to time to release a portion of the real property or improvements constituting the Leased Premises (as defined in the Lease), if it has: (i) provided the Trustee with a supplement to the Lease; and (ii) satisfied certain conditions precedent set forth in Section 7.12 of the Lease.

C. As of the date of this First Amendment, the City has provided the Trustee with a supplement to the Lease and has complied with the conditions precedent set forth in Section 7.12 of

the Lease, and Corporation and Trustee hereby desire to amend the Assignment Agreement as set forth below.

NOW, THEREFORE, the Corporation and the Trustee agree as follows:

1. Release. The Leased Premises listed on Exhibit A of the Assignment Agreement is hereby replaced in its entirety with the Leased Premises listed on Exhibit A attached hereto. By recording this First Amendment, the real property listed on Exhibit B attached hereto (the "Released Leased Premises") is hereby released from the encumbrance of the Assignment Agreement, and all interests previously granted in the Released Leased Premises pursuant to the terms of the Assignment Agreement are hereby terminated.

2. No Other Changes. Except as expressly provided to the contrary in this First Amendment, the terms of the Assignment Agreement shall remain in full force and effect as written. All terms used herein and not defined herein but defined in the Assignment Agreement shall have the meaning given to such terms in the Assignment Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Assignment Agreement as of the date first set forth above.

NEWPORT BEACH PUBLIC FACILITIES
CORPORATION

By: _____
Its: Chief Financial Officer

ATTEST:

By: _____
Secretary

Accepted by:

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Trustee

By: _____
Its: Authorized Officer

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: Aaron C. Harp
Aaron C. Harp, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE LEASED PREMISES

Central Library:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1: (APN: 442-014-26)

THE SOUTHWESTERLY ONE-HALF OF PARCEL 2, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 90-361, FILED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND, AS RESERVED BY THE IRVINE-COMPANY IN THE DEED RECORDED MAY 8, 1992, AS INSTRUMENT NO. 92-304758, OF OFFICIAL RECORDS.

PARCEL 1A:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "PRINCIPAL ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH PRINCIPAL ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE PRINCIPAL ACCESS EASEMENT AREA AND TO MAINTAIN THE

Exhibit A-1

PRINCIPAL ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 1 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 1") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 1. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 1, THE OWNER OF THE BURDENED PARCEL 1 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE PRINCIPAL ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 1 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 1; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 1 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 1 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

PARCEL 1B:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "SERVICE ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH SERVICE ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE SERVICE ACCESS EASEMENT AREA AND TO MAINTAIN THE SERVICE ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 3 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 3") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 3. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 3, THE OWNER OF THE BURDENED PARCEL 3 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE SERVICE ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES

Exhibit A-2

THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 3 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE SERVICE ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 3; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 3 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 3 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

PARCEL 2: (APN: 442-014-25)

THE NORTHWESTERLY ONE-HALF OF PARCEL 2, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 90-361, FILED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND, AS RESERVED BY THE IRVINE-COMPANY IN THE DEED RECORDED MAY 8, 1992, AS INSTRUMENT NO. 92-304759, OF OFFICIAL RECORDS.

PARCEL 2A:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "PRINCIPAL ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS,

Exhibit A-3

LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH PRINCIPAL ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE PRINCIPAL ACCESS EASEMENT AREA AND TO MAINTAIN THE PRINCIPAL ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 1 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 1") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 1. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 1, THE OWNER OF THE BURDENED PARCEL 1 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE PRINCIPAL ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 1 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 1; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 1 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 1 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

PARCEL 2B:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "SERVICE ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH SERVICE ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE SERVICE ACCESS EASEMENT AREA AND TO MAINTAIN THE SERVICE ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 3 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 3") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 3. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 3, THE OWNER OF THE BURDENED PARCEL 3 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH

Exhibit A-4

CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE SERVICE ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 3 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE SERVICE ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 3; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 3 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 3 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

Civic Center (1100 and 1300 Avocado):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 3 OF PARCEL MAP 90-361, IN THE CITY OF NEWPORT BEACH, AS PER MAP RECORDED IN BOOK 270, PAGE(S) 15 THROUGH 18, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

APN: 442-014-27

Civic Center (1450 Avocado):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF PARCEL MAP NO. 88-163, AS SHOWN ON A MAP FILED IN BOOK 253, PAGES 34 AND 35 OF PARCEL MAPS, IN THE OFFICE OF THE COUNT RECORDER OF ORANGE COUNTY, CALIFORNIA, SHOWN AS "REMAINING PARCEL".

EXCEPTING THEREFROM, ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOW, GEOTHERMAL STEAM, ANY OTHER MATERIAL RESOURCES AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PROPERTY, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE PROPERTY OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OUTSIDE THE PROPERTY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS

Exhibit A-5

THE SUBSURFACE OF THE PROPERTY AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; BUT WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE OR OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE PROPERTY.

ALSO EXCEPTING THEREFROM, ANY AND ALL WATER, WATER RIGHTS, OR INTEREST THEREIN APPURTENANT TO, UNDERLYING OR RELATING TO THE PROPERTY, OR OWNED OR USED BY GRANTOR IN CONNECTION WITH THE PROPERTY OR FOR ANY BENEFICIAL USE, NO MATTER HOW ACQUIRED BY GRANTOR, AND INCLUDING BUT NOT LIMITED TO THE RIGHTS THAT ARE RIPARIAN, OVERLYING, APPROPRIATIVE, PRESCRIPTIVE, PERCOLATING, LITTORAL, ADJUDICATED, STATUTORY OR CONTRACTUAL, BUT WITHOUT, HOWEVER, ANY RIGHT TO ENTER UPON THE SURFACE OF THE PROPERTY IN THE EXERCISE OF SUCH RESERVED RIGHTS, AS RESERVED IN GRANT DEED RECORDED OCTOBER 17, 2008, AS INSTRUMENT NO. 2008000480500, OF OFFICIAL RECORDS.

APN: 442-014-24

[END]

Exhibit A-6

EXHIBIT B

LEGAL DESCRIPTION OF THE RELEASED LEASED PREMISES

Newport Coast Community Center:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

A PORTION OF PARCEL 1 OF LOT LINE ADJUSTMENT 94-006, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED MARCH 22, 1994, AS INSTRUMENT NUMBER 94-0202108 OF OFFICIAL RECORDS, ORANGE COUNTY RECORDERS OFFICE, STATE OF CALIFORNIA, BEING MORE PRACTICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF NEWPORT COAST DRIVE AND SAN JOAQUIN HILLS ROAD AS SHOWN ON SAID TRACT MAP; THENCE NORTH 84° 27' 16" WEST ALONG SAID CENTERLINE OF SAN JOAQUIN HILLS ROAD A DISTANCE OF 441.70 FEET; THENCE LEAVING SAID CENTERLINE NORTH 05° 32' 44" EAST A DISTANCE OF 61.49 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF LAST SAID ROAD, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 05° 32' 44" EAST A DISTANCE OF 345.01 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 142.54 FEET TO WHICH A RADIAL LINE BEARS SOUTH 48° 54' 51" WEST; THENCE CONTINUING ALONG THE NORTHERLY LINE OF SAID LOT LINE ADJUSTMENT THE FOLLOWING MULTIPLE COURSES; THENCE SOUTHEASTERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 37° 02' 25" AN ARC LENGTH OF 92.15 FEET; THENCE SOUTH 78° 07' 34" EAST A DISTANCE OF 36.87 FEET; THENCE NORTH 74° 03' 52" EAST A DISTANCE OF 79.69 FEET; THENCE NORTH 64° 42' 53" EAST A DISTANCE OF 58.38 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 50.00 FEET; THENCE EASTERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 25° 58' 33" AN ARC LENGTH OF 22.67 FEET; THENCE SOUTH 89° 18' 34" EAST A DISTANCE OF 123.01 FEET; THENCE NORTH 77° 16' 30" EAST A DISTANCE OF 18.90 FEET TO WESTERLY RIGHT OF WAY LINE OF SAID NEWPORT COAST DRIVE AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2291.00 FEET TO WHICH A RADIAL LINE BEARS SOUTH 85° 40' 34" EAST; THENCE CONTINUING ALONG LAST SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING MULTIPLE COURSES; THENCE SOUTHERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 03° 11' 42" AN ARC LENGTH OF 127.75 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE WESTERLY HAVING A RADIUS OF 201.00 FEET; THENCE SOUTHERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 8° 19' 02" AN ARC LENGTH OF 29.18 FEET; THENCE SOUTH 15° 50' 10" WEST A DISTANCE OF 30.62 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 219.00 FEET; THENCE SOUTHERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 07° 34' 07" AN ARC LENGTH OF 28.93 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2929.50 FEET TO WHICH A RADIAL LINE BEARS SOUTH 81° 23' 57" EAST; THENCE SOUTHERLY ALONG SAID REVERSE CURVE THROUGH A CENTRAL

Exhibit B-1

ANGLE OF 2° 09' 07" AND ARC LENGTH OF 110.03 FEET; THENCE SOUTH 79° 14' 50" EAST A DISTANCE OF 4.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2925.50 FEET TO WHICH A RADIAL LINE BEARS SOUTH 79° 14' 50" EAST; THENCE SOUTHERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 0° 34' 09" AN ARC LENGTH OF 29.06 FEET TO AN ANGLE POINT ON SAID WESTERLY RIGHT OF WAY LINE; THENCE LEAVING SAID RIGHT OF WAY LINE SOUTH 48° 11' 54" WEST A DISTANCE OF 29.57 FEET TO A POINT ON SAID NORTHERLY RIGHT OF WAY LINE OF SAN JOAQUIN HILLS ROAD; THENCE CONTINUING ALONG LAST SAID RIGHT OF WAY LINE SOUTH 89° 52' 33" WEST A DISTANCE OF 51.85 FEET; THENCE CONTINUING ALONG LAST SAID RIGHT OF WAY LINE NORTH 85° 17' 57" WEST A DISTANCE OF 305.86 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM, ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PROPERTY, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING, AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE PROPERTY OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM OTHER LANDS OTHER THAN THE PROPERTY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE PROPERTY AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; BUT WITHOUT THE RIGHT TO ENTER UPON OR USE THE SURFACE OF THE PROPERTY TO DRILL, MINE, STORE, EXPLORE, OR OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE PROPERTY.

ALSO EXCEPTING THEREFROM, FOR USE OF SURFACE OR SUBSURFACE WATER BY THE COUNTY FOR LOCAL PARK PURPOSES ON THE PROPERTY, ANY AND ALL WATER, SOLAR-HEATED WATER, RECLAIMED RIGHTS, WHETHER SURFACE OR SUBSURFACE, APPURTENANT OR RELATING TO THE PROPERTY, OR OWNED OR USED BY OFFEROR IN CONNECTION WITH THE PROPERTY TOGETHER WITH THE RIGHT TO EXPLORE, DRILL, REDRILL AND REMOVE SUCH WATER FROM THE PROPERTY, TO STORE SUCH WATER IN THE GROUND-WATER BASIN UNDERLYING THE PROPERTY BY PERCOLATING, SPREADING, OR INJECTING WATER INTO SUCH BASIN FROM LOCATIONS ON LANDS LYING OUTSIDE OF THE PROPERTY, AND TO DIVERT OR OTHERWISE UTILIZE SUCH WATER, RIGHTS, OR INTERESTS ON ANY OTHER PROPERTY OWNED OR LEASED BY OFFEROR, BUT WITHOUT THE RIGHT TO ENTER UPON OR USE THE SURFACE OF THE PROPERTY IN THE EXERCISE OF SUCH RIGHT, AS RESERVED BY THE IRVINE COMPANY, A MICHIGAN CORPORATION, IN IRREVOCABLE OFFER OF DEDICATION, RECORDED APRIL 8, 1993, AS INSTRUMENT NO. 93-0234810, AND IN GRANT DEED RECORDED JANUARY 2, 1997, AS INSTRUMENT NO. 19970000564, BOTH OF OFFICIAL RECORDS.

Mariner's Library:

Exhibit B-2

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

A PARCEL OF LAND CONTAINING 9.019 ACRES AND BEING A PORTION OF BLOOK 53, AS SHOWN UPON A MAP OF IRVINE'S SUBDIVISION RECORDED IN MISCELLANEOUS MAPS, BOOK 1, PAGE 88, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

BEGINNING AT THE INTERSECTION OF A LINE LYING SOUTHWESTERLY OF, PARALLEL TO, AND DISTANT 17 FEET FROM THE SOUTHEASTERLY PROLONGATION OF THE CENTER LINE OF 19TH STREET AS SHOWN UPON A MAP OF NEWPORT HEIGHTS, RECORDED IN MISCELLANEOUS MAP BOOK 4, PAGE 83, RECORDS OF ORANGE COUNTY, SAID LINE ALSO BEING THE NORTHWESTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF THE ORANGE COUNTY FLOOD CONTROL CHANNEL, AS CONVEYED TO THE COUNTY OF ORANGE BY DEED RECORDED APRIL 7, 1954, IN BOOK 2705, PAGE 539, OFFICIAL RECORDS OF SAID ORANGE COUNTY, AND A LINE LYING SOUTHEASTERLY OF, PARALLEL TO, AND DISTANT 30 FEET FROM THE NORTHWESTERLY LINE OF SAID BLOCK 53; THENCE SOUTH 50° 11' 30" EAST ALONG SAID NORTHWESTERLY PROLONGATION AND ALONG SAID SOUTHWESTERLY LINE OF SAID FLOOD CONTROL CHANNEL A DISTANCE OF 277 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 868 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AND SAID SOUTHWESTERLY LINE OF THE FLOOD CONTROL CHANNEL A DISTANCE OF 713.99 FEET; THENCE SOUTH 3° 03' 42" EAST, TANGENT TO LAST MENTIONED CURVE, AND ALONG SAID SOUTHWESTERLY LINE OF THE FLOOD CONTROL CHANNEL A DISTANCE OF 58 FEET; THENCE SOUTH 16° 55' 29" EAST ALONG SAID SOUTHWESTERLY LINE OF THE FLOOD CONTROL CHANNEL A DISTANCE OF 10.46 FEET; THENCE SOUTH 86° 56' 18" WEST A DISTANCE OF 106.72 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 710 FEET; SAID LINE ALSO BEING THE SOUTHWESTERLY PROLONGATION OF THE CENTER LINE OF MARINERS DRIVE, 60 FEET IN WIDTH, AS SHOWN UPON A MAP OF TRACT NO. 3004, RECORDED IN MISCELLANEOUS MAP BOOK 92, PAGES 1 AND 2, RECORDS OF SAID ORANGE COUNTY; THENCE WESTERLY ALONG SAID CURVE A DISTANCE OF 152.14 FEET; THENCE NORTH 15° 20' 20" WEST, RADIAL TO LAST MENTIONED CURVE, A DISTANCE OF 30 FEET; THENCE NORTH 50° 11' 05" WEST A DISTANCE OF 758.99 FEET TO A POINT OF INTERSECTION WITH THE AFOREMENTIONED PARALLEL LINE LYING SOUTHEASTERLY OF, PARALLEL TO, AND DISTANT 30 FEET FROM THE NORTHWESTERLY LINE OF SAID BLOCK 53; THENCE NORTH 39° 48' 55" EAST ALONG SAID PARALLEL LINE A DISTANCE OF 495.70 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THAT PORTION OF THE LAND CONVEYED TO NEWPORT-MESA UNIFIED SCHOOL DISTRICT IN QUITCLAIM DEED RECORDED JANUARY 14, 2003 AS INSTRUMENT NO. 2003000045873, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE DESCRIBED IN DEED TO THE CITY OF NEWPORT BEACH HAVING A BEARING AND

Exhibit B-3

DISTANCE OF N 15°20'20" W 30.00 FEET, SAID NORTHWESTERLY TERMINUS BEING THE INTERSECTION OF THE SOUTHWESTERLY LINE OF SAID CERTAIN PARCEL OF LAND DEEDED TO THE CITY OF NEWPORT BEACH AND THE NORTHERLY LINE OF MARINERS DRIVE, 60.00 FEET WIDE, AS SHOWN ON MAP OF TRACT NO. 1896 FILED IN BOOK 114, PAGE 43 THROUGH 45 INCLUSIVE OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE N 50°11'06" W 498.00 FEET; THENCE N 39°48'55" E 38.00 FEET; THENCE S 50°11'05" E 526.60 FEET TO A POINT IN SAID NORTHERLY LINE OF MARINERS DRIVE, SAID NORTHERLY LINE BEING A CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 740.00 FEET, A RADIAL TO SAID POINT BEING N 11°49'06" W; THENCE WESTERLY ALONG SAID NORTHERLY LINE AND CURVE, THROUGH A CENTRAL ANGLE OF 03°41'14", AN ARC LENGTH OF 47.62 FEET TO THE POINT OF BEGINNING.

PARCEL B:

A PORTION OF THAT CERTAIN PARCEL OF LAND IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED IN DEED TO THE NEWPORT BEACH ELEMENTARY SCHOOL DISTRICT, FILED IN BOOK 3970, PAGE 3 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND SHOWN AS ASSESSOR'S PARCEL NO. 425-071-01 FILED IN BOOK 425, PAGE 7 OF ASSESSOR'S MAPS IN THE OFFICE OF THE COUNTY ASSESSOR OF SAID COUNTY, SAID PORTION MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE DESCRIBED IN SAID DEED TO THE NEWPORT BEACH ELEMENTARY SCHOOL DISTRICT HAVING A BEARING AND DISTANCE OF N 50°11'05" W 758.99 FEET, SAID CERTAIN COURSE BEING THE NORTHEASTERLY LINE OF SAID CERTAIN PARCEL DEEDED TO THE NEWPORT BEACH ELEMENTARY SCHOOL DISTRICT; THENCE ALONG SAID NORTHEASTERLY LINE S 50°11'05" E 50.00 FEET TO ITS INTERSECTION WITH THE SOUTHEASTERLY LINE OF IRVINE AVENUE AS DESCRIBED IN DEED TO THE CITY OF NEWPORT BEACH FILED IN BOOK 3978, PAGE 542 OF SAID OFFICIAL RECORDS, SAID INTERSECTION BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE S 50°11'05" E 210.99 FEET; THENCE S 39°48'55" W 92.00 FEET; THENCE N 50°11'05" W 120.99 FEET; THENCE S 39°48'55" W 10.00 FEET; THENCE N 50°11'05" W 90.00 FEET TO SAID SOUTHEASTERLY LINE OF IRVINE AVENUE; THENCE ALONG SAID SOUTHEASTERLY LINE N 39°48'55" E 102.00 FEET TO THE TRUE POINT OF BEGINNING.

APN: 425-071-03

Fire Station 7 (Santa Ana Heights):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 57 THROUGH 60 AND THE SOUTHWESTERLY 66 FEET OF LOT 56, TRACT NO. 706, PER MAP RECORDED IN BOOK 21, PAGES 25 OF MAPS, IN THE OFFICE OF THE COUNTY

Exhibit B-4

RECORDER, COUNTY OF ORANGE, CALIFORNIA.

APN: 439-391-29

Oasis Senior Center:

PARCEL 1 OF PARCEL MAP NO. 2008-161, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 367, PAGES 26, 27 AND 28 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS, AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER THE ABOVE DESCRIBED PROPERTY, TOGETHER WITH THE RIGHT TO EXPLORE FOR, DEVELOP, EXTRACT AND REMOVE THE SAME THEREFROM BY SLANT DRILLING OR OTHER LIKE METHODS, WITH DERRICKS OR DRILL RIGS LOCATED OUTSIDE OF THE BOUNDARIES OF SAID PROPERTY, AS RESERVED BY THE IRVINE COMPANY IN THE DEED RECORDED MAY 5, 1959, IN BOOK 4698, PAGE 478, OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING, AND OPERATING THEREFOR, AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE, AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AS RESERVED BY THE IRVINE COMPANY, IN THE DEED RECORDED APRIL 29, 1986, AS INSTRUMENT NO. 86-170658, OF OFFICIAL RECORDS.

APN: 458-651-02, 458-651-11, 458-651-13

Fire Station 3/Police Station (Newport Center):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 55, PAGE 31 OF PARCEL MAPS, IN

Exhibit B-5

THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND CONVENIENT RIGHT TO EXPLORE AND EXTRACT AND TAKE ON AND AT LEVELS BELOW THE DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND BY MEANS OF WELLS, DERRICK OF OTHER EQUIPMENT FROM THE SURFACE LOCATIONS AS RESERVED BY THE IRVINE COMPANY, IN DEED RECORDED JULY 28, 1970 IN BOOK 9357, PAGE 805 AND FEBRUARY 1, 1973, IN BOOK 10538, PAGE 27 OF OFFICIAL RECORDS.

APN: 442-261-07, 08 AND 09

Fire Station 4 (Balboa Island):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP 92-139, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 314, PAGES 36 AND 37 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 050-173-01

[END]

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 ORANGE

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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 signature(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 OF NOTARY PUBLIC

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 ORANGE

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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 signature(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 OF NOTARY PUBLIC



**CITY OF NEWPORT BEACH
CITY COUNCIL AGENDA**

AUGUST 25, 2020

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

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

**WILL O'NEILL, Mayor
BRAD AVERY, Mayor Pro Tem
JOY BRENNER, Council Member
DIANE B. DIXON, 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**

SPECIAL NOTICE REGARDING COVID-19

On March 4, 2020, Governor Newsom proclaimed a State of Emergency in California as a result of the threat of COVID-19. On March 12, 2020, Governor Newsom issued Executive Order N-25-20, which allows Council Members to attend City Council meetings telephonically. Please be advised that to minimize the spread of COVID-19, some, or all, of the Newport Beach City Council Members may attend this meeting telephonically.

Also, please be advised that on March 17, 2020, Governor Newsom issued Executive Order N-29-20, which allows for the public to participate in any meeting of the City Council telephonically or by other electronic means. Given the health risks associated with COVID-19, the City of Newport Beach has decided to **not** have City Council Chambers open to the public for this meeting. As a member of the public, if you would like to participate in this meeting, you can participate via the following options:

1. You can submit your questions and comments in writing for City Council consideration by sending them to the City Clerk at cityclerk@newportbeachca.gov. To give the City Council adequate time to review your questions and comments, please submit your written comments by **Monday, August 24, 2020, at 5:00 p.m.**
2. In addition, members of the public can participate in this meeting telephonically. Specifically, the meeting will be viewable on NBTv and live streamed on the City's website. If you are watching the meeting on NBTv or via the live stream, during the meeting, phone numbers for the public to call and to comment on specific agenda items will be posted on the screen. When you call, you will be placed on hold until it is your turn to speak. Please note that only twenty (20) people can remain on hold at a time. If you call in to speak on an item and the line is busy, please call back after a few moments. The City will ensure that it allows enough time per item for everyone to call in to comment.

Please know that it is important for the City to allow public participation at this meeting. If you are unable to participate in the meeting via the process set forth above, please contact the City Clerk at (949-644-3005 or cityclerk@newportbeachca.gov) and she will attempt to accommodate you. While the City does not expect there to be any changes to the above process for participating in this meeting, if there is a change, the City will post the information as soon as possible to the City's website.

The City of Newport Beach thanks you in advance for continuing to take precautions to prevent the spread of the COVID-19 virus.

NOTICE REGARDING PRESENTATIONS REQUIRING USE OF CITY EQUIPMENT

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

PUBLIC HEARINGS

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

NOTICE TO THE PUBLIC

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

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

The City of Newport Beach's goal is to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, we will attempt to accommodate you in every reasonable manner. Please contact City Clerk Leilani Brown prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or cityclerk@newportbeachca.gov).

**NEWPORT BEACH CITY COUNCIL AGENDA
CITY COUNCIL CHAMBERS
100 CIVIC CENTER DRIVE, NEWPORT BEACH, CA 92660
AUGUST 25, 2020
STUDY SESSION – 4:00 P.M. (PUBLIC WELCOME)
REGULAR MEETING – 6:00 P.M.**

I. ROLL CALL – 4:00 p.m.

II. CURRENT BUSINESS

SS1. Clarification of Items on the Consent Calendar

SS2. Introduction of Homeless Liaison Police Officer Cynthia Carter

SS3. Superior Avenue and West Coast Highway Intersection Improvements [949-270-8165]

Staff is recommending the approval of two contract amendments to complete environmental review and design services for the Superior Ave and West Coast Highway Intersection Improvement project. The study session presentation will discuss proposed improvements to West Coast Highway at the Superior Avenue intersection and recent grant funding for this project. Staff is also recommending the approval of a revised conceptual design for the Superior Ave pedestrian bridge structure.

SS4. Parking Meter Replacement [949-270-8165]

The current parking meters in the City are outdated and/or inoperable, resulting in thousands of dollars of lost revenue and increased cost to maintain. Staff will provide a presentation regarding the context, justification and options for the procurement of parking equipment.

III. PUBLIC COMMENTS [949-270-8165]

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. RECESS

V. RECONVENE AT 6:00 P.M. FOR REGULAR MEETING

VI. ROLL CALL

VII. INVOCATION – Dr. Jim Turrell, Center for Spiritual Living Newport Mesa

VIII. PLEDGE OF ALLEGIANCE

IX. NOTICE TO THE PUBLIC

The City Council of Newport Beach welcomes and encourages community participation. Public comments are generally limited to three (3) minutes per person to allow everyone to speak. Written comments are encouraged as well. The City Council has the discretion to extend or shorten the time limit on agenda or non-agenda items.

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

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

- **Consideration of an emergency ordinance to enforce State guidance on face coverings by administrative citation and implement a “one person one seat” rule for establishments with a walk-up bar [Brenner]**

XII. PUBLIC COMMENTS ON CONSENT CALENDAR [949-270-8165]

*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.*

XIII. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. Minutes for the July 28, 2020 City Council Regular Meeting

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

2. Reading of Ordinances

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

ORDINANCES FOR ADOPTION

3. Ordinance No. 2020-18: Adoption of an Ordinance Amending a Development Agreement for Hoag Memorial Hospital Presbyterian (PA2020-065)

- a) Find all significant environmental concerns for the proposed project have been addressed in a previously certified Final Environmental Impact Report (EIR) and Supplemental EIR, and that the City of Newport Beach intends to use said document for the above noted project, and further that there are no additional reasonable alternative or mitigation measures that should be considered in conjunction with said project; and
- b) Conduct a second reading and adopt Ordinance No. 2020-18, *An Ordinance of the City Council of the City of Newport Beach, California, Amending a Development Agreement between the City of Newport Beach and Hoag Memorial Hospital Presbyterian (Development Agreement Amendment No. DA2020-003).*

4. Ordinance No. 2020-19: Adoption of an Ordinance Amending the Planning & Zoning Code (PA2019-055)

- a) Find this project statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 21065 of CEQA and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3) and 15378. The proposed action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment; and

- b) Conduct second reading and adopt Ordinance No. 2020-19, *An Ordinance of the City Council of the City Newport Beach, California, Adopting Code Amendment No. CA2019-001 to Amend Title 20 (Planning and Zoning) of the City of Newport Beach Municipal Code Correcting and Clarifying Provisions Related to Overlays and Public Hearing Notice Requirements (PA2019-055).*

RESOLUTIONS FOR ADOPTION

- 5. **Resolution No. 2020-74: Resolution in Support of the Newport Beach Police Department**
 - a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
 - b) Adopt Resolution No. 2020-74, *A Resolution of the City Council of the City of Newport Beach, California, Supporting the Newport Beach Police Department.*
- 6. **Resolution No. 2020-75: Approval of Release of Certain Assets Securing the City's 2010 Certificates of Participation**
 - 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. 2020-75, *A Resolution of the City Council of the City of Newport Beach, California, Approving Supplement No. 1 to Lease/Purchase Agreement dated November 1, 2010 and First Amendment to the Site Lease and Authorizing Certain Actions in Connection Therewith.*

CONTRACTS AND AGREEMENTS

- 7. **City Corporation Yard Re-Roofing Project – Notice of Completion for Contract No. 7719-1 (20F02)**
 - a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
 - b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after Notice of Completion has been recorded in accordance with applicable portions of the Civil Code; and
 - c) Release the Faithful Performance Bond one year after acceptance by the City Council.
- 8. **Water Well Rehabilitation (Tamura Deep Well) – Notice of Completion for Contract No. 7427-2 (19W04)**
 - a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
 - b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
 - c) Release Faithful Performance Bond one year after acceptance by the City Council.
- 9. **Bison Avenue, San Joaquin Hills Road and San Nicolas Drive Pavement Rehabilitation – Notice of Completion for Contract No. 7433-2 (19R21)**
 - a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
 - b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of the Civil Code; and
 - c) Release the Faithful Performance Bond one year after acceptance by the City Council.

10. Assessment District No. 111 and Underground Utilities District No. 22 Phases 2 & 3 – Award of Contract No. 7833-1 (21A11)

- a) Approve the project plans and specifications;
- b) Declare the bid packages submitted by Teichert Energy & Utilities Group, Inc of Sacramento as non-responsive;
- c) Award Contract No. 7833-1 to Asplundh Construction Corp. for the bid amount of \$6,969,777.79 for Underground Utility Assessment District No. 111 and Underground Utility District No. 22 – Phase 2 and optional Phase 3, and authorize the Mayor and City Clerk to execute the contract;
- d) Establish a \$700,000 (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 2 & optional Phase 3 portion of the project on an agreement approved as to form by the City Attorney;
- f) Approve Amendment to Professional Services Agreement No. 7572-3 with NV5 of Irvine, CA for an additional not-to-exceed fee of \$236,807 for Construction Administration and Residential Permit Support Services;
- g) Approve Memorandums of Understanding (MOU) with the Cities of Monrovia, Mission Viejo and Laguna Woods documenting details of the transaction for the Rule 20A credit acquisition and authorize the City Manager and City Clerk to execute the MOUs;
- h) Authorize staff to process Rule 20A credit transfers between the City of Newport Beach and the Cities of Monrovia, Mission Viejo and Laguna Woods with SCE; and
- i) Approve Budget Amendment No. 21-007 recognizing \$5,195,419.59 in contribution revenue funding from multiple utility companies in Account No. 13501-561007-21A11; appropriating \$5,195,419.59 in increased expenditures in Account No. 13501-980000-21A11; and appropriating \$204,512.35 in increased expenditures from the Neighborhood Enhancement unappropriated fund balance to SCE Rule 20A Credit Purchase Account No. 53601-980000-20M03.

11. Approval of Amendments to Maintenance Repair Service Agreements with GCI Construction and Tight Quarters for On-Call Beach Maintenance 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 Amendment No. 2 to the Maintenance Repair Services Agreement with GCI Construction to add \$350,000 to the current contract for a total not-to-exceed amount of \$725,000;
- c) Approve Amendment No. 2 to the Maintenance Repair Services Agreement with Tight Quarters, Inc. to add \$155,000 to the current contract for a total not-to-exceed amount of \$530,000; and
- d) Authorize the Mayor and City Clerk to execute the amendments.

12. Superior Avenue and West Coast Highway Intersection Improvements – Approval of Amendment No. 2 with Chambers Group, Inc. and Amendment No. 1 with Dokken Engineering and Updated Pedestrian Bridge Conceptual Design (15T09)

- 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 Amendment No. 2 in the amount of \$227,821.00 to the Professional Services Agreement with Chambers Group, Inc. for environmental review services at a new not-to-exceed total price of \$389,038.00 and authorize the Mayor and City Clerk to execute the Amendment;

- c) Approve Amendment No. 1 in the amount of \$970,000.00 to the Professional Services Agreement with Dokken Engineering for professional engineering design services at a new not-to-exceed total price of \$1,889,890.00 and authorize the Mayor and City Clerk to execute the Amendment; and
- d) Approve a revision to the Conceptual Design related to the Superior Avenue pedestrian bridge structure.

13. Back Bay Landing Development – Reimbursement Agreement with Bayside Village Marina LLC for Environmental Review, Permitting and Design Services

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning) of the CEQA Guidelines because this action involves executing a Reimbursement Agreement to undertake future environmental review, permitting and design services;
- b) Approve a Reimbursement Agreement with Bayside Village Marina LLC and authorize the Mayor and City Clerk to execute the Agreement; and
- c) Approve Budget Amendment No. 21-005 recognizing \$450,000 in increased contributions in Account No. 13501-561005-16W12; recognizing \$22,500 in increased revenue in account 01080801-521380; and appropriating \$450,000 in increased expenditures in Account No. 13501-980000-16W12 for the Bay/Channel Crossings Water Main Replacement (16W12) project.

MISCELLANEOUS

14. Planning Commission Agenda for the August 20, 2020 Meeting
Receive and file.

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

XIV. ITEMS REMOVED FROM THE CONSENT CALENDAR [949-270-8165]

XV. PUBLIC COMMENTS ON NON-AGENDA ITEMS [949-270-8165]

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.

XVI. PUBLIC HEARINGS

15. Ordinance No. 2020-20: Non-Exclusive Commercial Solid Waste Franchises [949-270-8165]

- 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) Conduct a Public Hearing to consider the award of Non-Exclusive Commercial Solid Waste Franchises pursuant to Resolution No. 2020-70; and
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2020-20, *An Ordinance of the City Council of the City of Newport Beach, California, Granting the 2020 Non-Exclusive Franchise Agreements for Commercial Solid Waste and Divertible Materials Handling Services within the City of Newport Beach* to the 15 so named companies, and pass to second reading on September 8, 2020.

16. Ordinance No. 2020-21: Zoning Code Amendment to Allow Wine Tasting Room Uses within the Industrial Zoning District (PA2020-042) [949-270-8165]

- a) Conduct a public hearing;
- b) Find this action proposed herein is not a project subject to the California Environmental Quality Act ("CEQA") in accordance with Section 21065 of the California Public Resources Code and Sections 15060 (c)(2), 15060 (c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). The proposed action is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment; and
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2020-21, *An Ordinance of the City Council of the City of Newport Beach, California, adopting Zoning Code Amendment No. CA2020-005 to Amend Section 20.24.020 (Industrial Zoning Land Uses and Permit Requirements) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code and other Related Provisions to Allow for Wine Tasting Rooms Within the Industrial Zoning District (IG) (PA2020-042)*, and pass to second reading on September 8, 2020.

17. Resolution No. 2020-76: Appeal of Planning Commission's Decision of an AT&T Small Cell Installation (PA2019-111) [949-270-8165]

- a) Conduct a de novo public hearing;
- b) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the State CEQA (California Environmental Quality Act) Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment and the exceptions to the Class 3 exemption under Section 15300.2 do not apply; and
- c) Adopt Resolution No. 2020-76, *A Resolution of the City Council of Newport Beach, California, Upholding the Decision of the Planning Commission Approving Minor Use Permit No. UP2019-030 and Coastal Development Permit No. CD2020-052 for a Small Cell Facility Located Within the Public Right-of-Way on City Streetlight No. SCL0796, at the Northwestern Corner of Balboa Boulevard and 30th Street (PA2019-111)*, and denying the appeal.

XVII. CURRENT BUSINESS

18. Novel Coronavirus (COVID-19) Update [949-270-8165]

An oral report will be provided.

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 Nichols and John Hamilton

CITY OF NEWPORT BEACH

City Council Minutes
Regular Meeting
July 28, 2020

I. ROLL CALL – 4:00 p.m.

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

II. PUBLIC COMMENTS ON CLOSED SESSION

Jim Mosher, addressing Item A, suggested Council Members consider how litigation would benefit their constituents and Council, absent public input. Regarding Item B, Mr. Mosher stated that the discussion is limited to the price and how it will be paid, noted the City of Costa Mesa's agenda indicates it is negotiating with the Central Orange County Service Planning Area Group, added that Council should consider whether the development agreement with Hoag Hospital would apply to the situation, and stated that in the near future, a status report of the City's homeless program would be timely.

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

III. CLOSED SESSION – Council Chambers Conference Room

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

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

Property: 3175 Airway Avenue, Costa Mesa, CA 92627, APN: 427-091-12
Agency Negotiators: Grace Leung, City Manager, Seimone Jurjis, CDD Director, and Lauren Whitlinger, Real Property Administrator
Negotiating Party: City of Costa Mesa
Under Negotiation: Price and terms of payment

IV. RECESSED – 4:05 p.m.

V. RECONVENED AT 5:00 P.M. FOR REGULAR MEETING

VI. ROLL CALL

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

VII. CLOSED SESSION REPORT

City Attorney Harp announced that no reportable actions were taken.

VIII. INVOCATION – Mayor O'Neill

IX. PLEDGE OF ALLEGIANCE – Mayor Pro Tem Avery

X. PRESENTATION

• **Recognition of Seasonal Lifeguard Sean Richards for His Heroic Rescues on July 3, 2020**

Mayor O'Neill read the proclamation and discussed his fear upon learning that Sean was taken to the hospital, his pride in Sean's skills and efforts, and his appreciation for Sean's representation of the City of Newport Beach.

Mayor Pro Tem Avery believed there is no greater honor than saving a life and thanked Sean for acting heroically.

Council Member Dixon was honored to salute Sean and noted the numbers of beachgoers whom Lifeguards serve and protect.

Council Member Brenner thanked Sean for being a wonderful role model for Junior Lifeguards.

Council Member Muldoon indicated Sean is a testament to what the City does and all those who wear the City seal.

Council Member Herdman commended Sean and the Fire Department for their perseverance under the conditions caused by the pandemic.

Council Member Duffield was amazed by the response of Lifeguards no matter the conditions and stated that Sean did a great job.

Seasonal Lifeguard Sean Richards thanked the City for the proclamation and recognition.

XI. NOTICE TO THE PUBLIC

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

Council Member Brenner:

- Reported the homeless ad hoc committee met, introduced Homeless Liaison Officer Carter, indicated Homeless Liaison Manager Basmacyan is knowledgeable and encouraged the public to subscribe to the City Manager's newsletter, which highlights success in this area.
- Met with Corona del Mar Residents Association (CdMRA) subcommittees to review parking, one-way streets, construction parking, and the weekend construction ban.

Council Member Dixon:

- Met via Zoom with Peninsula stakeholders.
- Announced 70 businesses have received permits to operate outdoors under the Emergency Ordinance.
- Reported the Aviation Committee has received recommendations from the Council ad hoc committee.

Council Member Herdman:

- Attended the monthly Orange County Mosquito and Vector Control District meeting via Zoom, and reported an infestation of mosquitos is being treated.
- Announced the first of four task force meetings with the Federal Aviation Administration (FAA) was held last week and noted that the Aviation Committee met on July 27th.
- Thanked City Manager Leung and staff for addressing the bridge jumping problem.

Mayor Pro Tem Avery:

- Attended the meeting of the ad hoc committee on homelessness and noted the City's work is robust and more effort is to come.
- Attended the Orange County Sanitation District board meeting and discussed its purpose and the number of people it serves.

Mayor O'Neill:

- Announced the housing ad hoc committee met.
- Attended Transportation Corridor Authority (TCA) subcommittee meetings.
- Reported Council Member Dixon and he did an interview with Hoag Hospital, and the video is on their website.
- Noted the fundraiser for the Ben Carlson Foundation occurred.
- Utilized slides to highlight OASIS Virtual Programs and noted information can be obtained at 949-644-3244; and noted that the Mayor's Challenge for Water Conservation is taking place from August 1–31 and encouraged everyone to take the pledge at www.mywaterpledge.com.

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

- **Consideration of adopting a resolution supporting the Newport Beach Police Department [Dixon]**

With Council Members Brenner, Dixon, Duffield, Herdman and Muldoon, Mayor Pro Tem Avery and Mayor O'Neill agreeing, the item will be brought back at a future meeting.

XIV. PUBLIC COMMENTS ON CONSENT CALENDAR

In response to Council Member Brenner's question regarding Item No. 7 (Amendment No. Three to Agreement between the City of Newport Beach and Hoag Hospital for the Delivery of Natural Gas), Utilities Director Vukojevic reported the natural gas to be transferred has a present market value of approximately \$10,000 annually, which is a small percentage of the gas Hoag uses. He noted this topic was last reviewed in 2012, but nothing at that time was cost effective and added that he would monitor the market for other uses of the gas. Council Member Brenner appreciated staff finding a solution.

XV. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. **Minutes for the July 1, 2020 City Council Emergency Meeting and July 14, 2020 Regular Meeting [100-2020]**
Waive reading of subject minutes, approve as amended, and order filed.
2. **Reading of Ordinances**
Waive reading in full of all ordinances under consideration, and direct the City Clerk to read by title only.

RESOLUTIONS FOR ADOPTION

3. **Resolution No. 2020-70: Resolution of Intention to Conduct a Public Hearing to Grant New Non-Exclusive Solid Waste Franchises [73/100-2020]**
 - 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. 2020-70, *A Resolution of the City Council of the City of Newport Beach, California, Declaring its Intention to Conduct a Public Hearing to Consider Granting Non-Exclusive Commercial Solid Waste and Divertible Materials Handling Franchises.*
4. **Resolution No. 2020-71: Second Addendum to the Uptown Newport EIR to Modify Mitigation Measures (PA2020-003) [100-2020]**
 - a) Adopt Resolution No. 2020-71, *A Resolution of the City Council of the City of Newport Beach, California, Certifying Second Addendum No. ER2020-001 to the Uptown Newport Environmental*

Impact Report (SCH No. 2010051094) Modifying Mitigation Measures and Approving a Mitigation Monitoring and Reporting Program for the Uptown Newport Planned Community Project Located at 4311-4321 Jamboree Road (PA2020-003).

Mayor O'Neill recused himself on Item 4 due to his membership with the Pacific Club.

CONTRACTS AND AGREEMENTS

- 5. Corporation Yard Rear Fence Replacement – Award of Contract No. 7810-1 (20F02) [38/100-2020]**
 - a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (d) (Restoration of deteriorated or damaged existing facility) of the CEQA Guidelines, because this project results in negligible or no expansion of existing capacity;
 - b) Approve the project drawings and specifications;
 - c) Award Contract No. 7810-1 to A2ZConstruct, Inc. for the total base bid amount of \$222,000.00, and authorize the Mayor and City Clerk to execute the associated construction contract; and
 - d) Establish a \$22,000 (approximately 10 percent) contingency to cover unforeseen conditions, extra work and/or material quantities.
- 6. Approval of Amendment No. Two to On-Call Maintenance/Repair Services Agreement with Newport Dredging Company Inc. for Harbor Maintenance and Repair Services (C-7029-2) [38/100-2020]**
 - 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 Amendment No. Two to On-Call Maintenance/Repair Services Agreement with Newport Dredging Company Inc. DBA South Mooring Company for Harbor Maintenance and Repair Services to add \$75,000 to the current agreement for a total not-to-exceed amount of \$325,000.00; and
 - c) Authorize the Mayor and City Clerk to execute the amendment.
- 7. Amendment No. Three to Agreement between the City of Newport Beach and Hoag Hospital for the Delivery of Natural Gas (C-2493) [38/100-2020]**
 - 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 Amendment No. Three to the Agreement with Hoag Memorial Hospital Presbyterian for delivery of excess natural gas produced from the City-owned oil wells;
 - c) Authorize the City Manager to sign future amendments to this Agreement for extensions up to five additional years; and
 - d) Authorize the Mayor and City Clerk to execute Amendment No. Three to this Agreement.
- 8. Contract with Arts Orange County to Manage Phase VI of the Sculpture Exhibition in Civic Center Park (C-8463-4) [38/100-2020]**
 - a) Determine that the action is exempt from the California Environmental Quality Act CEQA pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
 - b) Approve a contract with Arts Orange County for project management of Phase VI of the Sculpture Exhibition in Civic Center Park for a total amount not to exceed \$91,436.00, and authorize the Mayor and City Clerk to sign the agreement.

Council Member Muldoon voted “no” on Item 8.

MISCELLANEOUS

- 9. Planning Commission Agenda for the July 23, 2020 Meeting [100-2020]**
Receive and file.

10. Required Council Reporting: Fiscal Year 2019-20 Annual District Discretionary Grant Report and the Quarter Ending June 30, 2020 Grants and Donations Report [100-2020]

- 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. Visit Newport Beach, Inc. FY 2021 & FY 2022 Destination Business Plan and Budgets, and FY 2020 Performance Standards Report (C-4436) [38/100-2020]

- 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) Review, receive and file the FY 2021 & FY 2022 Newport Beach & Company Destination Business Plan;
- c) Receive and file the Visit Newport Beach FY 2020 Performance Standards Report; and
- d) Review and approve the Visit Newport Beach, Inc. Leisure Marketing (TOT) FY 2021 and FY 2022 Budget.

12. Confirmation of Voting Delegate and Alternates for the 2020 League of California Cities Annual Conference – October 7, 2020 to October 9, 2020 [100-2020]

- 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) Designate Council Member Joy Brenner to be the Voting Delegate and the remainder of the City Council to be the Alternate Voting Delegates at the League of California Cities Conference; and
- c) Direct the City Clerk to complete and submit the designation form to the League of California Cities.

Motion by Mayor Pro Tem Avery, seconded by Council Member Muldoon, to approve the Consent Calendar; and noting Council Member Muldoon's "no" vote on Item 8, Mayor O'Neill's recusal on Item 4, and the amendments to Item 1.

The motion carried unanimously.

XVI. ITEMS REMOVED FROM THE CONSENT CALENDAR – None

XVII. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Jim Mosher requested Council reconsider, under Item XX (Motion to Reconsider), its July 14th vote to move the regular meeting start time to 4:00 p.m. and suggested Council hold study sessions earlier or on a separate day.

XVIII. PUBLIC HEARINGS

13. Ordinance No. 2020-18: Two-Year Extension to the Hoag Development Agreement (PA2020-065) (C-2912) [38/100-2020]

Mayor O'Neill discussed the reason for a development agreement, planning constraints, terms of the development agreement, the Planning Commission's recommendation for a two-year extension, and his support for a one-year extension.

At Mayor O'Neill's request, Community Development Director Jurjis related Hoag's right to develop 455,000 square feet on its campus, noted that a complete build-out of the campus would generate about 9,000 car trips per day, and added that Council has previously granted a ten-year extension of the development agreement.

Council Member Dixon intended to support a one-year extension, indicated extending the agreement means the City cannot use the car trips for any other development property when the City has to identify sites for additional housing, and expressed appreciation for the partnership with Hoag Hospital.

In response to Council Member Muldoon's question, Community Development Director Jurjis advised that there would be no additional fees for extending the agreement for one year or two years.

In response to Mayor Pro Tem Avery's question, Community Development Director Jurjis believed development of the square footage would be a phased project.

Mayor O'Neill opened the public hearing.

Jim Mosher was unsure of Hoag Hospital's need for a development agreement because he could not envision a City Council revoking any rights Hoag has under the General Plan, questioned whether Hoag should pay for an extension of the development agreement, and suggested Council clarify how the City can use the \$300,000 payment.

Hearing no further testimony, Mayor O'Neill closed the public hearing.

Motion by Mayor O'Neill, seconded by Council Member Dixon, to a) find all significant environmental concerns for the proposed project have been addressed in a previously certified Final Environmental Impact Report (EIR) and Supplemental EIR, and that the City of Newport Beach intends to use said document for the above noted project, and further that there are no additional reasonable alternative or mitigation measures that should be considered in conjunction with said project; and b) waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2020-18, *An Ordinance of the City Council of the City of Newport Beach, California, Amending a Development Agreement Between the City of Newport Beach and Hoag Memorial Hospital Presbyterian (Development Agreement Amendment No. DA2020-003)*, and pass to second reading on August 25, 2020.

Council Member Brenner believed everyone loves Hoag Hospital, noted the Planning Commission is not responsible for balancing the City's budget or finding a solution to homelessness, and indicated it is imperative for Council to view this broadly.

Council Member Muldoon expressed his appreciation for Hoag Hospital and believed government should be as helpful as possible.

Substitute motion by Council Member Muldoon, seconded by Council Member Duffield, to approve the two-year extension recommended by the Planning Commission.

Council Member Duffield did not see how one could relate homes and money to health, indicated the City has never helped Hoag Hospital, to his knowledge, believed health is priority, and expressed his desire to help Hoag and not stand in their way.

In response to Mayor Pro Tem Avery's question, Community Development Director Jurjis indicated a two-year extension would change the urgency for Hoag to develop the square footage and added that Council could extend the development agreement for one year and extend it again in the future.

Council Member Dixon clarified that Council is waiving Hoag's annual payment and that the City is giving them an extra year at no cost.

Mayor O'Neill agreed that Hoag is doing a great job, indicated that 455,000 square feet is substantial, believed a one-year extension is appropriate, and was reticent to bind a future Council.

Council Member Herdman reiterated that Hoag requested a one-year extension.

With Mayor O'Neill, Mayor Pro Tem Avery, Council Member Brenner, Council Member Dixon, and Council Member Herdman voting "no," the substitute motion failed 2-5.

Council Member Muldoon indicated Hoag Hospital requested a one-year extension and was thrilled with the recommendation for a two-year extension. He clarified that support for a two-year extension did not contradict support for a one-year extension.

The original motion carried unanimously.

14. Ordinance No. 2020-19: Zoning Code and LCP Amendments Related to Corrections, Clarifications, and Inconsistencies (PA2019-055) [100-2020]

Mayor O'Neill opened the public hearing.

Jim Mosher noted Title 21 has some technical problems, stated that Mayor O'Neill has advocated for reducing the number of words in regulations, and noted that Page 14-10 of the staff report could have been more efficient.

Hearing no further testimony, Mayor O'Neill closed the public hearing.

Motion by Mayor O'Neill, seconded by Council Member Muldoon, to a) find this project statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 21065 of CEQA and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3) and 15378. The proposed action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment; b) waive reading, read by title only, introduce Ordinance No. 2020-19, *An Ordinance of the City Council of the City Newport Beach, California, Adopting Code Amendment No. CA2019-001 to Amend Title 20 (Planning and Zoning) of the City of Newport Beach Municipal Code Correcting and Clarifying Provisions Related to Overlays and Public Hearing Notice Requirements (PA2019-055)*, and pass to second reading on August 25, 2020; and c) adopt Resolution No. 2020-72, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of Local Coastal Program Amendment No. LC2019-001 to the California Coastal Commission to Amend Title 21 (Local Coastal Program Implementation Plan) of the City of Newport Beach Municipal Code Correcting and Clarifying Provisions Related to Minimum Lot Size and Dimensions, Overlays and Public Hearing Notice Requirements (PA2019-055)*.

The motion carried unanimously.

15. Resolution No. 2020-73: Intent to Override the Airport Land Use Commission Finding of Inconsistency for the Newport Airport Village Project (PA2014-225) [100-2020]

In response to Council Member Dixon's question, Community Development Director Jurjis reported that this item concerns notice to the Airport Land Use Commission (ALUC) of Council's intention to challenge ALUC's vote on the development project.

In response to Mayor O'Neill's question, Community Development Director Jurjis explained that the City is beginning to plan and zone for the anticipated Regional Housing Needs Assessment (RHNA) of 4,800 housing units, half of which have to be affordable and noted that the California Department of Housing and Community Development (HCD) requires substantial evidence that sites will become housing.

In response to Council Member Herdman's question, Community Development Director Jurjis indicated legally the City has to give a 45-day notice before Council takes any further action on the project, stated that if the resolution is adopted ALUC will be notified that in the future the Council will consider this project in this location. He further reported that ALUC will have an opportunity to comment on the project, noted on September 8th, staff will introduce the project to Council, and on September 22nd, Council will determine whether it wants to adopt the project.

Community Development Director Jurjis believed ALUC will likely recommend the City Council not approve this project in this location, but Council does not have to heed the recommendation.

In response to Mayor O'Neill's question, Community Development Director Jurjis related that the Council last overrode an ALUC finding with Measure Y and the Uptown Newport project.

In response to Council Member Brenner's questions, Community Development Director Jurjis stated the ALUC does not want projects too close to John Wayne Airport (JWA) because residents may raise concerns relating to airport noise and the potentiality of a General Aviation crash into a residential building. He further noted that, according to ALUC's plan, housing is allowed in this location, reported that State law affirms if the City overrides an ALUC finding, JWA is not liable, and stated that staff has not discussed with the City Attorney where the liability transfers.

In response to Council Member Dixon's questions, Community Development Director Jurjis clarified that the Federal Aviation Administration (FAA) approved the project at a height of 80 feet, however the applicant indicated it will be 85 feet and the applicant needs to work it out with the FAA before staff presents the project to Council. He added that the motion may require the project to conform to the FAA height requirement and that Council will discuss the merits of the project on September 8th. Council Member Dixon noted the irony of Council seeking JWA's support of the proposed General Aviation Improvement Plan (GAIP) while opposing ALUC's finding.

Council Member Muldoon believed JWA staff is dedicated to aviation and the ALUC is concerned about potential noise complaints and the future of the airport. He noted his support of the item.

Council Member Herdman explained ALUC's responsibility in reviewing a project for consistency, stated ALUC's issue is safety, and advised that if the applicant reduces the height and the height is the only inconsistency, it is a done deal.

In response to Mayor Pro Tem Avery's question, Community Development Director Jurjis noted the Airport Area is the prime location for housing and there would be many proposed residential projects there in the next 10-20 years.

Mayor O'Neill remarked that ALUC had legal obligations in which they used to make their determinations, which differ from those of Council.

Mayor O'Neill opened the public hearing.

Jim Mosher discussed the proposal, the finding of inconsistency for a prior project, housing in the Airport Area, a finding that the City is an inconsistent agency, and questioned who is advocating to override the decision.

Patrick Strader, Starpointe Ventures, discussed the history of the project, updates of the General Plan in 2006 and 2014, ALUC not finding any residential project consistent, and urged Council to adopt the notice of intent.

Nancy Scarbrough indicated she may support the project under certain conditions and believed it was important for the community to understand the total number of units needed to provide the required number of affordable housing units.

Hearing no further testimony, Mayor O'Neill closed the public hearing.

Council Member Herdman discussed the City's work to address the effects of JWA on the community, stated no aircraft departs JWA between 11:00 p.m. and 7:00 a.m., and added that airport housing is an obvious solution to the RHNA requirement.

In response to Council Member Dixon's question, Community Development Director Jurjis stated the project would require a General Plan amendment.

Council Member Muldoon related that RHNA numbers are tricky and the City must show good faith.

Motion by Council Member Muldoon, seconded by Council Member Herdman, to a) find the adoption of this Resolution is not subject to CEQA pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly; and b) adopt Resolution No. 2020-73, *A Resolution of the City Council of the City of Newport Beach, California, Notifying the Orange County Airport Land Use Commission and the State Division of Aeronautics of the City's Intention to Find that the Newport Airport Village Planned Community Development Plan is Consistent with the Purposes of the State Aeronautics Act and to Overrule the Orange County Airport Land Use Commission's Determination that the Newport Airport Village Planned Community Development Plan is Inconsistent with the Airport Environs Land Use Plan for the John Wayne Airport (PA2014-225).*

Mayor O'Neill believed anyone who chooses to live in the close vicinity of an airport knows what to expect.

The motion carried unanimously.

XIX. CURRENT BUSINESS

16. Temporary Adjustment to the City Council Seating Arrangement due to Social Distancing Guidelines [100-2020]

Mayor O'Neill indicated Council needs to waive the seating arrangement.

City Manager Leung requested direction on the seating rotation for Council Members aside from the Mayor and Mayor Pro Tem.

Motion by Mayor O'Neill, seconded by 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; and b) waive City Council Policy A-1: *City Council – Seating Arrangement for City Council* and determine the method to rotate Council Member seats, or other adjustment to ensure social distancing, until such time as the emergency is over.

The motion carried unanimously.

17. Evaluation of John Wayne Airport Fixed Base Operator Proposals [100-2020]

Deputy City Manager Finnigan used a presentation to discuss the Aviation Committee's review of Fixed Base Operators' (FBO) proposals for JWA, the City's compliance and goals for the GAIP, and recommendations to reiterate the importance of the set-aside to which the County agreed and include the elimination of the General Aviation Facility (GAF).

Council Member Dixon reported the Aviation Committee will recommend additional language to ensure the green area, highlighted on page 17-3 of the packet, is built out in a manner that preserves the ratios of 40-, 50-, and 60-foot hangars and eliminates the ability of any lessee to construct and operate a GAF or, at a minimum, restricts the hours of operation of the facility from 8:00 a.m. to 10:00 p.m.

Council Member Herdman credited Council Member Dixon with obtaining the agreement with Supervisor Steel, indicated the item adds an addendum to the Aviation Committee's work from July 27th; discussed the Aviation Committee's vote, and noted that any further delay raises the danger of the Board of Supervisors saying it needs a recommendation from the City.

Mayor O'Neill reiterated the language added to the City's goals.

Council Member Dixon noted the drawing prepared by Supervisor Steel is critical to confining the usage of JWA property, reported that the Board of Supervisors last September agreed to the City's request for the public to review the scoring of applicants for FBO areas and the questionnaires, stated the process has been a determined effort to ensure quality of life for residents, noted that general aviation flights are not regulated as commercial aircraft are, and added that the Aviation Committee requested a limit on the hours of operation and wants the green area, highlighted on page 17-3 of the packet, to remain for small aircraft.

Council Member Brenner clarified that JWA's plan did not guarantee the same ratio on both sides of the runway, but the proposed language corrects that and added that the Board of Supervisors does not have to but most likely will accept the revision.

Council Member Dixon stated Newport Beach residents support this agreement, and their support has reinforced the City's presentations to the Board of Supervisors and hopefully will influence the Board's decision.

Sue Dvorak thanked the aviation ad hoc committee for their efforts, suggested the City delay this process until complete information has been released and the public can provide input to the FBOs modifying their proposals, inquired whether the City is asking for the elimination of the GAF from the plan, noted an attempt to compel the Board of Supervisors to release more information, or consult with their aviation attorneys, and hoped the City was doing everything it legally could to pursue its goals.

Scott Forman supported ACI Jet on the east side of JWA because it has supported light aircraft since it began operating at JWA.

Keith Bohr believed ACI Jet deserves kudos for the amazing remodel job and hoped Council would consider recommending them as one of the FBO operators.

Steve Rosansky, Newport Beach Chamber of Commerce President/CEO, supported ACI Jet's proposal, indicated a properly functioning airport in close proximity to the City is a key ingredient to the quality of life in Newport Beach, and listed ACI Jet's support of the Chamber of Commerce.

Mel Beale supported the City's approach, noted the importance of using legally binding language that supports the City's objectives, and reviewed the conflict between the language and the Environmental Impact Report (EIR).

Alan Herman supported ACI Jet's proposal because they are 100-percent focused on aviation, has a vested interest in JWA, and respects the restricted hours for flights. He believed ACI Jet's proposal meets the City's goals for general aviation improvement.

Charles Klobe noted activist groups have not picked an operator but are taking issue with the process, the bidders were asked to modify their proposals because the language of the agreement did not match the EIR, and the bid can be awarded to operators to build what JWA management wants.

Julie Johnson, AirFair, clarified that activists and JWA community members expressed concern about the language, indicated community members do not want the GAF or international, believed neither the Aviation Committee nor community members had an opportunity to review the language prior to the Council meeting, and related that ACI Jet agreed to remove the GAF and include language in their lease to protect California pilots.

William Borgsmiller, ACI Jet President/CEO, advised that ACI Jet is willing to honor the spirit of Supervisor Steel's drawing and is the only proposer that offered to shut down hard at night.

Mayor O'Neill highlighted the language added to the recommendation. City Attorney Harp reported that legal counsel for the County would not disclose all information because it was considered trade secrets, and the Request for Proposals (RFP) contained a confidentiality agreement that prevented disclosure. Mayor O'Neill expressed surprise regarding the public comment that the language is being pushed through without any real assessment, and indicated he is aware of the amount of effort on this issue.

At Council Member Dixon's request, City Attorney Harp advised that the EIR has been approved, noted that if the proposal expanded beyond what has been analyzed, there would have to be additional environmental analyses, stated there is no bar to the County complying with Supervisor Steel's direction, and staff will push for that to be included in the final lease agreement.

Council Member Herdman remarked that the lack of a transparent process was not caused by the City of Newport Beach and any unhappiness with transparency should be aimed at the Board of Supervisors.

Motion by Council Member Herdman, seconded by Council Member 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; and b) subject to the Orange County Board of Supervisors including terms and conditions in the lease agreement which: (1) implement Supervisor Steel's direction to restrict certain airport parcels for use only by medium and large general aviation jet aircraft and others by small general aviation aircraft on the John Wayne Airport property, as indicated with the yellow/green areas on the map attached as Attachment A of the staff report, with the "Green Area" built out in a manner that preserves the current ratio of 40, 50, and 60 foot hangers; and (2) eliminates the ability of any lessee to construct and operate a General Aviation Facility or, at a minimum, restricts the hours of the GAF to 8:00 a.m. to 10:00 p.m., the City Council approves the Aviation Committee's General Aviation Improvement Program Ad Hoc's findings that the entities set forth in Attachment B of the staff report meet the City's goals for a lessee, and the City Council hereby authorizes the City Manager to inform the County of Orange of this recommendation.

The motion carried unanimously.

18. Novel Coronavirus (COVID-19) Update [100-2020]

City Manager Leung introduced Fire Chief Boyles to provide a brief report on the latest COVID-19 statistics, noted that Community Development Director Jurjis would briefly report on the status of the Back to Business program, and Deputy City Manager Finnigan would provide an update on the Small Business Grant Program.

Fire Chief Boyles related statistics for COVID-19 cases and hospital admissions in Newport Beach and Orange County, noted that Hoag Hospital did not experience the surge it expected from July 4th activities, reported that the Fire Department has responded to 494 enhanced precaution calls and transported 39 known COVID-19 patients, confirmed that 10 Firefighters and 13 Lifeguards have tested positive and out of the 39 Firefighters quarantined during July, 36 are back on duty, and added that 85 assisted living and skilled nursing facilities have experienced some sort of outbreak, which is twice the number reported in June.

Council Member Muldoon noted a total of 793 cases have occurred since the pandemic began, a super majority have recovered, and there are no staffing issues. Fire Chief Boyles expressed no staffing concerns, lifeguard towers and bridges continue to be staffed, and Fire stations and apparatus remain open. Council Member Muldoon related that the spikes are occurring in neighboring cities. Fire Chief Boyles noted that he was not aware of any concerns regarding Hoag Hospital's capacity.

Council Member Brenner understood the Newport Beach Chamber of Commerce had signs encouraging people to wear masks to support local businesses and expressed optimism over the decline in numbers. Fire Chief Boyles stated the Junior Lifeguard program will be complete in two weeks.

Mayor O'Neill clarified that the Orange County numbers of positive cases does not mean those individuals were tested on the day the report was issued and stated the number of COVID-19 deaths at skilled nursing facilities is declining. Fire Chief Boyles advised that EMS Division Chief Kristin Thompson worked with skilled nursing facilities in March and April to provide training and resources, which helped to reduce the number of positive cases.

Council Member Dixon indicated that COVID-19 is largely affecting those in the age group of 17-44 and believed that it is easy to wear a mask, socially distance, and wash hands.

In response to Mayor Pro Tem Avery's question, Fire Chief Boyles advised that he does not have COVID-19 statistics for small care homes.

Fire Chief Boyles reported COVID-19 ran through the Fire Department quickly, but personnel quarantined, traced contacts, and adjusted activities among personnel and the department is currently fully staffed.

Council Member Muldoon recused himself due to the potential for a conflict of interest related to a recent business transaction.

Community Development Director Jurjis used a presentation to discuss the fast track Back to Business program, outdoor expansion permits, statistics for permits issued and applications pending, and resources and departments involved in the program.

In response to Council Member Brenner's question, Community Development Director Jurjis advised that staff is not considering extending the outdoor permits past the pandemic because the Emergency Ordinance provides a 14-day period following the emergency for restaurants to remove the outdoor facilities.

In response to Mayor Pro Tem Avery's questions, Community Development Director Jurjis believed staff is fulfilling the demand for permits. Mayor Pro Tem Avery stated one of the City's success stories during COVID-19 has been the Community Development Department's responsiveness to businesses.

Council Member Duffield shared a restaurant owner's dismay at the prospect of applying for a permit and their delight and compliments for the Community Development Department staff's assistance and quick response.

Mayor O'Neill concurred with the compliments. In response to his question, Community Development Director Jurjis indicated the only way to track closed businesses is visually and to ask the Chamber of Commerce for data. Mayor O'Neill requested Deputy City Manager Finnigan attempt to track this data.

Deputy City Manager Finnigan provided an update on the business grant program, the Small Business Development Center's (SBDC) individualized work with businesses, and the issuance of payments.

In response to Council Member Dixon's questions, staff reported more than 300 grants have been approved, some applicants have fallen out of the process, there will be at least 305 grantees, nine checks have been issued, and 30 more are awaiting issuance. SBDC reviews the applications and forwards them to staff for final review and payment. More than 900 applications have been submitted, but funding is sufficient for only 300-305 grants at \$5,000-\$10,000 each. The Community Development Block Grant (CDBG) program will launch at the end of the week or the beginning of next week, which SBDC will administer as well.

Mayor O'Neill noted the Library was one of the first in the county to implement curbside service. Library Services Director Hetherton has indicated between April 1st and June 30th, 135,566 items have been distributed through curbside service, and patrons have downloaded 66,226 eBooks and magazines. Just this week, the Newport Beach Public Library has launched a new app.

Jim Mosher indicated the amount of materials distributed is impressive, but it is only a fraction of the usual number, noted the Emergency Ordinance provides outdoor permits to any commercial or religious business, and added that all materials for agenda items and public comments should be posted online so that the public can review the same material as Council.

Steve Rosansky explained the Chamber's Wear-A-Mask program, noted that signage is available for all businesses and residents, and added that requests can be sent to steve@newportbeach.com or info@newportbeach.com.

XX. MOTION FOR RECONSIDERATION – None

XXI. ADJOURNMENT – At 7:37 p.m. in memory of Lawrence Erwin Klein aka Poppy

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 July 23, 2020, at 4:00 p.m.

Will O'Neill
Mayor

Leilani I. Brown
City Clerk



CITY OF

NEWPORT BEACH

City Council Staff Report

August 25, 2020
Agenda Item No. 3

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Patrick Achis, Assistant Planner, pachis@newportbeachca.gov
PHONE: 949-644-3237

TITLE: Ordinance No. 2020-18: Adoption of an Ordinance Amending a Development Agreement for Hoag Memorial Hospital Presbyterian (PA2020-065)

ABSTRACT:

On July 28, 2020, the City Council voted unanimously to introduce Ordinance No. 2020-18 amending Restated Development Agreement No. 5 ("Agreement") between the City of Newport Beach and Hoag Memorial Hospital Presbyterian ("Hoag"). This fourth amendment extends the Term of the Agreement one additional year in light of COVID-19 related impacts that have constrained Hoag's ability to plan for future development.

RECOMMENDATION:

- a) Find all significant environmental concerns for the proposed project have been addressed in a previously certified Final Environmental Impact Report (EIR) and Supplemental EIR, and that the City of Newport Beach intends to use said document for the above noted project, and further that there are no additional reasonable alternative or mitigation measures that should be considered in conjunction with said project; and
- b) Conduct a second reading and adopt Ordinance No. 2020-18, *An Ordinance of the City Council of the City of Newport Beach, California, Amending a Development Agreement between the City of Newport Beach and Hoag Memorial Hospital Presbyterian (Development Agreement Amendment No. DA2020-003).*

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

On July 28, 2020, the City Council conducted a public hearing and introduced Ordinance No. 2020-18 (Attachment A) amending the Term of the Agreement with Hoag. This fourth amendment extends the Term of the Agreement one additional year in light of COVID-19-related impacts. Existing development regulations and required mitigation measures as provided in the Agreement and subsequent amendments remained unchanged by the subject Fourth Amendment.

ENVIRONMENTAL REVIEW:

In accordance with the California Environmental Quality Act ("CEQA") (Cal. Pub. Res. Code §§21000, et seq.) and its implementing State regulations (CEQA Guidelines) (14 Cal. Reg. §§15000, et seq.), the City of Newport Beach prepared Final EIR No. 142, which was certified by the City of Newport Beach in 1992. Final EIR No. 142 was prepared to address the potential environmental effects associated with the Hoag Hospital Master Plan development program. EIR No. 142 is a program EIR that ensures appropriate mitigation of impacts of the buildout of Hoag Hospital over time.

A Supplemental Final Environmental Impact Report (SCH No. 19910071003) was prepared in accordance with the provisions of the CEQA Public Resources Code §§21000, et seq., and the State CEQA Guidelines, California Code of Regulations §§15000, et seq. The purpose of the Supplemental EIR to the original program EIR was to analyze the potential impacts of the proposed changes to the Hoag Hospital Master Plan development program. The City Council considered and certified the Supplemental Final Environmental Impact Report on April 16, 2008, by adopting certain CEQA Findings of Facts and a Statement of Overriding Considerations contained within City Council Resolution No. 2008-27.

All significant environmental concerns for the proposed project have been addressed in the previously certified Final Environmental Impact Report No. 142 (certified 1992) and its Supplemental Final Environmental Impact Report (certified 2008). The proposed Amendment to the Amended and Restated Development Agreement only extends the term of the agreement and does not amend any development standards, development requirements, or required mitigation measures identified in Final EIR No. 142 and the Supplemental Final EIR (SCH No. 19910071003).

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 - Ordinance No. 2020-18

ATTACHMENT A

ORDINANCE NO. 2020-18

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF NEWPORT BEACH AND HOAG MEMORIAL HOSPITAL PRESBYTERIAN (DEVELOPMENT AGREEMENT AMENDMENT NO. DA2020-003)

WHEREAS, on February 14, 1994, the City Council of the City of Newport Beach ("City") adopted Ordinance No. 94-8 approving Restated Development Agreement No. 5 ("Development Agreement") between the City and Hoag Memorial Hospital Presbyterian ("Hoag"). Ordinance No. 94-8 went into effect on March 16, 1994. The Development Agreement was executed and recorded, as document number 94-0207276, on March 23, 1994;

WHEREAS, Section 6.3, "Term of Agreement," of the Development Agreement provides a twenty-five (25) year term ("Term") from the effective date of the original adopting ordinance;

WHEREAS, on May 13, 2008, the City Council adopted Ordinance No. 2008-10 amending certain provisions of the Development Agreement ("First Amendment") that went into effect on June 12, 2008. The Amendment was executed and recorded with the Orange County Clerk-Recorder, as document number 2008000289321, on June 17, 2008. The Amendment did not modify the Term of the Development Agreement;

WHEREAS, on March 12, 2019, the City Council adopted Ordinance No. 2019-6 extending the term of the Development Agreement ("Second Amendment"), which was set to expire, for an additional six (6) months. The Second Amendment was executed and recorded with the Orange County Clerk-Recorder, as document number 2019000188999, on June 3, 2019;

WHEREAS, on July 23, 2019, the City Council adopted Ordinance No. 2019-12 extending the term of the Development Agreement ("Third Amendment") for an additional ten (10) years in exchange for certain public benefits provided by Hoag. The Third Amendment was executed and recorded with the Orange County Clerk-Recorder, as document number 2019000318392, on August 27, 2019;

WHEREAS, Hoag requests a fourth amendment to extend the Term of the Development Agreement an additional one (1) year in light of COVID-19-related impacts that have constrained the ability to plan for the development allowed by the Development Agreement ("Fourth Amendment"). The existing development regulations and required mitigation measures as provided in the Development Agreement and subsequent amendments remain unchanged by this Fourth Amendment;

WHEREAS, on July 9, 2020, a public hearing was held by the Planning Commission of the City of Newport Beach in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, at which time the Planning Commission considered the Fourth Amendment. A notice of time, place, and purpose of the hearing was given in accordance with California Government Code Section 54950 *et. seq.* (the "Ralph M. Brown Act") and Section 15.45.050 of the Newport Beach Municipal Code ("NBMC"). Evidence, both written and oral, was presented to and considered by the Planning Commission at the hearing. At the conclusion of the hearing, the Planning Commission adopted a Resolution No. 2020-26 recommending City Council approval of the Fourth Amendment;

WHEREAS, on July 28, 2020, the City Council held a public hearing in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place, and purpose of the hearing was given in accordance with the Ralph M. Brown Act and Section 15.45.050 of the NBMC. Evidence, both written and oral, was presented to and considered by the City Council at the hearing;

WHEREAS, Section 15.45.040 of the NBMC requires that development agreements include the term, permitted uses, density and intensity of development, maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes;

WHEREAS, the Development Agreement and Fourth Amendment comply with Section 15.45.040 of the NBMC in that the Fourth Amendment includes a Term of one (1) year and the Development Agreement includes the permitted uses, density and intensity of development, maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes;

WHEREAS, the City Council finds the Fourth Amendment is entered into pursuant to, and constitutes a present exercise of, the City's police power and is in the best interests of the health, safety, and general welfare of the City, its residents, and the public;

WHEREAS, the City Council finds the Fourth Amendment is consistent with the City of Newport Beach General Plan Policy LU 6.1 Strategy 6.1.5 by supporting Hoag in its mission to provide adequate facilities to meet the needs of area residents and by working with Hoag to ensure that future development plans consider its relationship to and assure compatibility with adjoining residential neighborhoods and mitigate impacts on local and regional transportation systems;

WHEREAS, the City Council finds the Fourth Amendment is consistent with California Government Code Sections 65864-65869.5 and local law, including Chapter 15.45 (Development Agreements) of the NBMC, which authorize binding agreements that: (i) encourage investment in, and commitment to, comprehensive planning and public facilities financing; (ii) strengthen the public planning process and encourage private implementation of the local general plan; (iii) provide certainty in the approval of projects in order to avoid waste of time and resources; and (iv) reduce the economic costs of development by providing assurance to the property owners that they may proceed with projects consistent with existing policies, rules, and regulations. COVID-19 has put a strain on the health-care system and demands Hoag's full attention as a regional provider treating those sick with the virus. Temporary closures in the development industry resulting from COVID-19 have also effectively reduced the time Hoag has to act on the by-right development provisions of the Term. If the one (1) year extension is not granted, Hoag might divert its attention from COVID-19 to plan for future development. They might also incur increased development costs and needless expenditure of time and resources because long-term development plans would need to be reconstituted under a tighter future timeframe. Hoag intends to exercise the development assurances of the Term completely to invest vital health-care infrastructure in the community, and needs one (1) additional year to account for the unforeseeable complications from COVID-19;

WHEREAS, the Development Agreement and Fourth Amendment is consistent with these provisions in that the Project has allowed for the development of a hospital to serve a community, provides a Term sufficient to complete the Project, and requires development in accordance with the Project entitlements; and

WHEREAS, the City Council finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

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

Section 1: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 2: All significant environmental concerns for the Project are addressed in previously certified Final Environmental Impact Report No. 142 (certified 1992) and its Supplemental Final Environmental Impact Report (certified 2008). In accordance with the California Environmental Quality Act ("CEQA") set forth in the California Public Resources Code Section 21000, *et. seq.* and its implementing State regulations set forth in the California Code of Regulations Title 14, Division 6, Chapter 3 ("CEQA Guidelines"), the City Council certified Final EIR No. 142 in 1992 that addressed potential environmental effects associated with the Project. Final EIR No. 142 included a supplemental EIR volume (Final EIR No. 142, Volume V), which was prepared in accordance with CEQA Guidelines Section 15163, provided clarifications to the EIR and Project, and was distributed before Final EIR No. 142 was certified.

On April 16, 2008, the City Council certified Supplemental Final Environmental Impact Report (SCH No. 19910071003) in accordance with the provisions of the California Public Resources Code Section 21000, *et. seq.*, and the CEQA Guidelines. The purpose of the Supplemental Final EIR was to analyze the potential impacts of the proposed changes to the Hoag Hospital Master Plan development program. As part of its certification of the Supplemental Final EIR, the City Council adopted certain CEQA Findings of Facts and a Statement of Overriding Considerations contained within Resolution No. 2008-27, which are hereby incorporated by reference.

The Fourth Amendment does not change the Project but rather only extends the Term of the Development Agreement by an additional one (1) years to account for COVID-19-related impacts. The Fourth Amendment does not amend any development standards, development requirements, or required mitigation measures identified in Final EIR No. 142 and the Supplemental EIR.

Section 3: The City Council has considered the recommendation of the Planning Commission and has determined that modifications to the Project made by the City Council, if any, are not major changes that require referral back to the Planning Commission for consideration and recommendation.

Section 4: The Fourth Amendment to Restated Development Agreement No. 5 between Hoag Memorial Hospital Presbyterian and the City of Newport Beach (Development Agreement Amendment No. 2020-003) attached as Exhibit "A" is approved.

Section 5: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 6: To the fullest extent permitted by law, Hoag shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of this Fourth Amendment to Restated Development Agreement No. 5 (Development Agreement Amendment No. 2020-003) and/or the City's related California Environmental Quality Act determinations related to this project. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Hoag, City, and/or the parties initiating or bringing such proceeding. Hoag shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed pursuant to this provision. This Section 6 shall in no way be interpreted as limiting or suspending Hoag's indemnification obligations as set forth in Sections 6.8 and 11.17 of the Development Agreement.

Section 7: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414, and the same shall become effective thirty (30) days after the date of its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 28th day of July, 2020, and adopted on the 25th day of August, 2020, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

WILL O'NEILL, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

Attachment(s): Exhibit "A" – Fourth Amendment to Restated Development Agreement No. 5

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

**FOURTH AMENDMENT TO RESTATED DEVELOPMENT
AGREEMENT NO. 5**

BETWEEN

THE CITY OF NEWPORT BEACH

AND

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

*(Pursuant to California Government Code Sections 65864-65869.5
and Newport Beach Municipal Code Chapter 15.45)*

**Approved August 25, 2020
Ordinance No. 2020-18**

FOURTH AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

(Pursuant to California Government Code sections 65864-65869.5)

This FOURTH AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5 ("**Fourth Amendment**") is entered into and effective on the date it is recorded with the Orange County Recorder ("**Effective Date**") by and between the CITY OF NEWPORT BEACH, a California municipal corporation ("**City**"), on the one hand, and HOAG MEMORIAL HOSPITAL PRESBYTERIAN, a California nonprofit public benefit corporation ("**Hoag**"), on the other. City and Hoag are sometimes collectively referred to in this Fourth Amendment as the "**Parties**" and individually as a "**Party**."

RECITALS

A. Hoag is the fee owner of approximately thirty eight (38) acres of real property located in the City of Newport Beach, County of Orange, State of California, located at 1 Hoag Drive (Assessor Parcel Nos. 423-011-30, 423-011-28), ("**Property**"). The Property is more particularly described in the legal description attached hereto and as Exhibit A and incorporated herein by reference, and as more particularly depicted as attached hereto in Exhibit B and incorporated herein by reference.

B. City and Hoag entered into that certain Development Agreement Between the City of Newport Beach and Hoag Memorial Hospital Presbyterian dated February 14, 1994, for reference purposes and recorded in the Official Records of Orange County on March 23, 1994, as document number 94-0207276 ("**Agreement**") attached hereto as Exhibit C with a twenty five (25) year Term of the Agreement.

C. City and Hoag entered into that certain Amendment to Restated Development Agreement No. 5 dated June 17, 2008, and recorded in the Official Records of Orange County on the same date, as document number 2008000289321 ("**Amendment**") attached hereto as Exhibit D which incorporated references to a Supplemental EIR and amendment to the General Plan, an increase in public benefits, designation of the City as the point of sale to the extent allowed under applicable law, and amendments to the Hoag Hospital Planned Community Text.

D. City and Hoag entered into that Second Amendment to Restated Development Agreement No. 5 and recorded in the Official Records of Orange County on June 3, 2019, as document number 2019000188999 ("**Second Amendment**") attached hereto as Exhibit E which extended the Term of the Agreement for an additional six (6) months.

E. City and Hoag entered into that Third Amendment to Restated Development Agreement No. 5 and recorded in the Official Records of Orange County on August 27, 2019, as document number 2019000318392 ("**Third Amendment**") attached hereto as Exhibit F which extended the Term of the Agreement for an additional ten (10) years.

F. City and Hoag now wish to enter into that **Fourth Amendment** extending the term one (1) year.

G. On July 9, 2020, due to COVID-19, the Planning Commission held a noticed public hearing on this Fourth Amendment and considered the testimony and information submitted by City staff, Hoag, and members of the public. Consistent with applicable provisions of the Development Agreement Statute and Ordinance, the Planning Commission adopted Resolution No. PC2020-26, recommending the City Council approve this Fourth Amendment.

H. On July 28, 2020, the City Council held a noticed public hearing on this Fourth Amendment and considered the testimony and information submitted by City staff, Hoag, and members of the public. On August 25, 2020, consistent with applicable provisions of the Development Agreement Statute and Ordinance, the City Council held second reading and adopted Ordinance No. 2020-18 approving this Fourth Amendment.

I. This Fourth Amendment is consistent with the City of Newport Beach General Plan, including without limitation the General Plan's designation of the Property as "Private Institutions - PI," Ordinance No. 2007-6, entitled "Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code ("NBMC") Regarding Development Agreements" that amended the terms of NBMC Section 15.45 (the "**Development Agreement Statute and Ordinance**"), the Agreement, Amendment, Second Amendment and Third Amendment (collectively the "Amended Agreement").

J. In recognition of the significant public benefits provided in the Amended Agreement, and the fact that the one (1) year extension is requested as a result of delays due to COVID-19, the City Council has found that this Fourth Amendment: (i) is consistent with the City of Newport Beach General Plan as of the date of the Agreement, Amendment, Second Amendment, Third Amendment, and this Fourth Amendment; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) is consistent and has been approved consistent with the final Environmental Impact Report (FEIR No. 142) ("**FEIR**") and the supplemental Environmental Impact Report (EIR No. ER2007-003) (SCH#1991071003) ("**EIR**") that have been certified by the City Council on or before the date of approval, which analyzed the environmental effects of the proposed development of the project on the Property, and all of the findings, conditions of approval and mitigation measures related thereto; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 *et. seq.* and Chapter 15.45 of the NBMC.

AGREEMENT

NOW, THEREFORE, the City and Hoag agree as follows:

1. **Term of Agreement.** Section 6.3 of the Amended Agreement is hereby amended in its entirety to read as follows:

Term of Agreement. The term of this agreement (the "Term") shall begin on the Effective Date and continue until September 15, 2030, unless otherwise terminated or modified pursuant to its terms."

2. **Full Force and Effect.** Except as modified by this Fourth Amendment, the Agreement, Amendment, Second Amendment and Third Amendment, attached hereto as Exhibit

C, Exhibit D, Exhibit E, and Exhibit F, respectively, are incorporated into this Fourth Amendment and shall remain in full force and effect.

3. **Recitals**. The Recitals set forth above are true and correct and incorporated herein by reference.

4. **Counterparts**. This Fourth Amendment may be signed by the Parties in different counterparts and the signature pages combined shall create a single document binding on all Parties.

5. **Recordation**. The City Clerk of City shall record this Fourth Amendment in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.100.

[SIGNATURE PAGE FOLLOWS]

**SIGNATURE PAGE TO
FOURTH AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5**

CITY:


CITY OF NEWPORT BEACH,
a California municipal corporation and charter city

By: _____
Will O'Neill, Mayor

ATTEST:

By: _____
Leilani I. Brown, City Clerk

APPROVED AS TO FORM:

By: 
Aaron C. Harp, City Attorney

HOAG:

HOAG MEMORIAL HOSPITAL
PRESBYTERIAN,
a California nonprofit public benefit corporation

By: _____
Name: Sanford Smith, AIA
Title: Senior Vice President Real Estate & Facilities

By: _____
Name: Andrew Guarni
Title: Senior Vice President and Chief Financial
Officer

(All Signatures to Be Notarized)

Attachments -

- Exhibit A: Legal Description
- Exhibit B: Legal Depiction
- Exhibit C: Development Agreement dated February 14, 1994
- Exhibit D: Amendment to Restated Development Agreement No. 5 dated June 17, 2008
- Exhibit E: Second Amendment to Restated Development Agreement No. 5
- Exhibit F: Third Amendment to the Restated Development Agreement No. 5

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)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

(seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Parcel 1:

That portion of Lots 169 and 170 in Block 2 and a portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

Parcel 2:

That portion of Lot 172 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

EXHIBIT B

LEGAL DEPICTION OF THE PROPERTY

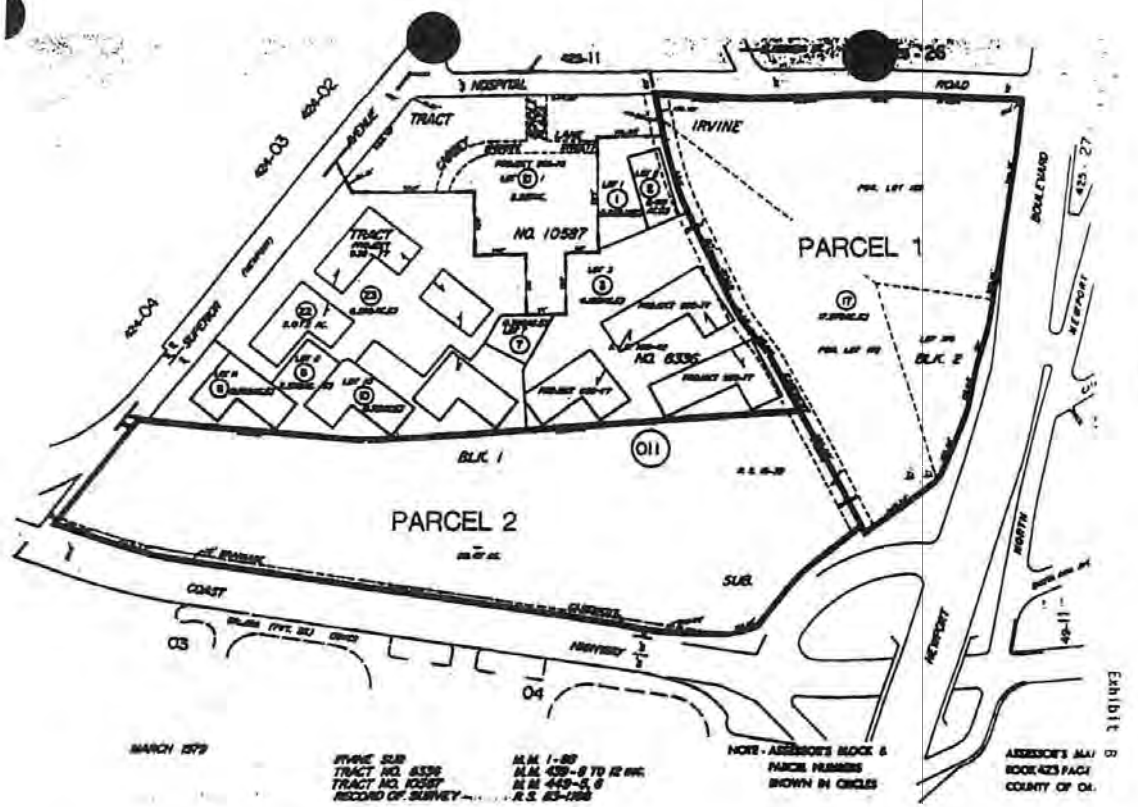


EXHIBIT C

DEVELOPMENT AGREEMENT DATED FEBRUARY 14, 1994

**EXEMPT RECORDING REQUEST PER
GOVERNMENT CODE 6103**

Recording Requested By and
When Recorded Return to:

City Clerk / *by P. M.*
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92659-1768

DOC # 94-0207276
23-MAR-1994 03:59 PM

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**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF NEWPORT BEACH
AND
HOAG MEMORIAL HOSPITAL PRESBYTERIAN**

Approved February 14, 1994
Ordinance No. 94-8

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into between the City of Newport Beach (the "City"), and Hoag Memorial Hospital Presbyterian ("Hoag").

1. RECITALS. This Agreement relates to the following:

1.1 Purpose of Agreement. This Agreement is intended to:

- (a) Enable Hoag to adapt to the ever changing health care needs of those residents within its service area by authorizing design parameters of new or additional facilities in a manner that will allow Hoag to respond to rapid changes in medical and health care technology and delivery systems.
- (b) Establish strict, binding limits on the amount and height of permitted development as well as ensure compliance with numerous conditions on the density, location, and timing of construction to minimize, to the extent feasible, any environmental impacts of Hoag's proposed expansion.
- (c) Impose exactions such as dedication of property, construction of public improvements and/or the installation of landscaping visible to the public, which, when considered in conjunction with the public services provided by Hoag, benefit the general public.

1.2 Authorization. This Agreement is authorized by, and is consistent with, the provisions of 65864 et seq. of the Government Code of the State of California, and Chapter 15.45 of the Newport Beach Municipal Code.

1.3 Interest of Hoag. Hoag is the legal and/or equitable owner of approximately forty (40) acres of real property located in the City and more particularly described in Exhibit "A" and depicted in Exhibit "B" (the "Property").

1.4 Development of the Property. This Agreement authorizes development on the Property consistent with the Hoag Memorial Hospital Presbyterian Master Plan and Planned Community Development Plan ("Master Plan", a copy of which is attached to this Agreement as Exhibit "C" and incorporated by reference when appropriate), subject to the conditions and mitigation measures identified in Environmental Impact Report No. 142 and imposed by the City Council as conditions to approval of the Master Plan and this Agreement and, for all development within

the coastal zone subject to approval of a coastal development permit by the California Coastal Commission or its successor agency.

- 1.5 Planning Commission/City Council Hearings. The Planning Commission, after giving appropriate notice, held public hearings to consider a development agreement, the proposed Master Plan, and the EIR on December 5, 1991, January 9, 1992, January 23, 1992, February 6, 1992, and February 20, 1992. The City Council conducted public hearings on the Master Plan, this Agreement and the EIR on March 23, 1992, March 30, 1992, April 13, 1992 and May 11, 1992.
- 1.6 Consistency. This Agreement is consistent with the various elements of the Newport Beach General Plan, the Master Plan, and other applicable ordinances, plans, and policies of the City. This Agreement is also consistent with the purpose and intent of state and local laws authorizing development agreements in that it represents comprehensive planning, provides certainty in the approval of subsequent projects subject to compliance with conditions, reduces the economic costs of development by providing assurance to Hoag that it may generally proceed with projects in accordance with existing regulations, and provides assurance to adjoining property owners that limits on the height of structures and amount of development as specified in the Master Plan and this Agreement will remain in full force and effect for a period of twenty-five (25) years.
- 1.7 Police Power. The City Council has determined that this Agreement is in the best interests of the health, safety and general welfare of the City, its residents and the public, was entered into pursuant to, and represents a valid exercise of, the City's police power, and has been approved in accordance with the provisions of state and local law that establish procedures for the approval of development agreements.
- 1.8 City Ordinance. On February 14, 1994, the City Council adopted Ordinance No. 94-8 approving this Agreement and authorizing the City to enter into this Agreement. The Adopting Ordinance will become effective on March 16, 1994.

2. DEFINITIONS.

- 2.1 The "Adopting Ordinance" refers to City Ordinance No. 94-8, adopted on February 14, 1994, by the City Council, which approved and authorized the City to enter into this Agreement.
- 2.2 "Agreement" refers to this "Development Agreement Between the City of Newport Beach and Hoag Memorial Hospital Presbyterian".

- 2.3 "Annual Review" refers to the review of Hoag's good faith compliance with this Agreement and conditions on development as set forth in Section 5.
- 2.4 The "Approval Date" means the date on which the City Council voted to adopt the Adopting Ordinance.
- 2.5 All forms of use of the verb "assign" and the nouns "assignment" and "assignee" shall include all contexts of hypothecations, sales, conveyances, transfers, leases, and assignments.
- 2.55 "California Coastal Commission" refers to the California State Resources Agency established under the California Coastal Act of 1976.
- 2.6 "CEQA" and the "CEQA Guidelines" refers to the California Environmental Quality Act and the CEQA Guidelines promulgated by the Secretary of Resources of the State of California, including any amendments adopted subsequent to the Effective Date.
- 2.7 "City" refers to the City of Newport Beach, California.
- 2.8 "City Council" refers to the City Council of the City.
- 2.9 "Cure Period" refers to the period of time during which a Default may be cured pursuant to Section 9.
- 2.10 A "day" or "days" refers to a calendar day, unless expressly stated to be a business day.
- 2.11 A "Default" refers to any material default, breach, or violation of the provisions of this Agreement. A "City Default" refers to a Default by the City, while a "Hoag Default" refers to a default by Hoag.
- 2.12 The "Effective Date" refers to the effective date of the Adopting Ordinance and is the effective date of this Agreement. provided however, the Agreement has been approved by the California Coastal Commission, and the Executive Director of the Coastal Commission is in receipt of a copy of this Agreement signed by both parties.
- 2.13 The "EIR" refers to final Environmental Impact Report No. 142 of the City of Newport Beach and Supplemental Environmental Impact Report No. 142.
- 2.14 An "Estoppel Certificate" refers to the document certifying the status of this Agreement required by Section 5.6 in the form of Exhibit "D".

- 2.15 An "Exaction" refers to those specific dedications and improvements required of Hoag and set forth in Section 8.2 below.
- 2.16 An "Exhibit" refers to an exhibit to this Agreement. All Exhibits are incorporated as a substantive part of this Agreement. The Exhibits to this Agreement are:
- Exhibit A: Legal Description of the Property
- Exhibit B: Map of the Property
- Exhibit C: The Master Plan
- Exhibit D: Estoppel Certificate
- 2.17 "Existing General Regulations" means those General Regulations approved by the City on or before the Approval Date (irrespective of their effective date) and not rescinded or superseded by City action taken on or before the Approval Date.
- 2.18 "Future General Regulations" means those General Regulations (see Section 2.19 below) adopted by the City after the Approval Date.
- 2.19 "General Regulations" means those ordinances, rules, regulations, policies, and guidelines of the City, which are generally applicable to the use of land and/or construction within the City and include, the Fair Share Traffic Contribution Fee Ordinance, Uniform Building Codes and water and sewer connection and fee ordinances.
- 2.20 "General Plan" refers to the City's General Plan in effect on the Approval Date, plus all amendments to the General Plan adopted by the City on or before the Approval Date and effective prior to the Effective Date.
- 2.21 "Hoag" refers to Hoag Memorial Hospital Presbyterian, a non-profit corporation.
- 2.22 "Includes" and all contexts and forms of the words "includes" and "including" shall be interpreted to also state "but not limited to."
- 2.23 "Master Plan" refers to the Hoag Memorial Hospital Presbyterian Master Plan and Planned Community Development Plan which was adopted by the City on May 26, 1992 (Exhibit "C").
- 2.24 "Mortgagee" refers to the holder of a beneficial interest under any mortgage, deed of trust, sale-leaseback agreement, or other

transaction under which all or a portion of the Property, including those portions acquired by assignees, is used as security (a "Mortgage") or the owner of any interest in all or any portion of the Property under a Mortgage, including those portions acquired by assignees.

- 2.25 "Notice" refers to any written notice or demand between the Parties required or permitted by this Agreement.
- 2.26 The "Parties" refers to the City and Hoag and a "Party" shall refer to either of the Parties.
- 2.27 "Planning Commission" refers to the Planning Commission of the City.
- 2.28 The "Project" refers to the proposed development of the Property pursuant to the Master Plan and this Agreement.
- 2.29 "Project Specific Approvals" means all site-specific (meaning specifically applicable to the Property only and not generally applicable to some or all other properties within the City) plans, subdivision maps, permits, or other entitlement. Project Specific Approvals include subdivision maps, site plan review, conditional use permits, coastal development permits, variances, grading and building permits, as well as amendments or modifications to those plans, maps and permits. Project Specific Approvals does not include Existing or Future General Regulations.
- 2.30 The "Property" refers to the real property described on Exhibit "A" and depicted on Exhibit "B."

3. CONDITIONS TO DEVELOPMENT.

- 3.1 Introduction. The provisions of this Section express the intent of the parties regarding the extent to which this Agreement vests Hoag's right to proceed with the development described in the Master Plan. Hoag acknowledges that its right to proceed with development described in the Master Plan is subject to numerous conditions and mitigation measures including the following:
 - (a) The specific limitations and restrictions contained in the Master Plan;
 - (b) Conditions and mitigation measures imposed by the City Council to mitigate significant effects identified in the EIR;

- (c) Conditions imposed by the City as a result of subsequent or supplemental environmental analysis pursuant to provisions of CEQA and the CEQA Guidelines;
- (d) Conditions imposed by the City Council in conjunction with the approval of Traffic Study No. 81 and Variance No. 1180;
- (e) Compliance with the terms and conditions specified in this Agreement.
- (f) Compliance with Existing General Regulations.

3.2 Compliance with Master Plan Conditions/Mitigation Measures.
 Hoag acknowledges that City Council approval of the Master Plan and this Agreement was subject to compliance with numerous conditions and mitigation measures designed to minimize or eliminate the significant adverse effects of the Project and ensure the health, safety, and welfare of nearby residents as well as Hoag patients and employees. Many of these conditions and mitigation measures impose specific development standards and requirements to be implemented in conjunction with further study and analysis of site or subsurface conditions before grading or construction. Specific mitigation measures that require compliance with, or satisfaction of, standards before grading or construction can occur include the following:

- (a) Slope excavation techniques which insure stability;
- (b) Grading and excavation techniques which minimize disturbance to adjacent residents and the general public;
- (c) Identification of potential faults on site and construction of buildings pursuant to recommendations of certified geologists and in a manner which insures that nearby residents, Hoag patients and Hoag employees are not exposed to a significant risk of injury;
- (d) Evaluation of soil corrosivity and removal of corrosive soils or use of corrosion resistant construction materials;
- (e) Mitigation of impacts caused by removal of wetlands through off-site restoration as required by resource agencies;
- (f) Preparation and approval of a project trip generation study prior to development of Phase I of the Master Plan (if Hoag proposes a land use other than specified in the approved Traffic Study);

- (g) Preparation and approval of a project trip generation study as a condition to construction of development in Phases II and III of the Master Plan;
- (h) Preparation and approval of a Traffic Phasing Ordinance analysis prior to construction of development in Phase II and Phase III of the Master Plan;
- (i) Preparation of a view impact analysis of each proposed building prior to issuance of permits;
- (j) Analysis and mitigation of emissions in accordance with the regulations of the South Coast Air Quality Management District;
- (k) Preparation and approval of a construction phasing and traffic control plan for each phase of development.

Hoag's right to develop the Property pursuant to the Master Plan is contingent upon compliance with, and satisfaction of, the conditions and mitigation measures imposed by the City Council as of the Approval Date, conditions imposed by the California Coastal Commission required for approval of coastal development permits, as well as conditions and mitigation measures resulting from subsequent environmental analysis as specified in Paragraph 3.3.

- 3.25 Future Coastal Act discretionary review may result in specific mitigation measures to ensure consistency with the Coastal Act that require compliance with, or satisfaction of, standards before grading or construction can occur.

3.3 Program EIR. Hoag acknowledges that the EIR is a "Program EIR." The EIR analyzes the impacts of construction phased over time and, pursuant to CEQA, City is under a continuing obligation to analyze Hoag's requests for Project Specific Approvals to ensure the environmental impacts associated with the request were fully addressed in the EIR. Subsequent environmental documentation is required if this analysis reveals environmental impacts not fully addressed in the program EIR, identifies new impacts, or concludes the specific request is not consistent with the project described in the EIR. Hoag acknowledges the right and obligation of the City and the Coastal Commission or its successor agency to impose additional conditions as the result of the subsequent environmental analysis required by CEQA.

- 3.4 Mitigation Monitoring Plan. City shall prepare a Mitigation Monitoring Plan ("Plan") within sixty (60) days after the Effective Date. Hoag shall not submit any application for Project Specific Approval until the Plan has been approved by the City Council and the Executive Director of the Coastal Commission or the appropriate entity of its successor agency.

The Plan shall comply with and satisfy the requirements of CEQA and the Guidelines and the Coastal Act. The Plan shall be available to the public upon request.

- 3.5 Compliance with General Regulations. Hoag is required to comply with the Existing General Regulations. As to those Existing General Regulations which require the payment of fees, costs, and expenses, Hoag shall pay the fee, cost, or expense required as of the date on which Hoag submits the application for Project Specific Approval. Hoag shall also comply with any Future General Regulations that do not impair Hoag's ability to develop the Property in accordance with the density, intensity, height and location of development specified in the Master Plan. Hoag shall also comply with all provisions of the Uniform Building Code, whether adopted before or after the Approval Date, which are in effect at the time applications for Project Specific Approvals are submitted. Hoag shall also comply with the Coastal Act and the City's certified Local Coastal Program.

4. RIGHT TO DEVELOPMENT.

- 4.1 Right to Develop. Subject to compliance with the provisions of Sections 3 and 8.2, Hoag shall have a vested right to develop and receive Project Specific Approvals for construction on the Property to the full extent permitted by the Master Plan. Subject to the provisions of Sections 3 and 8, City shall only take action which complies with and is consistent with the Master Plan and this Agreement unless Hoag otherwise consents in writing. Subject to this Subsection, City shall have the authority to impose only those Exactions which are specifically described in this Agreement, except as expressly required (as opposed to permitted) by state or federal law.
- 4.2 Reservations or Dedications of Land. Except as expressly provided in this Agreement, no dedications or reservations of the Property shall be required of Hoag in conjunction with the application or issuance of any Project Specific Approvals.
- 4.3 Conflicting Measures. Except as expressly provided in this Agreement, no initiative measure, moratorium, referendum (except as provided in Government Code Section 65857.5), ordinance, statute or other provision of law which in any way limits or restricts development of the Property to the full extent permitted by the Master Plan and this Agreement (including density, intensity, timing, phasing, and sequencing) shall be applied to the Property during the term of this Agreement.

- 4.4 Time for Construction and Completion of Project. Subject to the provisions of this Agreement and the Master Plan, Hoag shall have the right to decide the timing, phasing, and sequencing of construction on the Property and shall be entitled to apply for, and receive approval of, in a timely manner, permits or approvals at any time.

5. ANNUAL REVIEW.

- 5.1 City and Hoag Responsibilities. At least every twelve (12) months during the Term, the City shall review Hoag's good faith substantial compliance with this Agreement (the "Annual Review"). After the Annual Review, the City's finding of good faith compliance by Hoag shall be conclusive for the purposes of future Annual Reviews or legal action between the Parties. Either Party may address any requirements of the Agreement during the Annual Review. However, fifteen (15) days' written Notice of any requirement to be addressed shall be made by the requesting Party. If, at the time of the review, an issue not previously identified in writing is required to be addressed, the review shall be continued at the request of either Party to afford sufficient time for analysis and preparation of a response.
- 5.2 Public Hearing. The Annual Review shall be conducted at a public hearing noticed in accordance with the provisions of Chapter 15.45 of the Newport Beach Municipal Code.
- 5.3 Information to be Provided to Hoag. The City shall mail to Hoag a copy of the staff report and related exhibits concerning Agreement performance a minimum of ten (10) days before the Annual Review.
- 5.4 Mitigation Review. The annual review shall include a detailed report of compliance with the various conditions and mitigation measures contained within the mitigation monitoring plan. The report shall include an analysis of the view impacts of buildings constructed in comparison to the anticipated views as depicted in the EIR. For the five year monitoring period imposed by the Department of Fish and Game Streambed Alteration Agreement entered into between the Department of Fish and Game and Hoag, the annual review shall also assess the success of any off-site wetlands mitigation. Five years after the completion of the Department of Fish and Game monitoring period, Hoag shall submit a final report assessing the success of the off-site wetlands mitigation in its annual review. If the survival and cover requirements set forth in the Streambed Alteration Agreement have not been met, Hoag shall be responsible for replacement planting to achieve these requirements. Hoag shall be found in compliance with this Agreement unless the City Council determines, based upon the

evidence presented at the Annual Review, that Hoag has not complied with all mitigation measures and conditions including those imposed as a result of subsequent environmental analysis, applicable to the grading of, or building on, the Property as of the date of the Annual Review.

5.5 Review Letter. If Hoag is found to be in compliance with the Agreement after the Annual Review, the City shall issue, within ten (10) days of Hoag's written request, a letter to Hoag stating that the Agreement remains in effect and Hoag is not in Default.

5.6 Estoppel Certificate. Either Party may at any time deliver written Notice to the other Party requesting an estoppel certificate (the "Estoppel Certificate") stating:

- (a) The Agreement is in full force and effect and is a binding obligation of the Parties.
- (b) The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments.
- (c) No Default in the performance of the requesting Party's obligations under the Agreement exists or, if a Default does exist, the nature and amount of any Default.

A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request. The Planning Director may sign Estoppel Certificates on behalf of the city. An Estoppel Certificate may be relied on by assignees and Mortgagees. The Estoppel Certificate shall be substantially in the same form as Exhibit "D."

5.7 Failure to Conduct Annual Review. The City's failure to conduct an Annual Review shall not constitute or be asserted by the City as Hoag's Default.

6. GENERAL PROVISIONS.

6.1 Effective Date. This Agreement and the obligations of the Parties shall be effective as of the Effective Date. However, this Agreement shall bind the Parties as of the Approval Date, subject only to the Adopting Ordinance becoming effective pursuant to California law.

6.2 Applicability to Coastal Zone. This Agreement shall not be applicable to those portions of the Property located within the Coastal Zone as defined by the California Coastal Act (Division

20, California Public Resources Code, beginning with Section 30000) until either (1) the required local coastal program for the Property has been certified by the California Coastal Commission or (2) the California Coastal Commission has approved this Agreement. This Subsection is intended solely to comply with the provisions of California Government Code Section 65869 and shall be of no force or effect if Section 65869 is repealed.

- 6.3 Term of Agreement. The term of this Agreement (the "Term") shall begin on the Effective Date and continue for twenty-five (25) years unless otherwise terminated or modified pursuant to this Agreement. Any modifications to this Agreement prior to effective certification of the City's Local Coastal Program (LCP), are subject to the review and approval of the Coastal Commission or its successor agency.

- 6.4 Assignment. Hoag has the absolute right to assign (see Section 2.5) its rights and/or delegate its obligations under this Agreement as part of an assignment of all or a portion of the Property. Any assignment shall be subject to the provisions of this Agreement. As long as Hoag owns any part of the Property, Hoag may assign the benefits of this Agreement without delegating the obligations for the portion of the Property assigned. If that occurs, however, the benefits assigned shall remain subject to the performance by Hoag of the corresponding obligations.

Where an assignment includes the delegation of both the benefits and the corresponding obligations, those obligations become solely the obligations of the assignee. If an assignee is in Default, then as to Hoag or any assignees not in Default, the Default shall not constitute their Default, give grounds for termination of their rights under this Agreement or be a basis for an enforcement action against them.

- 6.5 Amendment of Agreement.

- (a) Subject to the provisions of Subsection (b), and subject to approval of the Coastal Commission or its successor agency prior to effective certification of the City's Local Coastal Program (LCP), this Agreement may be amended from time to time by the mutual consent of the Parties, or their successors in interest, but only in the manner provided by the Government Code and this Agreement. After any amendment, the term "Agreement" shall refer to the amended Agreement.
- (b) The City Council shall not approve, and Hoag shall not request, any amendment to the provisions of the Master Plan or this Agreement that would increase the maximum

permitted gross floor area or the maximum permitted building height (within any lettered building envelope) above that established by the Master Plan as of the Effective Date of this Agreement. This Subsection shall prevail over any conflicting ordinance, resolution, policy or plan adopted by the City Council.

6.6 Enforcement. This Agreement is enforceable by each of the Parties and their respective successors and assigns.

6.7 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the twenty-five (25) year term;

(b) Entry, after all appeals have been exhausted, of a final judgment or issuance of a final order directing the City to set aside, withdraw, or abrogate the City's approval of this Agreement or any material part of the Project; or,

(c) The effective date of a Party's election to terminate the Agreement as provided in Section 9.3 of this Agreement.

6.8 Hoag shall defend, indemnify and hold harmless the City and its officers and employees with respect to any claim, loss or damage in any way related to the grading, excavation or stabilization of the slopes adjacent to the view parks by Hoag or its employees, agents contractors or representatives. This Section is not intended to impose liability on Hoag for the acts of persons other than Hoag or its agents, representatives or contractors.

6.9 Hoag shall enter into an agreement with City to accept ownership of, and responsibility for maintenance of, the existing methane gas venting flare and any device for collecting gas that is subsequently installed on the Property pursuant to conditions or mitigation measures imposed in conjunction with the Master Plan approval or subsequent environmental analysis.

7. CONFLICTS OF LAW.

7.1 Conflict with State and Federal Laws and Regulations. Where state or federal laws or regulations prevent compliance with one or more provisions of this Agreement, those provisions shall be modified, through revision or suspension, to the

extent necessary to comply with such state or federal laws or regulations and the modified Agreement shall remain in effect, subject to the following:

- (a) the City shall not request modification of this Agreement pursuant to this provision unless and until the City Council makes a finding that such modification is required (as opposed to permitted) by state and federal laws or regulations;
- (b) the modifications must be limited to those required (as opposed to permitted) by the state or federal laws;
- (c) the modified Agreement must be consistent with the state or federal laws or regulations which required modification or suspension;
- (d) the intended material benefits of this Agreement must still be received by each of the Parties after modification;
- (e) neither the modification nor any applicable local, state, or federal laws or regulations, may render the modified Agreement impractical to enforce; and
- (f) Hoag consents in writing to the modification.
- (g) Any modifications, prior to effective certification of the City's Local Coastal Program (LCP) are subject to approval of the Coastal Commission or its successor agency.

Hoag shall have the right to seek judicial review of any proposed modification to ensure compliance with this Section.

- 7.2 Effect of Termination. If this Agreement is terminated as a result of changes in state or federal law, Hoag remains obligated to comply with the provisions of Section 8.2(a) and (b), unless Hoag has completed construction of less than twenty-five percent (25%) of the maximum permitted development.

8. PUBLIC BENEFITS/EXACTIONS.

- 8.1 Public Benefits. City and Hoag agree that this Agreement confers a substantial public benefit by enabling Hoag to construct facilities most appropriate to changes in medical technology and thereby better satisfy the health care needs of residents within its service area. In addition, the Master

Plan and this Agreement confer benefits on the public and nearby residents by imposing long term restrictions on the height, amount and location of development as well as the public improvements described in Section 8.2.

8.2 Exactions. Hoag shall, as a condition to the right to develop, do the following:

- (a) Prior to commencement of development, irrevocably offer to dedicate and grade the proposed linear and consolidated view park identified in Figure 3.2.1 of Volume 1 of the EIR. The City shall accept the offer of dedication within sixty (60) days after the initial grading permit has been finalised by the City. The first stage of development shall include grading of the public linear and consolidated viewpark identified in Figure 3.2.1. of Volume I of the EIR. Hoag shall grade and excavate the slope adjacent to the proposed .28 (28/100) acre consolidated public view park and .52 (52/100) acre public linear view park in a way that ensures stability of the park and adjacent slopes. The grade (between the bicycle path and edge of slope) of the view parks shall be the minimum necessary to insure adequate drainage. The improvement for the linear and consolidated public parks shall be completed within three (3) years after the offer of dedication has been accepted by the City. The City shall ensure that adequate erosion control measures are implemented prior to construction.
- (b) Subsequent to the approval of this Agreement by the Coastal Commission and the expiration of any statute of limitation for filing a legal challenge to this Agreement, the Master Plan, or the EIR, Hoag shall deposit Two Hundred and Fifty Thousand Dollars (\$250,000.00) in an account, and at a financial institution, acceptable to City. The account shall be in the name of the City provided, however, Hoag shall have the right to access the funds in the event, but only to the extent that, Hoag constructs or installs the improvements described in (i) or (ii). Funds in the account shall be applied to the following projects (in order of priority upon notice to proceed served by City on Hoag):
 - (i) The construction of a sidewalk and installation of landscaping in the CalTrans right-of-way along the west side of Newport Boulevard southerly of Hospital Road;

- (ii) The construction of facilities necessary to bring reclaimed water to West Newport and/or the Property;

Any funds remaining in the account after completion of the projects described in (i) and (ii) shall be used by the City to fund, in whole or in part, a public improvement in the vicinity of the property.

- (c) City and Hoag shall conduct a study of possible future improvements in and around the easterly end of Semenluk Slough that would, among other things, improve the appearance of the area and, potentially, serve as a component to improve public access from residential areas in West Newport to park land and public recreation facilities proposed in conjunction with development of the West Newport Oil Company property. The study shall analyze, among other things, the type of improvements that would improve the area without adversely impacting wetlands, the possible location of pedestrian trails and the potential for those trails to improve access to proposed recreational facilities, phasing of the improvements, potential public benefits, and the cost of the improvements. As a part of the study, Hoag and City shall meet and confer with resource agencies relative to the type and extent of improvements that may be permitted in or adjacent to wetlands. Hoag shall fund the study and participate in the cost of constructing any improvements in the area that the City Council determines are feasible and in the public interest, provided, however, the financial contribution of Hoag, including the costs of the study and improvements, shall not exceed Two Hundred Thousand Dollars (\$200,000.00).
- (d) Hoag's obligations pursuant to Subsection (c) are contingent on Coastal Commission approval of the Master Plan and attached as Exhibit C to this Agreement with no significant reduction in entitlement from that authorized in the Master Plan. Hoag's obligations pursuant to Subsection (b) shall be reduced through good faith negotiations in the event the Coastal Commission reduces entitlement by ten percent (10%) or more from that authorized in the Master Plan.

9. DEFAULT, REMEDIES AND TERMINATION.

- 9.1 General Provisions. In the event of a Default (see Section 2.11), the Party alleging a Default shall give the other Party

a written Notice of Default. The Notice of Default shall specify the nature of the alleged Default, and a reasonable manner and sufficient period of time (not less than thirty (30) days) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of the Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then a Default shall be deemed not to exist.

- 9.2 Option to Institute Legal Proceedings or to Terminate. If an alleged Default is not cured within the Cure Period, the noticing Party must give the defaulting Party a Notice of intent to terminate the Agreement. Within thirty (30) days after giving of the Notice, the City Council shall hold a public hearing in the manner set forth in Government Code Sections 65865, 65867, and 65868, as amended, to consider and review the matter.
- 9.3 Notice of Termination. After considering the evidence presented to the City Council, the Party alleging the Default, at its option, may give written Notice of termination of the Agreement to the other Party and the Agreement shall be terminated immediately upon giving the Notice. A termination shall be valid only if good cause exists and clear and convincing evidence was presented to the City Council to establish the existence of a Default. The findings of the City Council as to the existence of a Default shall have no weight in any legal proceeding brought to determine the existence of a Default. The validity of any termination may be challenged pursuant to Section 11.16, in which case the court must render an independent judgment, on the basis of clear and convincing evidence, as to the existence of good cause for termination. Termination may result only from a material Default of a material provision of this Agreement.
- 9.4 Waiver. Failure or delay in giving Notice of Default shall not waive a Party's right to give future Notice of the same or any other Default.
- 9.5 Default by Hoag. If the City alleges a Hoag Default, the City shall conduct a hearing utilizing the Annual Review procedures required by this Agreement before the City may commence legal proceedings to terminate this Agreement.
- 9.6 Default by the City. If Hoag alleges a City Default, Hoag, without limiting any of its other remedies, shall not be

obligated to proceed with or complete the Project or any phase of the Project, nor to perform any further obligations under the Agreement. Upon a City Default, any resulting delays in Hoag's performance shall neither be Hoag's Default nor constitute grounds for termination or cancellation of the Agreement by the City.

10.0 ENCUMBRANCES AND RELEASES ON PROPERTY.

- 10.1 Discretion to Encumber. Hoag may encumber all or any portion of the Property in any manner. The City acknowledges that lenders providing financing may require technical modifications to the Agreement which do not materially alter the intent of the Parties. The City agrees to meet, upon request, with Hoag and/or lenders to negotiate in good faith any lender request for modification. The City agrees to not withhold unreasonably its consent to such modification. Any such modification, prior to effective certification of the City's Local Coastal Program (LCP), is subject to the review and approval of the Executive Director of the Coastal Commission or its successor agency.
- 10.2 Entitlement to Written Notice of Default. Any Mortgagee and its successors and assigns, upon written request to the City, shall be entitled to receive from the City written Notice of any Hoag Default at the same time Hoag is provided with Notice pursuant to Section 9.1.

11.0 MISCELLANEOUS PROVISIONS.

- 11.1 Notices. All Notices (see Section 2.26) shall be written and delivered by personal delivery (including Federal Express and other commercial express delivery services providing acknowledgments or receipt), registered, certified, or express mail, or telegram to the addresses set forth below. Receipt shall be deemed complete as follows:
- (a) For personal delivery, upon actual receipt;
 - (b) For registered, certified, or express mail, upon the delivery date or attempted delivery date as shown on the return receipt; and
 - (c) For telegram, upon the transmission of the telegram.

Notices shall be addressed as follows:

To the City: City Clerk
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92660
Attention: City Attorney
Attention: City Manager

To Hoag: Hoag Memorial Hospital Presbyterian
301 Newport Boulevard
Newport Beach, CA 92663
Attention: President

With a copy to:

Tim Paone
Paone, Callahan, McHolm & Winton
19100 Von Karman, 8th Floor
P.O. Box 19613
Irvine, CA 92713-9613

The addresses to which Notices shall be sent may be changed by giving Notice of a new address.

11.2 Enforced Delay/Extension of Time of Performance. Neither Party shall be deemed to be in Default where delays or non-performance are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, oil spills, casualties, acts of nature, unavailability of materials, governmental restrictions imposed or mandated by governmental entities, suspension of rights in accordance with the existence of unforeseen circumstances, litigation, or similar bases for excused performance. If written Notice of such delay is given to the other Party within thirty (30) days after such delay begins an extension of time for performance shall be granted in writing for the period of the delay, or longer as may be mutually agreed upon. In no event shall the term of this Agreement be extended as a result of the application of this Subsection.

11.3 Severability. If any material part of the Agreement is found by a court to be invalid, void, or illegal, the Parties shall modify the Agreement to implement the original intent of the Parties. These steps may include the waiver by either of the Parties of their right under the unenforceable provision. If, however, the Agreement objectively cannot be modified to implement the original intent of the Parties and the Party substantially benefitted by the material provision does not waive its rights under the unenforceable provision, the entire

Agreement shall become void. For purposes of this Section, and without excluding the possible materiality of other provisions of this Agreement, all provisions of Sections 3, 4 and 8 are deemed "material."

- 11.4 Entire Agreement. This Agreement constitutes the entire understanding and Agreement of the Parties regarding the subject matter of this Agreement. This Agreement supersedes all negotiations and previous agreements between the Parties regarding that subject matter.
- 11.5 Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the Party making the waiver and, prior to effective certification of the City's Local Coastal Program (LCP), are subject to approval of the Coastal Commission or its successor agency.
- 11.6 Incorporation of Recitals. The Recitals set forth in Section 1 are part of this Agreement.
- 11.7 Covenant of Good Faith and Fair Dealing. Neither Party shall do anything which shall have the effect of harming or injuring the right of the other Party to receive the benefits of this Agreement.
- 11.8 Further Actions and Instruments. Upon the request of either Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.
- 11.9 Successors and Assigns. Subject to Section 6.3 above, the burdens of this Agreement shall be binding upon, and the benefits of the Agreement inure to, all successors-in-interest and assigns of the Parties.
- 11.10 Construction of Agreement. All language in all parts of this Agreement shall be construed as a whole and given its fair meaning. The captions of the paragraphs and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of construction. This Agreement shall be governed by the laws of the State of California. This Agreement is not intended to impermissibly contract away the

legislative and governmental functions of the City, and in particular, the City's police powers or to surrender or abrogate the city's governmental powers over the Property.

- 11.11 Authority to Execute. The person executing this Agreement on behalf of Hoag warrants and represents that he/she has the authority to do so and the authority to bind Hoag to the performance of Hoag's obligations under this Agreement.
- 11.12 Consent. Any consent required by the Parties in carrying out the terms of this Agreement shall not unreasonably be withheld.
- 11.13 Effect on Title. This Agreement shall not continue as an encumbrance against any portion of the Property as to which this Agreement has terminated.
- 11.14 Recording. The City Clerk shall cause a copy of this Agreement to be executed by the City and recorded in the Official Records of Orange County no later than ten (10) days after the Effective Date. The recordation of this Agreement is deemed a ministerial act and the failure of the City to record the Agreement as required by this Section and Government Code Section 65868.5 does not make the Agreement void or ineffective.
- 11.15 Institution of Legal Action. In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any Default, to enforce any provision of this Agreement, to enjoin any threatened or attempted violation of this Agreement, to recover damages for any Default, or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Superior Court of the County of Orange, State of California, or in the Federal District Court in the Central District of California.
- 11.16 Attorneys' Fees. In any arbitration, quasi-judicial, administrative, or judicial proceeding between the Parties initiated with respect to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all costs, expenses, and disbursements in connection with such action.

Date: 2-23-94, 1994

CITY OF NEWPORT BEACH

By: Clarence Turner
Clarence Turner, Mayor

Date: March 9, 1994

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

By: Albert J. Auer
Albert J. Auer
Chairman of the Board

wb\hoagda4.fnl
1/21/94

LEGAL DESCRIPTION

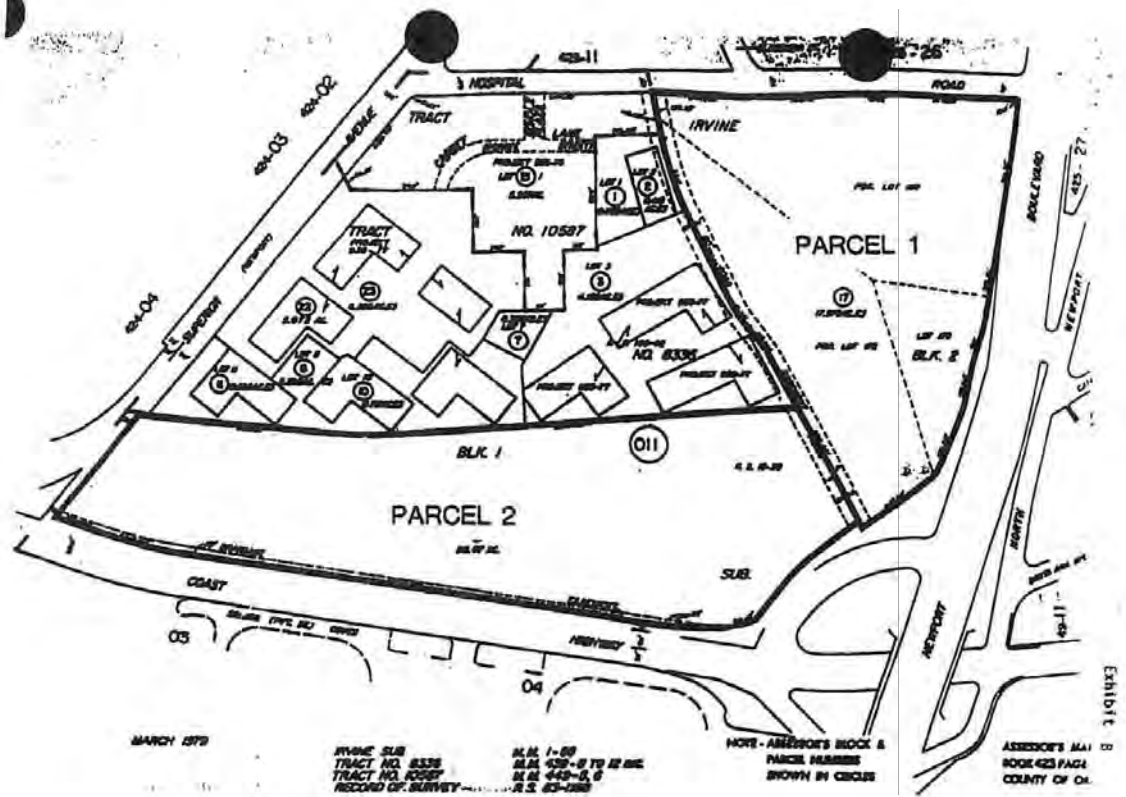
The subject property is the following real property in the City of Newport Beach, County of Orange, State of California:

Parcel 1:

That portion of Lots 169 and 170 in Block 2 and a portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

Parcel 2:

That portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.



HOAG MEMORIAL HOSPITAL PRESBYTERIAN

**PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS**

**Recommended for Approval
by the Planning Commission
February 20, 1992**

**Adopted by the City Council
City of Newport Beach
Ordinance No. 92-3
May 26, 1992**

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I. INTRODUCTION

Background

The Hoag Memorial Hospital Presbyterian Planned Community District in the City of Newport Beach has been developed in accordance with the Newport Beach General Plan. The purpose of this Planned Community District is to provide a method whereby property may be classified and developed for hospital-related uses. The specifications of this District are intended to provide land use and development standards supportive of the proposed use while ensuring compliance with the intent of all applicable regulatory codes.

The Planned Community District includes district regulations and a development plan for both the upper and lower campuses of Hoag Hospital. In general, over the long term, the upper campus will become oriented primarily towards emergency, acute and critical care (predominantly inpatient) uses and the lower campus will be developed with predominantly outpatient uses, residential care and support services.

Whenever the regulations contained in the Planned Community text conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the Planned Community text shall take precedence. The Municipal Code shall regulate this development when such regulations are not provided within these district regulations. All development within the Planned Community boundaries shall comply with all provisions of the Uniform Building Code and other governing building codes.

II. GENERAL NOTES

1. Water service to the Planned Community District will be provided by the City of Newport Beach.
2. Development of the subject property will be undertaken in accordance with the flood protection policies of the City of Newport Beach.
3. All development of the site is subject to the provisions of the City Council Policies K-5 and K-6 regarding archaeological and paleontological resources.
4. Except as otherwise stated in this text, the requirements of the Newport Beach Zoning Ordinance shall apply. The contents of this text notwithstanding, all construction within the boundaries of this Planned Community District shall comply with all provisions of the Uniform Building Code, other various codes related thereto and local amendments.
5. All buildings shall meet Title 24 requirements. Design of buildings shall take into account the location of building air intake to maximize ventilation efficiency, the incorporation of natural ventilation, and implementation of energy conserving heating and lighting systems.
6. Any fire equipment and access shall be approved by the Newport Beach Fire Department.
7. New mechanical appurtenances on building rooftops and utility vaults, excluding communications devices, on the upper campus shall be screened from view in a manner compatible with building materials. Rooftop mechanical appurtenances or utility vaults shall be screened on the lower campus. Noise shall not exceed 55 dBA at all property lines. No new mechanical appurtenances may exceed the building height limitations as defined in these district regulations.

8. Grading and erosion control shall be carried out in accordance with the provisions of the City of Newport Beach Grading Ordinance and shall be subject to permits issued by the Building and Planning Departments.
9. Sewage disposal facilities within the Planned Community will be provided by Orange County Sanitation District No. 5. Prior to issuance of any building permits it shall be demonstrated to the satisfaction of the Planning Department that adequate sewer facilities will be available. Prior to the occupancy of any structure it shall be further demonstrated that adequate sewer facilities exist.
10. Mass grading and grading by development phases shall be allowed provided that landscaping of exposed slopes shall be installed within 30 days of the completion of grading.

III. DEFINITIONS

Building Elevation:

1. a vertical distance of a building above or below a fixed reference level, i.e., MSL (mean sea level).
2. a flat scale drawing of the front, rear, or side of a building.

Building Envelope: the volume in which a building may be built as circumscribed by setback lines and maximum allowable building heights.

Building Height: the vertical distance measured from the finished grade to the highest point of the structure. At all points, the height measurement shall run with the slope of the land.

Emergency Room: a service and facility designated to provide acute emergency medical services for possible life threatening situations.

Fast Aid: low acuity medical treatment for non-life threatening situations.

General Plan: the General Plan of the City of Newport Beach and all elements thereof.

Grade: for the purpose of determining building height:

1. Finished - the ground level elevation which exists after any grading or other site preparation related to, or to be incorporated into, a proposed new development or alteration of existing developments. (Grades may be worked into buildings to allow for subterranean parking.)
2. Natural - the elevation of the ground surface in its natural state before man-made alterations.
3. Existing - the current elevation of ground surface.

Inpatient Uses: hospital patient services which require overnight stay.

Landscape Area: the landscape area shall include on-site walks, plazas, water, rooftop

landscaping and all other areas not devoted to building footprints or vehicular parking and drive surfaces.

Mean Sea Level: a reference or datum mark measuring land elevation using the average level of the ocean between high and low tides.

Outpatient Uses: hospital patient services which do not require overnight stay.

Residential Care: medically-oriented residential units that do not require the acuity level generally associated with inpatient services but require overnight stays.

Site Area: for the purpose of determining development area:

1. Gross - parcel area prior to dedications.
2. Net - parcel area after dedications.

Special Landscaped Street: West Coast Highway is designated as a special landscaped street, containing special landscape requirements.

Streets: reference to all streets or rights-of-way within this ordinance shall mean dedicated vehicular rights-of-way.

IV. DEVELOPMENT PLAN

Project Characteristics

The upper campus of Hoag Hospital is located on a triangular site of approximately 17.57 acres and is bounded by Newport Boulevard to the east, Hospital Road to the north and existing residential developments (the Versailles and Villa Balboa/Seafaire condominiums) to the west. The lower campus is located north of West Coast Highway, south of the Versailles and Villa Balboa/Seafaire Condominiums, west of Newport Boulevard and east of Superior Avenue. It contains approximately 20.41 acres and adjoins the upper campus at its eastern boundary. The upper campus is, and will continue to be, oriented towards inpatient functions, while the lower campus will be developed with predominantly outpatient, residential care and support services.

Development Plan

The Planned Community Development Plan for Hoag Hospital is shown on Exhibit 1. From 1990 to 2015, many of the existing buildings shown on the Development Plan for the upper campus may be redeveloped in order to functionally respond to the needs of the Hospital and conform to the requirements of State agencies.

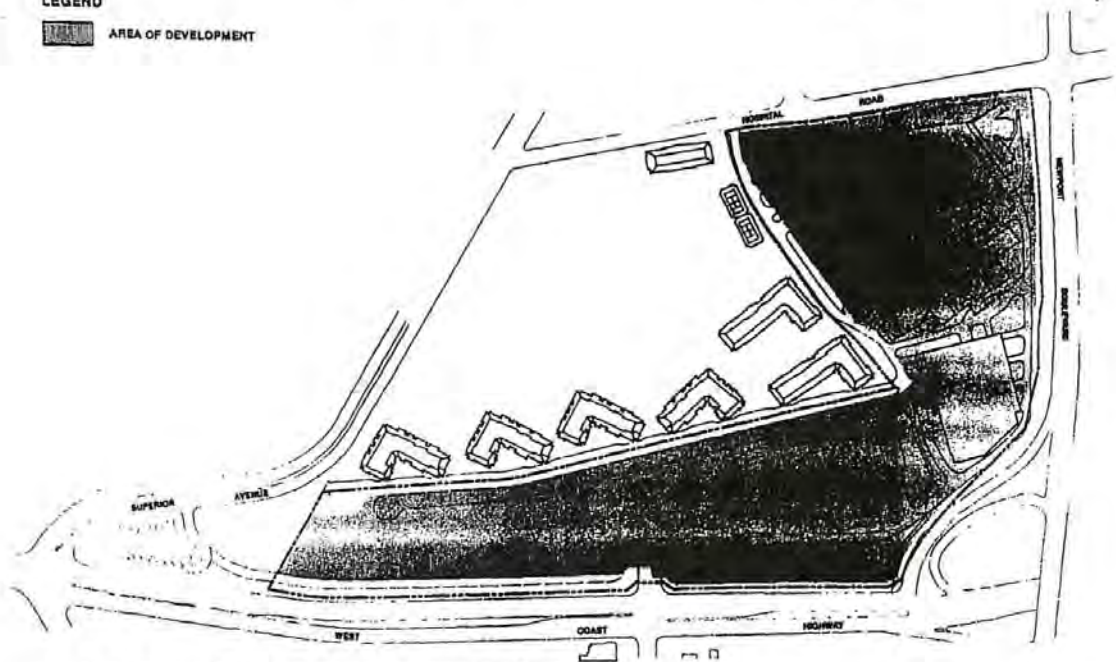
The Development Plan includes a 0.8 acre view park adjacent to the bike trail between the lower campus and the Villa Balboa/Seafaire Condominiums. This view park includes a twenty-foot wide linear park area adjacent to the bike path (approximately 0.5 acres) and a consolidated view park at the westerly edge of the property (approximately 0.3 acres). A bike trail connection is also provided between the existing bike trails at the northern and southern boundaries of the lower campus. Access to the lower campus will be from West Coast Highway and Superior Avenue, as well as from Hospital Road, via the upper campus. Exhibit 2 shows the internal circulation for Hoag Hospital.

The Development Plan does not specify building locations or specific hospital related uses. Instead, a developable area is identified based on the regulations established for this Planned Community District. Because of the dynamic nature of the health care industry which leads to rapid technological changes that effect how health care services are delivered, the Development Plan for Hoag Hospital sets development caps as a function of allowable densities established by the Newport Beach General Plan.

LEGEND



AREA OF DEVELOPMENT



PLANNED COMMUNITY DEVELOPMENT PLAN
HOAG MEMORIAL HOSPITAL PRESBYTERIAN

May 26, 1992

EXHIBIT 1








Not to be used for any other purpose without the written consent of the City of Jackson, Mississippi.

The statistical analysis (Table 1) provides a summary of a potential development profile for Hoag Hospital. In order to provide flexibility for the hospital to respond to changes in the health care industry, while at the same time ensuring that trip generation restrictions are adhered to and the overall development cap is not exceeded, this Development Plan allows Hoag Hospital to adjust the development profile provided in the statistical analysis. For example, if changing hospital needs necessitate the development of additional outpatient uses, this development would be allowed, consistent with the Development Plan, as long as a corresponding adjustment in square footage and trip generation for another use were to occur.

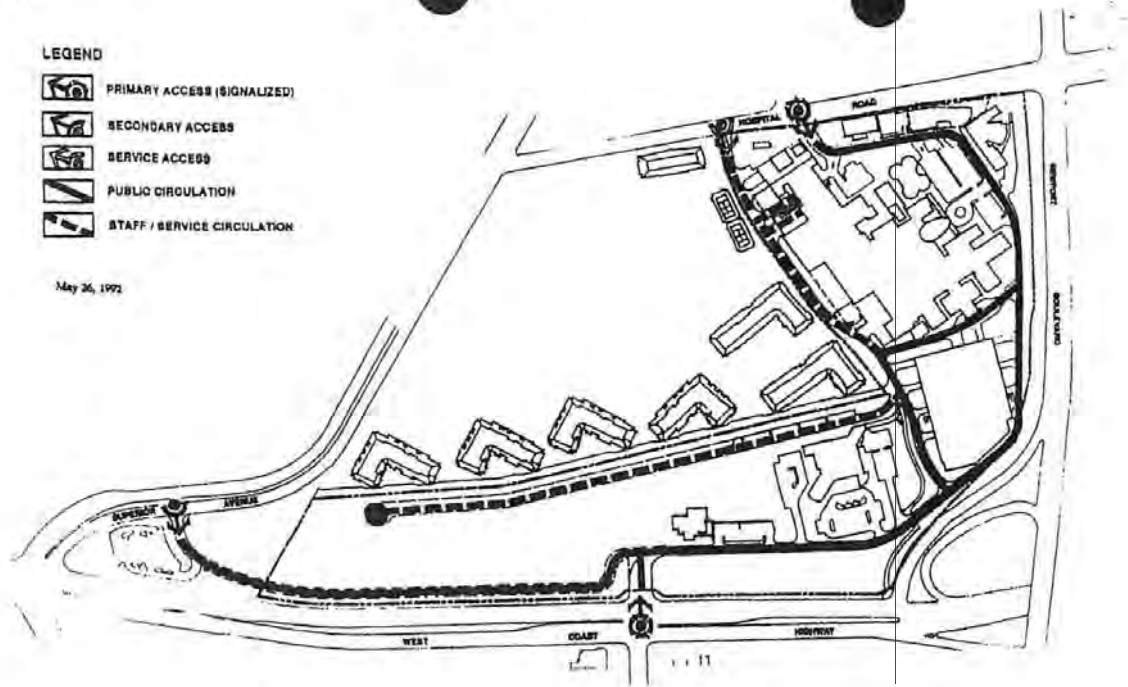
This Development Plan allows Hoag Hospital to adjust the development profile provided in the statistical analysis (Table 1) as long as the development limit (i.e., square feet) or the trip generation limit for the peak period (as identified in the Environmental Impact Report) established within each phase of development is not exceeded.

Adjustments to the Development Plan may be allowed if the total square footage or trip generation allowed in the current phase of development is exceeded, if the total development or trip generation allowed under the Development Plan is not exceeded.

LEGEND

-  PRIMARY ACCESS (SIGNALIZED)
-  SECONDARY ACCESS
-  SERVICE ACCESS
-  PUBLIC CIRCULATION
-  STAFF / SERVICE CIRCULATION

May 26, 1992



VEHICULAR ACCESS

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

EXHIBIT 2

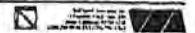


Table 1
STATISTICAL ANALYSIS¹

<u>Use</u>	<u>Square Feet</u>
Lower Campus	
Existing:	
Outpatient Services (Hoag Cancer Center)	65,000
Child Care	7,800
Subtotal:	<u>72,800</u>
Phase I:	
Outpatient Services	115,000
Support Service	55,000
Administrative	30,000
Subtotal:	<u>200,000</u>
Phases II & III:	
Subtotal:	305,089
<u>Total Lower Campus</u>	<u>577,889</u>
Upper Campus	
Existing²:	480,000
Phase I:	
Outpatient Services	25,000
Inpatient	115,000
Subtotal:	<u>140,000</u>
Phases II & III:	145,349
<u>Total Upper Campus</u>	<u>765,349</u>
GRAND TOTAL	1,343,238³

¹ Full development of the upper and lower campuses is anticipated to occur over an approximate 20-year period and will likely occur in three, seven-year phases.

² Up to 50% of the existing upper campus may be redeveloped by master plan buildout.

³ Based on development allowed under the General Plan at a floor area ratio to gross site area of .65 for the lower campus and 1.0 for the upper campus. Building Bulk limit for the lower campus is 0.90 for all structures which includes above grade covered parking.

V. DISTRICT REGULATIONS

The following regulations apply to all development within the Hoag Hospital Planned Community. The individual uses listed under the five permitted use categories is not an exhaustive list. Other hospital-related uses which fit into the five permitted use categories are allowed by definition. Prior to the issuance of a building permit, plot plans, elevations and any other such documents deemed necessary by the Planning, Building and Public Works Departments shall be submitted for the review and approval of the Planning, Building, and Public Works Departments.

A. Permitted Uses

1. Lower Campus

a) Hospital facilities, including, but not limited to:

- i. Outpatient services:
 - Antepartum Testing
 - Cancer Center
 - Skilled Nursing
 - Rehabilitation
 - Conditioning
 - Surgery Center
 - Clinical Center
 - Day Hospital
 - Back and Neck Center
 - Biofeedback
 - Breast Imaging Center
 - CT Scan
 - Dialysis
 - EEG/EMG/NICE Laboratory
 - First Aid Center
 - Fertility Services
 - G.I. Laboratory
 - Laboratory
 - Magnetic Resonance Imaging
 - Nuclear Medicine
 - Occupational Therapy
 - Pediatrics
 - Pharmacy
 - Physical Therapy
 - Pulmonary Services

- Radiation Therapy
- Radiology
- Respiratory Therapy
- Sleep Disorder Center
- Speech Therapy
- Ultrasound
- ii. Administration:
 - Admitting
 - Auxiliary Office
 - Business Offices
 - Information
 - Registration
 - Patient Relations
 - Social Services
- iii. Support Services:
 - Employee Child Care
 - Health Education
 - Power/Mechanical/Auxiliary Support and Storage
 - Food Services
 - Cashier
 - Chapel/Chaplaincy Service
 - Conference Center
 - Dietitian
 - Gift Shop
 - Laboratory
 - Medical Library
 - Medical Records
 - Pharmacy
 - Engineering/Maintenance
 - Shipping/Receiving
 - Microwave, Satellite, and Other Communication Facilities
- iv. Residential Care:
 - Substance Abuse
 - Mental Health Services
 - Extended Care
 - Hospice Care
 - Self or Minimal Care
 - Congregate Care

v. Medical/Support Offices

- b) Methane gas flare burner, collection wells and associated system components.
- c) Accessory uses normally incidental to hospital development.
- d) Temporary structures and uses, including modular buildings.

2. Upper Campus

- a) Hospital facilities, including, but not limited to:
 - i) Inpatient uses:
 - Critical Care
 - Emergency Care Unit
 - Birth Suites
 - Cardiology
 - Cardiac Care Unit
 - Intensive Care Unit
 - Mother/Baby Unit
 - Surgery/Waiting Rooms
 - Radiology
 - Laboratory
 - Pharmacy
 - ii) Outpatient services as allowed on the lower campus
 - iii) Administrative uses as allowed on the lower campus
 - iv) Support services as allowed on the lower campus
 - v) Residential care as allowed on the lower campus
 - vi) Heliport (subject to Conditional Use Permit)
- b) Accessory uses normally incidental to hospital development.
- c) Temporary structures and uses, including modular buildings.

B. Prohibited Uses

1. Lower Campus
 - a) Emergency Room
 - b) Heliport

C. Maximum Building Height

The maximum building height of all buildings shall be in accordance with Exhibit 3 which established the following height zones:

1. Upper Campus Tower Zone - maximum building height not to exceed the existing tower (235 feet above mean sea level).
2. Upper Campus Midrise Zone - maximum building height not to exceed 140 feet above mean sea level.
3. Upper Campus Parking zone - maximum building height not to exceed 80 feet above mean sea level, exclusive of elevator tower.
4. Lower Campus Zone, Sub-Areas A, B, C, F and G - within each sub-area no building shall exceed the height of the existing slope and conform to the range of maximum building heights indicated on the development criteria Exhibit 3.
5. Lower Campus Zone, Sub-Areas D and E - maximum building height shall not exceed the height of the existing Hoag Cancer Center (57.5 feet above mean sea level).

D. Setbacks

Setbacks for the Hoag Hospital Planned Community are shown on Exhibit 3.

1. Setbacks will be provided along property boundaries adjacent to the Villa Balboa / Seafaire Condominiums, as defined below:
 - a) Upper campus western boundary setback shall be the prolongation of the westerly edge of the existing cafeteria/laboratory building to the points of intersection with the easterly curb line of the existing service drive, then continuing along said line of the existing service drive.
 - b) Lower campus northern boundary, all of which will have a 20' minimum building setback.



May 25, 1993

**EXHIBIT 3**

VISA

2. The setback on West Coast Highway easterly of the hospital entry signal shall be 15 feet.

In addition, vertical articulation shall be required for buildings easterly of the signal within 150 feet of the West Coast Highway frontage, as follows:

1st Floor: Up to 18 feet in height no additional articulation is required. If the 1st floor exceeds 18 feet in height, it shall be subject to the articulation requirements of the 2nd Floor.

2nd Floor (up to 32' in height): A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 2nd floor setback of 20 feet.

3rd Floor and above: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 3rd floor and above setback of 25 feet.

The setback on West Coast Highway westerly of the hospital entry signal shall be 45 feet.

In addition, vertical articulation shall be required for buildings westerly of the signal for buildings within 150 feet of the West Coast Highway frontage, as follows:

1st Floor: Up to 18 feet in height no additional articulation is required. If the 1st floor exceeds 18 feet in height, it shall be subject to the articulation requirements of the 2nd Floor.

2nd Floor (up to 32' in height): A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 2nd floor setback of 55 feet.

3rd Floor and above: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 3rd floor and above setback of 65 feet.

In order to avoid any future structures in this area (within 150 feet of West Coast Highway) from presenting an unacceptable linear mass, no single structure shall be greater than 250 linear feet in width. Additionally, 20% of the linear frontage within 150 feet of West Coast Highway shall be open and unoccupied by buildings.

10% of the linear length of height zones A and B as viewed from the existing bicycle/pedestrian trail, exclusive of that area adjacent to the consolidated portion of the view park, shall be maintained as view corridors between buildings.

These requirements may be altered for individual buildings, if requested by the hospital, through the site plan review process defined in Section IX.

3. There will be no building setbacks along the boundary with CalTrans east property at Superior Avenue and West Coast Highway.
4. A 20 foot setback from property line shall be provided along Newport Boulevard from Hospital Road to a point 600 feet south; a 25 foot setback from property line shall be provided along the remainder of Newport Boulevard and along the Newport Boulevard/West Coast Highway Interchange.
5. A ten (10) foot building setback from the property line shall be provided along Hospital Road.

E. Lighting

The lighting systems shall be designed and maintained in such a manner as to conceal the light source and to minimize light spillage and glare to the adjacent residential uses. The plans shall be prepared and signed by a licensed Electrical Engineer.

F. Roof Treatment

Prior to the issuance of building permits, the project sponsor shall submit plans which illustrate that major mechanical equipment will not be located on the roof of any structure on the Lower Campus. Rather, such buildings will have clean rooftops. Minor rooftop equipment necessary for operating purposes will comply with all building height criteria, and shall be concealed and screened to blend into the building roof using materials compatible with roofing materials.

G. Signs

All signs shall be as specified under the Hoag Hospital Sign Program, Part VI.

H. Parking

All parking shall be as specified in Part VII, Hoag Hospital Parking Regulations.

I. Landscape

All landscaping shall be as specified in the Hoag Hospital Landscape Regulations, Part VIII.

J. Mechanical and Trash Enclosures

Prior to issuance of a building permit, the project sponsor shall submit plans to the City Planning Department which illustrate that all mechanical equipment and trash areas will be screened from public streets, alleys and adjoining properties.

K. Internal Circulation

1. Prior to the issuance of a grading permit for any of the proposed Master Plan facilities, the project sponsor shall implement a pilot program that controls usage of the Upper and Lower Campus service roads during non-working hours. Such controls may include requesting that the majority of vendors deliver products (other than emergency products) during working hours (i.e. 7:00 a.m. to 8:00 p.m.), signage to restrict use of the road by Hospital employees, physicians, patients and visitors during non-working hours, and other methods to restrict use. The Hospital will also request that vendors not deliver (i.e. scheduled and routine deliveries) on the weekends.

This restriction specifically applies to scheduled and routine deliveries. The results of this program will be submitted to the City prior to the issuance of the grading permit. If such results indicate that such controls do not significantly impact the operations of the Hospital, and provided that requests for specified vendor delivery times is consistent with future Air Quality Management Plan procedures, the City may require that the program be implemented as hospital policy. If operation impacts are significant, other mitigation measures will be investigated at that time to reduce service road impacts to the adjacent residential units.

2. The lower campus service road shall include provisions for controlled access to limit usage to physicians and staff, and service vehicles.

L. Loading Dock

Within one year from the date of final approval of the Planned Community District Regulations and Development Plan by the California Coastal Commission, as an interim measure, the project sponsor shall implement an acoustical and/or landscape screen to provide a visual screen from and reduce noise to adjoining residences from the loading dock area.

The design process for the Critical Care Surgery Addition shall include an architectural and acoustical study to insure the inclusion of optimal acoustical screening of the loading dock area by that addition.

Subsequent to the construction of the Critical Care Surgery Addition, an additional acoustical study shall be conducted to assess the sound attenuation achieved by that addition. If no significant sound attenuation is achieved, the hospital shall submit an architectural and acoustical study assessing the feasibility and sound attenuation implications of enclosing the loading dock area. If enclosure is determined to be physically feasible and effective in reducing noise impacts along the service access road, enclosure shall be required. Any enclosure required pursuant to this requirement may encroach into any required setback upon the review and approval of a Modification as set forth in Chapter 20.81 of the Newport Beach Municipal Code.

VI. HOAG HOSPITAL SIGN PROGRAM

A. Purpose and Intent

1. The purpose of this Sign Program is to provide adequate, consistent and aesthetically pleasing on-building wall and ground-mounted signage based upon the provisions set forth by the City of Newport Beach Sign Ordinance and the information signage requirements of Hoag Hospital.
2. The intent of this Sign Program is to produce uniform standards for Hoag Hospital.

B. General Sign Standards

1. All signs visible at the exterior of any building or facility of the Hospital, ground mounted or on-building, may be illuminated or non-illuminated, depending upon need. Illumination method may be by external or internal source. No sign shall be constructed or installed to rotate, gyrate, blink or move, nor create the illusion of motion, in any fashion.
2. All signs attached to building or facility exteriors shall be flush or surface mounted as is appropriate to the architectural design features of said building or facility.
3. All signs together with the entirety of their supports, braces, guys, anchors, attachments and decor shall be properly maintained, legible, functional and safe with regard to appearance, structural integrity and electrical service.
4. All street signs shall be subject to review and approval of the City Traffic Engineer, and shall be in compliance with Ordinance 110-L.

C. Number of Signs Allowed

1. One (1) double-faced primary identification ground-mounted sign or two single faced gateway entry signs shall be allowed per street frontage. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Total maximum signage area shall not exceed two hundred (200) square feet and shall not exceed ten (10) feet in height per sign and street frontage. This sign may occur as a wall sign, to be located upon a project boundary perimeter wall, subject

to the same number and area maximums described above. This sign may also occur as part of an entry gateway system.

2. Secondary identification signs shall be allowed. This sign type shall not exceed a maximum height of 48" average height above finished grade. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Maximum sign area shall not exceed thirty-five (35) square feet. This sign may occur as a wall sign to be located upon a project boundary perimeter wall, subject to the same number and area maximums described above.
3. Vehicular and pedestrian directional signs shall be allowed. This sign type may occur as a single-faced or double-faced sign. This sign type shall occur with the sign suspended between two upright supports having the same depth (thickness) as the sign cabinet described above.
4. Hospital identification signs shall be allowed upon hospital tower parapets, one (1) at each elevation. The elevation facing west (Villa Balboa property line) may not be illuminated.
5. On the lower campus, one (1) building-mounted identification sign will be allowed per structure and shall not be placed so as to directly face the Villa Balboa/Seafaire property. Such signs will be no higher than the roof line of the building upon which they are mounted.

VII. HOAG HOSPITAL PARKING REGULATIONS

A. General

1. Off-street parking for Hoag Hospital shall be provided on-site. Parking may be on surface lots, subterranean or in parking structures.
2. The design and layout of all parking areas shall be subject to the review and approval of the city Traffic Engineer and the Public Works Department.
3. Parking lot lighting shall be developed in accordance with City standards and shall be designed in a manner which minimizes impacts on adjacent land uses. Nighttime lighting shall be limited to that necessary for security and shielded down from any adjacent residential area. The plans shall be prepared and signed by a licensed electrical engineer, with a letter from the engineer stating that the requirements has been met. The lighting plan shall be subject to review and approval of the City Planning Department.

B. Requirements for Offstreet Parking

Parking requirements for specific sites shall be based upon the parking criteria established in Table 2. All parking shall be determined based upon building type and the area allotted to the following functions. Any area which is calculated as part of the total floor area limitation shall be included in the gross floor area to determine the parking requirement.

Table 2
PARKING REQUIREMENTS

<u>Use Category</u>	<u>Parking Requirements</u>
Outpatient Services	2.0 spaces/1,000 square feet*
Support	1.0 spaces/1,000 square feet*
Administrative	4.0 spaces/1,000 square feet*
Residential Care	1.0 spaces/1,000 square feet*
Medical Offices	4.0 spaces/1,000 square feet*
Inpatient	1.25 spaces/1,000 square feet**

- * Parking requirements are based on a study performed by DKS Associates in May, 1987.
- ** Parking requirement is based on current Hoag Hospital parking demand.

VIII. HOAG HOSPITAL LANDSCAPE REGULATIONS

A. General

1. Detailed landscape and irrigation plans, prepared by a registered Architect or under the direction of a Landscape Architect, shall be reviewed by the Planning and Parks, Beaches and Recreation Departments and approved by the Public Work Departments prior to issuance of a building permit and installed prior to issuance of Certificate of Use and Occupancy. The Landscape Plan may include a concept for the roofs and the parking structures. Trees shall not be used, but a planter box or trellis system shall be designed to provide visual relief of parking structures. All landscaping shall conform to the building height limits established in this text.
2. Parking lot trees shall be no less than fifteen (15) gallon size.
3. Shrubs to be planted in containers shall not be less than one (1) gallon size. Ground covers will be planted from (1) gallon containers or from root cuttings.
4. Every effort should be made to avoid using plants with invasive and shallow root systems.
5. Earth berms shall be rounded and natural in character, designed to obscure automobiles and to add interest to the site. Wheel stops shall be so placed that damage to trees, irrigation units and shrubs is avoided.
6. Trees in parking lots should be limited in variety. Selection should be repeated to give continuity. Regular spacing is not required and irregular groupings may add interest. Care should be exercised to allow plants to grow and maintain their ultimate size without restriction.
7. Heavy emphasis shall be placed on the use of drought-resistant native and naturalized vegetation and the use of an irrigation system designed to avoid surface runoff and over-watering.

B. Maintenance

1. All planting areas are to be kept free of weeds and debris.
2. Lawn and ground covers are to be kept trimmed and/or mowed regularly.

3. All plantings are to be kept in a healthy and growing condition. Fertilization, cultivation and tree pruning are to be carried out as part of regular maintenance.
4. Irrigation systems are to be kept in working condition. Adjustment and cleaning of system should be part of regular maintenance.
5. Stakes, guys and ties on trees should be checked regularly for correct function; ties to be adjusted to avoid creating abrasions or girdling to the stems.
6. Damage to plantings created by vandalism, automobile or acts of nature shall be corrected within thirty (30) days.

C. Special Landscaped Street

West Coast Highway is designated in the Hoag Hospital Planned Community as a special landscaped street. A 15' building setback from right-of-way / property line is required along West Coast Highway. Only driveways, parking and signage are allowed in the setback area. Parking areas shall be screened from view of West Coast Highway with landscaped berms.

Landscaping along West Coast Highway shall consist of trees, ground cover and shrubbery. All unpaved areas not utilized for parking or circulation shall be landscaped in a similar manner. Tree size to be no less than twenty-four (24) inch box.

D. Villa Balboa Landscape Zone

The area between the Villa Balboa/Hoag property line and the loading dock service access road shall be landscaped except for any driveway, walkway, or other hardscape elements in said area. The purpose of the landscaping will be to screen and buffer residential units from hospital activities.

E. Parking Areas

A minimum of 5% of the surface parking areas shall be devoted to planting areas. Planting areas around building shall not be included in parking area. Planting of trees may be in groups and need not necessarily be in regular spacing. Alternative landscape programs may be developed, including perimeter parking area landscaping, berming and depressing of parking areas. Alternative landscape programs shall be subject to the review of the Parks, Beaches and Recreation Department and the approval of the Planning and Public Works Departments.

A rooftop landscaping program may be developed for parking structures and shall be subject to the review of the Parks, Beaches and Recreation Department and the approval of the Planning and Public Works Departments. Rooftop landscaping shall conform to height restrictions.

IX. SITE PLAN REVIEW.

A. Purpose

The City Council finds that development on the West Coast Highway frontage of the lower campus of Hoag Hospital may have the potential to affect the aesthetics of the West Newport area as viewed from surrounding arterial roadways. The effect of this section is to establish a Site Plan Review requirement by the Planning Commission for certain individual projects which are proposed by the hospital to differ from the setback, horizontal and vertical articulation requirements as set forth in Section V.D.2. to insure that these projects conform with the objectives of the General Plan and the Master Plan for Hoag Hospital.

B. Findings

The City finds, determines and declares that the establishment of Site Plan Review procedures contained in this section promotes the health, safety, and general welfare of the community by ensuring that the development of Hoag Hospital proceeds in a manner which will not result in inadequate and poorly planned landscape areas, excessive building bulk on arterial roadways, inappropriate placement of structures and impairment of the benefits of occupancy and use of existing properties in the area.

C. Application

Site Plan Review approval shall be obtained prior to the issuance of a grading or building permit for any new structure or the addition to an existing structure which does not conform to the provisions of Section V.D.2.

D. Plans and Diagrams to be Submitted

The following plans and diagrams shall be submitted to the Planning Commission for approval:

1. A plot plan, drawn to scale, showing the arrangement of buildings, driveways, pedestrian ways, off-street parking and off-street loading areas, landscaped areas, signs, fences and walks. The plot plan shall show the location of entrances and exits, and the direction of traffic flow into and out of off-street parking and loading areas, the location of each parking space and loading space, and areas for turning and maneuvering vehicles. The plot plan shall indicate how utility and drainage are to be provided.

2. A landscape plan, drawn to scale, showing the locations of existing trees proposed to be removed and proposed to be retained; and indicating the amount, type, and location of landscaped areas, planting beds and plant materials with adequate provisions for irrigation.
3. Grading plans when necessary to ensure development properly related to the site and to surrounding properties and structures.
4. Scale drawings of exterior lighting showing size, location, materials, intensity and relationship to adjacent streets and properties.
5. Architectural drawings, renderings or sketches, drawn to scale, showing all elevations of the proposed buildings and structures as they will appear upon completion.
6. Any other plans, diagrams, drawings or additional information necessary to adequately consider the proposed development and to determine compliance with the purposes of this chapter.

E. Fee

The applicant shall pay a fee as established by Resolution of the City Council to the City with each application for Site Plan Review under this chapter.

F. Standards

In addition to the general purposes set forth in sub-section B, in order to carry out the purposes of this chapter as established by said section, the site plan review procedures established by this Section shall be applied according to and in compliance with the following standards, when applicable:

1. The development is in compliance with all other provisions of the Planned Community Development Criteria and District Regulations (P-C Text);
2. Development shall be compatible with the character of the neighborhood and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;
3. Development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on West Coast Highway;

4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.

G. Public Hearing - Required Notice

A public hearing shall be held on all Site Plan Review applications. Notice of such hearing shall be mailed not less than ten (10) days before the hearing date, postage prepaid, using addresses from the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses, to owners of property within a radius of three hundred (300) feet of the exterior boundaries of the subject property. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this Section. In addition to the mailed notice, such hearing shall be posted in not less than two conspicuous places on or close to the property at least ten (10) days prior to the hearing.

H. Action by the Planning Commission

If all applicable standards established by this Section are met, the Planning Commission shall approve the development. Conditions may be applied when the proposed development does not comply with applicable standards and shall be such as to bring said development into conformity.

If the development is disapproved, the Commission shall specify the standard or standards that are not met.

A Site Plan Review decision of the Planning Commission shall be subject to review by the City Council either by appeal, or upon its own motion, or upon the request of the Commission. The action of the Commission on any Site Plan Review shall be final and effective twenty-one (21) days following the Commission action thereon unless, within the twenty-one (21) day appeal period an appeal in writing has been filed by the applicant, or any other person, the Commission has requested a review of its decision, or unless the City Council, not more than twenty-one (21) days after the Commission action, on its own motion, elects to review and act on the action of the Commission, unless the applicant consents to an extension of time. The City Council may affirm, reverse or modify the decision. Such action by the City Council shall be final.

I. Appeal to the City Council

Any Site Plan Review decision of the Commission may be appealed to the City Council by the applicant or any other person, at any time within twenty-one (21) days after the date of the Commission decision. An appeal to the City Council shall be taken by filing a letter of appeal in duplicate, with the Planning Department. Such letter shall set forth the grounds upon which the appeal is based and shall be accompanied by a fee as established by Resolution of the City Council.

J. Action by the City Council




An appeal shall be heard and acted on by the City Council, and the City Council may affirm, reverse or modify the decision of the Commission. The decision of the City Council is final.

K. Expiration and Revocation of Site Plan Review Approvals

1. **Expiration.** Any Site Plan Review granted in accordance with the terms of this Title shall expire within 24 months from the date of approval if a building permit has not been issued prior to the expiration date and subsequently construction is diligently pursued until completion, unless at the time of approval the Planning Commission has specified a different period of time.
2. **Violation of Terms.** Any Site Plan Review granted in accordance with the terms of this Title may be revoked if any of the conditions or terms of such Site Plan Review are violated or if any law or ordinance is violated in connection therewith.
3. **Hearing.** The Planning Commission shall hold a hearing on any proposed revocation after giving written notice to the permittee at least ten days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within 60 days after receipt of the recommendation of the Planning Commission.

E:\Planning\FCTEXT\HOAGHOSP

CITY OF NEWPORT BEACH
**HEIGHT LIMITATION
 ZONES-COMMERCIAL**

	26 / 35 FEET
	32 / 50 FEET
	HIGHRISE 375 FT.

NOTE:
 ALL R-1, R-1.5, R-2 ZONES 24/28 FEET
 ALL R-3, R-4, MFR ZONES 28/32 FEET



MAY 11, 1991
 REVISION DATE: 5-27-92

Revision Date: May 26, 1992

Exhibit D
 273

**EXHIBIT D
ESTOPPEL CERTIFICATE**

Date Requested: _____
Date of Certificate: _____

On _____, the City of Newport Beach approved the "Development Agreement Between the City of Newport Beach and Hoag Memorial Hospital Presbyterian" (the "Development Agreement").

This Estoppel Certificate certifies that, as of the "Date of Certificate" set forth above:

CHECK WHERE APPLICABLE

- _____ 1. The Development Agreement remains binding and effective;
- _____ 2. The Development Agreement has not been amended;
- _____ 3. The Development Agreement has been amended in the following respects:

- _____ 4. Neither Hoag nor any of its successors are in default under the Development Agreement;
- _____ 5. The following defaults exist under the Development Agreement:

This Estoppel Certificate may be relied upon by any transferee or mortgagee of any interest in the property which is subject of the Development Agreement.

CITY OF NEWPORT BEACH

BY: _____
NAME: _____
TITLE: _____

EXHIBIT D

100000 / 00001

EXHIBIT D

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5
DATED JUNE 17, 2008

This Document was electronically recorded by
ER Cert Mail D

RECORDING REQUEST BY, AND
WHEN RECORDED MAIL TO:

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

City Clerk
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92659-1768



NO FEE

2008000289321 12:35pm 06/17/08

120 33 A17 56

0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

EXEMPT FROM FILING FEES CAL. GOV'T CODE § 6103

(Space above this line for Recorder's use)

EXEMPT RECORDING REQUEST PER
GOVERNMENT CODE 27383

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

BETWEEN

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

AND

THE CITY OF NEWPORT BEACH

*(Pursuant to California Government Code Sections 65864-65869.5
and Newport Beach Municipal Code Chapter 15.45)*

Approved May 13, 2008
Ordinance No. 2008-10

FINAL
5/16/08 10001.34
H&O: #58720 v1

RECORDING REQUEST BY, AND
WHEN RECORDED MAIL TO:

City Clerk
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92659-1768

EXEMPT FROM FILING FEES CAL. GOV'T CODE § 6103
(Space above this line for Recorder's use)

EXEMPT RECORDING REQUEST PER
GOVERNMENT CODE 27383

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

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*(Pursuant to California Government Code Sections 65864-65869.5
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Approved May 13, 2008
Ordinance No. 2008-10

FINAL
5/16/08 10001.34
H&O: #58720 v1

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

(Hoag Memorial Hospital Presbyterian)

THIS AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5 ("Amendment") is entered into and effective on the date it is recorded with the Orange County Recorder (the "Effective Date") by and between the City of Newport Beach (hereinafter "City") and Hoag Memorial Hospital Presbyterian (hereinafter "Hoag").

RECITALS

1. The "RECITALS" to the Restated Development Agreement are amended to add new Sections 1.9 through Section 1.19(f) to read as follows:

1.9 Hoag Property. Hoag is the fee owner of approximately 38 acres of real property located in the City divided between the Upper Campus and the Lower Campus and more particularly described in Exhibit "A" and depicted on Exhibit "B" (the "Property").

1.10 Hoag Healthcare Services. Hoag is a modern, state-of-the-art acute care, not-for-profit hospital providing a comprehensive mix of healthcare services to treat virtually any routine or complex medical condition. Hoag features centers of excellence that include Hoag Cancer Center, Hoag Heart and Vascular Institute, Hoag Neuroscience Institute, Hoag Orthopedic Services and Hoag Women's Health Services, as well as advanced medical programs in many other specialties.

1.11 Hoag Community Benefit Programs. In addition to providing state-of-the-art hospital, diagnostic imaging and emergency room care medical services, Hoag is involved in many other community benefit programs such as police and SWAT team, fire department and paramedic support services, designating the City as the point of sale for major hospital equipment purchases and construction projects, providing financial and transportation support for the City's senior Oasis Center, and providing methane gas flare burnoff to mitigate methane gas fumes along Pacific Coast Highway. Hoag's community medicine program allocates approximately \$10 million annually toward improving the community's overall health, primarily through disease prevention and wellness and health promotion, especially for those vulnerable and disadvantaged populations.

1.12 EIR No. 142 and P.C. Text. On May 26, 1992, the City Council of City ("City Council") certified the Hoag Hospital Master Plan Final EIR No. 142 and adopted the Hoag Memorial Hospital Presbyterian Master Plan ("Hoag Master Plan") and the Planned Community Development Criteria and District Regulations ("P.C. Text") setting forth the development standards and terms and conditions by which the Property may be developed, including the maximum permissible building area, building height limits and permitted land uses.

1.13 Square Footage of Buildable Area. Under the existing Hoag Master Plan and P.C. Text, the Property allows a total of 1,343,238 square feet of buildable area with 577,889 square feet allocated to the Lower Campus and 765,349 square feet allocated to the Upper Campus.

1.14 Development Agreement No. 5. On May 26, 1992, the City Council adopted Ordinance No. 92-4 approving Development Agreement No. 5 between the City and Hoag incorporating the Hoag Master Plan and P.C. Text and granting vested rights to Hoag to develop the Property pursuant to the Hoag Master Plan and P.C. Text for the term of the Development Agreement. The Development Agreement was recorded in the Official Records of Orange County, California on August 4, 1993 as Instrument No. 63-0522236.

1.15 Restated Development Agreement. On February 14, 1994, the City Council of City adopted Ordinance No. 94-8 approving an Amendment and Restatement of Development Agreement No. 5 ("Restated Development Agreement") incorporating certain provisions clarifying the role, review and approval authority of the California Coastal Commission for development of the Property to ensure consistency and compliance with the California Coastal Act. The Restated Development Agreement was recorded in the Official Records of Orange County, California on March 23, 1994 as Instrument No. 94-0207276.

1.16 First Amendment to P.C. Text. On August 13, 2002, the City Council adopted Ordinance No. 2002-17 approving the First Amendment to the P.C. Text to provide that certain non-occupied building areas are not counted towards the maximum permissible building floor areas for development of the Property.

1.17 Noise Limitation. The existing PC Text provides that noise generated from Hoag Hospital from new mechanical appurtenances shall not exceed 55 dBA at the Property lines. This noise limitation was established prior to the adoption of the City's

Noise Element in the General Plan and Noise Ordinance. It is proposed that noise generated and originating from the Property be governed by the City Noise Ordinance with certain exceptions.

1.18 Noise Attenuation. Hoag has taken significant actions to attenuate noise generated from mechanical equipment and has installed landscape screening and walls to mitigate and buffer noise and improve aesthetic impacts for adjacent residential properties.

1.19 Restated Development Agreement Amendments. The City and Hoag propose to further amend the Restated Development Agreement by this Amendment to incorporate references to: a Supplemental EIR; an amendment to the City General Plan; an increase in the Public Benefits; designation of the City as the point of sale to the extent allowed under applicable law; and amendments to the Hoag Hospital Planned Community Text ("P.C. Text") to, among other things:

(a) eliminate the reference to 1.0 Floor Area Ratio ("FAR") for the Upper Campus and the .65 FAR for the Lower Campus in the General Plan Land Use Element. In place of the reference to the FAR's, an absolute maximum allowable building area of 1,343,238 square feet will remain available for development of the entire Property comprised of the Upper Campus and the Lower Campus;

(b) maintain a cap under the General Plan Land Use Element Amendment for development of the Lower Campus at 577,889 square feet (if no square footage is reallocated) and establish a cap on development of the Upper Campus at 990,349 square feet (if all 225,000 square feet are reallocated from the Lower Campus to the Upper Campus);

(c) allow the transfer of up to 225,000 square feet of buildable area from the Lower Campus to the Upper Campus, which, if all 225,000 square feet are reallocated, would result in a maximum allowed density of 990,349 square feet for the Upper Campus and a reduction to permit 352,889 square feet of allowable development for the Lower Campus;

(d) to modify the noise standards applicable to the Property;

(e) delete a provision that required the City and Hoag to conduct a study of possible future improvements in and around the easterly end of the Semeniuk Slough, including a requirement that Hoag fund the study and potential future improvements in an amount not to exceed \$200,000; and

(f) incorporate the Second Amendment to the P.C. Text.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 1.5 of the Restated Development Agreement entitled *Planning Commission/City Council Hearings* is amended to read as follows:

"1.5 Planning Commission/City Council Hearings. The Planning Commission, after giving appropriate notice, held public hearings to consider a development agreement, the proposed Master Plan, and the EIR on December 5, 1991, January 9, 1992, January 23, 1992, February 6, 1992 and February 20, 1992. The City Council conducted public hearings on the Master Plan, this Agreement and the EIR on March 23, 1992, March 30, 1992, April 13, 1992 and May 11, 1992. The Planning Commission, after giving appropriate notice, held a public hearing to consider this Amendment, the Supplemental EIR, the General Plan Amendment, and the Second Amendment to the P.C. Text on January 31, 2008, February 7, 2008, March 6, 2008 and March 20, 2008. The City Council conducted a public hearing on this Amendment, the Supplemental EIR, the General Plan Amendment and the Second Amendment to the P.C. Text on April 16, 2008."

2. Section 1.8 of the Restated Development Agreement entitled *City Ordinance* is amended to read as follows:

"1.8 City Ordinance. On February 14, 1994, the City Council adopted Ordinance No. 94-8 approving a Restated Development Agreement No. 5 incorporating certain provisions clarifying the role, review and approval authority of the California Coastal Commission for development of the Property to ensure consistency and compliance with the California Coastal Act. The Adopting Ordinance became effective on March 16, 1994. On May 13, 2008, the City Council adopted Ordinance No. 2008-10 approving

this Amendment and authorizing the City to enter into this Amendment. The adopting ordinance will become effective on June 12, 2008."

3. Section 2.1 of the Restated Development Agreement entitled *The Adopting Ordinance* is amended to read as follows:

"2.1 The "Adopting Ordinance" refers to City Ordinance No. 94-8, adopted on February 14, 1994, by the City Council, which approved and authorized the City to enter into this Agreement. "Adopting Ordinance" further refers to Ordinance No. 2008-10 adopted on May 13, 2008 by the City Council, which approved and authorized the City to enter into this Amendment."

4. Section 2.2 of the Restated Development Agreement entitled *Agreement* is amended to read as follows:

"2.2 "Agreement" refers to the "Restated Development Agreement Between the City of Newport Beach and Hoag Memorial Hospital Presbyterian," and this Amendment."

5. Section 2.13 of the Restated Development Agreement entitled *The EIR* is amended to read as follows:

"2.13 The "EIR" refers to final Environmental Impact Report No. 142 of the City of Newport Beach, and Supplemental Environmental Impact Report No. 142."

6. Section 2.23 of the Restated Development Agreement entitled *Master Plan* is amended to read as follows:

"2.23 "Master Plan" refers to the Hoag Memorial Hospital Presbyterian Master Plan and Planned Community Development Plan which was adopted by the City on May 26, 1992 (Exhibit "C"), as amended."

7. Section 3 of the Restated Development Agreement entitled *Conditions to Development* is amended to add a new paragraph after Subsection (f) to read as follows:

"Notwithstanding the provisions of this Section, any provisions set forth in this Amendment shall supersede and control over any inconsistencies with this Section."

8. Section 3.3 of the Restated Development Agreement entitled *Program EIR* is amended to read as follows:

“3.3 Program EIR. Hoag acknowledges that the EIR is a “Program EIR” and includes Supplemental Environmental Impact Report No. 142. The EIR analyzes the impacts of construction phased over time and, pursuant to CEQA, City is under a continuing obligation to analyze Hoag’s requests for Project Specific Approvals to ensure the environmental impacts associated with the request were fully addressed in the EIR. Subsequent environmental documentation is required if this analysis reveals environmental impacts not fully addressed in the program EIR, identifies new impacts, or concludes the specific request is not consistent with the project described in the EIR. Hoag acknowledges the right and obligation of the City and the Coastal Commission or its successor agency to impose additional conditions as the result of the subsequent environmental analysis required by CEQA.”

9. Section 4.1 of the Restated Development Agreement entitled *Right to Develop* is amended to read as follows:

“4.1 Right to Develop. Subject to compliance with the provisions of Sections 3 and 8.2, Hoag shall have a vested right to develop and receive Project Specific Approvals for construction on the Property to the full extent permitted by the Master Plan, as amended. Subject to the provisions of Sections 3 and 8, City shall only take action which complies with and is consistent with the Master Plan, as amended, the Restated Development Agreement and this Amendment unless Hoag otherwise consents in writing. Subject to this Subsection, City shall have the authority to impose only those Exactions which are specifically described in this Agreement, except as expressly required (as opposed to permitted) by state or federal law.”

10. Section 5.2 of the Restated Development Agreement entitled *Mitigation Review* is amended to read as follows:

“5.2 Public Hearing. The Annual Review shall be conducted at a public hearing noticed in accordance with the provisions of Chapter 15.45 of the Newport Beach Municipal Code. Annual reviews should be scheduled in April of each year.”

11. Section 5.4 of the Restated Development Agreement entitled Mitigation Review is amended to read as follows:

"5.4 Mitigation Review. The annual review shall include a detailed report of compliance with the various conditions and mitigation measures contained within the mitigation monitoring plan. The report shall also include a noise regulation compliance assessment that includes noise measurements prepared by a qualified noise consultant on a yearly basis. The noise assessment shall identify noise regulation compliance issues and recommended measures to abate any noncompliance. The report shall include an analysis of the view impacts of buildings constructed in comparison to the anticipated views as depicted in the EIR. Hoag shall be found in compliance with this Agreement unless the City Council determines, based upon the evidence presented at the Annual Review, that Hoag has not complied with all mitigation measures and conditions including those imposed as a result of subsequent environmental analysis, applicable to the grading of, or building on, the Property as of the date of the Annual Review. Hoag shall pay the City administrative costs incurred in conducting Annual Reviews. Hoag shall reimburse the City for costs incurred by the City associated with Fluor Enterprises' review of the cogeneration plant during the 2008 Annual Review."

12. Section 8.2 of the Restated Development Agreement entitled *Exactions* is hereby amended to delete Subsection (c), which reads as follows:

"(c) City and Hoag shall conduct a study of possible future improvements in and around the easterly end of Semeniuk Slough that would, among other things, improve the appearance of the area and, potentially, serve as a component to improve public access from residential areas in West Newport to park land and public recreation facilities proposed in conjunction with development of the West Newport Oil Company property. The study shall analyze, among other things, the type of improvements that would improve the area without adversely impacting wetlands, the possible location of pedestrian trails and the potential for those trails to improve access to proposed recreational facilities, phasing of the improvements, potential public benefits, and the cost of the improvements. As a part of the study, Hoag and City shall meet and confer with resource agencies relative to the type and extent of improvements that may be permitted in or adjacent to wetlands. Hoag shall fund the study and participate in the cost of constructing any improvements in the area that the City Council determines are feasible and in the public interest, provided, however, the financial contribution of Hoag, including the costs of the study and improvements, shall not exceed Two Hundred Thousand Dollars (\$200,000.00)."

13. Section 8.2 of the Restated Development Agreement entitled *Exactions* is hereby amended to renumber Subsection (d) to Subsection (c); and to add a new Subsection (d) to read as follows:

"(d) City and Hoag acknowledge and agree that the Restated Development Agreement and this Amendment confer private benefits on Hoag that should be balanced by commensurate public benefits in favor of the City. Accordingly, the City and Hoag intend to provide consideration to balance the private and public benefits by the imposition of a Development Agreement Fee, which fee shall be used to reimburse the City for public improvements in the area and to fund certain additional needed public improvements identified by the City. Hoag shall pay to the City a Development Agreement Fee of Three Million Dollars (\$3,000,000). Payment of one-half of the Development Agreement Fee of \$1.5 million shall be made upon the Effective Date of this Amendment. Payment of the remaining one-half of the Development Agreement Fee of \$1.5 million shall be paid to City 12 months from the Effective Date of this Amendment or at the time of issuance of the first building permit by the City for development of a project on the Upper Campus as provided in Exhibit "C" attached to this Amendment, whichever occurs earlier.

The first \$1.5 million of the Development Agreement Fee shall be used to reimburse the City and/or pay for the costs associated with the following projects: (i) construction of the Superior Avenue medians extending from Ticonderoga Street to Dana Road; (ii) construction of the right-turn pocket for southbound Newport Boulevard to westbound Hospital Road; and (iii) funding of the operational improvements and traffic signal upgrade at the Hospital Road and Placentia intersection ("Priority Public Improvements"). Construction of the first two Priority Public Improvements listed above occurred during 2007, and the third is anticipated to occur in 2008. The City shall be obligated to pay the actual cost difference, if any, for construction of these Priority Public Improvements. However, if there are any funds remaining after construction of the Priority Public Improvements is completed, the City may retain the funds to be used for other City projects or services that benefit the public. The City shall also have the sole authority to decide the design, cost and scope of the Priority Public Improvements and the sufficiency of City's performance on the Public Improvement Projects shall not be subject to Hoag's approval.

The balance of the Development Agreement Fee (\$1.5 million) and any funds remaining after the construction of the Priority Public Improvements shall be used by the City in the City's sole discretion to

offset costs associated with other City and community projects or services that benefit the public such as, among other things, public parks (for example, Sunset View Consolidated Park), landscaping improvements adjacent to public right of ways, sound abatement programs, public buildings, public road improvements, water quality improvements, law enforcement, fire fighting, emergency preparedness and other public safety facilities."

14. A new section, Section 8.3, shall be added to the Restated Development Agreement entitled *Sales/Use Tax Origin*, to read as follows:

"8.3 Sales/ Use Tax Origin

(a) Hoag will include in its general contractor construction contract a provision that Hoag's general contractor and subcontractors, to the extent allowed by applicable law, will obtain a Board of Equalization sales/use tax subpermit for the jobsite at the Project Property and allocate all eligible sales and use tax payments for individual contracts over \$5 million to the City. Hoag will provide Hoag's general contractor and subcontractors with the name and contact information of the City's Revenue Manager and notice of the Revenue Manager's availability to meet and confer with them on the implementation of the Board of Equalization sales/use tax subpermit procedures. Hoag will further include a notice in its general contractor construction contract that prior to beginning a qualified construction project, the general contractor and subcontractors are encouraged to meet with the City's Revenue Manager to review the process to be followed with respect to sales and use taxes. Hoag will further include a provision in its general contractor construction contract that the general contractor or subcontractors will certify in writing that the person(s) responsible for filing the tax return understands the process of reporting the tax to the City and will follow the guidelines set forth in the relevant sections of the Sales and Use Tax Regulations. Hoag shall not be responsible for failure of Hoag's general contractor or subcontractors to follow the procedures set forth in this Section.

Hoag, if readily available, shall provide to the City or any City designated representative the names, addresses, phone numbers and contact name of the general contractor and all subcontractors.

(b) Hoag will continue to follow the Direct Payment Permit Process established in the Revenue and Taxation Code and use the permit for all qualifying individual purchases in excess of \$100,000 so that the local share of its sales/use tax payments is allocated to the City as the point of sale.

(c) It is understood and agreed that any fixtures, materials and equipment with a purchase total that exceeds \$100,000 purchased directly by Hoag and shipped to Hoag's Newport Beach location may also be eligible for direct allocation of sales/use tax to the City. Upon request of the City, Hoag will provide City on a semi-annual basis with a list of purchases exceeding the \$100,000 threshold during the preceding six-month period, including the amount of the purchase and, if readily available, the name and contact information for the vendor upon request by the City. The City agrees to review the semi-annual list of purchases made by Hoag and advise Hoag of any missed opportunities for direct allocation. Hoag agrees to file its Direct Payment Permit with vendors identified by the City in an effort to improve the direct allocation of the local share of sales/use tax payments in future periods."

15. A new section, Section 8.4, shall be added to the Restated Development Agreement entitled *Sunset View Park Improvements*, to read as follows:

"8.4 Hoag shall reimburse the City up to \$ 150,000 for the installation of groundcover, shrubs and irrigation systems within the unimproved portion of Sunset View Park and Superior Avenue, approximately 20,500 square feet in area, located northerly of the cogeneration building. Reimbursement to the City shall be within 30 days of Hoag receiving an invoice from the City."

16. A new section, Section 8.5, shall be added to the Restated Development Agreement entitled *Cogeneration Plant Energy Curtailment*, to read as follows:

"8.5 Hoag shall install a weather station capable of identifying ambient conditions necessary in documenting cogeneration plant and cooling tower operations. The weather station shall be tied into the cogeneration plant controls in order to maximize automatic responses to prevailing weather conditions, assisting in managing the operational changes and load shifting, as well as to provide periodic reports on plant operations.

Hoag shall not construct or erect additional cooling towers within the Hoag Lower Campus.

Hoag shall reduce the effective heat rejection by 33% at the existing cooling towers and such reduction shall be measured from a baseline (to be measured at the cooling towers) of operating three existing generators and absorption chillers at 100% of design capacity.

This reduced capacity operation shall be implemented daily between November 1st and April 30th, between the hours of 7:00 AM and 7:00 PM when the relative humidity is equal to or above 60% and when ambient temperatures are equal to or less than 55 degrees Fahrenheit.

17. Section 11.1(c) of the Restated Development Agreement entitled *Notices* is hereby amended to delete:

"with a copy to: Tim Paone
Paone, Callahan, McHolm & Winton
19100 Von Karman, 8th Floor
P.O. Box 19613
Irvine, CA 92713-9613"

and to add:

"with a copy to: Dennis D. O'Neil
Hewitt & O'Neil LLP
19900 MacArthur Blvd., Suite 1050
Irvine, CA 92612

with a copy to: Gary McKitterick
Allen Matkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, 5th Floor
Irvine, CA 92614-7321"

18. A new Section 11.17 shall be added to the Restated Development Agreement as follows:

"11.17 Indemnification/Hold Harmless. To the fullest extent permitted by law, Hoag shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of this Amendment, including, but not limited to, the approval of the Planned Community Text and/or the City's related California Environmental Quality Act determinations, the certification of the Supplemental Environmental Impact Report, the adoption of a Mitigation Program, and/or statement of overriding considerations for this Project. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Hoag, City, and/or the parties initiating or bringing such proceeding. Hoag shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Hoag shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition."

19. Exhibit C of the Restated Development Agreement shall incorporate the First Amendment to the P.C. Text as part of this Second Amendment to the P.C. Text in revised Exhibit C entitled:

"HOAG MEMORIAL HOSPITAL PRESBYTERIAN

PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS

Recommended for Approval
by the Planning Commission
March 20, 2008

Adopted by the City Council
City of Newport Beach
Ordinance No.2008-10
May 13, 2008"

20. Except as provided for in this Amendment and not otherwise superseded by this Amendment, the provisions set forth in the Restated Development Agreement, all of the other terms, conditions, provisions and exhibits of the Restated Development Agreement continue to have full force and effect as provided therein and this Amendment shall constitute an integral part of the Restated Development Agreement. Exhibits A through C constitute a part of this Amendment and are incorporated into this Amendment in full by this reference.

21. In the event there is any conflict between any provision of the Restated Development Agreement and this Amendment, the later approved and recorded document shall prevail in interpretation, operation and implementation.

22. The City Clerk shall cause a copy of this Amendment to be recorded with the Office of the County Recorder of Orange County, California within ten (10) days following the effective date of adoption of the Ordinance approving this Amendment.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Development Agreement No. 5 to be binding as of the Effective Date.

CITY:

THE CITY OF NEWPORT BEACH, a municipal corporation of the State of California

By: _____

Edward D. Selich, Mayor

ATTEST:

LaVonne M. Harkless

LaVonne Harkless, City Clerk



APPROVED AS TO FORM:

Robin Clauson
for Robin Clauson, City Attorney

OWNER:

HOAG MEMORIAL HOSPITAL
PRESBYTERIAN, a California nonprofit public
benefit corporation

By: _____

Richard F. Afable, M.D.
President and CEO

(All Signatures to be Notarized)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

ORANGE

On

JUNE 11, 2008

before me,

LEILANI I. BROWN, NOTARY PUBLIC

Here Insert Name and Title of the Officer

personally appeared

EDWARD D. SELICH

Name(s) of Signer(s)



Place Notary Seal Above

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 signature(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

Leilani I. Brown

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

Document Date:

Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:

- ☐ Individual
- ☐ Corporate Officer — Title(s):
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

Signer Is Representing:

Signer's Name:

- ☐ Individual
- ☐ Corporate Officer — Title(s):
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On May 19, 2008 before me, Debra HAMES, Notary Public
(Here insert name and title of the officer)

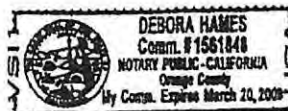
personally appeared Richard Afable

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is 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~~ signature~~(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.

Debra HAMES
Signature of Notary Public



(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Amendment to Restated Development
(Title or description of attached document)

Agreement No. 5
(Title or description of attached document continued)

Number of Pages 33 Document Date 5-19-08

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual(s)
☒ Corporate Officer
President and CEO
(Title)
☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, ~~is/are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

EXHIBIT A

LEGAL DESCRIPTION

The subject property is the following real property in the City of Newport Beach, County of Orange, State of California:

Parcel 1:

That portion of Lots 169 and 170 in Block 2 and a portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

Parcel 2:

That portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

FINAL
 57608 1000134
 HCO-458720 V

B-1

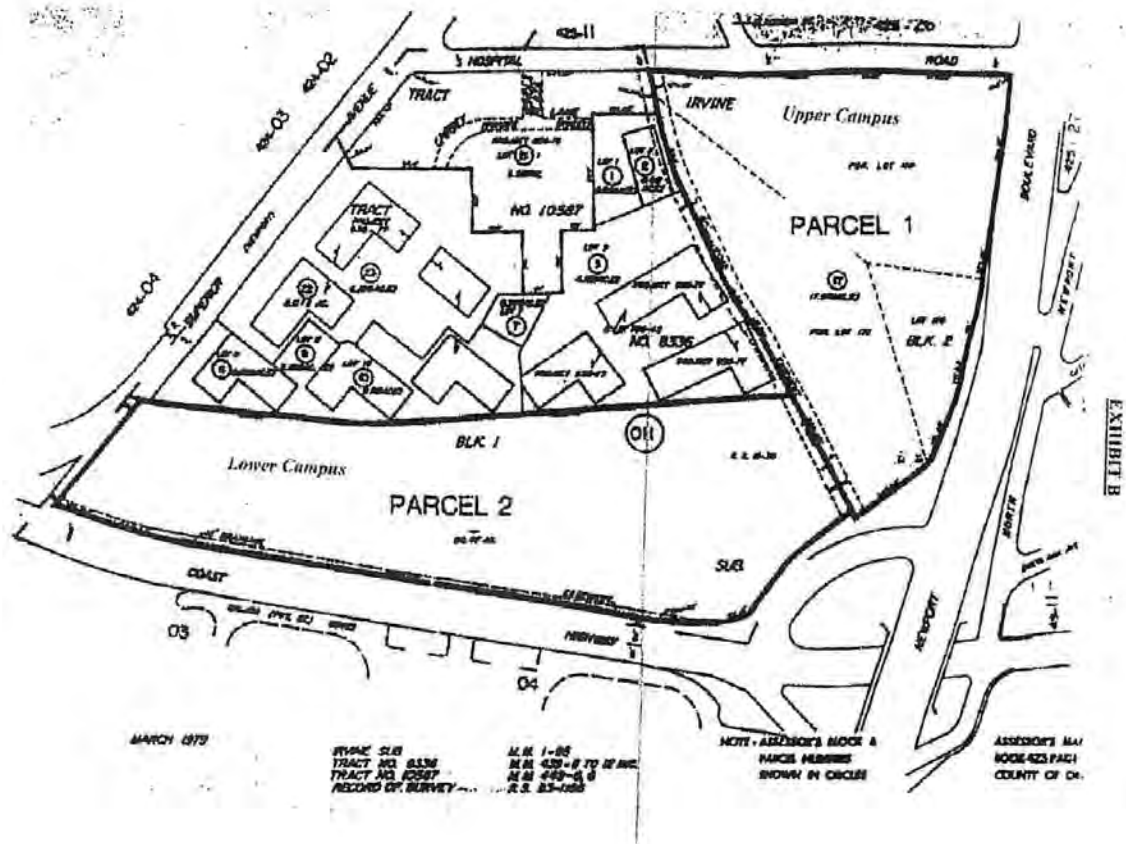


EXHIBIT C

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

**PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS**

Adopted May 13, 2008

Ordinance No. 2008-9

Effective June 12, 2008

FINAL
5/16/08 10001.34
H&O: #58720 vl

C-1

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

**PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS**

Recommended for Approval
by the Planning Commission
March 20, 2008

Adopted by the City Council
City of Newport Beach
Ordinance No. 2008-10
May 13, 2008

Hoag Memorial Hospital Presbyterian Planned Community Development Criteria and District Regulations

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I. INTRODUCTION

Background

The Hoag Memorial Hospital Presbyterian Planned Community District in the City of Newport Beach has been developed in accordance with the Newport Beach General Plan. The purpose of this Planned Community District is to provide a method whereby property may be classified and developed for hospital-related uses. The specifications of this District are intended to provide land use and development standards supportive of the proposed use while ensuring compliance with the intent of all applicable regulatory codes.

The Planned Community District includes district regulations and a development plan for both the Upper and Lower Campuses of Hoag Hospital. In general, over the long term, the Upper Campus will become oriented primarily towards emergency, acute and critical care (predominantly inpatient) uses and the Lower Campus will be developed with predominantly outpatient uses, residential care and support services.

Whenever the regulations contained in the Planned Community text conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the Planned Community text shall take precedence. The Municipal Code shall regulate this development when such regulations are not provided within these district regulations. All development within the Planned Community boundaries shall comply with all provisions of the Uniform Building Code and other governing building codes.

II. GENERAL NOTES

1. Water service to the Planned Community District will be provided by the City of Newport Beach.
2. Development of the subject property will be undertaken in accordance with the flood protection policies of the City of Newport Beach.
3. All development of the site is subject to the provisions of the City Council Policies K-4 and K-5 regarding paleontological and archaeological resources.
4. Except as otherwise stated in this text, the requirements of the Newport Beach Zoning Ordinance shall apply. The contents of this text notwithstanding, all construction within the boundaries of this Planned Community District shall comply with all provisions of the Uniform Building Code, other various codes related thereto and local amendments.
5. All buildings shall meet Title 24 requirements or the requirements of the California Office of Statewide Health Planning and Development as applicable. Design of buildings shall take into account the location of building air intake to maximize ventilation efficiency, the incorporation of natural ventilation, and implementation of energy conserving heating and lighting systems.
6. Any fire equipment and access shall be approved by the Newport Beach Fire Department.
7. Excluding communications devices on the Upper Campus, new mechanical appurtenances on building rooftops and utility vaults on the Upper and Lower Campuses shall be screened from view in a manner compatible with building materials. Rooftop mechanical appurtenances or utility vaults shall be designed utilizing compatible architectural materials on the Lower Campus. No new mechanical appurtenances may exceed the building height limitations as defined in these district regulations.
8. Grading and erosion control shall be carried out in accordance with the provisions of the City of Newport Beach Excavation and Grading Code and shall be subject to permits issued by the Building and Planning Departments.
9. Sewage disposal facilities within the Planned Community will be provided by Orange County Sanitation District No. 5. Prior to issuance of any building permits it shall be demonstrated to the satisfaction of the Planning Department that adequate sewer facilities will be available. Prior to the occupancy of any structure it shall be further demonstrated that adequate sewer facilities exist.
10. Mass grading and grading by development phases shall be allowed provided that landscaping of exposed slopes shall commence within thirty (30) days of the completion of grading.

III. DEFINITIONS

Building Elevation:

1. A vertical distance of a building above or below a fixed reference level, i.e., MSL (mean sea level).
2. A flat scale drawing of the front, rear, or side of a building.

Building Envelope: The volume in which a building may be built as circumscribed by setback lines and maximum allowable building heights.

Building Height: The vertical distance measured from the finished grade to the highest point of the structure. At all points, the height measurement shall run with the slope of the land.

Emergency Room: A service and facility designated to provide acute emergency medical services for possible life threatening situations.

Entitlement, Gross Floor Area: Any area of a building, or portion thereof, including the surrounding exterior walls, but excluding:

1. Area of a building utilized for stairwells and elevator shafts on levels other than the first level of a building in which they appear;
2. Area of a medical building, that is not used for general or routine occupancy but rather is for interstitial or mechanical occupancies, that measures less than 19 feet from finished floor to ceiling;
3. As applied to new construction permits issued on or after August 13, 2002, area of a building used specifically for base isolation and structural system upgrades directly related to requirements of governmental agencies and is not for general or routine occupancy; and
4. As applied to new construction permits issued on or after August 13, 2002, enclosed rooftop mechanical levels not for general or routine occupancy.

First Aid: Low acuity medical treatment for non-life threatening situations.

General Plan: The General Plan of the City of Newport Beach and all elements thereof.

Grade: For the purpose of determining building height:

1. Finished - the ground level elevation which exists after any grading or other site preparation related to, or to be incorporated into, a proposed new development or alteration of existing developments. (Grades may be worked into buildings to allow for subterranean parking.)

Hoag Memorial Hospital Presbyterian Planned Community Development Criteria and District Regulations

2. Natural - the elevation of the ground surface in its natural state before man-made alterations.
3. Existing - the current elevation of ground surface.

Inpatient Uses: Hospital patient services which require twenty-four (24) hour or more stays.

Landscape Area: The landscape area shall include on-site walks, plazas, water, rooftop landscaping and all other areas not devoted to building footprints or vehicular parking and drive surfaces.

Mean Sea Level: A reference or datum mark measuring land elevation using the average level of the ocean between high and low tides.

Outpatient Uses: Hospital patient services which do not exceed twenty-four (24) hours.

Residential Care: Medically-oriented residential units that do not require the acuity level generally associated with inpatient services but require overnight stays.

Site Area: For the purpose of determining development area:

1. Gross - parcel area prior to dedications.
2. Net - parcel area after dedications.

Streets: Reference to all streets or rights-of-way within this ordinance shall mean dedicated vehicular rights-of-way.

IV. DEVELOPMENT PLAN

Project Characteristics

The Upper Campus of Hoag Hospital is located on a triangular site of approximately 17.57 acres and is bounded by Newport Boulevard to the east, Hospital Road to the north and existing residential developments to the west. The Lower Campus is located north of West Coast Highway, south of the Sunset View linear and consolidated park and Villa Balboa Condominiums, west of Newport Boulevard and east of Superior Avenue. It contains approximately 37.38 total acres, including 8,603 square feet of land encumbered by a roadway easement. The Lower Campus adjoins the Upper Campus at its eastern boundary. The Upper Campus is, and will continue to be, oriented towards inpatient functions, while the Lower Campus will be developed with predominantly outpatient, residential care and support services.

Development Plan

The Planned Community Development Plan for Hoag Hospital is shown on Exhibit 1, *Planned Community Site and Boundary Map*. Through the year 2017, many of the existing buildings shown on the Development Plan for the Upper Campus may be redeveloped in order to functionally respond to the needs of the Hospital and conform to the requirements of State agencies.

Access to the Lower Campus will be from West Coast Highway and from Hospital Road, via the Upper Campus. Exhibit 2, *Vehicular Access*, shows the internal circulation for Hoag Hospital.

The Development Plan does not specify building locations or specific hospital-related uses. Instead, a developable area is identified based on the regulations established for this Planned Community District. Because of the dynamic nature of the health care industry which leads to rapid technological changes that effect how health care services are delivered, the Development Plan for Hoag Hospital sets development caps as a function of allowable densities established by the Newport Beach General Plan.

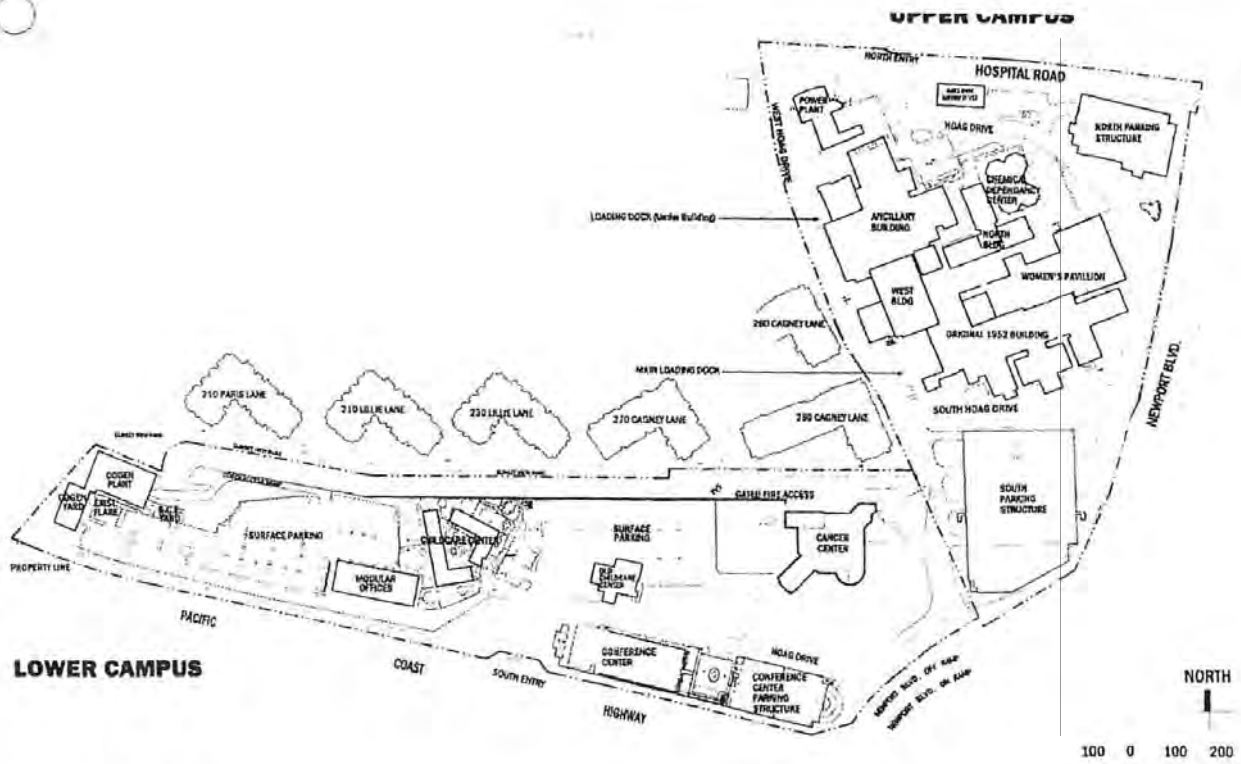
The maximum allowable building area for Hoag Hospital, which encompasses both the Lower Campus and the Upper Campus, is 1,343,238 square feet. Each Campus is also subject to a maximum allowable building area limit: the maximum allowable building area for the Upper Campus is 990,349 square feet; the maximum allowable building area for the Lower Campus is 577,889 square feet. Table 1, *Building Area Statistical Analysis*, provides a summary of allowable square footage for both the Upper and Lower Campuses.

Implementation, Program EIR and Subsequent Project Specific Approvals

Hoag has acknowledged that the Environmental Impact Report prepared for the development and implementation of the Hoag Master Plan pursuant to this Planned Community Development Plan is a "Program EIR." The City has prepared and certified two program Environmental Impact Reports - Hoag Hospital Master Plan Final Program EIR (Final EIR No. 142) and a Supplemental EIR for the Master Plan Update (SCH#1991071003). The EIRs analyze the impacts of construction phased over time and, pursuant to CEQA, the City is under a continuing

Hoag Memorial Hospital Presbyterian Planned Community Development Criteria and District Regulations

obligation to analyze Hoag's requests for Project Specific Approvals to ensure the environmental impacts associated with the requests were fully addressed in the EIRs. Subsequent environmental documentation is required if this analysis reveals environmental impacts not fully addressed in the program EIRs, identifies new impacts, or concludes the specific request is not consistent with the project described in the EIRs. Hoag acknowledges the right and obligation of the City and the Coastal Commission or its successor agency to impose additional conditions as the result of the subsequent environmental analysis required by CEQA.







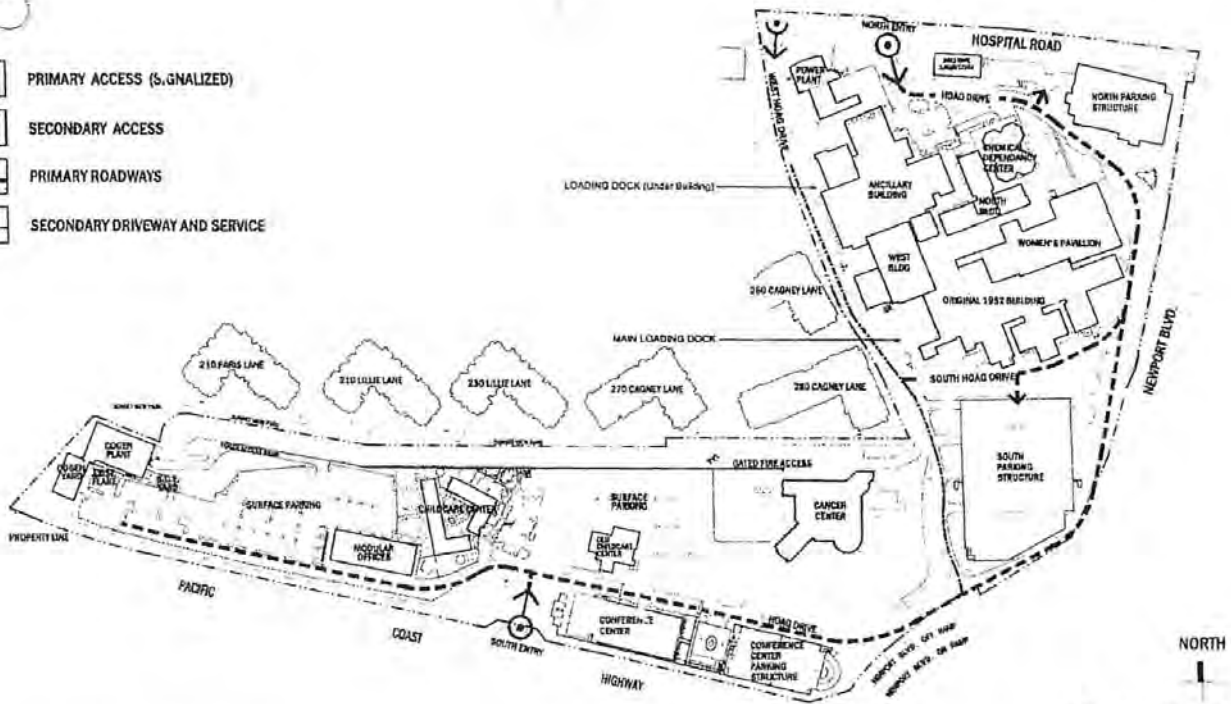
Note: Buildings labeled for identification purposes only

**PLANNED COMMUNITY SITE AND BOUNDARY MAP
HOAG MEMORIAL HOSPITAL PRESBYTERIAN**

EXHIBIT 1
08.20.07
REVISED 01.22.08

LEGEND

-  PRIMARY ACCESS (SIGNALIZED)
-  SECONDARY ACCESS
-  PRIMARY ROADWAYS
-  SECONDARY DRIVEWAY AND SERVICE



Note: Buildings labeled for identification purposes only

VEHICULAR ACCESS
HOAG MEMORIAL HOSPITAL PRESBYTERIAN

NORTH
 100 0 100 200
 SCALE: 1"=200'
EXHIBIT 2
 08.20.07
 REVISED 01.22.08

TABLE 1

BUILDING AREA STATISTICAL ANALYSIS

**TOTAL OF LOWER CAMPUS & UPPER CAMPUS BUILDING AREAS -
MAXIMUM ALLOWABLE: 1,343,238 SQUARE-FEET**

	Site Area	Allowable Building Area	Existing ¹	Net Remaining	Maximum Allowable
UPPER CAMPUS	765,349 sq. ft.	765,349 sq. ft.	698,121 sq. ft.	67,228 sq. ft.	990,349 sq. ft. ²
LOWER CAMPUS	862,815 sq. ft.	577,889 sq. ft.	188,149 sq. ft.	389,740 sq. ft.	577,889 sq. ft.
TOTALS	1,618,164 sq. ft.	1,343,238 sq. ft.	886,270 sq. ft.	456,968 sq. ft.	1,343,238 sq. ft. ³

¹ As of the date of adoption.

² Up to 225,000 square-feet can be transferred from the Lower to the Upper Campus

³ Demolition of some existing structures on the Upper Campus will occur to ensure maximum square-feet will not exceed 1,343,238 square-feet

V. DISTRICT REGULATIONS

The following regulations apply to all development within the Hoag Hospital Planned Community. The individual uses listed under the five permitted use categories are not an exhaustive list. Other hospital-related uses which fit into the five (5) permitted use categories are allowed. Prior to the issuance of a building permit, plot plans, elevations and any other such documents deemed necessary by the Planning, Building, Public Works, and Fire Departments shall be submitted for the review and approval of the Planning, Building, Public Works, and Fire Departments.

A. Permitted Uses

1. Lower Campus

a. Hospital facilities, including, but not limited to:

(1) Outpatient services:

- (a) Antepartum Testing
- (b) Cancer Center
- (c) Skilled Nursing
- (d) Rehabilitation
- (e) Surgery Center
- (f) Clinical Center
- (g) Day Hospital
- (h) Back and Neck Center
- (i) Biofeedback
- (j) Breast Imaging Center
- (k) Dialysis
- (l) EEG/EMG/NICE Laboratory
- (m) First Aid Center
- (n) Fertility Services
- (o) G.I. Laboratory
- (p) Magnetic Resonance Imaging
- (q) Neurology
- (r) Nuclear Medicine
- (s) Occupational Therapy
- (t) Pediatrics
- (u) Pharmacy
- (v) Physical Therapy
- (w) Pulmonary Services
- (x) Radiation Therapy
- (y) Respiratory Therapy
- (z) Sleep Disorder Center
- (aa) Speech Therapy
- (bb) Ultrasound
- (cc) Urgent Care

(2) Administration:

- (a) Admitting
- (b) Auxiliary Office
- (c) Business Offices
- (d) Information Desk
- (e) Registration
- (f) Patient Relations
- (g) Social Services

(3) Support Services:

- (a) Employee Child Care
- (b) Health Education
- (c) Power/Mechanical/Auxiliary Support and Storage
- (d) Food Services
- (e) Cashier
- (f) Chapel/Chaplaincy Service
- (g) Conference Center
- (h) Dietitian
- (i) Gift Shop
- (j) Laboratory
- (k) Medical Library
- (l) Medical Records
- (m) Pharmacy
- (n) Parking Facilities⁴
- (o) Engineering/Maintenance
- (p) Shipping/Receiving
- (q) Microwave, Satellite, and Other Communication Facilities

(4) Residential Care:

- (a) Substance Abuse
- (b) Mental Health Services
- (c) Extended Care
- (d) Hospice Care
- (e) Self or Minimal Care
- (f) Congregate Care

(5) Medical/Support Offices

⁴ Parking structures or decks do not count toward square-footage

- b. Methane gas flare burner, collection wells and associated system components.
 - c. Accessory uses normally incidental to hospital development.
 - d. Temporary structures and uses, including modular buildings.
2. Upper Campus
- a. Hospital facilities, including, but not limited to:
 - (1) Inpatient uses including, but not limited to:
 - (a) Critical Care
 - (b) Emergency Department
 - (c) Birthing Suites
 - (d) Cardiology
 - (e) Cardiac Care Unit
 - (f) Intensive Care Unit
 - (g) Mother/Baby Unit
 - (h) Surgery
 - (i) Laboratory
 - (j) Pharmacy
 - (k) Patient Beds
 - (2) Outpatient services as allowed on the Lower Campus
 - (3) Administrative uses as allowed on the Lower Campus
 - (4) Support services as allowed on the Lower Campus
 - (5) Residential care as allowed on the Lower Campus
 - (6) Heliport (subject to Conditional Use Permit)⁵
 - b. Accessory uses normally incidental to hospital development.
 - c. Temporary structures and uses, including modular buildings.

⁵ Does not count toward square-footage

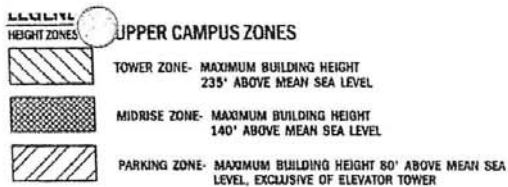
B. Prohibited Uses

1. Lower Campus
 - a. Emergency Room
 - b. Heliport
 - c. Conversion of mechanical or structural spaces to uses that allow general or routine occupancy
2. Upper Campus
 - a. Conversion of mechanical or structural spaces to uses that allow general or routine occupancy

C. Maximum Building Height

The maximum building height of all buildings shall be in accordance with Exhibit 3, *Development Criteria Plan*, which establishes the following height zones:

1. Upper Campus Tower Zone - maximum building height not to exceed the existing tower which is two-hundred thirty-five (235) feet above mean sea level.
2. Upper Campus Mid-rise Zone - maximum building height not to exceed one-hundred forty (140) feet above mean sea level.
3. Upper Campus Parking Zone - maximum building height not to exceed eighty (80) feet above mean sea level, exclusive of elevator towers.
4. Lower Campus Zone, Sub-Areas A, B, C, F and G - within each sub-area no building shall exceed the height of the existing slope and conform to the range of maximum building heights indicated by the development criteria shown on Exhibit 3.
5. Lower Campus Zone, Sub-Areas D and E - maximum building height shall not exceed the height of the existing Hoag Cancer Center which is fifty-seven and one-half (57.5) feet above mean sea level.



LOWER CAMPUS ZONES

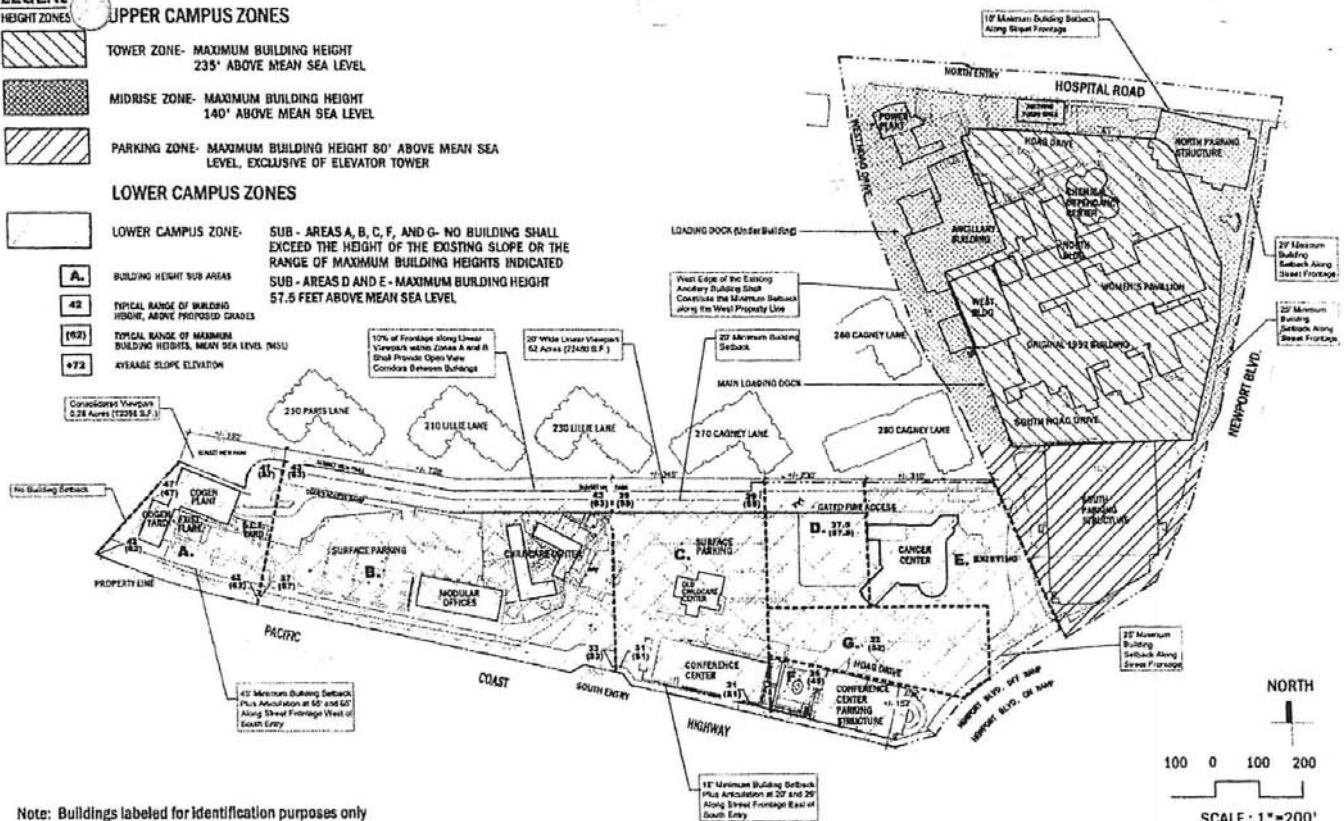
LOWER CAMPUS ZONE- SUB - AREAS A, B, C, F, AND G- NO BUILDING SHALL EXCEED THE HEIGHT OF THE EXISTING SLOPE OR THE RANGE OF MAXIMUM BUILDING HEIGHTS INDICATED
 SUB - AREAS D AND E- MAXIMUM BUILDING HEIGHT 57.5 FEET ABOVE MEAN SEA LEVEL

A. BUILDING HEIGHT SUB AREAS

42 TYPICAL RANGE OF BUILDING HEIGHT, ABOVE PROPOSED GRADES

(62) TYPICAL RANGE OF MAXIMUM BUILDING HEIGHTS, MEAN SEA LEVEL (MSL)

+72 AVERAGE SLOPE ELEVATION



Note: Buildings labeled for identification purposes only

DEVELOPMENT CRITERIA PLAN
HOAG MEMORIAL HOSPITAL PRESBYTERIAN

EXHIBIT 3
 08.20.07
 REVISED 01.22.08

D. Building Setbacks

Setbacks for the Hoag Hospital Planned Community are shown on Exhibit 3.

1. Setbacks will be provided along property boundaries adjacent to the Villa Balboa condominiums, as defined below:
 - a. Upper Campus western boundary setback shall be the prolongation of the westerly edge of the existing cafeteria/laboratory building to the points of intersection with the easterly curb line of the existing service drive, then continuing along said line of the existing service drive.
 - b. Lower Campus northern boundary, all of which will have a 20-foot minimum building setback.
2. The setback on West Coast Highway easterly of the hospital entry signal shall be fifteen (15) feet.

In addition, vertical articulation shall be required for buildings easterly of the signal within one-hundred fifty (150) feet of the West Coast Highway frontage, as follows:

1st Floor: Up to eighteen (18) feet in height no additional articulation is required. If the 1st floor exceeds eighteen (18) feet in height, it shall be subject to the articulation requirements of the 2nd Floor.

2nd Floor, up to thirty-two (32) feet in height: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 2nd floor setback of twenty (20) feet.

3rd Floor and above: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 3rd floor and above setback of twenty-five (25) feet.

The setback on West Coast Highway westerly of the hospital entry signal shall be forty-five (45) feet.

In addition, vertical articulation shall be required for buildings westerly of the signal for buildings within one-hundred fifty (150) feet of the West Coast Highway frontage, as follows:

1st Floor: Up to eighteen (18) feet in height no additional articulation is required. If the 1st floor exceeds eighteen (18) feet in height, it shall be subject to the articulation requirements of the 2nd Floor.

2nd Floor, up to thirty-two (32) feet in height: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 2nd floor setback of fifty-five (55) feet.

3rd Floor and above: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 3rd floor and above setback of sixty-five (65) feet.

In order to avoid any future structures in this area (within 150 feet of West Coast Highway) from presenting an unacceptable linear mass, no single structure shall be greater than two-hundred fifty (250) linear feet in width. Additionally, 20% of the linear frontage within one-hundred fifty (150) feet of West Coast Highway shall be open and unoccupied by buildings.

10% of the linear length of Height Zones A and B as viewed from the existing bicycle/pedestrian trail, exclusive of that area adjacent to the consolidated portion of the view park, shall be maintained as view corridors between buildings.

These requirements may be altered for individual buildings, if requested by the hospital, through the site plan review process defined in Section IX.

3. There will be no building setbacks along the westerly boundary of the Lower Campus (adjacent to the municipal parking lot at Superior and West Coast Highway).
4. A twenty (20) foot setback from property line shall be provided along Newport Boulevard from Hospital Road to a point six-hundred (600) feet south; a twenty-five (25) foot setback from property line shall be provided along the remainder of Newport Boulevard and along the Newport Boulevard/West Coast Highway Interchange.
5. A ten (10) foot building setback from the property line shall be provided along Hospital Road.

E. Lighting

The lighting systems shall be designed and maintained in such a manner as to shield the light source and to minimize light spillage and glare to the adjacent residential uses. The plans shall be prepared and signed by a licensed Electrical Engineer.

F. Roof Treatment

Prior to the issuance of building permits, the project sponsor shall submit plans which illustrate that major mechanical equipment will not be located on the roof of any structure on the Lower Campus. Minor rooftop equipment, necessary for operating purposes, will comply with all building height criteria, and shall be designed and screened to blend into the building roof using materials compatible with roofing materials.

G. Signs

All signs shall be as specified under the Hoag Hospital Sign Program, Part VI.

H. Parking

All parking shall be as specified in Part VII, Hoag Hospital Parking Regulations.

I. Landscape

All landscaping shall be as specified in the Hoag Hospital Landscape Regulations, Part VIII.

J. Mechanical and Trash Areas

Prior to issuance of a building permit, the project sponsor shall submit plans to the City Planning Department which illustrate that all mechanical equipment and trash areas will be screened from public streets and immediately adjacent residential properties.

K. West Hoag Drive Circulation Limitations

The project sponsor shall continue to limit the use of that portion of West Hoag Drive adjacent to residential uses located on the Upper Campus. Deliveries to loading areas shall not occur after 8:00 PM or before 7:00 AM daily. The project sponsor shall physically restrict access to the roadway between these hours and appropriate signage indicating permitted delivery hours and access limitations shall be installed and maintained at all times. Night time deliveries and vehicular access to the loading area located along West Hoag Drive are allowed where critical supplies, services or materials are necessary for the continued operation of the hospital.

L. Loading Dock

The project sponsor shall provide a sound wall along West Hoag Drive as shown in the approximate location on Exhibit 4. Said wall shall be installed within 12 months of project approval, subject to issuance of required permits. To the maximum degree feasible, the sound wall shall be constructed to retain existing vegetation, which serves as a visual screen. Please refer to Section VIII, D. for additional landscaping requirements related to the sound wall. Mitigation measures to reduce the noise levels in the Loading Dock Area shall be incorporated into the design and operations of the hospital; such mitigation shall include relocation of the trash compactor and baler, limiting the hours of truck deliveries to the loading dock area, and enclosure of the trash compactor.

M. Noise Standards

Noise generated at the Hoag Hospital property shall be governed by the City of Newport Beach Noise Ordinance, except as noted below for the Loading Dock Area. Refer to Exhibit 5, *Loading Dock Area Location*, for the location.

1. The applicable noise standard at the Hoag Hospital property line adjacent to the Loading Dock Area shall be as follows:

	<u>7 AM – 10 PM</u>	<u>10 PM – 7 AM</u>
	Daytime	Nighttime
Leq (15 min)	65 dBA	55 dBA

2. Within the Loading Dock Area during daytime hours, vehicles shall be exempt from applicable noise standards as listed above.

Vehicle idling shall be prohibited on West Hoag Drive and within the loading dock areas, except that refrigerated vehicles may idle while at the loading docks when refrigeration is necessary.

In addition, the grease pit cleaning which is exempt from the City Noise Ordinance as a maintenance activity shall occur on a Saturday between the hours of 11:00 AM and 3:00 PM.

VI. HOAG HOSPITAL SIGN PROGRAM

A. Purpose and Intent

1. The purpose of this Sign Program is to provide adequate, consistent and aesthetically pleasing on-building wall and ground-mounted signage based upon the provisions set forth by the City of Newport Beach Sign Ordinance and the information signage requirements of Hoag Hospital.
2. The intent of this Sign Program is to produce uniform standards for Hoag Hospital.

B. General Sign Standards

1. All signs visible at the exterior of any building or facility of the Hospital, ground-mounted or on-building, may be illuminated or non-illuminated, depending upon need. Illumination method may be by external or internal source. No sign shall be constructed or installed to rotate, gyrate, blink or move, or create the illusion of motion, in any fashion.
2. All signs attached to building or facility exteriors shall be mounted as is appropriate to the architectural design features of said building or facility.
3. All signs together with the entirety of their supports, braces, guys, anchors, attachments and decor shall be properly maintained, legible, functional and safe with regard to appearance, structural integrity and electrical service.
4. All street signs shall be subject to review and approval of the City Traffic Engineer, and shall be in compliance with Ordinance 110-L.
5. For purposes of this section, a building shall be defined as any occupied structure or any occupied portion of a structure that is constructed as an addition to an existing structure and identified as a separate building for way finding purposes. Individual building numbers uniquely define the buildings on the Hoag campus.

C. Number of Signs Allowed

1. One (1) double-faced primary identification ground-mounted sign or two (2) single-faced gateway entry signs shall be allowed per street frontage. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Total maximum signage area shall not exceed two hundred (200) square feet and shall not exceed ten (10) feet in height per sign and street frontage. This sign may occur as a wall sign, to be located upon a project

boundary perimeter wall, subject to the same number and area maximums described above. This sign may also occur as part of an entry gateway system.

2. Primary entrance identification shall be allowed at the main entrance to the facility and at the main entrance to the Emergency Department. If freestanding, this sign type shall not exceed a maximum height of eight (8) feet average height above finished grade. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Maximum sign area shall not exceed seventy (70) square feet.
3. Secondary building and entrance identification signs shall be allowed. If freestanding, this sign type shall not exceed a maximum height of nine (9) feet average height above finished grade. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Maximum sign area shall not exceed fifty (50) square feet whether freestanding or wall-mounted.
4. Vehicular and pedestrian directional signs shall be allowed. This sign type may occur as a single-faced, double-faced, or triple-faced sign. The sign shall be sized to allow for proper readability given the number of lines of copy, speed of traffic, setback off the road and viewing distance. This sign type shall not exceed a maximum height of eleven (11) feet average height above finished grade.
5. Donor recognition signage shall be allowed, one (1) at each building elevation. Maximum sign area shall not exceed one hundred seventy-five (175) square feet for donor recognition signage.
6. Hospital identification signs shall be allowed upon hospital towers, one (1) at each elevation. The maximum sign area shall not exceed two hundred seventy-five (275) square feet. Any hospital identification signage on the elevation facing west (Villa Balboa property line) may not be illuminated.
7. On the Lower Campus, two (2) building-mounted identification signs will be allowed per structure and shall not be placed so as to directly face the Villa Balboa property. Such signs shall adhere to the requirements above for secondary building and entrance identification signage and shall be no higher than the roof line of the building upon which they are mounted.
8. Each public parking structure shall be allowed one (1) identification sign above each entrance and exit of the structure. The maximum sign area of each identification sign shall not exceed thirty (30) square feet. Adjacent regulatory parking signage does not count toward the maximum sign area.

VII. HOAG HOSPITAL PARKING REGULATIONS

A. General

1. Off-street parking for Hoag Hospital shall be provided on-site. Parking may be on surface lots, subterranean or in parking structures.
2. The design and layout of all parking areas shall be subject to the review and approval of the City Traffic Engineer and the Public Works Department.
3. Parking lot lighting shall be developed in accordance with City standards and shall be designed in a manner which minimizes impacts on adjacent land uses. Nighttime lighting shall be limited to that necessary for security and shielded down from any adjacent residential area. The plans shall be prepared and signed by a licensed electrical engineer, with a letter from the engineer stating that the requirements have been met. The lighting plan shall be subject to review and approval of the City Planning Department.

B. Requirements for Off-Street Parking

Parking requirements for specific sites shall be based upon the parking criteria established in Table 2. All parking shall be determined based upon the area allocated to the use categories.

TABLE 2
PARKING REQUIREMENTS

<u>Use Category</u>	<u>Parking Requirements</u>
Outpatient Services	2.31 spaces/1,000 square feet (1)
Support	0.0 spaces/1,000 square feet (1)(2)
Administrative	5.3 spaces/1,000 square feet (1)
Residential Care	1.0 spaces/1,000 square feet (3)
Medical Offices	4.0 spaces/1,000 square feet (3)
Inpatient	2.35 spaces/1,000 square feet (1)

- (1) Parking factor based on parking analysis prepared by Linscott, Law & Greenspan dated October 15, 2001 for Traffic Study 2001-002 approved by Planning Commission Resolution No. 1542.
- (2) Support Services generates parking demand that is accounted for in one of the other categories.
- (3) Parking requirements based upon a study prepared by LSA Associates dated September 27, 1991.

VIII. HOAG HOSPITAL LANDSCAPE REGULATIONS

A. General

1. Detailed landscape and irrigation plans, prepared by a registered Architect or under the direction of a Landscape Architect, shall be reviewed by the City prior to issuance of a Certificate of Use and Occupancy. The Landscape Plan shall include a concept for rooftop parking and parking structures if proposed for the Lower Campus. Trees shall not be used, however planter boxes, green roof treatments or trellis systems shall be designed to provide added visual relief of rooftop parking or parking structures. All rooftop or top of parking structure landscaping proposals shall conform to the building height limits established in this text.
2. Parking lot trees shall be no less than twenty-four (24) inch box size.
3. Shrubs to be planted in containers shall not be less than five (5) gallon size. Ground covers will be planted from one (1) gallon containers or from rooted cuttings.
4. Every effort should be made to avoid using plants with invasive and shallow root systems.
5. Earth berms shall be rounded and natural in character, designed to obscure automobiles and to add interest to the site. Wheel stops shall be so placed as necessary to avoid damage to trees, irrigation systems, shrubs and other planting materials.
6. Trees in parking lots should be limited in variety. Selection should be repeated to give continuity. Regular spacing or the introduction of irregular groupings may also be considered to add interest and variety. Care should be exercised to allow plants to grow and maintain their mature size without restriction.
7. Emphasis shall be placed on the use of native, drought-tolerant, non-invasive plants on the Lower Campus. On the Upper Campus, naturalized vegetation selections, as well as those plants allowed on the Lower Campus, will be emphasized. Automatically controlled irrigation systems shall be designed to avoid surface runoff and over-watering.
8. Installation and maintenance of landscape, screening and irrigation systems per Exhibit #6, Exhibit #7 and Exhibit #8. All improvements shall be shown on landscape and irrigation plans to be reviewed and approved by the Planning Department and which shall be in substantial compliance with the Exhibits #6, #7 and #8. Hoag shall complete all of the improvements within the timelines set forth in Exhibit #6.

B. Maintenance

1. All planting areas are to be kept free of weeds and debris and cultivated as necessary to maintain.
2. Lawn and ground cover areas are to be kept trimmed and/or mowed regularly.
3. All plantings are to be kept in a healthy and growing condition. Fertilization, cultivation and tree pruning are to be carried out as part of a regularly scheduled annual maintenance program.
4. Irrigation systems are to be kept in good working condition at all times. On-going monitoring, adjustments and cleaning of systems are to be part of regular maintenance procedures.
5. Stakes, guys and tree ties on trees should be checked regularly for correct function; ties shall be adjusted to avoid creating abrasions or girdling of branches or central leaders.
6. Damage to plantings created by vandalism, automobile or acts of nature shall be corrected within thirty (30) days.
7. Plantings and irrigation are to be maintained in accordance with the approved plans.

C. Special Landscaped Street

West Coast Highway is designated in the Hoag Hospital Planned Community as a special landscaped street. A fifteen (15) foot building setback from right-of-way/property line is required along West Coast Highway. Only driveways, parking and signage structures are allowed in the setback areas. Parking areas shall be screened from view of West Coast Highway with landscaped berms.

Landscaping along West Coast Highway shall consist of trees, ground cover and shrubbery. All unpaved areas not utilized for parking or circulation shall be landscaped in a similar manner. Installed trees are to be no smaller than twenty-four (24) inch box.

D. Villa Balboa Landscape Zone

The area between the Hoag property line and the sound wall will be referred to as the Villa Balboa Landscape Zone. This portion of the Hoag Hospital property will have a specific landscape process to ensure consultation with Villa Balboa on the planting and maintenance of the area. Existing landscaping on Villa Balboa's side of the wall shall be preserved to the extent feasible or replaced with specimen plant material as designated on a plan to be approved by the Planning Director after consultation with the Villa Balboa Community Association. The plan

shall also include sufficient additional landscaping to screen or soften the soundwall required pursuant to Section V.L. Hoag shall maintain all landscaping on Hoag's property and to the extent new plant material is installed as a result of wall construction by Hoag on the Villa Balboa property adjacent to the Villa Balboa Landscape Zone (with their permission), Hoag shall maintain such new plant material on Villa Balboa's property for a period of two years after installation to ensure healthy growth. All landscape installation shall occur within 45 days of the completion of the wall or earlier. Any future modifications made to said wall and landscaping shall be reviewed and approved by the Planning Director.

E. Parking Areas

A minimum of 5% of the surface parking areas shall be devoted to planting areas. Planting areas around building shall not be included in parking area landscape calculations. Planting of trees may be in groups and need not be regularly spaced. Alternative landscape programs may be developed, including perimeter parking area landscaping, berming and depressing of parking areas to provide additional screening. Alternative landscape programs shall be subject to the review of the Newport Beach Planning Department.

A rooftop landscaping program shall be developed for parking structures and rooftop parking proposed for the Lower Campus and shall be subject to the review and the approval of the Newport Beach Planning Department.

IX. SITE PLAN REVIEW

A. Purpose

The Council finds that development on the Lower Campus of Hoag Hospital may have the potential to affect the aesthetics of the community. The effect of this section is to establish a Site Plan Review requirement for certain individual projects - to insure that these projects conform with the goals and policies of the General Plan, provisions of this Planned Community Development Plan, the Development Agreement and the standards set forth below in sub-section F. The following classifications of projects are subject to the Site Plan Review:

Planning Commission review:

1. Any project that differs from setback, horizontal and vertical articulation requirements as set forth in Section V.D.2.

Planning Director's review:

1. Any project that could have the potential to generate emissions that could have an impact to visual resources.
2. Any project that could have the potential to generate emissions creating objectionable odors or other impacts to air quality.
3. Replacement of existing cooling towers, ~~except for casualty.~~

B. Findings

The City finds, determines and declares that the establishment of Site Plan Review procedures contained in this section promotes the health, safety, and general welfare of the community by ensuring that the development of Hoag Hospital proceeds in a manner which will not result in inadequate and poorly planned landscape areas, excessive building bulk on arterial roadways, inappropriate placement of structures and impairment of the benefits of occupancy and use of existing properties in the area.

C. Application

Site Plan Review approval shall be obtained for any new structure or the addition to an existing structure, as outlined in Section IX.A above, prior to the issuance of a grading or building permit or issuance of an approval in concept for Coastal Commission or Office of Statewide Health Planning and Development review.

D. Plans and Diagrams to be Submitted

The following plans and diagrams shall be submitted to the Planning Commission for approval:

1. A plot plan, drawn to scale, showing the arrangement of buildings, driveways, pedestrian ways, off-street parking and off-street loading areas, landscaped areas, signs, fences and walks. The plot plan shall show the location of entrances and exits, and the direction of traffic flow into and out of off-street parking and loading areas, the location of each parking space and loading space, and areas for turning and maneuvering vehicles. The plot plan shall indicate how utility and drainage are to be provided.
2. A landscape plan, drawn to scale, showing the locations of existing trees (proposed to be removed and proposed to be retained); and indicating the amount, type, and location of any landscaped areas, planting beds and plant materials with adequate provisions for automatic irrigation.
3. Grading plans when necessary to ensure development properly related to the site and to surrounding properties and structures.
4. Scale drawings of exterior lighting showing size, location, materials, intensity and relationship to adjacent streets and properties.
5. Architectural drawings, renderings or sketches, drawn to scale, showing all elevations of the proposed buildings and structures as they will appear upon completion.
6. Any other plans, diagrams, drawings or additional information necessary to adequately consider the proposed development and to determine compliance with the purposes of this chapter.

E. Fee

The applicant shall pay a fee as established by Resolution of the City Council to the City with each application for Site Plan Review under this chapter.

F. Standards

In addition to the general purposes set forth in sub-section A, in order to carry out the purposes of this chapter as established by said section, the Site Plan Review procedures established by this Section shall be applied according to and in compliance with the following standards, when applicable:

1. The development is in compliance with all other provisions of the Planned Community Development Criteria and District Regulations (P-C Text);
2. Development shall be compatible with the character of the neighborhood and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;
3. Development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special

consideration given to the mass and bulk of buildings and the streetscape on West Coast Highway;

4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.
5. Potential impacts shall be mitigated to less than significant levels.

G. Public Hearing - Required Notice

A public hearing shall be held on all Site Plan Review applications. Notice of such hearing shall be mailed not less than ten (10) days before the hearing date, postage prepaid, using addresses from the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses, to owners of property within a radius of three hundred (300) feet of the exterior boundaries of the subject property. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this Section. In addition to the mailed notice, such hearing shall be posted in not less than two (2) conspicuous places on or close to the property at least ten (10) days prior to the hearing.

H. Action by the Planning Director

If all applicable standards established by this Section are met, the Planning Director shall approve the development. Conditions may be applied when the proposed development does not comply with applicable standards and shall be such as to bring said development into conformity.

If the development is disapproved, the Director shall specify the standard or standards that are not met.

A Site Plan Review decision of the Planning Director shall be subject to review by the Planning Commission either by appeal, or upon its own motion, or upon the request of the Planning Director. The action of the Planning Director on any Site Plan Review shall be final and effective twenty-one (21) days following the Director's action thereon unless, within the twenty-one (21) day appeal period an appeal in writing has been filed by the applicant, or any other person, the Planning Director has requested a review of its decision, or unless the Planning Commission, not more than twenty-one (21) days after the Director's action, on its own motion, elects to review and act on the action of the Director, unless the applicant consents to an extension of time. The Planning Commission may affirm, reverse or modify the decision. Such action by the Planning Commission shall be final, unless subsequently appealed or reviewed.

I. Action by the Planning Commission

If all applicable standards established by this Section are met, the Planning Commission shall approve the development. Conditions may be applied when the proposed development does not comply with applicable standards and shall be such as to bring said development into conformity.

If the development is disapproved, the Commission shall specify the standard or standards that are not met.

A Site Plan Review decision of the Planning Commission shall be subject to review by the City Council either by appeal, or upon its own motion, or upon the request of the Commission. The action of the Commission on any Site Plan Review shall be final and effective twenty-one (21) days following the Commission action thereon unless, within the twenty-one (21) day appeal period an appeal in writing has been filed by the applicant, or any other person, the Commission has requested a review of its decision, or unless the City Council, not more than twenty-one (21) days after the Commission action, on its own motion, elects to review and act on the action of the Commission, unless the applicant consents to an extension of time. The City Council may affirm, reverse or modify the decision. Such action by the City Council shall be final.

J. Appeal to the City Council

Any Site Plan Review decision of the Commission may be appealed to the City Council by the applicant or any other person, at any time within twenty-one (21) days after the date of the Commission decision. An appeal to the City Council shall be taken by filing a letter of appeal in duplicate, with the Planning Department. Such letter shall set forth the grounds upon which the appeal is based and shall be accompanied by a fee as established by Resolution of the City Council.

K. Action by the City Council

An appeal shall be heard and acted on by the City Council within sixty (60) days of filing a letter of appeal, and the City Council may affirm, reverse or modify the decision of the Commission. The decision of the City Council is final.

L. Expiration and Revocation of Site Plan Review Approvals

1. Expiration. Any Site Plan Review granted in accordance with the terms of this Title shall expire within twenty-four (24) months from the date of approval if a building permit has not been issued prior to the expiration date and subsequently construction is diligently pursued until completion, unless at the time of approval the Planning Commission has specified a different period of time.
2. Violation of Terms. Any Site Plan Review granted in accordance with the terms of this Title may be revoked if any of the conditions or terms of such Site Plan Review are violated or if any law or ordinance is violated in connection therewith.
3. Hearing. The Planning Commission shall hold a hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within sixty (60) days after receipt of the recommendation of the Planning Commission.

LANDSCAPE MATRIX

HOAG HOSPITAL LOWER CAMPUS Prepared 4/13/2008

Location	Area	Description	Landscape Element	Schedule	Government/Agency Status	Anticipated Outcome / Effect
Hoag Lower Campus	Area 1 - Co Gen	Additional tree planting per community request	Add 5, 48" box evergreen screen trees and new irrigation	Nov 2007 Installed	Project completed	Screen/soften views of west end of Co Gen Building From PCH
	Area 2 - Co Gen	Additional tree planting per community request	Add 3, 48" box evergreen screen trees and new irrigation	To commence May 2008 Install completion July 2008	Coastal Comm. Approved 2/08	Added screening of Co Gen Flats
	Area 3 - Co Gen	Add green screen lattice per community request	Attach metal green screen lattice structure to cover east building elevation	To commence May 2008 Install completion July 2008	Coastal Comm. Approved 2/08	Screen/soften specific views of Co Gen Building
	Area 4 - Corbin Slope Retaining Wall	Clean up and regrade area with added shrub and groundcover planting	Additional shrubs, groundcover and new irrigation system added upon completion of wall project	Nov 2007 Installed	Project completed	Added visual quality and erosion control
	Area 5 - Co Gen Stone	Tree shrub and groundcover planting	24 trees, shrubs and groundcover plantings and new water conserving irrigation system	Nov 2007 Installed	Project completed	Added campus visual quality screening and erosion control
	Area 6 - Retaining Wall West of West Parking Lot	Tree and shrub planting	6, 24" box evergreen screen trees Installed as part of Lower Campus Wall Project	Nov 2007 Installed	Project completed	Screen and soften views of retaining wall
	Area 7 - West Parking Area Islands	Tree planting	12, 36" box flowering trees and 4 in path trees and irrigation systems at end islands Installed as part of Lower Campus Wall Project	Nov 2007 Installed	Project completed	Soften views of open parking lot areas Increased shade and visual enhancement to parking area
Hoag Lower Campus	Area 8 - West of Building Area Islands	Tree planting	Install 23, 36" box flowering trees and 3 in path trees	Installed no later than Dec 2009	Installation shall commence no later than 60 days of CDP issuance by the Coastal Comm.	Soften views of open parking lot areas and increase shade and visual enhancement to parking areas
	Area 9 - Top of Retaining Wall	Flowering bougainvillea shrub planting	550, bougainvillea shrubs installed as part of Lower Campus Wall Project	Nov 2007 Installed	Project completed	Colorful edge definition and softening of views along top of retaining wall
	Area 10 - West of Building Area Islands	Regrade area add fence shrub and groundcover planting	Shrubs, groundcover, fencing and new irrigation system	Installed no later than Dec 2009	Installation shall commence no later than 150 days of CDP issuance by the Coastal Comm.	Enhanced overall campus visual quality, safety and erosion control
Hoag Lower Campus	Area 11 - New Child Care Facility	Additional trees shrubs & groundcover planting	17 trees, shrubs and groundcover and new irrigation system	Dec 2007 Installed	Project completed	Added Visual Quality, Parking area screening and building drop off and entry area definition
	Area 12 - Behind Child Care Facility	Replace trees, shrub and groundcover and enhance planting areas	Trees, shrub & groundcovers and new irrigation system	Installation schedule Dec 2009	Pending city approval in concept and Coastal Comm Approval	Improve & unify campus planting character along PCH frontage after utilities installed
	Area 13 - Behind Child Care Facility	Additional green screen and treeshrub planting	Install approx. 670 linear feet of green screen along PCH frontage	Installed no later than Dec 2009	Immediately upon issuance of an Approval in Concept (AIC) by the City of Newport Beach an application shall be submitted for said improvements to the Coastal Comm. Construction of said improvements shall be completed no later than 18 months after CDP issuance by the Coastal Comm.	Screen views of west parking lot from PCH
	Area 14 - Future Parking Lot at West of Building Area Islands	Temporary native hydroseed groundcover planting	Add coastal wild flower and grass Hydroseed planting until permanent parking lot with landscape improvements added	Hydroseed and irrigation installed Dec 2007	Hydroseed and irrigation completed	Erosion/dust control and enhanced visual quality pending future parking area installation
	Color Code Indicating Current Project Status					
Green		Indicates current improvements that have been installed per previous approvals				
Yellow		Indicates improvements installed but not apart of reviewed permits				
Orange		Indicates improvements in design phase yet to be submitted for city or agency approvals				
Blue		Indicates improvements proposed but not approved for installation				

Revised 4/13/08
Revised 4/13/08 for City Council Meeting

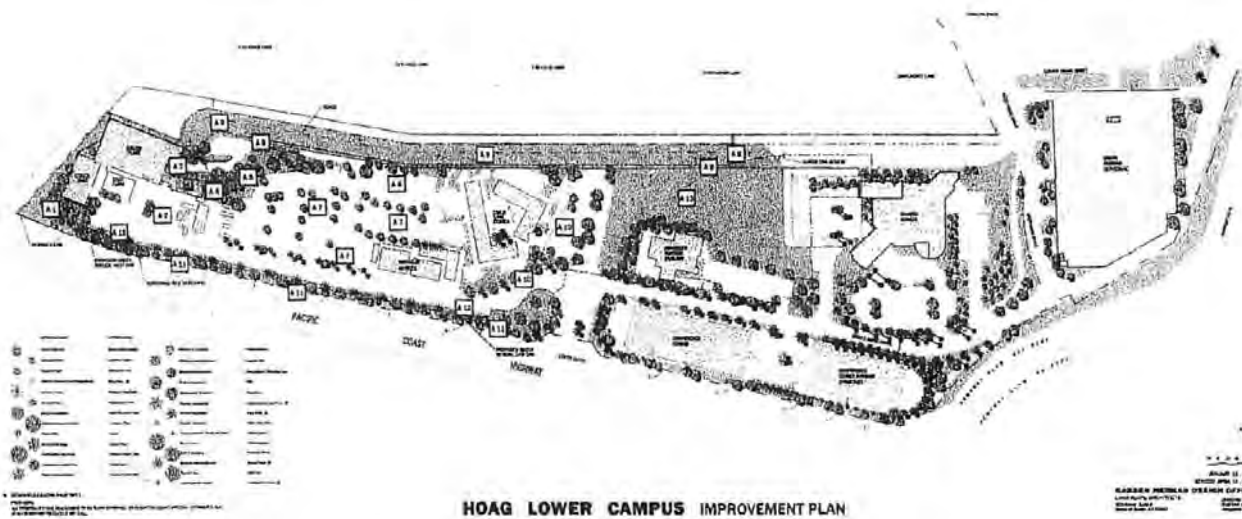
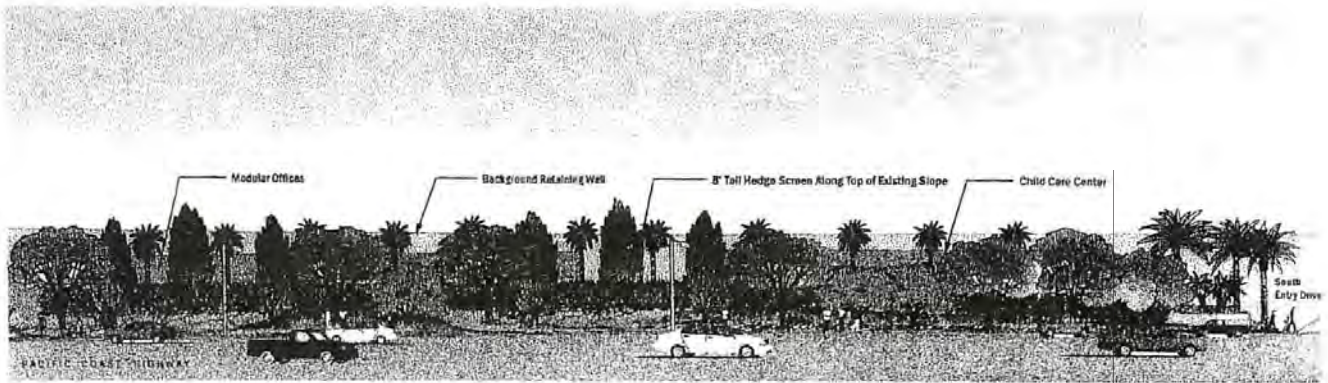


Exhibit #7



PARTIAL ELEVATION - PCH LANDSCAPE SCREEN (DRAFT)

Robb & Associates
ARCHITECTS

Hoag Memorial Hospital Presbyterian
Newport Beach, CA

Exhibit #8 33 04/14/2008

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, LaVonne M. Harkless, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Ordinance No. 2008-10 as duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 13th day of May 2008, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Henn, Rosansky, Curry, Daigle, Gardner, Mayor Selich

Noes: None

Absent: Webb

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 14th day of May 2008.

(Seal)



LaVonne M. Harkless

City Clerk
City of Newport Beach, California

CERTIFICATE OF PUBLICATION

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, LAVONNE M. HARKLESS, City Clerk of the City of Newport Beach, California, do hereby certify that Ordinance No. 2008-10 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in The Daily Pilot, a daily newspaper of general circulation on the following date, to wit: May 17, 2008.

In witness whereof, I have hereunto subscribed my name this _____ day of _____ 2008.

City Clerk
City of Newport Beach, California

EXHIBIT E

SECOND AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

**SECOND AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT
NO. 5**

BETWEEN

THE CITY OF NEWPORT BEACH

AND

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

*(Pursuant to California Government Code Sections 65864-65869.5
and Newport Beach Municipal Code Chapter 15.45)*

Approved February __, 2019
Ordinance No. 2019-__

SECOND AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

(Pursuant to California Government Code sections 65864-65869.5)

This SECOND AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT ("**Second Amendment**") is entered into and effective on the date it is recorded with the Orange County Recorder ("**Effective Date**") by and between the CITY OF NEWPORT BEACH, a California municipal corporation ("**City**"), on the one hand, and HOAG MEMORIAL HOSPITAL PRESBYTERIAN, a California nonprofit public benefit corporation ("**Hoag**"), on the other. City and Hoag are sometimes collectively referred to in this Second Amendment as the "**Parties**" and individually as a "**Party**."

RECITALS

A. Hoag is the fee owner of approximately thirty eight (38) acres of real property located in the City of Newport Beach, County of Orange, State of California, located at 1 Hoag Drive (Assessor's Parcel No.'s 423-011-30, 423-011-28), ("**Property**"). The Property is more particularly described in the legal description attached hereto and as Exhibit C and incorporated herein by reference, and as more particularly depicted as attached hereto in Exhibit D and incorporated herein by reference.

B. City and Hoag entered into that certain Development Agreement dated February 14, 1994, for reference purposes and recorded in the Official Records of Orange County on March 23, 1994, as document number 94-0207276 ("**Agreement**").

C. City and Hoag entered into that certain Amendment to Restated Development Agreement No. 5 dated June 17, 2008, and recorded in the Official Records of Orange County on the same date, as document number 2008000289321 ("**Amendment**"). All terms not otherwise defined in this Second Amendment shall have the meanings given them in the Amendment and the Agreement.

D. Under the Agreement, the Term of the Agreement was for twenty five (25) years and the Parties now desire to enter into this Second Amendment to the Agreement to extend the Term another six (6) months.

E. On March 13, 2007, the City Council adopted Ordinance No. 2007-6, entitled "Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code ("NBMC") Regarding Development Agreements" that amended the terms of NBMC Section 15.45 (the "**Development Agreement Statute and Ordinance**"). This Second Amendment is consistent with the Development Agreement Statute and Ordinance.

G. This Second Amendment is consistent with the City of Newport Beach General Plan, including without limitation the General Plan's designation of the Property as "Private Institutions - PI," and the Amendment and Agreement.

H. On January 17, 2019, the Planning Commission held a properly noticed public hearing on this Second Amendment and considered the testimony and information submitted by City staff, Hoag, and members of the public. On January 17, 2019, consistent with applicable provisions of the Development Agreement Statute and Ordinance, the Planning Commission

adopted Resolution No. PC2019-003, recommending the City Council approve this Second Amendment.

I. In recognition of the significant public benefits that the Agreement, as amended, provides, the City Council has found that this Second Amendment: (i) is consistent with the City of Newport Beach General Plan as of the date of the Agreement, the Amendment, and this Second Amendment; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) is consistent and has been approved consistent with the final Environmental Impact Report (FEIR No. 142) ("FEIR") and the supplemental Environmental Impact Report (EIR No. ER2007-003) (SCH#1991071003) ("EIR") that have been certified by the City Council on or before the Agreement Date, which analyzed the environmental effects of the proposed development of the Project on the Property, and all of the findings, conditions of approval and mitigation measures related thereto; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 and NBMC chapter 15.45.

J. On February 26, 2019, the City Council held a properly noticed public hearing on this Second Amendment and considered the testimony and information submitted by City staff, Hoag, and members of the public. On _____, 2019, consistent with applicable provisions of the Development Agreement Statute and Ordinance, the City Council held second reading and adopted Ordinance No. 2019-__, finding the Second Amendment to be consistent with the City of Newport Beach General Plan and approving this Second Amendment.

AGREEMENT

NOW, THEREFORE, City and Hoag agree as follows:

1. **Term of Agreement.** Section 6.3 is hereby amended in its entirety to read as follows:

"**Term of Agreement.** The term of this Agreement (the "Term") shall begin on the Effective Date and continue until September 15, 2019, unless otherwise terminated or modified pursuant to this Agreement. Any modifications to this Agreement prior to effective certification of the City's Local Coastal Program ("LCP"), are subject to the review and approval of the Coastal Commission or its successor agency."

2. **Full Force and Effect.** Except as modified by this Second Amendment, the Agreement and Amendment, attached hereto as Exhibit A and Exhibit B, respectively, are incorporated into this Second Amendment and shall remain in full force and effect.

3. **Recitals.** The Recitals set forth above are true and correct and incorporated herein by reference.

4. **Counterparts.** This Second Amendment may be signed by the Parties in different counterparts and the signature pages combined shall create a single document binding on all Parties.

5. **Recordation.** The City Clerk of City shall record this Second Amendment in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.100.

[SIGNATURE PAGE FOLLOWS]

Attachments - Exhibit A: Development Agreement dated February 14, 1994

Exhibit B: Amendment to Restated Development Agreement No. 5 dated June 17, 2008

Exhibit C: Legal Description

Exhibit D: Legal Depiction

**SIGNATURE PAGE TO
SECOND AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5**

CITY:


CITY OF NEWPORT BEACH,
a California municipal corporation and charter city

By: _____
Diane B. Dixon, Mayor

ATTEST:

By: _____
Leilani I. Brown, City Clerk

APPROVED AS TO FORM:

By:  _____
Aaron C. Harp, City Attorney *am 12/11/19*

HOAG:

HOAG MEMORIAL HOSPITAL
PRESBYTERIAN,
a California nonprofit public benefit corporation

By: _____
Name: Sanford Smith, AIA
Title: Senior Vice President Real Estate & Facilities

By: _____
Name: Andrew Guarni
Title: Senior Vice President and Chief Financial
Officer

(All Signatures to Be Notarized)

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)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

(seal)

EXHIBIT A

DEVELOPMENT AGREEMENT DATED FEBRUARY 14, 1994

**EXEMPT RECORDING REQUEST PER
GOVERNMENT CODE 6103**

Recording Requested By and
When Recorded Return to:

City Clerk / *Ray P. M.*
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92659-1768

DOC # 94-0207276
23-MAR-1994 03:59 PM

Recorded in Official Records
of Orange County, California
Lee A. Branch, County Recorder
Page 1 of 61 Fees: \$ 0.00
Tax: \$ 0.00



**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF NEWPORT BEACH
AND
HOAG MEMORIAL HOSPITAL PRESBYTERIAN**

61
R
1
OF -

Approved February 14, 1994
Ordinance No. 94-8

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into between the City of Newport Beach (the "City"), and Hoag Memorial Hospital Presbyterian ("Hoag").

1. RECITALS. This Agreement relates to the following:

1.1 Purpose of Agreement. This Agreement is intended to:

- (a) Enable Hoag to adapt to the ever changing health care needs of those residents within its service area by authorizing design parameters of new or additional facilities in a manner that will allow Hoag to respond to rapid changes in medical and health care technology and delivery systems.
- (b) Establish strict, binding limits on the amount and height of permitted development as well as ensure compliance with numerous conditions on the density, location, and timing of construction to minimize, to the extent feasible, any environmental impacts of Hoag's proposed expansion.
- (c) Impose exactions such as dedication of property, construction of public improvements and/or the installation of landscaping visible to the public, which, when considered in conjunction with the public services provided by Hoag, benefit the general public.

1.2 Authorization. This Agreement is authorized by, and is consistent with, the provisions of 65864 et seq. of the Government Code of the State of California, and Chapter 15.45 of the Newport Beach Municipal Code.

1.3 Interest of Hoag. Hoag is the legal and/or equitable owner of approximately forty (40) acres of real property located in the City and more particularly described in Exhibit "A" and depicted in Exhibit "B" (the "Property").

1.4 Development of the Property. This Agreement authorizes development on the Property consistent with the Hoag Memorial Hospital Presbyterian Master Plan and Planned Community Development Plan ("Master Plan", a copy of which is attached to this Agreement as Exhibit "C" and incorporated by reference when appropriate), subject to the conditions and mitigation measures identified in Environmental Impact Report No. 142 and imposed by the City Council as conditions to approval of the Master Plan and this Agreement and, for all development within

the coastal zone subject to approval of a coastal development permit by the California Coastal Commission or its successor agency.

1.5 Planning Commission/City Council Hearings. The Planning Commission, after giving appropriate notice, held public hearings to consider a development agreement, the proposed Master Plan, and the EIR on December 5, 1991, January 9, 1992, January 23, 1992, February 6, 1992, and February 20, 1992. The City Council conducted public hearings on the Master Plan, this Agreement and the EIR on March 23, 1992, March 30, 1992, April 13, 1992 and May 11, 1992.

1.6 Consistency. This Agreement is consistent with the various elements of the Newport Beach General Plan, the Master Plan, and other applicable ordinances, plans, and policies of the City. This Agreement is also consistent with the purpose and intent of state and local laws authorizing development agreements in that it represents comprehensive planning, provides certainty in the approval of subsequent projects subject to compliance with conditions, reduces the economic costs of development by providing assurance to Hoag that it may generally proceed with projects in accordance with existing regulations, and provides assurance to adjoining property owners that limits on the height of structures and amount of development as specified in the Master Plan and this Agreement will remain in full force and effect for a period of twenty-five (25) years.

1.7 Police Power. The City Council has determined that this Agreement is in the best interests of the health, safety and general welfare of the City, its residents and the public, was entered into pursuant to, and represents a valid exercise of, the City's police power, and has been approved in accordance with the provisions of state and local law that establish procedures for the approval of development agreements.

1.8 City Ordinance. On February 14, 1994, the City Council adopted Ordinance No. 94-8 approving this Agreement and authorizing the City to enter into this Agreement. The Adopting Ordinance will become effective on March 16, 1994.

2. DEFINITIONS.

2.1 The "Adopting Ordinance" refers to City Ordinance No. 94-8, adopted on February 14, 1994, by the City Council, which approved and authorized the City to enter into this Agreement.

2.2 "Agreement" refers to this "Development Agreement Between the City of Newport Beach and Hoag Memorial Hospital Presbyterian".

- 2.3 "Annual Review" refers to the review of Hoag's good faith compliance with this Agreement and conditions on development as set forth in Section 5.
- 2.4 The "Approval Date" means the date on which the City Council voted to adopt the Adopting Ordinance.
- 2.5 All forms of use of the verb "assign" and the nouns "assignment" and "assignee" shall include all contexts of hypothecations, sales, conveyances, transfers, leases, and assignments.
- 2.55 "California Coastal Commission" refers to the California State Resources Agency established under the California Coastal Act of 1976.
- 2.6 "CEQA" and the "CEQA Guidelines" refers to the California Environmental Quality Act and the CEQA Guidelines promulgated by the Secretary of Resources of the State of California, including any amendments adopted subsequent to the Effective Date.
- 2.7 "City" refers to the City of Newport Beach, California.
- 2.8 "City Council" refers to the City Council of the City.
- 2.9 "Cure Period" refers to the period of time during which a Default may be cured pursuant to Section 9.
- 2.10 A "day" or "days" refers to a calendar day, unless expressly stated to be a business day.
- 2.11 A "Default" refers to any material default, breach, or violation of the provisions of this Agreement. A "City Default" refers to a Default by the City, while a "Hoag Default" refers to a default by Hoag.
- 2.12 The "Effective Date" refers to the effective date of the Adopting Ordinance and is the effective date of this Agreement, provided however, the Agreement has been approved by the California Coastal Commission, and the Executive Director of the Coastal Commission is in receipt of a copy of this Agreement signed by both parties.
- 2.13 The "EIR" refers to final Environmental Impact Report No. 142 of the City of Newport Beach and Supplemental Environmental Impact Report No. 142.
- 2.14 An "Estoppel Certificate" refers to the document certifying the status of this Agreement required by Section 5.6 in the form of Exhibit "D".

- 2.15 An "Exaction" refers to those specific dedications and improvements required of Hoag and set forth in Section 8.2 below.
- 2.16 An "Exhibit" refers to an exhibit to this Agreement. All Exhibits are incorporated as a substantive part of this Agreement. The Exhibits to this Agreement are:
- Exhibit A: Legal Description of the Property
- Exhibit B: Map of the Property
- Exhibit C: The Master Plan
- Exhibit D: Estoppel Certificate
- 2.17 "Existing General Regulations" means those General Regulations approved by the City on or before the Approval Date (irrespective of their effective date) and not rescinded or superseded by City action taken on or before the Approval Date.
- 2.18 "Future General Regulations" means those General Regulations (see Section 2.19 below) adopted by the City after the Approval Date.
- 2.19 "General Regulations" means those ordinances, rules, regulations, policies, and guidelines of the City, which are generally applicable to the use of land and/or construction within the City and include, the Fair Share Traffic Contribution Fee Ordinance, Uniform Building Codes and water and sewer connection and fee ordinances.
- 2.20 "General Plan" refers to the City's General Plan in effect on the Approval Date, plus all amendments to the General Plan adopted by the City on or before the Approval Date and effective prior to the Effective Date.
- 2.21 "Hoag" refers to Hoag Memorial Hospital Presbyterian, a non-profit corporation.
- 2.22 "Includes" and all contexts and forms of the words "includes" and "including" shall be interpreted to also state "but not limited to."
- 2.23 "Master Plan" refers to the Hoag Memorial Hospital Presbyterian Master Plan and Planned Community Development Plan which was adopted by the City on May 26, 1992 (Exhibit "C").
- 2.24 "Mortgagee" refers to the holder of a beneficial interest under any mortgage, deed of trust, sale-leaseback agreement, or other

transaction under which all or a portion of the Property, including those portions acquired by assignees, is used as security (a "Mortgage") or the owner of any interest in all or any portion of the Property under a Mortgage, including those portions acquired by assignees.

- 2.25 "Notice" refers to any written notice or demand between the Parties required or permitted by this Agreement.
- 2.26 The "Parties" refers to the City and Hoag and a "Party" shall refer to either of the Parties.
- 2.27 "Planning Commission" refers to the Planning Commission of the City.
- 2.28 The "Project" refers to the proposed development of the Property pursuant to the Master Plan and this Agreement.
- 2.29 "Project Specific Approvals" means all site-specific (meaning specifically applicable to the Property only and not generally applicable to some or all other properties within the City) plans, subdivision maps, permits, or other entitlement. Project Specific Approvals include subdivision maps, site plan review, conditional use permits, coastal development permits, variances, grading and building permits, as well as amendments or modifications to those plans, maps and permits. Project Specific Approvals does not include Existing or Future General Regulations.
- 2.30 The "Property" refers to the real property described on Exhibit "A" and depicted on Exhibit "B."

3. CONDITIONS TO DEVELOPMENT.

- 3.1 Introduction. The provisions of this Section express the intent of the parties regarding the extent to which this Agreement vests Hoag's right to proceed with the development described in the Master Plan. Hoag acknowledges that its right to proceed with development described in the Master Plan is subject to numerous conditions and mitigation measures including the following:
 - (a) The specific limitations and restrictions contained in the Master Plan;
 - (b) Conditions and mitigation measures imposed by the City Council to mitigate significant effects identified in the EIR;

- (c) Conditions imposed by the City as a result of subsequent or supplemental environmental analysis pursuant to provisions of CEQA and the CEQA Guidelines;
- (d) Conditions imposed by the City Council in conjunction with the approval of Traffic Study No. 81 and Variance No. 1180;
- (e) Compliance with the terms and conditions specified in this Agreement.
- (f) Compliance with Existing General Regulations.

3.2 Compliance with Master Plan Conditions/Mitigation Measures.
 Hoag acknowledges that City Council approval of the Master Plan and this Agreement was subject to compliance with numerous conditions and mitigation measures designed to minimize or eliminate the significant adverse effects of the Project and ensure the health, safety, and welfare of nearby residents as well as Hoag patients and employees. Many of these conditions and mitigation measures impose specific development standards and requirements to be implemented in conjunction with further study and analysis of site or subsurface conditions before grading or construction. Specific mitigation measures that require compliance with, or satisfaction of, standards before grading or construction can occur include the following:

- (a) Slope excavation techniques which insure stability;
- (b) Grading and excavation techniques which minimize disturbance to adjacent residents and the general public;
- (c) Identification of potential faults on site and construction of buildings pursuant to recommendations of certified geologists and in a manner which insures that nearby residents, Hoag patients and Hoag employees are not exposed to a significant risk of injury;
- (d) Evaluation of soil corrosivity and removal of corrosive soils or use of corrosion resistant construction materials;
- (e) Mitigation of impacts caused by removal of wetlands through off-site restoration as required by resource agencies;
- (f) Preparation and approval of a project trip generation study prior to development of Phase I of the Master Plan (if Hoag proposes a land use other than specified in the approved Traffic Study);

- (g) Preparation and approval of a project trip generation study as a condition to construction of development in Phases II and III of the Master Plan;
- (h) Preparation and approval of a Traffic Phasing Ordinance analysis prior to construction of development in Phase II and Phase III of the Master Plan;
- (i) Preparation of a view impact analysis of each proposed building prior to issuance of permits;
- (j) Analysis and mitigation of emissions in accordance with the regulations of the South Coast Air Quality Management District;
- (k) Preparation and approval of a construction phasing and traffic control plan for each phase of development.

Hoag's right to develop the Property pursuant to the Master Plan is contingent upon compliance with, and satisfaction of, the conditions and mitigation measures imposed by the City Council as of the Approval Date, conditions imposed by the California Coastal Commission required for approval of coastal development permits, as well as conditions and mitigation measures resulting from subsequent environmental analysis as specified in Paragraph 3.3.

- 3.25 Future Coastal Act discretionary review may result in specific mitigation measures to ensure consistency with the Coastal Act that require compliance with, or satisfaction of, standards before grading or construction can occur.

3.3 Program EIR. Hoag acknowledges that the EIR is a "Program EIR." The EIR analyzes the impacts of construction phased over time and, pursuant to CEQA, City is under a continuing obligation to analyze Hoag's requests for Project Specific Approvals to ensure the environmental impacts associated with the request were fully addressed in the EIR. Subsequent environmental documentation is required if this analysis reveals environmental impacts not fully addressed in the program EIR, identifies new impacts, or concludes the specific request is not consistent with the project described in the EIR. Hoag acknowledges the right and obligation of the City and the Coastal Commission or its successor agency to impose additional conditions as the result of the subsequent environmental analysis required by CEQA.

- 3.4 Mitigation Monitoring Plan. City shall prepare a Mitigation Monitoring Plan ("Plan") within sixty (60) days after the Effective Date. Hoag shall not submit any application for Project Specific Approval until the Plan has been approved by the City Council and the Executive Director of the Coastal Commission or the appropriate entity of its successor agency.

The Plan shall comply with and satisfy the requirements of CEQA and the Guidelines and the Coastal Act. The Plan shall be available to the public upon request.

- 3.5 Compliance with General Regulations. Hoag is required to comply with the Existing General Regulations. As to those Existing General Regulations which require the payment of fees, costs, and expenses, Hoag shall pay the fee, cost, or expense required as of the date on which Hoag submits the application for Project Specific Approval. Hoag shall also comply with any Future General Regulations that do not impair Hoag's ability to develop the Property in accordance with the density, intensity, height and location of development specified in the Master Plan. Hoag shall also comply with all provisions of the Uniform Building Code, whether adopted before or after the Approval Date, which are in effect at the time applications for Project Specific Approvals are submitted. Hoag shall also comply with the Coastal Act and the City's certified Local Coastal Program.

4. RIGHT TO DEVELOPMENT.

- 4.1 Right to Develop. Subject to compliance with the provisions of Sections 3 and 8.2, Hoag shall have a vested right to develop and receive Project Specific Approvals for construction on the Property to the full extent permitted by the Master Plan. Subject to the provisions of Sections 3 and 8, City shall only take action which complies with and is consistent with the Master Plan and this Agreement unless Hoag otherwise consents in writing. Subject to this Subsection, City shall have the authority to impose only those Exactions which are specifically described in this Agreement, except as expressly required (as opposed to permitted) by state or federal law.
- 4.2 Reservations or Dedications of Land. Except as expressly provided in this Agreement, no dedications or reservations of the Property shall be required of Hoag in conjunction with the application or issuance of any Project Specific Approvals.
- 4.3 Conflicting Measures. Except as expressly provided in this Agreement, no initiative measure, moratorium, referendum (except as provided in Government Code Section 65857.5), ordinance, statute or other provision of law which in any way limits or restricts development of the Property to the full extent permitted by the Master Plan and this Agreement (including density, intensity, timing, phasing, and sequencing) shall be applied to the Property during the term of this Agreement.

- 4.4 Time for Construction and Completion of Project. Subject to the provisions of this Agreement and the Master Plan, Hoag shall have the right to decide the timing, phasing, and sequencing of construction on the Property and shall be entitled to apply for, and receive approval of, in a timely manner, permits or approvals at any time.

5. ANNUAL REVIEW.

- 5.1 City and Hoag Responsibilities. At least every twelve (12) months during the Term, the City shall review Hoag's good faith substantial compliance with this Agreement (the "Annual Review"). After the Annual Review, the City's finding of good faith compliance by Hoag shall be conclusive for the purposes of future Annual Reviews or legal action between the Parties. Either Party may address any requirements of the Agreement during the Annual Review. However, fifteen (15) days' written Notice of any requirement to be addressed shall be made by the requesting Party. If, at the time of the review, an issue not previously identified in writing is required to be addressed, the review shall be continued at the request of either Party to afford sufficient time for analysis and preparation of a response.
- 5.2 Public Hearing. The Annual Review shall be conducted at a public hearing noticed in accordance with the provisions of Chapter 15.45 of the Newport Beach Municipal Code.
- 5.3 Information to be Provided to Hoag. The City shall mail to Hoag a copy of the staff report and related exhibits concerning Agreement performance a minimum of ten (10) days before the Annual Review.
- 5.4 Mitigation Review. The annual review shall include a detailed report of compliance with the various conditions and mitigation measures contained within the mitigation monitoring plan. The report shall include an analysis of the view impacts of buildings constructed in comparison to the anticipated views as depicted in the EIR. For the five year monitoring period imposed by the Department of Fish and Game Streambed Alteration Agreement entered into between the Department of Fish and Game and Hoag, the annual review shall also assess the success of any off-site wetlands mitigation. Five years after the completion of the Department of Fish and Game monitoring period, Hoag shall submit a final report assessing the success of the off-site wetlands mitigation in its annual review. If the survival and cover requirements set forth in the Streambed Alteration Agreement have not been met, Hoag shall be responsible for replacement planting to achieve these requirements. Hoag shall be found in compliance with this Agreement unless the City Council determines, based upon the

evidence presented at the Annual Review, that Hoag has not complied with all mitigation measures and conditions including those imposed as a result of subsequent environmental analysis, applicable to the grading of, or building on, the Property as of the date of the Annual Review.

5.5 Review Letter. If Hoag is found to be in compliance with the Agreement after the Annual Review, the City shall issue, within ten (10) days of Hoag's written request, a letter to Hoag stating that the Agreement remains in effect and Hoag is not in Default.

5.6 Estoppel Certificate. Either Party may at any time deliver written Notice to the other Party requesting an estoppel certificate (the "Estoppel Certificate") stating:

- (a) The Agreement is in full force and effect and is a binding obligation of the Parties.
- (b) The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments.
- (c) No Default in the performance of the requesting Party's obligations under the Agreement exists or, if a Default does exist, the nature and amount of any Default.

A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request. The Planning Director may sign Estoppel Certificates on behalf of the city. An Estoppel Certificate may be relied on by assignees and Mortgagees. The Estoppel Certificate shall be substantially in the same form as Exhibit "D."

5.7 Failure to Conduct Annual Review. The City's failure to conduct an Annual Review shall not constitute or be asserted by the City as Hoag's Default.

6. GENERAL PROVISIONS.

6.1 Effective Date. This Agreement and the obligations of the Parties shall be effective as of the Effective Date. However, this Agreement shall bind the Parties as of the Approval Date, subject only to the Adopting Ordinance becoming effective pursuant to California law.

6.2 Applicability to Coastal Zone. This Agreement shall not be applicable to those portions of the Property located within the Coastal Zone as defined by the California Coastal Act (Division

20, California Public Resources Code, beginning with Section 30000) until either (1) the required local coastal program for the Property has been certified by the California Coastal Commission or (2) the California Coastal Commission has approved this Agreement. This Subsection is intended solely to comply with the provisions of California Government Code Section 65869 and shall be of no force or effect if Section 65869 is repealed.

- 6.3 Term of Agreement. The term of this Agreement (the "Term") shall begin on the Effective Date and continue for twenty-five (25) years unless otherwise terminated or modified pursuant to this Agreement. Any modifications to this Agreement prior to effective certification of the City's Local Coastal Program (LCP), are subject to the review and approval of the Coastal Commission or its successor agency.
- 6.4 Assignment. Hoag has the absolute right to assign (see Section 2.5) its rights and/or delegate its obligations under this Agreement as part of an assignment of all or a portion of the Property. Any assignment shall be subject to the provisions of this Agreement. As long as Hoag owns any part of the Property, Hoag may assign the benefits of this Agreement without delegating the obligations for the portion of the Property assigned. If that occurs, however, the benefits assigned shall remain subject to the performance by Hoag of the corresponding obligations.

Where an assignment includes the delegation of both the benefits and the corresponding obligations, those obligations become solely the obligations of the assignee. If an assignee is in Default, then as to Hoag or any assignees not in Default, the Default shall not constitute their Default, give grounds for termination of their rights under this Agreement or be a basis for an enforcement action against them.

6.5 Amendment of Agreement.

- (a) Subject to the provisions of Subsection (b), and subject to approval of the Coastal Commission or its successor agency prior to effective certification of the City's Local Coastal Program (LCP), this Agreement may be amended from time to time by the mutual consent of the Parties, or their successors in interest, but only in the manner provided by the Government Code and this Agreement. After any amendment, the term "Agreement" shall refer to the amended Agreement.
- (b) The City Council shall not approve, and Hoag shall not request, any amendment to the provisions of the Master Plan or this Agreement that would increase the maximum

permitted gross floor area or the maximum permitted building height (within any lettered building envelope) above that established by the Master Plan as of the Effective Date of this Agreement. This Subsection shall prevail over any conflicting ordinance, resolution, policy or plan adopted by the City Council.

6.6 Enforcement. This Agreement is enforceable by each of the Parties and their respective successors and assigns.

6.7 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

- (a) Expiration of the twenty-five (25) year term;
- (b) Entry, after all appeals have been exhausted, of a final judgment or issuance of a final order directing the City to set aside, withdraw, or abrogate the City's approval of this Agreement or any material part of the Project; or,
- (c) The effective date of a Party's election to terminate the Agreement as provided in Section 9.3 of this Agreement.

6.8 Hoag shall defend, indemnify and hold harmless the City and its officers and employees with respect to any claim, loss or damage in any way related to the grading, excavation or stabilization of the slopes adjacent to the view parks by Hoag or its employees, agents contractors or representatives. This Section is not intended to impose liability on Hoag for the acts of persons other than Hoag or its agents, representatives or contractors.

6.9 Hoag shall enter into an agreement with City to accept ownership of, and responsibility for maintenance of, the existing methane gas venting flare and any device for collecting gas that is subsequently installed on the Property pursuant to conditions or mitigation measures imposed in conjunction with the Master Plan approval or subsequent environmental analysis.

7. CONFLICTS OF LAW.

7.1 Conflict with State and Federal Laws and Regulations. Where state or federal laws or regulations prevent compliance with one or more provisions of this Agreement, those provisions shall be modified, through revision or suspension, to the

extent necessary to comply with such state or federal laws or regulations and the modified Agreement shall remain in effect, subject to the following:

- (a) the City shall not request modification of this Agreement pursuant to this provision unless and until the City Council makes a finding that such modification is required (as opposed to permitted) by state and federal laws or regulations;
- (b) the modifications must be limited to those required (as opposed to permitted) by the state or federal laws;
- (c) the modified Agreement must be consistent with the state or federal laws or regulations which required modification or suspension;
- (d) the intended material benefits of this Agreement must still be received by each of the Parties after modification;
- (e) neither the modification nor any applicable local, state, or federal laws or regulations, may render the modified Agreement impractical to enforce; and
- (f) Hoag consents in writing to the modification.
- (g) Any modifications, prior to effective certification of the City's Local Coastal Program (LCP) are subject to approval of the Coastal Commission or its successor agency.

Hoag shall have the right to seek judicial review of any proposed modification to ensure compliance with this Section.

- 7.2 Effect of Termination. If this Agreement is terminated as a result of changes in state or federal law, Hoag remains obligated to comply with the provisions of Section 8.2(a) and (b), unless Hoag has completed construction of less than twenty-five percent (25%) of the maximum permitted development.

8. PUBLIC BENEFITS/EXACTIONS.

- 8.1 Public Benefits. City and Hoag agree that this Agreement confers a substantial public benefit by enabling Hoag to construct facilities most appropriate to changes in medical technology and thereby better satisfy the health care needs of residents within its service area. In addition, the Master

Plan and this Agreement confer benefits on the public and nearby residents by imposing long term restrictions on the height, amount and location of development as well as the public improvements described in Section 8.2.

8.2 Exactions. Hoag shall, as a condition to the right to develop, do the following:

- (a) Prior to commencement of development, irrevocably offer to dedicate and grade the proposed linear and consolidated view park identified in Figure 3.2.1 of Volume 1 of the EIR. The City shall accept the offer of dedication within sixty (60) days after the initial grading permit has been finalled by the City. The first stage of development shall include grading of the public linear and consolidated viewpark identified in Figure 3.2.1. of Volume I of the EIR. Hoag shall grade and excavate the slope adjacent to the proposed .28 (28/100) acre consolidated public view park and .52 (52/100) acre public linear view park in a way that ensures stability of the park and adjacent slopes. The grade (between the bicycle path and edge of slope) of the view parks shall be the minimum necessary to insure adequate drainage. The improvement for the linear and consolidated public parks shall be completed within three (3) years after the offer of dedication has been accepted by the City. The City shall ensure that adequate erosion control measures are implemented prior to construction.
- (b) Subsequent to the approval of this Agreement by the Coastal Commission and the expiration of any statute of limitation for filing a legal challenge to this Agreement, the Master Plan, or the EIR, Hoag shall deposit Two Hundred and Fifty Thousand Dollars (\$250,000.00) in an account, and at a financial institution, acceptable to City. The account shall be in the name of the City provided, however, Hoag shall have the right to access the funds in the event, but only to the extent that, Hoag constructs or installs the improvements described in (i) or (ii). Funds in the account shall be applied to the following projects (in order of priority upon notice to proceed served by City on Hoag):
 - (i) The construction of a sidewalk and installation of landscaping in the CalTrans right-of-way along the west side of Newport Boulevard southerly of Hospital Road;

- (ii) The construction of facilities necessary to bring reclaimed water to West Newport and/or the Property;

Any funds remaining in the account after completion of the projects described in (i) and (ii) shall be used by the City to fund, in whole or in part, a public improvement in the vicinity of the property.

- (c) City and Hoag shall conduct a study of possible future improvements in and around the easterly end of Semenluk Slough that would, among other things, improve the appearance of the area and, potentially, serve as a component to improve public access from residential areas in West Newport to park land and public recreation facilities proposed in conjunction with development of the West Newport Oil Company property. The study shall analyze, among other things, the type of improvements that would improve the area without adversely impacting wetlands, the possible location of pedestrian trails and the potential for those trails to improve access to proposed recreational facilities, phasing of the improvements, potential public benefits, and the cost of the improvements. As a part of the study, Hoag and City shall meet and confer with resource agencies relative to the type and extent of improvements that may be permitted in or adjacent to wetlands. Hoag shall fund the study and participate in the cost of constructing any improvements in the area that the City Council determines are feasible and in the public interest, provided, however, the financial contribution of Hoag, including the costs of the study and improvements, shall not exceed Two Hundred Thousand Dollars (\$200,000.00).

- (d) Hoag's obligations pursuant to Subsection (c) are contingent on Coastal Commission approval of the Master Plan and attached as Exhibit C to this Agreement with no significant reduction in entitlement from that authorized in the Master Plan. Hoag's obligations pursuant to Subsection (b) shall be reduced through good faith negotiations in the event the Coastal Commission reduces entitlement by ten percent (10%) or more from that authorized in the Master Plan.

9. DEFAULT, REMEDIES AND TERMINATION.

- 9.1 General Provisions. In the event of a Default (see Section 2.11), the Party alleging a Default shall give the other Party

a written Notice of Default. The Notice of Default shall specify the nature of the alleged Default, and a reasonable manner and sufficient period of time (not less than thirty (30) days) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of the Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then a Default shall be deemed not to exist.

- 9.2 Option to Institute Legal Proceedings or to Terminate. If an alleged Default is not cured within the Cure Period, the noticing Party must give the defaulting Party a Notice of intent to terminate the Agreement. Within thirty (30) days after giving of the Notice, the City Council shall hold a public hearing in the manner set forth in Government Code Sections 65865, 65867, and 65868, as amended, to consider and review the matter.
- 9.3 Notice of Termination. After considering the evidence presented to the City Council, the Party alleging the Default, at its option, may give written Notice of termination of the Agreement to the other Party and the Agreement shall be terminated immediately upon giving the Notice. A termination shall be valid only if good cause exists and clear and convincing evidence was presented to the City Council to establish the existence of a Default. The findings of the City Council as to the existence of a Default shall have no weight in any legal proceeding brought to determine the existence of a Default. The validity of any termination may be challenged pursuant to Section 11.16, in which case the court must render an independent judgment, on the basis of clear and convincing evidence, as to the existence of good cause for termination. Termination may result only from a material Default of a material provision of this Agreement.
- 9.4 Waiver. Failure or delay in giving Notice of Default shall not waive a Party's right to give future Notice of the same or any other Default.
- 9.5 Default by Hoag. If the City alleges a Hoag Default, the City shall conduct a hearing utilizing the Annual Review procedures required by this Agreement before the City may commence legal proceedings to terminate this Agreement.
- 9.6 Default by the City. If Hoag alleges a City Default, Hoag, without limiting any of its other remedies, shall not be

obligated to proceed with or complete the Project or any phase of the Project, nor to perform any further obligations under the Agreement. Upon a City Default, any resulting delays in Hoag's performance shall neither be Hoag's Default nor constitute grounds for termination or cancellation of the Agreement by the City.

10.0 ENCUMBRANCES AND RELEASES ON PROPERTY.

- 10.1 Discretion to Encumber. Hoag may encumber all or any portion of the Property in any manner. The City acknowledges that lenders providing financing may require technical modifications to the Agreement which do not materially alter the intent of the Parties. The City agrees to meet, upon request, with Hoag and/or lenders to negotiate in good faith any lender request for modification. The City agrees to not withhold unreasonably its consent to such modification. Any such modification, prior to effective certification of the City's Local Coastal Program (LCP), is subject to the review and approval of the Executive Director of the Coastal Commission or its successor agency.
- 10.2 Entitlement to Written Notice of Default. Any Mortgagee and its successors and assigns, upon written request to the City, shall be entitled to receive from the City written Notice of any Hoag Default at the same time Hoag is provided with Notice pursuant to Section 9.1.

11.0 MISCELLANEOUS PROVISIONS.

- 11.1 Notices. All Notices (see Section 2.26) shall be written and delivered by personal delivery (including Federal Express and other commercial express delivery services providing acknowledgments or receipt), registered, certified, or express mail, or telegram to the addresses set forth below. Receipt shall be deemed complete as follows:
- (a) For personal delivery, upon actual receipt;
 - (b) For registered, certified, or express mail, upon the delivery date or attempted delivery date as shown on the return receipt; and
 - (c) For telegram, upon the transmission of the telegram.

Notices shall be addressed as follows:

To the City: City Clerk
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92660
Attention: City Attorney
Attention: City Manager

To Hoag: Hoag Memorial Hospital Presbyterian
301 Newport Boulevard
Newport Beach, CA 92663
Attention: President

With a copy to:

Tim Paone
Paone, Callahan, McHolm & Winton
19100 Von Karman, 8th Floor
P.O. Box 19613
Irvine, CA 92713-9613

The addresses to which Notices shall be sent may be changed by giving Notice of a new address.

11.2 Enforced Delay/Extension of Time of Performance. Neither Party shall be deemed to be in Default where delays or non-performance are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, oil spills, casualties, acts of nature, unavailability of materials, governmental restrictions imposed or mandated by governmental entities, suspension of rights in accordance with the existence of unforeseen circumstances, litigation, or similar bases for excused performance. If written Notice of such delay is given to the other Party within thirty (30) days after such delay begins an extension of time for performance shall be granted in writing for the period of the delay, or longer as may be mutually agreed upon. In no event shall the term of this Agreement be extended as a result of the application of this Subsection.

11.3 Severability. If any material part of the Agreement is found by a court to be invalid, void, or illegal, the Parties shall modify the Agreement to implement the original intent of the Parties. These steps may include the waiver by either of the Parties of their right under the unenforceable provision. If, however, the Agreement objectively cannot be modified to implement the original intent of the Parties and the Party substantially benefitted by the material provision does not waive its rights under the unenforceable provision, the entire

Agreement shall become void. For purposes of this Section, and without excluding the possible materiality of other provisions of this Agreement, all provisions of Sections 3, 4 and 8 are deemed "material."

- 11.4 Entire Agreement. This Agreement constitutes the entire understanding and Agreement of the Parties regarding the subject matter of this Agreement. This Agreement supersedes all negotiations and previous agreements between the Parties regarding that subject matter.
- 11.5 Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the Party making the waiver and, prior to effective certification of the City's Local Coastal Program (LCP), are subject to approval of the Coastal Commission or its successor agency.
- 11.6 Incorporation of Recitals. The Recitals set forth in Section 1 are part of this Agreement.
- 11.7 Covenant of Good Faith and Fair Dealing. Neither Party shall do anything which shall have the effect of harming or injuring the right of the other Party to receive the benefits of this Agreement.
- 11.8 Further Actions and Instruments. Upon the request of either Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.
- 11.9 Successors and Assigns. Subject to Section 6.3 above, the burdens of this Agreement shall be binding upon, and the benefits of the Agreement inure to, all successors-in-interest and assigns of the Parties.
- 11.10 Construction of Agreement. All language in all parts of this Agreement shall be construed as a whole and given its fair meaning. The captions of the paragraphs and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of construction. This Agreement shall be governed by the laws of the State of California. This Agreement is not intended to impermissibly contract away the

legislative and governmental functions of the City, and in particular, the City's police powers or to surrender or abrogate the city's governmental powers over the Property.

- 11.11 Authority to Execute. The person executing this Agreement on behalf of Hoag warrants and represents that he/she has the authority to do so and the authority to bind Hoag to the performance of Hoag's obligations under this Agreement.
- 11.12 Consent. Any consent required by the Parties in carrying out the terms of this Agreement shall not unreasonably be withheld.
- 11.13 Effect on Title. This Agreement shall not continue as an encumbrance against any portion of the Property as to which this Agreement has terminated.
- 11.14 Recording. The City Clerk shall cause a copy of this Agreement to be executed by the City and recorded in the Official Records of Orange County no later than ten (10) days after the Effective Date. The recordation of this Agreement is deemed a ministerial act and the failure of the City to record the Agreement as required by this Section and Government Code Section 65868.5 does not make the Agreement void or ineffective.
- 11.15 Institution of Legal Action. In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any Default, to enforce any provision of this Agreement, to enjoin any threatened or attempted violation of this Agreement, to recover damages for any Default, or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Superior Court of the County of Orange, State of California, or in the Federal District Court in the Central District of California.
- 11.16 Attorneys' Fees. In any arbitration, quasi-judicial, administrative, or judicial proceeding between the Parties initiated with respect to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all costs, expenses, and disbursements in connection with such action.

Date: 2-23-94, 1994

CITY OF NEWPORT BEACH

By: Clarence Turner
Clarence Turner, Mayor

Date: March 9, 1994

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

By: Albert J. Apter
Albert J. Apter
Chairman of the Board

wb\haagda4.fnl
1/21/94

LEGAL DESCRIPTION

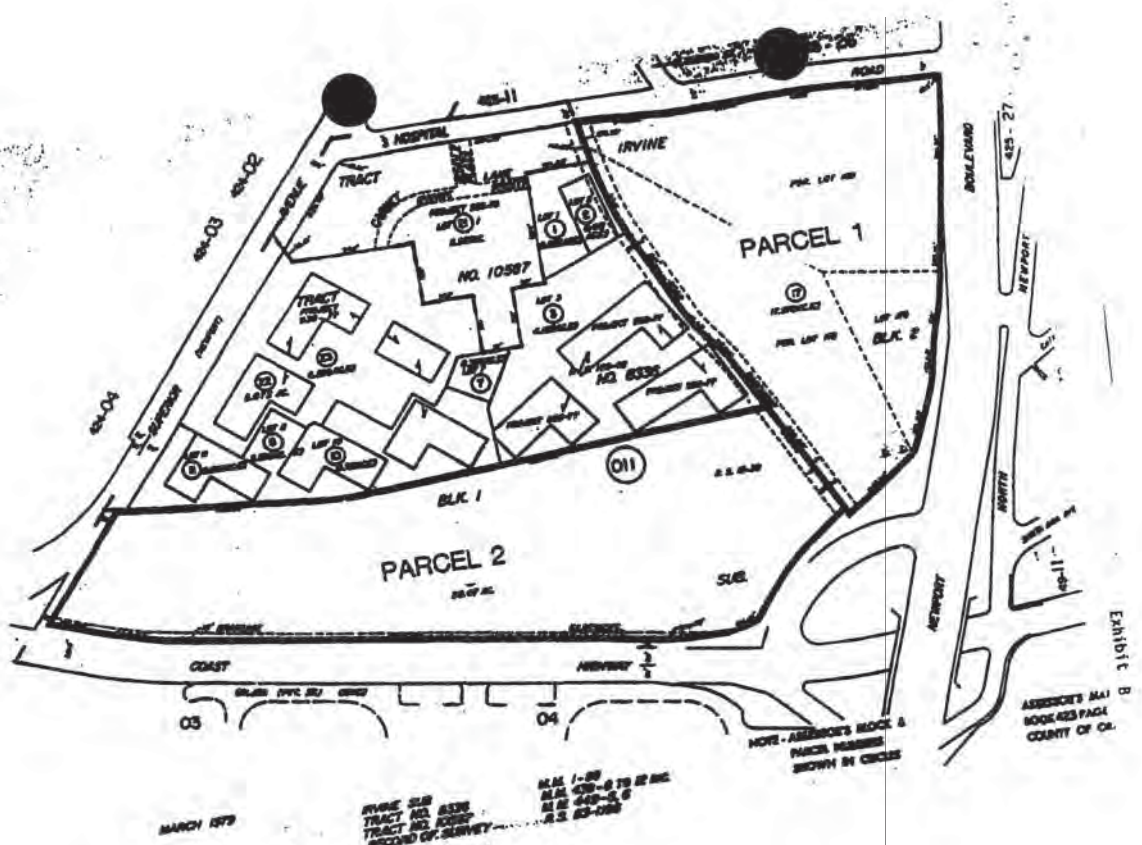
The subject property is the following real property in the City of Newport Beach, County of Orange, State of California:

Parcel 1:

That portion of Lots 169 and 170 in Block 2 and a portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

Parcel 2:

That portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.



HOAG MEMORIAL HOSPITAL PRESBYTERIAN

**PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS**

**Recommended for Approval
by the Planning Commission
February 20, 1992**

**Adopted by the City Council
City of Newport Beach
Ordinance No. 92-3
May 26, 1992**

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I. INTRODUCTION

Background

The Hoag Memorial Hospital Presbyterian Planned Community District in the City of Newport Beach has been developed in accordance with the Newport Beach General Plan. The purpose of this Planned Community District is to provide a method whereby property may be classified and developed for hospital-related uses. The specifications of this District are intended to provide land use and development standards supportive of the proposed use while ensuring compliance with the intent of all applicable regulatory codes.

The Planned Community District includes district regulations and a development plan for both the upper and lower campuses of Hoag Hospital. In general, over the long term, the upper campus will become oriented primarily towards emergency, acute and critical care (predominantly inpatient) uses and the lower campus will be developed with predominantly outpatient uses, residential care and support services.

Whenever the regulations contained in the Planned Community text conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the Planned Community text shall take precedence. The Municipal Code shall regulate this development when such regulations are not provided within these district regulations. All development within the Planned Community boundaries shall comply with all provisions of the Uniform Building Code and other governing building codes.

II. GENERAL NOTES

1. Water service to the Planned Community District will be provided by the City of Newport Beach.
2. Development of the subject property will be undertaken in accordance with the flood protection policies of the City of Newport Beach.
3. All development of the site is subject to the provisions of the City Council Policies K-5 and K-6 regarding archaeological and paleontological resources.
4. Except as otherwise stated in this text, the requirements of the Newport Beach Zoning Ordinance shall apply. The contents of this text notwithstanding, all construction within the boundaries of this Planned Community District shall comply with all provisions of the Uniform Building Code, other various codes related thereto and local amendments.
5. All buildings shall meet Title 24 requirements. Design of buildings shall take into account the location of building air intake to maximize ventilation efficiency, the incorporation of natural ventilation, and implementation of energy conserving heating and lighting systems.
6. Any fire equipment and access shall be approved by the Newport Beach Fire Department.
7. New mechanical appurtenances on building rooftops and utility vaults, excluding communications devices, on the upper campus shall be screened from view in a manner compatible with building materials. Rooftop mechanical appurtenances or utility vaults shall be screened on the lower campus. Noise shall not exceed 55 dBA at all property lines. No new mechanical appurtenances may exceed the building height limitations as defined in these district regulations.

8. Grading and erosion control shall be carried out in accordance with the provisions of the City of Newport Beach Grading Ordinance and shall be subject to permits issued by the Building and Planning Departments.
9. Sewage disposal facilities within the Planned Community will be provided by Orange County Sanitation District No. 5. Prior to issuance of any building permits it shall be demonstrated to the satisfaction of the Planning Department that adequate sewer facilities will be available. Prior to the occupancy of any structure it shall be further demonstrated that adequate sewer facilities exist.
10. Mass grading and grading by development phases shall be allowed provided that landscaping of exposed slopes shall be installed within 30 days of the completion of grading.

III. DEFINITIONS

Building Elevation:

1. a vertical distance of a building above or below a fixed reference level, i.e., MSL (mean sea level).
2. a flat scale drawing of the front, rear, or side of a building.

Building Envelope: the volume in which a building may be built as circumscribed by setback lines and maximum allowable building heights.

Building Height: the vertical distance measured from the finished grade to the highest point of the structure. At all points, the height measurement shall run with the slope of the land.

Emergency Room: a service and facility designated to provide acute emergency medical services for possible life threatening situations.

Fast Aid: low acuity medical treatment for non-life threatening situations.

General Plan: the General Plan of the City of Newport Beach and all elements thereof.

Grade: for the purpose of determining building height:

1. **Finished -** the ground level elevation which exists after any grading or other site preparation related to, or to be incorporated into, a proposed new development or alteration of existing developments. (Grades may be worked into buildings to allow for subterranean parking.)
2. **Natural -** the elevation of the ground surface in its natural state before man-made alterations.
3. **Existing -** the current elevation of ground surface.

Inpatient Uses: hospital patient services which require overnight stay.

Landscape Area: the landscape area shall include on-site walks, plazas, water, rooftop

landscaping and all other areas not devoted to building footprints or vehicular parking and drive surfaces.

Mean Sea Level: a reference or datum mark measuring land elevation using the average level of the ocean between high and low tides.

Outpatient Uses: hospital patient services which do not require overnight stay.

Residential Care: medically-oriented residential units that do not require the acuity level generally associated with inpatient services but require overnight stays.

Site Area: for the purpose of determining development area:

1. Gross - parcel area prior to dedications.
2. Net - parcel area after dedications.

Special Landscaped Street: West Coast Highway is designated as a special landscaped street, containing special landscape requirements.

Streets: reference to all streets or rights-of-way within this ordinance shall mean dedicated vehicular rights-of-way.

IV. DEVELOPMENT PLAN

Project Characteristics

The upper campus of Hoag Hospital is located on a triangular site of approximately 17.57 acres and is bounded by Newport Boulevard to the east, Hospital Road to the north and existing residential developments (the Versailles and Villa Balboa/Seafaire condominiums) to the west. The lower campus is located north of West Coast Highway, south of the Versailles and Villa Balboa/Seafaire Condominiums, west of Newport Boulevard and east of Superior Avenue. It contains approximately 20.41 acres and adjoins the upper campus at its eastern boundary. The upper campus is, and will continue to be, oriented towards inpatient functions, while the lower campus will be developed with predominantly outpatient, residential care and support services.

Development Plan

The Planned Community Development Plan for Hoag Hospital is shown on Exhibit 1. From 1990 to 2015, many of the existing buildings shown on the Development Plan for the upper campus may be redeveloped in order to functionally respond to the needs of the Hospital and conform to the requirements of State agencies.

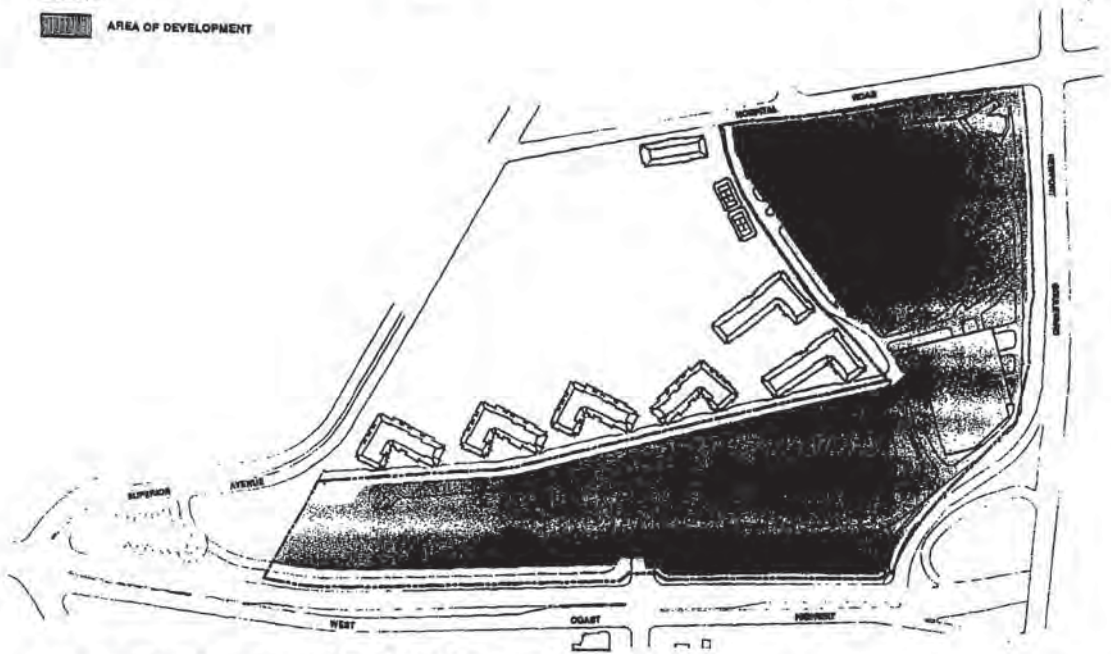
The Development Plan includes a 0.8 acre view park adjacent to the bike trail between the lower campus and the Villa Balboa/Seafaire Condominiums. This view park includes a twenty-foot wide linear park area adjacent to the bike path (approximately 0.5 acres) and a consolidated view park at the westerly edge of the property (approximately 0.3 acres). A bike trail connection is also provided between the existing bike trails at the northern and southern boundaries of the lower campus. Access to the lower campus will be from West Coast Highway and Superior Avenue, as well as from Hospital Road, via the upper campus. Exhibit 2 shows the internal circulation for Hoag Hospital.

The Development Plan does not specify building locations or specific hospital related uses. Instead, a developable area is identified based on the regulations established for this Planned Community District. Because of the dynamic nature of the health care industry which leads to rapid technological changes that effect how health care services are delivered, the Development Plan for Hoag Hospital sets development caps as a function of allowable densities established by the Newport Beach General Plan.

LEGEND



AREA OF DEVELOPMENT



PLANNED COMMUNITY DEVELOPMENT PLAN
HOAG MEMORIAL HOSPITAL PRESBYTERIAN

May 26, 1993

EXHIBIT 1








The statistical analysis (Table 1) provides a summary of a potential development profile for Hoag Hospital. In order to provide flexibility for the hospital to respond to changes in the health care industry, while at the same time ensuring that trip generation restrictions are adhered to and the overall development cap is not exceeded, this Development Plan allows Hoag Hospital to adjust the development profile provided in the statistical analysis. For example, if changing hospital needs necessitate the development of additional outpatient uses, this development would be allowed, consistent with the Development Plan, as long as a corresponding adjustment in square footage and trip generation for another use were to occur.

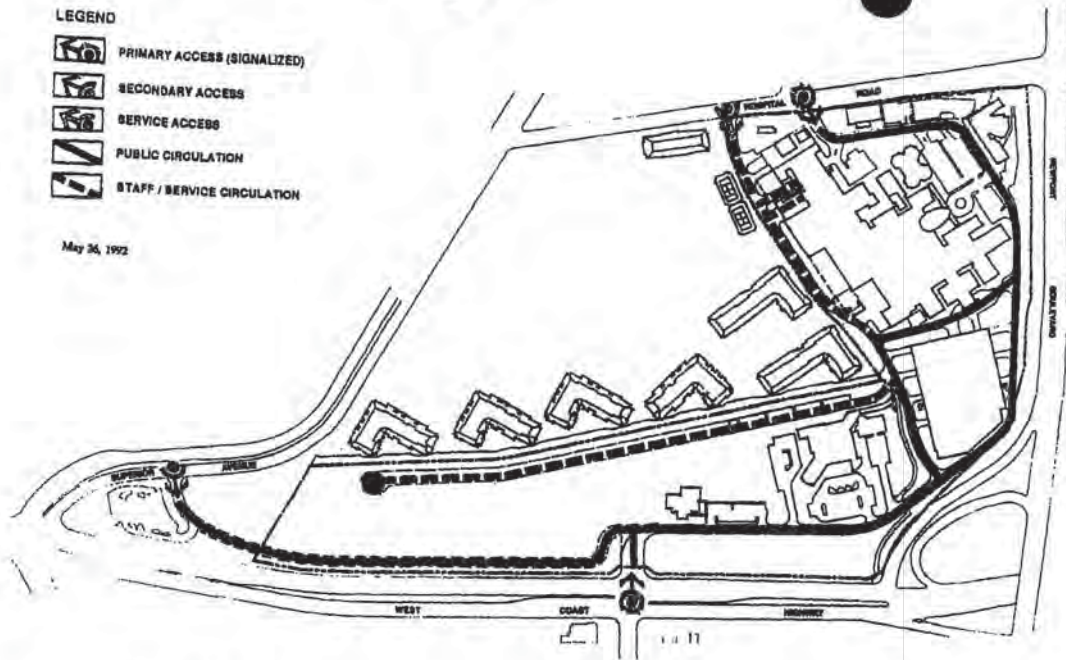
This Development Plan allows Hoag Hospital to adjust the development profile provided in the statistical analysis (Table 1) as long as the development limit (i.e., square feet) or the trip generation limit for the peak period (as identified in the Environmental Impact Report) established within each phase of development is not exceeded.

Adjustments to the Development Plan may be allowed if the total square footage or trip generation allowed in the current phase of development is exceeded, if the total development or trip generation allowed under the Development Plan is not exceeded.

LEGEND

-  PRIMARY ACCESS (SIGNALIZED)
-  SECONDARY ACCESS
-  SERVICE ACCESS
-  PUBLIC CIRCULATION
-  STAFF / SERVICE CIRCULATION

May 24, 1992



VEHICULAR ACCESS
HOAG MEMORIAL HOSPITAL PRESBYTERIAN

EXHIBIT 2



Table 1
STATISTICAL ANALYSIS¹

<u>Use</u>	<u>Square Feet</u>
Lower Campus	
Existing:	
Outpatient Services (Hoag Cancer Center)	65,000
Child Care	7,800
Subtotal:	<u>72,800</u>
Phase I:	
Outpatient Services	115,000
Support Service	55,000
Administrative	30,000
Subtotal:	<u>200,000</u>
Phases II & III:	
Subtotal:	<u>305,089</u>
<u>Total Lower Campus</u>	<u>577,889</u>
Upper Campus	
Existing²:	480,000
Phase I:	
Outpatient Services	25,000
Inpatient	115,000
Subtotal:	<u>140,000</u>
Phases II & III:	145,349
<u>Total Upper Campus</u>	<u>765,349</u>
GRAND TOTAL	1,343,238³

¹ Full development of the upper and lower campuses is anticipated to occur over an approximate 20-year period and will likely occur in three, seven-year phases.

² Up to 50% of the existing upper campus may be redeveloped by master plan buildout.

³ Based on development allowed under the General Plan at a floor area ratio to gross site area of .65 for the lower campus and 1.0 for the upper campus. Building Bulk limit for the lower campus is 0.90 for all structures which includes above grade covered parking.

V. DISTRICT REGULATIONS

The following regulations apply to all development within the Hoag Hospital Planned Community. The individual uses listed under the five permitted use categories is not an exhaustive list. Other hospital-related uses which fit into the five permitted use categories are allowed by definition. Prior to the issuance of a building permit, plot plans, elevations and any other such documents deemed necessary by the Planning, Building and Public Works Departments shall be submitted for the review and approval of the Planning, Building, and Public Works Departments.

A. Permitted Uses

1. Lower Campus

a) Hospital facilities, including, but not limited to:

i. Outpatient services:

- Antepartum Testing
- Cancer Center
- Skilled Nursing
- Rehabilitation
- Conditioning
- Surgery Center
- Clinical Center
- Day Hospital
- Back and Neck Center
- Biofeedback
- Breast Imaging Center
- CT Scan
- Dialysis
- EEG/EMG/NICE Laboratory
- First Aid Center
- Fertility Services
- G.I. Laboratory
- Laboratory
- Magnetic Resonance Imaging
- Nuclear Medicine
- Occupational Therapy
- Pediatrics
- Pharmacy
- Physical Therapy
- Pulmonary Services

- Radiation Therapy
- Radiology
- Respiratory Therapy
- Sleep Disorder Center
- Speech Therapy
- Ultrasound

ii. Administration:

- Admitting
- Auxiliary Office
- Business Offices
- Information
- Registration
- Patient Relations
- Social Services

iii. Support Services:

- Employee Child Care
- Health Education
- Power/Mechanical/Auxiliary Support and Storage
- Food Services
- Cashier
- Chapel/Chaplaincy Service
- Conference Center
- Dietitian
- Gift Shop
- Laboratory
- Medical Library
- Medical Records
- Pharmacy
- Engineering/Maintenance
- Shipping/Receiving
- Microwave, Satellite, and Other Communication Facilities

iv. Residential Care:

- Substance Abuse
- Mental Health Services
- Extended Care
- Hospice Care
- Self or Minimal Care
- Congregate Care

v. Medical/Support Offices

- b) Methane gas flare burner, collection wells and associated system components.
- c) Accessory uses normally incidental to hospital development.
- d) Temporary structures and uses, including modular buildings.

2. Upper Campus

- a) Hospital facilities, including, but not limited to:
 - i) Inpatient uses:
 - Critical Care
 - Emergency Care Unit
 - Birth Suites
 - Cardiology
 - Cardiac Care Unit
 - Intensive Care Unit
 - Mother/Baby Unit
 - Surgery/Waiting Rooms
 - Radiology
 - Laboratory
 - Pharmacy
 - ii) Outpatient services as allowed on the lower campus
 - iii) Administrative uses as allowed on the lower campus
 - iv) Support services as allowed on the lower campus
 - v) Residential care as allowed on the lower campus
 - vi) Heliport (subject to Conditional Use Permit)
- b) Accessory uses normally incidental to hospital development.
- c) Temporary structures and uses, including modular buildings.

B. Prohibited Uses

1. Lower Campus
 - a) Emergency Room
 - b) Heliport

C. Maximum Building Height

The maximum building height of all buildings shall be in accordance with Exhibit 3 which established the following height zones:

1. Upper Campus Tower Zone - maximum building height not to exceed the existing tower (235 feet above mean sea level).
2. Upper Campus Midrise Zone - maximum building height not to exceed 140 feet above mean sea level.
3. Upper Campus Parking zone - maximum building height not to exceed 80 feet above mean sea level, exclusive of elevator tower.
4. Lower Campus Zone, Sub-Areas A, B, C, F and G - within each sub-area no building shall exceed the height of the existing slope and conform to the range of maximum building heights indicated on the development criteria Exhibit 3.
5. Lower Campus Zone, Sub-Areas D and E - maximum building height shall not exceed the height of the existing Hoag Cancer Center (57.5 feet above mean sea level).

D. Setbacks

Setbacks for the Hoag Hospital Planned Community are shown on Exhibit 3.

1. Setbacks will be provided along property boundaries adjacent to the Villa Balboa / Seafaire Condominiums, as defined below:
 - a) Upper campus western boundary setback shall be the prolongation of the westerly edge of the existing cafeteria/laboratory building to the points of intersection with the easterly curb line of the existing service drive, then continuing along said line of the existing service drive.
 - b) Lower campus northern boundary, all of which will have a 20' minimum building setback.

2. The setback on West Coast Highway easterly of the hospital entry signal shall be 15 feet.

In addition, vertical articulation shall be required for buildings easterly of the signal within 150 feet of the West Coast Highway frontage, as follows:

1st Floor: Up to 18 feet in height no additional articulation is required. If the 1st floor exceeds 18 feet in height, it shall be subject to the articulation requirements of the 2nd Floor.

2nd Floor (up to 32' in height): A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 2nd floor setback of 20 feet.

3rd Floor and above: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 3rd floor and above setback of 25 feet.

The setback on West Coast Highway westerly of the hospital entry signal shall be 45 feet.

In addition, vertical articulation shall be required for buildings westerly of the signal for buildings within 150 feet of the West Coast Highway frontage, as follows:

1st Floor: Up to 18 feet in height no additional articulation is required. If the 1st floor exceeds 18 feet in height, it shall be subject to the articulation requirements of the 2nd Floor.

2nd Floor (up to 32' in height): A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 2nd floor setback of 55 feet.

3rd Floor and above: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 3rd floor and above setback of 65 feet.

In order to avoid any future structures in this area (within 150 feet of West Coast Highway) from presenting an unacceptable linear mass, no single structure shall be greater than 250 linear feet in width. Additionally, 20% of the linear frontage within 150 feet of West Coast Highway shall be open and unoccupied by buildings.

10% of the linear length of height zones A and B as viewed from the existing bicycle/pedestrian trail, exclusive of that area adjacent to the consolidated portion of the view park, shall be maintained as view corridors between buildings.

These requirements may be altered for individual buildings, if requested by the hospital, through the site plan review process defined in Section IX.

3. There will be no building setbacks along the boundary with CalTrans east property at Superior Avenue and West Coast Highway.
4. A 20 foot setback from property line shall be provided along Newport Boulevard from Hospital Road to a point 600 feet south; a 25 foot setback from property line shall be provided along the remainder of Newport Boulevard and along the Newport Boulevard/West Coast Highway Interchange.
5. A ten (10) foot building setback from the property line shall be provided along Hospital Road.

E. Lighting

The lighting systems shall be designed and maintained in such a manner as to conceal the light source and to minimize light spillage and glare to the adjacent residential uses. The plans shall be prepared and signed by a licensed Electrical Engineer.

F. Roof Treatment

Prior to the issuance of building permits, the project sponsor shall submit plans which illustrate that major mechanical equipment will not be located on the roof of any structure on the Lower Campus. Rather, such buildings will have clean rooftops. Minor rooftop equipment necessary for operating purposes will comply with all building height criteria, and shall be concealed and screened to blend into the building roof using materials compatible with roofing materials.

G. Signs

All signs shall be as specified under the Hoag Hospital Sign Program, Part VI.

H. Parking

All parking shall be as specified in Part VII, Hoag Hospital Parking Regulations.

I. Landscape

All landscaping shall be as specified in the Hoag Hospital Landscape Regulations, Part VIII.

J. Mechanical and Trash Enclosures

Prior to issuance of a building permit, the project sponsor shall submit plans to the City Planning Department which illustrate that all mechanical equipment and trash areas will be screened from public streets, alleys and adjoining properties.

K. Internal Circulation

1. Prior to the issuance of a grading permit for any of the proposed Master Plan facilities, the project sponsor shall implement a pilot program that controls usage of the Upper and Lower Campus service roads during non-working hours. Such controls may include requesting that the majority of vendors deliver products (other than emergency products) during working hours (i.e. 7:00 a.m. to 8:00 p.m.), signage to restrict use of the road by Hospital employees, physicians, patients and visitors during non-working hours, and other methods to restrict use. The Hospital will also request that vendors not deliver (i.e. scheduled and routine deliveries) on the weekends.

This restriction specifically applies to scheduled and routine deliveries. The results of this program will be submitted to the City prior to the issuance of the grading permit. If such results indicate that such controls do not significantly impact the operations of the Hospital, and provided that requests for specified vendor delivery times is consistent with future Air Quality Management Plan procedures, the City may require that the program be implemented as hospital policy. If operation impacts are significant, other mitigation measures will be investigated at that time to reduce service road impacts to the adjacent residential units.

2. The lower campus service road shall include provisions for controlled access to limit usage to physicians and staff, and service vehicles.

L. Loading Dock

Within one year from the date of final approval of the Planned Community District Regulations and Development Plan by the California Coastal Commission, as an interim measure, the project sponsor shall implement an acoustical and/or landscape screen to provide a visual screen from and reduce noise to adjoining residences from the loading dock area.

The design process for the Critical Care Surgery Addition shall include an architectural and acoustical study to insure the inclusion of optimal acoustical screening of the loading dock area by that addition.

Subsequent to the construction of the Critical Care Surgery Addition, an additional acoustical study shall be conducted to assess the sound attenuation achieved by that addition. If no significant sound attenuation is achieved, the hospital shall submit an architectural and acoustical study assessing the feasibility and sound attenuation implications of enclosing the loading dock area. If enclosure is determined to be physically feasible and effective in reducing noise impacts along the service access road, enclosure shall be required. Any enclosure required pursuant to this requirement may encroach into any required setback upon the review and approval of a Modification as set forth in Chapter 20.81 of the Newport Beach Municipal Code.

VI. HOAG HOSPITAL SIGN PROGRAM

A. Purpose and Intent

1. The purpose of this Sign Program is to provide adequate, consistent and aesthetically pleasing on-building wall and ground-mounted signage based upon the provisions set forth by the City of Newport Beach Sign Ordinance and the information signage requirements of Hoag Hospital.
2. The intent of this Sign Program is to produce uniform standards for Hoag Hospital.

B. General Sign Standards

1. All signs visible at the exterior of any building or facility of the Hospital, ground mounted or on-building, may be illuminated or non-illuminated, depending upon need. Illumination method may be by external or internal source. No sign shall be constructed or installed to rotate, gyrate, blink or move, nor create the illusion of motion, in any fashion.
2. All signs attached to building or facility exteriors shall be flush or surface mounted as is appropriate to the architectural design features of said building or facility.
3. All signs together with the entirety of their supports, braces, guys, anchors, attachments and decor shall be properly maintained, legible, functional and safe with regard to appearance, structural integrity and electrical service.
4. All street signs shall be subject to review and approval of the City Traffic Engineer, and shall be in compliance with Ordinance 110-L.

C. Number of Signs Allowed

1. One (1) double-faced primary identification ground-mounted sign or two single faced gateway entry signs shall be allowed per street frontage. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Total maximum signage area shall not exceed two hundred (200) square feet and shall not exceed ten (10) feet in height per sign and street frontage. This sign may occur as a wall sign, to be located upon a project boundary perimeter wall, subject

to the same number and area maximums described above. This sign may also occur as part of an entry gateway system.

2. Secondary identification signs shall be allowed. This sign type shall not exceed a maximum height of 48" average height above finished grade. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Maximum sign area shall not exceed thirty-five (35) square feet. This sign may occur as a wall sign to be located upon a project boundary perimeter wall, subject to the same number and area maximums described above.
3. Vehicular and pedestrian directional signs shall be allowed. This sign type may occur as a single-faced or double-faced sign. This sign type shall occur with the sign suspended between two upright supports having the same depth (thickness) as the sign cabinet described above.
4. Hospital identification signs shall be allowed upon hospital tower parapets, one (1) at each elevation. The elevation facing west (Villa Balboa property line) may not be illuminated.
5. On the lower campus, one (1) building-mounted identification sign will be allowed per structure and shall not be placed so as to directly face the Villa Balboa/Seafaire property. Such signs will be no higher than the roof line of the building upon which they are mounted.

VII. HOAG HOSPITAL PARKING REGULATIONS

A. General

1. Off-street parking for Hoag Hospital shall be provided on-site. Parking may be on surface lots, subterranean or in parking structures.
2. The design and layout of all parking areas shall be subject to the review and approval of the city Traffic Engineer and the Public Works Department.
3. Parking lot lighting shall be developed in accordance with City standards and shall be designed in a manner which minimizes impacts on adjacent land uses. Nighttime lighting shall be limited to that necessary for security and shielded down from any adjacent residential area. The plans shall be prepared and signed by a licensed electrical engineer, with a letter from the engineer stating that the requirements has been met. The lighting plan shall be subject to review and approval of the City Planning Department.

B. Requirements for Offstreet Parking

Parking requirements for specific sites shall be based upon the parking criteria established in Table 2. All parking shall be determined based upon building type and the area allotted to the following functions. Any area which is calculated as part of the total floor area limitation shall be included in the gross floor area to determine the parking requirement.

Table 2
PARKING REQUIREMENTS

<u>Use Category</u>	<u>Parking Requirements</u>
Outpatient Services	2.0 spaces/1,000 square feet*
Support	1.0 spaces/1,000 square feet*
Administrative	4.0 spaces/1,000 square feet*
Residential Care	1.0 spaces/1,000 square feet*
Medical Offices	4.0 spaces/1,000 square feet*
Inpatient	1.25 spaces/1,000 square feet**

- * Parking requirements are based on a study performed by DKS Associates in May, 1987.
- ** Parking requirement is based on current Hoag Hospital parking demand.

VIII. HOAG HOSPITAL LANDSCAPE REGULATIONS

A. General

1. Detailed landscape and irrigation plans, prepared by a registered Architect or under the direction of a Landscape Architect, shall be reviewed by the Planning and Parks, Beaches and Recreation Departments and approved by the Public Work Departments prior to issuance of a building permit and installed prior to issuance of Certificate of Use and Occupancy. The Landscape Plan may include a concept for the roofs and the parking structures. Trees shall not be used, but a planter box or trellis system shall be designed to provide visual relief of parking structures. All landscaping shall conform to the building height limits established in this text.
2. Parking lot trees shall be no less than fifteen (15) gallon size.
3. Shrubs to be planted in containers shall not be less than one (1) gallon size. Ground covers will be planted from (1) gallon containers or from root cuttings.
4. Every effort should be made to avoid using plants with invasive and shallow root systems.
5. Earth berms shall be rounded and natural in character, designed to obscure automobiles and to add interest to the site. Wheel stops shall be so placed that damage to trees, irrigation units and shrubs is avoided.
6. Trees in parking lots should be limited in variety. Selection should be repeated to give continuity. Regular spacing is not required and irregular groupings may add interest. Care should be exercised to allow plants to grow and maintain their ultimate size without restriction.
7. Heavy emphasis shall be placed on the use of drought-resistant native and naturalized vegetation and the use of an irrigation system designed to avoid surface runoff and over-watering.

B. Maintenance

1. All planting areas are to be kept free of weeds and debris.
2. Lawn and ground covers are to be kept trimmed and/or mowed regularly.

3. All plantings are to be kept in a healthy and growing condition. Fertilization, cultivation and tree pruning are to be carried out as part of regular maintenance.
4. Irrigation systems are to be kept in working condition. Adjustment and cleaning of system should be part of regular maintenance.
5. Stakes, guys and ties on trees should be checked regularly for correct function; ties to be adjusted to avoid creating abrasions or girdling to the stems.
6. Damage to plantings created by vandalism, automobile or acts of nature shall be corrected within thirty (30) days.

C. Special Landscaped Street

West Coast Highway is designated in the Hoag Hospital Planned Community as a special landscaped street. A 15' building setback from right-of-way / property line is required along West Coast Highway. Only driveways, parking and signage are allowed in the setback area. Parking areas shall be screened from view of West Coast Highway with landscaped berms.

Landscaping along West Coast Highway shall consist of trees, ground cover and shrubbery. All unpaved areas not utilized for parking or circulation shall be landscaped in a similar manner. Tree size to be no less than twenty-four (24) inch box.

D. Villa Balboa Landscape Zone

The area between the Villa Balboa/Hoag property line and the loading dock service access road shall be landscaped except for any driveway, walkway, or other hardscape elements in said area. The purpose of the landscaping will be to screen and buffer residential units from hospital activities.

E. Parking Areas

A minimum of 5% of the surface parking areas shall be devoted to planting areas. Planting areas around building shall not be included in parking area. Planting of trees may be in groups and need not necessarily be in regular spacing. Alternative landscape programs may be developed, including perimeter parking area landscaping, berming and depressing of parking areas. Alternative landscape programs shall be subject to the review of the Parks, Beaches and Recreation Department and the approval of the Planning and Public Works Departments.

A rooftop landscaping program may be developed for parking structures and shall be subject to the review of the Parks, Beaches and Recreation Department and the approval of the Planning and Public Works Departments. Rooftop landscaping shall conform to height restrictions.

IX. SITE PLAN REVIEW.

A. Purpose

The City Council finds that development on the West Coast Highway frontage of the lower campus of Hoag Hospital may have the potential to affect the aesthetics of the West Newport area as viewed from surrounding arterial roadways. The effect of this section is to establish a Site Plan Review requirement by the Planning Commission for certain individual projects which are proposed by the hospital to differ from the setback, horizontal and vertical articulation requirements as set forth in Section V.D.2. to insure that these projects conform with the objectives of the General Plan and the Master Plan for Hoag Hospital.

B. Findings

The City finds, determines and declares that the establishment of Site Plan Review procedures contained in this section promotes the health, safety, and general welfare of the community by ensuring that the development of Hoag Hospital proceeds in a manner which will not result in inadequate and poorly planned landscape areas, excessive building bulk on arterial roadways, inappropriate placement of structures and impairment of the benefits of occupancy and use of existing properties in the area.

C. Application

Site Plan Review approval shall be obtained prior to the issuance of a grading or building permit for any new structure or the addition to an existing structure which does not conform to the provisions of Section V.D.2.

D. Plans and Diagrams to be Submitted

The following plans and diagrams shall be submitted to the Planning Commission for approval:

1. A plot plan, drawn to scale, showing the arrangement of buildings, driveways, pedestrian ways, off-street parking and off-street loading areas, landscaped areas, signs, fences and walks. The plot plan shall show the location of entrances and exits, and the direction of traffic flow into and out of off-street parking and loading areas, the location of each parking space and loading space, and areas for turning and maneuvering vehicles. The plot plan shall indicate how utility and drainage are to be provided.

2. A landscape plan, drawn to scale, showing the locations of existing trees proposed to be removed and proposed to be retained; and indicating the amount, type, and location of landscaped areas, planting beds and plant materials with adequate provisions for irrigation.
3. Grading plans when necessary to ensure development properly related to the site and to surrounding properties and structures.
4. Scale drawings of exterior lighting showing size, location, materials, intensity and relationship to adjacent streets and properties.
5. Architectural drawings, renderings or sketches, drawn to scale, showing all elevations of the proposed buildings and structures as they will appear upon completion.
6. Any other plans, diagrams, drawings or additional information necessary to adequately consider the proposed development and to determine compliance with the purposes of this chapter.

E. Fee

The applicant shall pay a fee as established by Resolution of the City Council to the City with each application for Site Plan Review under this chapter.

F. Standards

In addition to the general purposes set forth in sub-section B, in order to carry out the purposes of this chapter as established by said section, the site plan review procedures established by this Section shall be applied according to and in compliance with the following standards, when applicable:

1. The development is in compliance with all other provisions of the Planned Community Development Criteria and District Regulations (P-C Text);
2. Development shall be compatible with the character of the neighborhood and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;
3. Development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on West Coast Highway;

4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.

G. Public Hearing - Required Notice

A public hearing shall be held on all Site Plan Review applications. Notice of such hearing shall be mailed not less than ten (10) days before the hearing date, postage prepaid, using addresses from the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses, to owners of property within a radius of three hundred (300) feet of the exterior boundaries of the subject property. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this Section. In addition to the mailed notice, such hearing shall be posted in not less than two conspicuous places on or close to the property at least ten (10) days prior to the hearing.

H. Action by the Planning Commission

If all applicable standards established by this Section are met, the Planning Commission shall approve the development. Conditions may be applied when the proposed development does not comply with applicable standards and shall be such as to bring said development into conformity.

If the development is disapproved, the Commission shall specify the standard or standards that are not met.

A Site Plan Review decision of the Planning Commission shall be subject to review by the City Council either by appeal, or upon its own motion, or upon the request of the Commission. The action of the Commission on any Site Plan Review shall be final and effective twenty-one (21) days following the Commission action thereon unless, within the twenty-one (21) day appeal period an appeal in writing has been filed by the applicant, or any other person, the Commission has requested a review of its decision, or unless the City Council, not more than twenty-one (21) days after the Commission action, on its own motion, elects to review and act on the action of the Commission, unless the applicant consents to an extension of time. The City Council may affirm, reverse or modify the decision. Such action by the City Council shall be final.

I. Appeal to the City Council

Any Site Plan Review decision of the Commission may be appealed to the City Council by the applicant or any other person, at any time within twenty-one (21) days after the date of the Commission decision. An appeal to the City Council shall be taken by filing a letter of appeal in duplicate, with the Planning Department. Such letter shall set forth the grounds upon which the appeal is based and shall be accompanied by a fee as established by Resolution of the City Council.

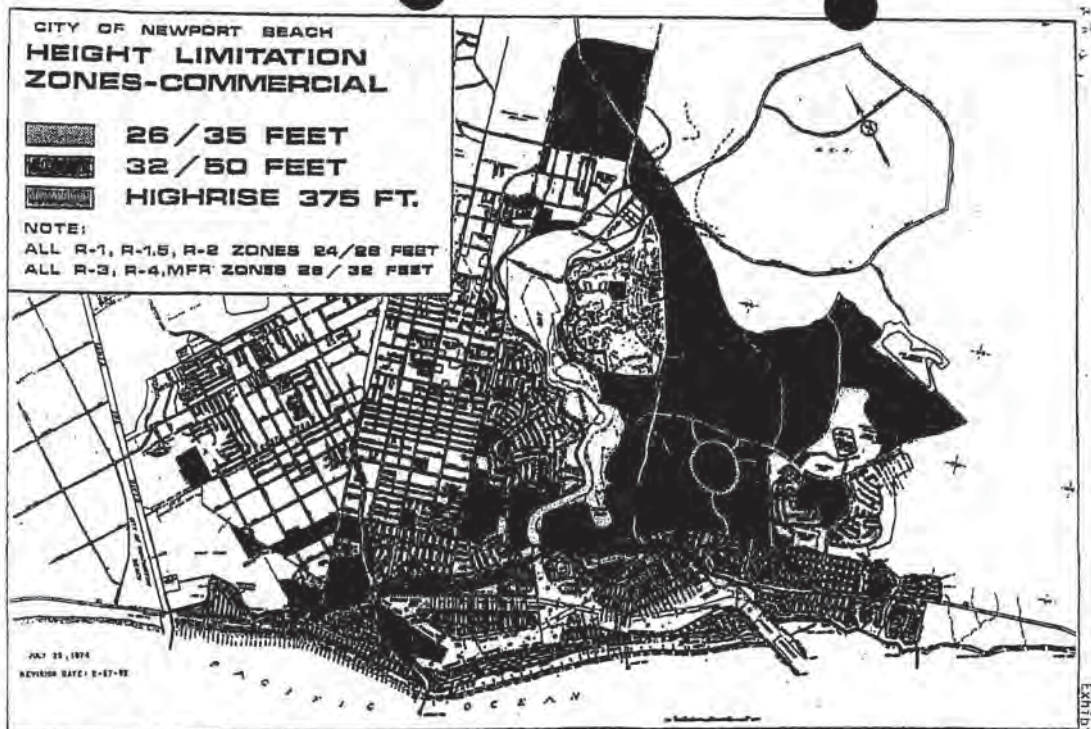
J. Action by the City Council

An appeal shall be heard and acted on by the City Council, and the City Council may affirm, reverse or modify the decision of the Commission. The decision of the City Council is final.

K. Expiration and Revocation of Site Plan Review Approvals

1. **Expiration.** Any Site Plan Review granted in accordance with the terms of this Title shall expire within 24 months from the date of approval if a building permit has not been issued prior to the expiration date and subsequently construction is diligently pursued until completion, unless at the time of approval the Planning Commission has specified a different period of time.
2. **Violation of Terms.** Any Site Plan Review granted in accordance with the terms of this Title may be revoked if any of the conditions or terms of such Site Plan Review are violated or if any law or ordinance is violated in connection therewith.
3. **Hearing.** The Planning Commission shall hold a hearing on any proposed revocation after giving written notice to the permittee at least ten days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within 60 days after receipt of the recommendation of the Planning Commission.

F:\... \Planning\PCTEXT\HOAGHOSP



Revision Date: May 26, 1992

**EXHIBIT D
ESTOPPEL CERTIFICATE**

Date Requested: _____
Date of Certificate: _____

On _____, the City of Newport Beach approved the "Development Agreement Between the City of Newport Beach and Hoag Memorial Hospital Presbyterian" (the "Development Agreement").

This Estoppel Certificate certifies that, as of the "Date of Certificate" set forth above:

CHECK WHERE APPLICABLE

- _____ 1. The Development Agreement remains binding and effective;
- _____ 2. The Development Agreement has not been amended;
- _____ 3. The Development Agreement has been amended in the following respects:

- _____ 4. Neither Hoag nor any of its successors are in default under the Development Agreement;
- _____ 5. The following defaults exist under the Development Agreement:

This Estoppel Certificate may be relied upon by any transferee or mortgagee of any interest in the property which is subject of the Development Agreement.

CITY OF NEWPORT BEACH

BY: _____
NAME: _____
TITLE: _____

EXHIBIT D

NRB/1 / 2010.1

EXHIBIT B

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5
DATED JUNE 17, 2008

This Document was electronically recorded by
ER Cert Mail D

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

RECORDING REQUEST BY, AND
WHEN RECORDED MAIL TO:

City Clerk
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92659-1768



NO FEE

2008000289321 12:35pm 06/17/08

120 33 A17 56

0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

EXEMPT FROM FILING FEES CAL. GOV'T CODE § 6103

(Space above this line for Recorder's use)

EXEMPT RECORDING REQUEST PER
GOVERNMENT CODE 27383

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

BETWEEN

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

AND

THE CITY OF NEWPORT BEACH

*(Pursuant to California Government Code Sections 65864-65869.5
and Newport Beach Municipal Code Chapter 15.45)*

Approved May 13, 2008
Ordinance No. 2008-10

FINAL
5/16/08 10001.34
H&O: #58720 vl

RECORDING REQUEST BY, AND
WHEN RECORDED MAIL TO:

City Clerk
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92659-1768

EXEMPT FROM FILING FEES CAL. GOV'T CODE § 6103

(Space above this line for Recorder's use)

**EXEMPT RECORDING REQUEST PER
GOVERNMENT CODE 27383**

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

BETWEEN

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

AND

THE CITY OF NEWPORT BEACH

*(Pursuant to California Government Code Sections 65864-65869.5
and Newport Beach Municipal Code Chapter 15.45)*

**Approved May 13, 2008
Ordinance No. 2008-10**

FINAL
5/16/08 10001.34
H&O: #58720 v1

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

(Hoag Memorial Hospital Presbyterian)

THIS AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5 ("Amendment") is entered into and effective on the date it is recorded with the Orange County Recorder (the "Effective Date") by and between the City of Newport Beach (hereinafter "City") and Hoag Memorial Hospital Presbyterian (hereinafter "Hoag").

RECITALS

1. The "RECITALS" to the Restated Development Agreement are amended to add new Sections 1.9 through Section 1.19(f) to read as follows:

1.9 Hoag Property. Hoag is the fee owner of approximately 38 acres of real property located in the City divided between the Upper Campus and the Lower Campus and more particularly described in Exhibit "A" and depicted on Exhibit "B" (the "Property").

1.10 Hoag Healthcare Services. Hoag is a modern, state-of-the-art acute care, not-for-profit hospital providing a comprehensive mix of healthcare services to treat virtually any routine or complex medical condition. Hoag features centers of excellence that include Hoag Cancer Center, Hoag Heart and Vascular Institute, Hoag Neuroscience Institute, Hoag Orthopedic Services and Hoag Women's Health Services, as well as advanced medical programs in many other specialties.

1.11 Hoag Community Benefit Programs. In addition to providing state-of-the-art hospital, diagnostic imaging and emergency room care medical services, Hoag is involved in many other community benefit programs such as police and SWAT team, fire department and paramedic support services, designating the City as the point of sale for major hospital equipment purchases and construction projects, providing financial and transportation support for the City's senior Oasis Center, and providing methane gas flare burnoff to mitigate methane gas fumes along Pacific Coast Highway. Hoag's community medicine program allocates approximately \$10 million annually toward improving the community's overall health, primarily through disease prevention and wellness and health promotion, especially for those vulnerable and disadvantaged populations.

1.12 EIR No. 142 and P.C. Text. On May 26, 1992, the City Council of City ("City Council") certified the Hoag Hospital Master Plan Final EIR No. 142 and adopted the Hoag Memorial Hospital Presbyterian Master Plan ("Hoag Master Plan") and the Planned Community Development Criteria and District Regulations ("P.C. Text") setting forth the development standards and terms and conditions by which the Property may be developed, including the maximum permissible building area, building height limits and permitted land uses.

1.13 Square Footage of Buildable Area. Under the existing Hoag Master Plan and P.C. Text, the Property allows a total of 1,343,238 square feet of buildable area with 577,889 square feet allocated to the Lower Campus and 765,349 square feet allocated to the Upper Campus.

1.14 Development Agreement No. 5. On May 26, 1992, the City Council adopted Ordinance No. 92-4 approving Development Agreement No. 5 between the City and Hoag incorporating the Hoag Master Plan and P.C. Text and granting vested rights to Hoag to develop the Property pursuant to the Hoag Master Plan and P.C. Text for the term of the Development Agreement. The Development Agreement was recorded in the Official Records of Orange County, California on August 4, 1993 as Instrument No. 63-0522236.

1.15 Restated Development Agreement. On February 14, 1994, the City Council of City adopted Ordinance No. 94-8 approving an Amendment and Restatement of Development Agreement No. 5 ("Restated Development Agreement") incorporating certain provisions clarifying the role, review and approval authority of the California Coastal Commission for development of the Property to ensure consistency and compliance with the California Coastal Act. The Restated Development Agreement was recorded in the Official Records of Orange County, California on March 23, 1994 as Instrument No. 94-0207276.

1.16 First Amendment to P.C. Text. On August 13, 2002, the City Council adopted Ordinance No. 2002-17 approving the First Amendment to the P.C. Text to provide that certain non-occupied building areas are not counted towards the maximum permissible building floor areas for development of the Property.

1.17 Noise Limitation. The existing PC Text provides that noise generated from Hoag Hospital from new mechanical appurtenances shall not exceed 55 dBA at the Property lines. This noise limitation was established prior to the adoption of the City's

Noise Element in the General Plan and Noise Ordinance. It is proposed that noise generated and originating from the Property be governed by the City Noise Ordinance with certain exceptions.

1.18 Noise Attenuation. Hoag has taken significant actions to attenuate noise generated from mechanical equipment and has installed landscape screening and walls to mitigate and buffer noise and improve aesthetic impacts for adjacent residential properties.

1.19 Restated Development Agreement Amendments. The City and Hoag propose to further amend the Restated Development Agreement by this Amendment to incorporate references to: a Supplemental EIR; an amendment to the City General Plan; an increase in the Public Benefits; designation of the City as the point of sale to the extent allowed under applicable law; and amendments to the Hoag Hospital Planned Community Text ("P.C. Text") to, among other things:

(a) eliminate the reference to 1.0 Floor Area Ratio ("FAR") for the Upper Campus and the .65 FAR for the Lower Campus in the General Plan Land Use Element. In place of the reference to the FAR's, an absolute maximum allowable building area of 1,343,238 square feet will remain available for development of the entire Property comprised of the Upper Campus and the Lower Campus;

(b) maintain a cap under the General Plan Land Use Element Amendment for development of the Lower Campus at 577,889 square feet (if no square footage is reallocated) and establish a cap on development of the Upper Campus at 990,349 square feet (if all 225,000 square feet are reallocated from the Lower Campus to the Upper Campus);

(c) allow the transfer of up to 225,000 square feet of buildable area from the Lower Campus to the Upper Campus, which, if all 225,000 square feet are reallocated, would result in a maximum allowed density of 990,349 square feet for the Upper Campus and a reduction to permit 352,889 square feet of allowable development for the Lower Campus;

(d) to modify the noise standards applicable to the Property;

(e) delete a provision that required the City and Hoag to conduct a study of possible future improvements in and around the easterly end of the Semeniuk Slough, including a requirement that Hoag fund the study and potential future improvements in an amount not to exceed \$200,000; and

(f) incorporate the Second Amendment to the P.C. Text.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 1.5 of the Restated Development Agreement entitled *Planning Commission/City Council Hearings* is amended to read as follows:

"1.5 Planning Commission/City Council Hearings. The Planning Commission, after giving appropriate notice, held public hearings to consider a development agreement, the proposed Master Plan, and the EIR on December 5, 1991, January 9, 1992, January 23, 1992, February 6, 1992 and February 20, 1992. The City Council conducted public hearings on the Master Plan, this Agreement and the EIR on March 23, 1992, March 30, 1992, April 13, 1992 and May 11, 1992. The Planning Commission, after giving appropriate notice, held a public hearing to consider this Amendment, the Supplemental EIR, the General Plan Amendment, and the Second Amendment to the P.C. Text on January 31, 2008, February 7, 2008, March 6, 2008 and March 20, 2008. The City Council conducted a public hearing on this Amendment, the Supplemental EIR, the General Plan Amendment and the Second Amendment to the P.C. Text on April 16, 2008."

2. Section 1.8 of the Restated Development Agreement entitled *City Ordinance* is amended to read as follows:

"1.8 City Ordinance. On February 14, 1994, the City Council adopted Ordinance No. 94-8 approving a Restated Development Agreement No. 5 incorporating certain provisions clarifying the role, review and approval authority of the California Coastal Commission for development of the Property to ensure consistency and compliance with the California Coastal Act. The Adopting Ordinance became effective on March 16, 1994. On May 13, 2008, the City Council adopted Ordinance No. 2008-10 approving

this Amendment and authorizing the City to enter into this Amendment. The adopting ordinance will become effective on June 12, 2008."

3. Section 2.1 of the Restated Development Agreement entitled *The Adopting Ordinance* is amended to read as follows:

"2.1 The "Adopting Ordinance" refers to City Ordinance No. 94-8, adopted on February 14, 1994, by the City Council, which approved and authorized the City to enter into this Agreement. "Adopting Ordinance" further refers to Ordinance No. 2008-10 adopted on May 13, 2008 by the City Council, which approved and authorized the City to enter into this Amendment."

4. Section 2.2 of the Restated Development Agreement entitled *Agreement* is amended to read as follows:

"2.2 "Agreement" refers to the "Restated Development Agreement Between the City of Newport Beach and Hoag Memorial Hospital Presbyterian," and this Amendment."

5. Section 2.13 of the Restated Development Agreement entitled *The EIR* is amended to read as follows:

"2.13 The "EIR" refers to final Environmental Impact Report No. 142 of the City of Newport Beach, and Supplemental Environmental Impact Report No. 142."

6. Section 2.23 of the Restated Development Agreement entitled *Master Plan* is amended to read as follows:

"2.23 "Master Plan" refers to the Hoag Memorial Hospital Presbyterian Master Plan and Planned Community Development Plan which was adopted by the City on May 26, 1992 (Exhibit "C"), as amended."

7. Section 3 of the Restated Development Agreement entitled *Conditions to Development* is amended to add a new paragraph after Subsection (f) to read as follows:

"Notwithstanding the provisions of this Section, any provisions set forth in this Amendment shall supersede and control over any inconsistencies with this Section."

8. Section 3.3 of the Restated Development Agreement entitled *Program EIR* is amended to read as follows:

"3.3 Program EIR. Hoag acknowledges that the EIR is a "Program EIR" and includes Supplemental Environmental Impact Report No. 142. The EIR analyzes the impacts of construction phased over time and, pursuant to CEQA, City is under a continuing obligation to analyze Hoag's requests for Project Specific Approvals to ensure the environmental impacts associated with the request were fully addressed in the EIR. Subsequent environmental documentation is required if this analysis reveals environmental impacts not fully addressed in the program EIR, identifies new impacts, or concludes the specific request is not consistent with the project described in the EIR. Hoag acknowledges the right and obligation of the City and the Coastal Commission or its successor agency to impose additional conditions as the result of the subsequent environmental analysis required by CEQA."

9. Section 4.1 of the Restated Development Agreement entitled *Right to Develop* is amended to read as follows:

"4.1 Right to Develop. Subject to compliance with the provisions of Sections 3 and 8.2, Hoag shall have a vested right to develop and receive Project Specific Approvals for construction on the Property to the full extent permitted by the Master Plan, as amended. Subject to the provisions of Sections 3 and 8, City shall only take action which complies with and is consistent with the Master Plan, as amended, the Restated Development Agreement and this Amendment unless Hoag otherwise consents in writing. Subject to this Subsection, City shall have the authority to impose only those Exactions which are specifically described in this Agreement, except as expressly required (as opposed to permitted) by state or federal law."

10. Section 5.2 of the Restated Development Agreement entitled *Mitigation Review* is amended to read as follows:

"5.2 Public Hearing. The Annual Review shall be conducted at a public hearing noticed in accordance with the provisions of Chapter 15.45 of the Newport Beach Municipal Code. Annual reviews should be scheduled in April of each year."

11. Section 5.4 of the Restated Development Agreement entitled Mitigation Review is amended to read as follows:

"5.4 Mitigation Review. The annual review shall include a detailed report of compliance with the various conditions and mitigation measures contained within the mitigation monitoring plan. The report shall also include a noise regulation compliance assessment that includes noise measurements prepared by a qualified noise consultant on a yearly basis. The noise assessment shall identify noise regulation compliance issues and recommended measures to abate any noncompliance. The report shall include an analysis of the view impacts of buildings constructed in comparison to the anticipated views as depicted in the EIR. Hoag shall be found in compliance with this Agreement unless the City Council determines, based upon the evidence presented at the Annual Review, that Hoag has not complied with all mitigation measures and conditions including those imposed as a result of subsequent environmental analysis, applicable to the grading of, or building on, the Property as of the date of the Annual Review. Hoag shall pay the City administrative costs incurred in conducting Annual Reviews. Hoag shall reimburse the City for costs incurred by the City associated with Fluor Enterprises' review of the cogeneration plant during the 2008 Annual Review."

12. Section 8.2 of the Restated Development Agreement entitled *Exactions* is hereby amended to delete Subsection (c), which reads as follows:

"(c) City and Hoag shall conduct a study of possible future improvements in and around the easterly end of Semeniuk Slough that would, among other things, improve the appearance of the area and, potentially, serve as a component to improve public access from residential areas in West Newport to park land and public recreation facilities proposed in conjunction with development of the West Newport Oil Company property. The study shall analyze, among other things, the type of improvements that would improve the area without adversely impacting wetlands, the possible location of pedestrian trails and the potential for those trails to improve access to proposed recreational facilities, phasing of the improvements, potential public benefits, and the cost of the improvements. As a part of the study, Hoag and City shall meet and confer with resource agencies relative to the type and extent of improvements that may be permitted in or adjacent to wetlands. Hoag shall fund the study and participate in the cost of constructing any improvements in the area that the City Council determines are feasible and in the public interest, provided, however, the financial contribution of Hoag, including the costs of the study and improvements, shall not exceed Two Hundred Thousand Dollars (\$200,000.00)."

13. Section 8.2 of the Restated Development Agreement entitled *Exactions* is hereby amended to renumber Subsection (d) to Subsection (c); and to add a new Subsection (d) to read as follows:

"(d) City and Hoag acknowledge and agree that the Restated Development Agreement and this Amendment confer private benefits on Hoag that should be balanced by commensurate public benefits in favor of the City. Accordingly, the City and Hoag intend to provide consideration to balance the private and public benefits by the imposition of a Development Agreement Fee, which fee shall be used to reimburse the City for public improvements in the area and to fund certain additional needed public improvements identified by the City. Hoag shall pay to the City a Development Agreement Fee of Three Million Dollars (\$3,000,000). Payment of one-half of the Development Agreement Fee of \$1.5 million shall be made upon the Effective Date of this Amendment. Payment of the remaining one-half of the Development Agreement Fee of \$1.5 million shall be paid to City 12 months from the Effective Date of this Amendment or at the time of issuance of the first building permit by the City for development of a project on the Upper Campus as provided in Exhibit "C" attached to this Amendment, whichever occurs earlier.

The first \$1.5 million of the Development Agreement Fee shall be used to reimburse the City and/or pay for the costs associated with the following projects: (i) construction of the Superior Avenue medians extending from Ticonderoga Street to Dana Road; (ii) construction of the right-turn pocket for southbound Newport Boulevard to westbound Hospital Road; and (iii) funding of the operational improvements and traffic signal upgrade at the Hospital Road and Placentia intersection ("Priority Public Improvements"). Construction of the first two Priority Public Improvements listed above occurred during 2007, and the third is anticipated to occur in 2008. The City shall be obligated to pay the actual cost difference, if any, for construction of these Priority Public Improvements. However, if there are any funds remaining after construction of the Priority Public Improvements is completed, the City may retain the funds to be used for other City projects or services that benefit the public. The City shall also have the sole authority to decide the design, cost and scope of the Priority Public Improvements and the sufficiency of City's performance on the Public Improvement Projects shall not be subject to Hoag's approval.

The balance of the Development Agreement Fee (\$1.5 million) and any funds remaining after the construction of the Priority Public Improvements shall be used by the City in the City's sole discretion to

offset costs associated with other City and community projects or services that benefit the public such as, among other things, public parks (for example, Sunset View Consolidated Park), landscaping improvements adjacent to public right of ways, sound abatement programs, public buildings, public road improvements, water quality improvements, law enforcement, fire fighting, emergency preparedness and other public safety facilities."

14. A new section, Section 8.3, shall be added to the Restated Development Agreement entitled *Sales/Use Tax Origin*, to read as follows:

"8.3 Sales/ Use Tax Origin

(a) Hoag will include in its general contractor construction contract a provision that Hoag's general contractor and subcontractors, to the extent allowed by applicable law, will obtain a Board of Equalization sales/use tax subpermit for the jobsite at the Project Property and allocate all eligible sales and use tax payments for individual contracts over \$5 million to the City. Hoag will provide Hoag's general contractor and subcontractors with the name and contact information of the City's Revenue Manager and notice of the Revenue Manager's availability to meet and confer with them on the implementation of the Board of Equalization sales/use tax subpermit procedures. Hoag will further include a notice in its general contractor construction contract that prior to beginning a qualified construction project, the general contractor and subcontractors are encouraged to meet with the City's Revenue Manager to review the process to be followed with respect to sales and use taxes. Hoag will further include a provision in its general contractor construction contract that the general contractor or subcontractors will certify in writing that the person(s) responsible for filing the tax return understands the process of reporting the tax to the City and will follow the guidelines set forth in the relevant sections of the Sales and Use Tax Regulations. Hoag shall not be responsible for failure of Hoag's general contractor or subcontractors to follow the procedures set forth in this Section.

Hoag, if readily available, shall provide to the City or any City designated representative the names, addresses, phone numbers and contact name of the general contractor and all subcontractors.

(b) Hoag will continue to follow the Direct Payment Permit Process established in the Revenue and Taxation Code and use the permit for all qualifying individual purchases in excess of \$100,000 so that the local share of its sales/use tax payments is allocated to the City as the point of sale.

(c) It is understood and agreed that any fixtures, materials and equipment with a purchase total that exceeds \$100,000 purchased directly by Hoag and shipped to Hoag's Newport Beach location may also be eligible for direct allocation of sales/use tax to the City. Upon request of the City, Hoag will provide City on a semi-annual basis with a list of purchases exceeding the \$100,000 threshold during the preceding six-month period, including the amount of the purchase and, if readily available, the name and contact information for the vendor upon request by the City. The City agrees to review the semi-annual list of purchases made by Hoag and advise Hoag of any missed opportunities for direct allocation. Hoag agrees to file its Direct Payment Permit with vendors identified by the City in an effort to improve the direct allocation of the local share of sales/use tax payments in future periods."

15. A new section, Section 8.4, shall be added to the Restated Development Agreement entitled *Sunset View Park Improvements*, to read as follows:

"8.4 Hoag shall reimburse the City up to \$ 150,000 for the installation of groundcover, shrubs and irrigation systems within the unimproved portion of Sunset View Park and Superior Avenue, approximately 20,500 square feet in area, located northerly of the cogeneration building. Reimbursement to the City shall be within 30 days of Hoag receiving an invoice from the City."

16. A new section, Section 8.5, shall be added to the Restated Development Agreement entitled *Cogeneration Plant Energy Curtailment*, to read as follows:

"8.5 Hoag shall install a weather station capable of identifying ambient conditions necessary in documenting cogeneration plant and cooling tower operations. The weather station shall be tied into the cogeneration plant controls in order to maximize automatic responses to prevailing weather conditions, assisting in managing the operational changes and load shifting, as well as to provide periodic reports on plant operations.

Hoag shall not construct or erect additional cooling towers within the Hoag Lower Campus.

Hoag shall reduce the effective heat rejection by 33% at the existing cooling towers and such reduction shall be measured from a baseline (to be measured at the cooling towers) of operating three existing generators and absorption chillers at 100% of design capacity.

This reduced capacity operation shall be implemented daily between November 1st and April 30th, between the hours of 7:00 AM and 7:00 PM when the relative humidity is equal to or above 60% and when ambient temperatures are equal to or less than 55 degrees Fahrenheit.

17. Section 11.1(c) of the Restated Development Agreement entitled *Notices* is hereby amended to delete:

"with a copy to: Tim Paone
Paone, Callahan, McHolm & Winton
19100 Von Karman, 8th Floor
P.O. Box 19613
Irvine, CA 92713-9613"

and to add:

"with a copy to: Dennis D. O'Neil
Hewitt & O'Neil LLP
19900 MacArthur Blvd., Suite 1050
Irvine, CA 92612"

with a copy to: Gary McKitterick
Allen Matkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, 5th Floor
Irvine, CA 92614-7321"

18. A new Section 11.17 shall be added to the Restated Development Agreement as follows:

"11.17 Indemnification/Hold Harmless. To the fullest extent permitted by law, Hoag shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of this Amendment, including, but not limited to, the approval of the Planned Community Text and/or the City's related California Environmental Quality Act determinations, the certification of the Supplemental Environmental Impact Report, the adoption of a Mitigation Program, and/or statement of overriding considerations for this Project. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Hoag, City, and/or the parties initiating or bringing such proceeding. Hoag shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Hoag shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition."

19. Exhibit C of the Restated Development Agreement shall incorporate the First Amendment to the P.C. Text as part of this Second Amendment to the P.C. Text in revised Exhibit C entitled:

"HOAG MEMORIAL HOSPITAL PRESBYTERIAN

PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS

Recommended for Approval
by the Planning Commission
March 20, 2008

Adopted by the City Council
City of Newport Beach
Ordinance No.2008-10
May 13, 2008"

20. Except as provided for in this Amendment and not otherwise superseded by this Amendment, the provisions set forth in the Restated Development Agreement, all of the other terms, conditions, provisions and exhibits of the Restated Development Agreement continue to have full force and effect as provided therein and this Amendment shall constitute an integral part of the Restated Development Agreement. Exhibits A through C constitute a part of this Amendment and are incorporated into this Amendment in full by this reference.

21. In the event there is any conflict between any provision of the Restated Development Agreement and this Amendment, the later approved and recorded document shall prevail in interpretation, operation and implementation.

22. The City Clerk shall cause a copy of this Amendment to be recorded with the Office of the County Recorder of Orange County, California within ten (10) days following the effective date of adoption of the Ordinance approving this Amendment.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Development Agreement No. 5 to be binding as of the Effective Date.

CITY:

THE CITY OF NEWPORT BEACH, a municipal corporation of the State of California

By: _____

Edward D. Selich, Mayor

ATTEST:

LaVonne M. Harkless
LaVonne Harkless, City Clerk



APPROVED AS TO FORM:

Robin Clauson
for Robin Clauson, City Attorney

OWNER:

HOAG MEMORIAL HOSPITAL
PRESBYTERIAN, a California nonprofit public
benefit corporation

By: _____

Richard F. Afable, M.D.
President and CEO

(All Signatures to be Notarized)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of ORANGE

On JUNE 11, 2008 before me,

LEILANI I. BROWN, NOTARY PUBLIC

Here Insert Name and Title of the Officer

personally appeared EDWARD D. SAUGH

Name(s) of Signer(s)



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 signature(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

Leilani I. Brown

Signature of Notary Public

Please Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On May 19, 2008 before me, Debara Hames, Notary Public
(Here insert name and title of the officer)

personally appeared Richard Afable

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is 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 signature~~(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.

Debara Hames
Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Amendment to Restated Development
(Title or description of attached document)

Agreement No. 5
(Title or description of attached document continued)

Number of Pages 33 Document Date 5-19-08

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
☒ Corporate Officer
President And CEO
(Title)
☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

EXHIBIT A
LEGAL DESCRIPTION

The subject property is the following real property in the City of Newport Beach, County of Orange, State of California:

Parcel 1:

That portion of Lots 169 and 170 in Block 2 and a portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

Parcel 2:

That portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

EXHIBIT C

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

**PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS**

Adopted May 13, 2008

Ordinance No. 2008-9

Effective June 12, 2008

FINAL
5/16/08 10001.34
H&O: #58720 vl

C-1

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

**PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS**

Recommended for Approval
by the Planning Commission
March 20, 2008

Adopted by the City Council
City of Newport Beach
Ordinance No. 2008-10
May 13, 2008

Hoag Memorial Hospital Presbyterian Planned Community Development Criteria and District Regulations

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I. INTRODUCTION

Background

The Hoag Memorial Hospital Presbyterian Planned Community District in the City of Newport Beach has been developed in accordance with the Newport Beach General Plan. The purpose of this Planned Community District is to provide a method whereby property may be classified and developed for hospital-related uses. The specifications of this District are intended to provide land use and development standards supportive of the proposed use while ensuring compliance with the intent of all applicable regulatory codes.

The Planned Community District includes district regulations and a development plan for both the Upper and Lower Campuses of Hoag Hospital. In general, over the long term, the Upper Campus will become oriented primarily towards emergency, acute and critical care (predominantly inpatient) uses and the Lower Campus will be developed with predominantly outpatient uses, residential care and support services.

Whenever the regulations contained in the Planned Community text conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the Planned Community text shall take precedence. The Municipal Code shall regulate this development when such regulations are not provided within these district regulations. All development within the Planned Community boundaries shall comply with all provisions of the Uniform Building Code and other governing building codes.

II. GENERAL NOTES

1. Water service to the Planned Community District will be provided by the City of Newport Beach.
2. Development of the subject property will be undertaken in accordance with the flood protection policies of the City of Newport Beach.
3. All development of the site is subject to the provisions of the City Council Policies K-4 and K-5 regarding paleontological and archaeological resources.
4. Except as otherwise stated in this text, the requirements of the Newport Beach Zoning Ordinance shall apply. The contents of this text notwithstanding, all construction within the boundaries of this Planned Community District shall comply with all provisions of the Uniform Building Code, other various codes related thereto and local amendments.
5. All buildings shall meet Title 24 requirements or the requirements of the California Office of Statewide Health Planning and Development as applicable. Design of buildings shall take into account the location of building air intake to maximize ventilation efficiency, the incorporation of natural ventilation, and implementation of energy conserving heating and lighting systems.
6. Any fire equipment and access shall be approved by the Newport Beach Fire Department.
7. Excluding communications devices on the Upper Campus, new mechanical appurtenances on building rooftops and utility vaults on the Upper and Lower Campuses shall be screened from view in a manner compatible with building materials. Rooftop mechanical appurtenances or utility vaults shall be designed utilizing compatible architectural materials on the Lower Campus. No new mechanical appurtenances may exceed the building height limitations as defined in these district regulations.
8. Grading and erosion control shall be carried out in accordance with the provisions of the City of Newport Beach Excavation and Grading Code and shall be subject to permits issued by the Building and Planning Departments.
9. Sewage disposal facilities within the Planned Community will be provided by Orange County Sanitation District No. 5. Prior to issuance of any building permits it shall be demonstrated to the satisfaction of the Planning Department that adequate sewer facilities will be available. Prior to the occupancy of any structure it shall be further demonstrated that adequate sewer facilities exist.
10. Mass grading and grading by development phases shall be allowed provided that landscaping of exposed slopes shall commence within thirty (30) days of the completion of grading.

III. DEFINITIONS

Building Elevation:

1. A vertical distance of a building above or below a fixed reference level, i.e., MSL (mean sea level).
2. A flat scale drawing of the front, rear, or side of a building.

Building Envelope: The volume in which a building may be built as circumscribed by setback lines and maximum allowable building heights.

Building Height: The vertical distance measured from the finished grade to the highest point of the structure. At all points, the height measurement shall run with the slope of the land.

Emergency Room: A service and facility designated to provide acute emergency medical services for possible life threatening situations.

Entitlement, Gross Floor Area: Any area of a building, or portion thereof, including the surrounding exterior walls, but excluding:

1. Area of a building utilized for stairwells and elevator shafts on levels other than the first level of a building in which they appear;
2. Area of a medical building, that is not used for general or routine occupancy but rather is for interstitial or mechanical occupancies, that measures less than 19 feet from finished floor to ceiling;
3. As applied to new construction permits issued on or after August 13, 2002, area of a building used specifically for base isolation and structural system upgrades directly related to requirements of governmental agencies and is not for general or routine occupancy; and
4. As applied to new construction permits issued on or after August 13, 2002, enclosed rooftop mechanical levels not for general or routine occupancy.

First Aid: Low acuity medical treatment for non-life threatening situations.

General Plan: The General Plan of the City of Newport Beach and all elements thereof.

Grade: For the purpose of determining building height:

1. Finished - the ground level elevation which exists after any grading or other site preparation related to, or to be incorporated into, a proposed new development or alteration of existing developments. (Grades may be worked into buildings to allow for subterranean parking.)

Hoag Memorial Hospital Presbyterian Planned Community Development Criteria and District Regulations

2. Natural - the elevation of the ground surface in its natural state before man-made alterations.
3. Existing - the current elevation of ground surface.

Inpatient Uses: Hospital patient services which require twenty-four (24) hour or more stays.

Landscape Area: The landscape area shall include on-site walks, plazas, water, rooftop landscaping and all other areas not devoted to building footprints or vehicular parking and drive surfaces.

Mean Sea Level: A reference or datum mark measuring land elevation using the average level of the ocean between high and low tides.

Outpatient Uses: Hospital patient services which do not exceed twenty-four (24) hours.

Residential Care: Medically-oriented residential units that do not require the acuity level generally associated with inpatient services but require overnight stays.

Site Area: For the purpose of determining development area:

1. Gross - parcel area prior to dedications.
2. Net - parcel area after dedications.

Streets: Reference to all streets or rights-of-way within this ordinance shall mean dedicated vehicular rights-of-way.

IV. DEVELOPMENT PLAN

Project Characteristics

The Upper Campus of Hoag Hospital is located on a triangular site of approximately 17.57 acres and is bounded by Newport Boulevard to the east, Hospital Road to the north and existing residential developments to the west. The Lower Campus is located north of West Coast Highway, south of the Sunset View linear and consolidated park and Villa Balboa Condominiums, west of Newport Boulevard and east of Superior Avenue. It contains approximately 37.38 total acres, including 8,603 square feet of land encumbered by a roadway easement. The Lower Campus adjoins the Upper Campus at its eastern boundary. The Upper Campus is, and will continue to be, oriented towards inpatient functions, while the Lower Campus will be developed with predominantly outpatient, residential care and support services.

Development Plan

The Planned Community Development Plan for Hoag Hospital is shown on Exhibit 1, *Planned Community Site and Boundary Map*. Through the year 2017, many of the existing buildings shown on the Development Plan for the Upper Campus may be redeveloped in order to functionally respond to the needs of the Hospital and conform to the requirements of State agencies.

Access to the Lower Campus will be from West Coast Highway and from Hospital Road, via the Upper Campus. Exhibit 2, *Vehicular Access*, shows the internal circulation for Hoag Hospital.

The Development Plan does not specify building locations or specific hospital-related uses. Instead, a developable area is identified based on the regulations established for this Planned Community District. Because of the dynamic nature of the health care industry which leads to rapid technological changes that effect how health care services are delivered, the Development Plan for Hoag Hospital sets development caps as a function of allowable densities established by the Newport Beach General Plan.

The maximum allowable building area for Hoag Hospital, which encompasses both the Lower Campus and the Upper Campus, is 1,343,238 square feet. Each Campus is also subject to a maximum allowable building area limit: the maximum allowable building area for the Upper Campus is 990,349 square feet; the maximum allowable building area for the Lower Campus is 577,889 square feet. Table 1, *Building Area Statistical Analysis*, provides a summary of allowable square footage for both the Upper and Lower Campuses.

Implementation, Program EIR and Subsequent Project Specific Approvals

Hoag has acknowledged that the Environmental Impact Report prepared for the development and implementation of the Hoag Master Plan pursuant to this Planned Community Development Plan is a "Program EIR." The City has prepared and certified two program Environmental Impact Reports - Hoag Hospital Master Plan Final Program EIR (Final EIR No. 142) and a Supplemental EIR for the Master Plan Update (SCH#1991071003). The EIRs analyze the impacts of construction phased over time and, pursuant to CEQA, the City is under a continuing

Hoag Memorial Hospital Presbyterian Planned Community Development Criteria and District Regulations


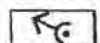
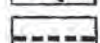
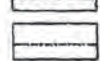
obligation to analyze Hoag's requests for Project Specific Approvals to ensure the environmental impacts associated with the requests were fully addressed in the EIRs. Subsequent environmental documentation is required if this analysis reveals environmental impacts not fully addressed in the program EIRs, identifies new impacts, or concludes the specific request is not consistent with the project described in the EIRs. Hoag acknowledges the right and obligation of the City and the Coastal Commission or its successor agency to impose additional conditions as the result of the subsequent environmental analysis required by CEQA.

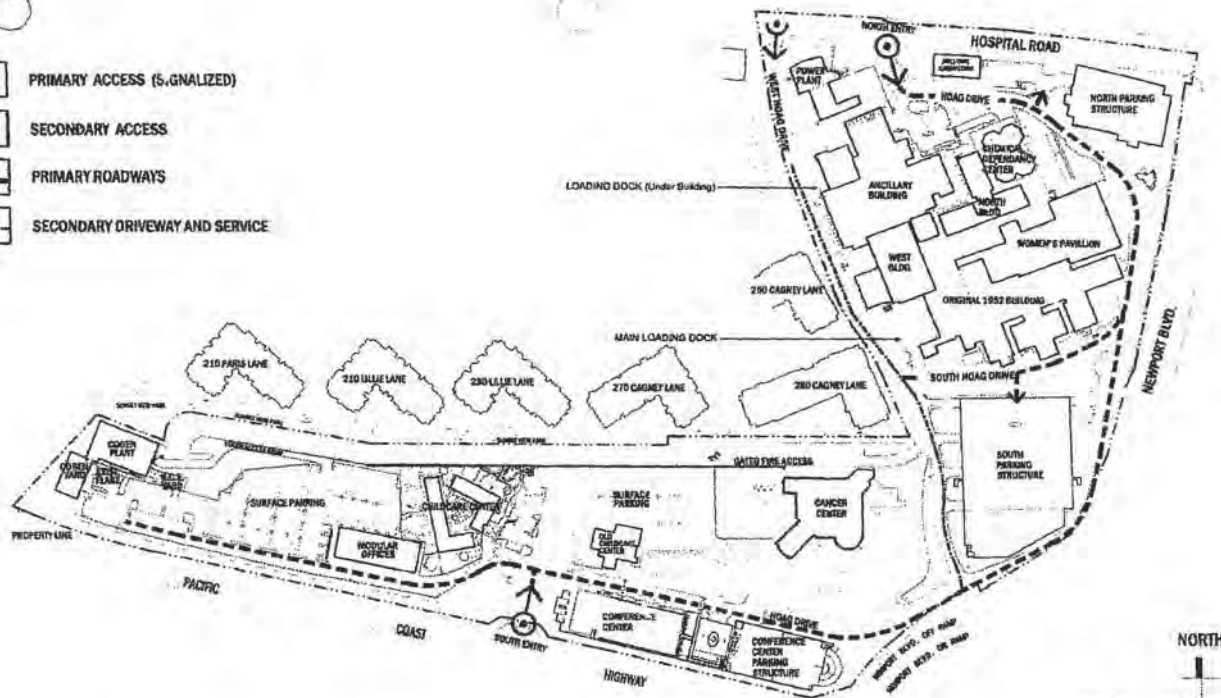


Note: Buildings labeled for identification purposes only
PLANNED COMMUNITY SITE AND BOUNDARY MAP
HOAG MEMORIAL HOSPITAL PRESBYTERIAN

EXHIBIT 1
 08.20.07
 REVISED 01.22.08

LEGEND

-  PRIMARY ACCESS (SIGNALIZED)
-  SECONDARY ACCESS
-  PRIMARY ROADWAYS
-  SECONDARY DRIVEWAY AND SERVICE



Note: Buildings labeled for identification purposes only

VEHICULAR ACCESS
HOAG MEMORIAL HOSPITAL PRESBYTERIAN

NORTH
 100 0 100 200
 SCALE: 1" = 200'
EXHIBIT 2
 08.28.07
 REVISED 01.22.08

TABLE 1

BUILDING AREA STATISTICAL ANALYSIS

**TOTAL OF LOWER CAMPUS & UPPER CAMPUS BUILDING AREAS -
MAXIMUM ALLOWABLE: 1,343,238 SQUARE-Feet**

	Site Area	Allowable Building Area	Existing ¹	Net Remaining	Maximum Allowable
UPPER CAMPUS	765,349 sq. ft.	765,349 sq. ft.	698,121 sq. ft.	67,228 sq. ft.	990,349 sq. ft. ²
LOWER CAMPUS	862,815 sq. ft.	577,889 sq. ft.	188,149 sq. ft.	389,740 sq. ft.	577,889 sq. ft.
TOTALS	1,618,164 sq. ft.	1,343,238 sq. ft.	886,270 sq. ft.	456,968 sq. ft.	1,343,238 sq. ft. ³

¹ As of the date of adoption.

² Up to 225,000 square-feet can be transferred from the Lower to the Upper Campus

³ Demolition of some existing structures on the Upper Campus will occur to ensure maximum square-feet will not exceed 1,343,238 square-feet

V. DISTRICT REGULATIONS

The following regulations apply to all development within the Hoag Hospital Planned Community. The individual uses listed under the five permitted use categories are not an exhaustive list. Other hospital-related uses which fit into the five (5) permitted use categories are allowed. Prior to the issuance of a building permit, plot plans, elevations and any other such documents deemed necessary by the Planning, Building, Public Works, and Fire Departments shall be submitted for the review and approval of the Planning, Building, Public Works, and Fire Departments.

A. Permitted Uses

I. Lower Campus

a. Hospital facilities, including, but not limited to:

(1) Outpatient services:

- (a) Antepartum Testing
- (b) Cancer Center
- (c) Skilled Nursing
- (d) Rehabilitation
- (e) Surgery Center
- (f) Clinical Center
- (g) Day Hospital
- (h) Back and Neck Center
- (i) Biofeedback
- (j) Breast Imaging Center
- (k) Dialysis
- (l) EEG/EMG/NICE Laboratory
- (m) First Aid Center
- (n) Fertility Services
- (o) G.I. Laboratory
- (p) Magnetic Resonance Imaging
- (q) Neurology
- (r) Nuclear Medicine
- (s) Occupational Therapy
- (t) Pediatrics
- (u) Pharmacy
- (v) Physical Therapy
- (w) Pulmonary Services
- (x) Radiation Therapy
- (y) Respiratory Therapy
- (z) Sleep Disorder Center
- (aa) Speech Therapy
- (bb) Ultrasound
- (cc) Urgent Care

- (2) Administration:
 - (a) Admitting
 - (b) Auxiliary Office
 - (c) Business Offices
 - (d) Information Desk
 - (e) Registration
 - (f) Patient Relations
 - (g) Social Services
- (3) Support Services:
 - (a) Employee Child Care
 - (b) Health Education
 - (c) Power/Mechanical/Auxiliary Support and Storage
 - (d) Food Services
 - (e) Cashier
 - (f) Chapel/Chaplaincy Service
 - (g) Conference Center
 - (h) Dietitian
 - (i) Gift Shop
 - (j) Laboratory
 - (k) Medical Library
 - (l) Medical Records
 - (m) Pharmacy
 - (n) Parking Facilities⁴
 - (o) Engineering/Maintenance
 - (p) Shipping/Receiving
 - (q) Microwave, Satellite, and Other Communication Facilities
- (4) Residential Care:
 - (a) Substance Abuse
 - (b) Mental Health Services
 - (c) Extended Care
 - (d) Hospice Care
 - (e) Self or Minimal Care
 - (f) Congregate Care
- (5) Medical/Support Offices

⁴ Parking structures or decks do not count toward square-footage

Hoag Memorial Hospital Presbyterian Planned Community Development Criteria and District Regulations

- b. Methane gas flare burner, collection wells and associated system components.
- c. Accessory uses normally incidental to hospital development.
- d. Temporary structures and uses, including modular buildings.

2. Upper Campus

a. Hospital facilities, including, but not limited to:

(1) Inpatient uses including, but not limited to:

- (a) Critical Care
- (b) Emergency Department
- (c) Birthing Suites
- (d) Cardiology
- (e) Cardiac Care Unit
- (f) Intensive Care Unit
- (g) Mother/Baby Unit
- (h) Surgery
- (i) Laboratory
- (j) Pharmacy
- (k) Patient Beds

- (2) Outpatient services as allowed on the Lower Campus
- (3) Administrative uses as allowed on the Lower Campus
- (4) Support services as allowed on the Lower Campus
- (5) Residential care as allowed on the Lower Campus
- (6) Heliport (subject to Conditional Use Permit)⁵

- b. Accessory uses normally incidental to hospital development.
- c. Temporary structures and uses, including modular buildings.

⁵ Does not count toward square-footage

B. Prohibited Uses

1. Lower Campus
 - a. Emergency Room
 - b. Heliport
 - c. Conversion of mechanical or structural spaces to uses that allow general or routine occupancy
2. Upper Campus
 - a. Conversion of mechanical or structural spaces to uses that allow general or routine occupancy

C. Maximum Building Height

The maximum building height of all buildings shall be in accordance with Exhibit 3, *Development Criteria Plan*, which establishes the following height zones:

1. Upper Campus Tower Zone - maximum building height not to exceed the existing tower which is two-hundred thirty-five (235) feet above mean sea level.
2. Upper Campus Mid-rise Zone - maximum building height not to exceed one-hundred forty (140) feet above mean sea level.
3. Upper Campus Parking Zone - maximum building height not to exceed eighty (80) feet above mean sea level, exclusive of elevator towers.
4. Lower Campus Zone, Sub-Areas A, B, C, F and G - within each sub-area no building shall exceed the height of the existing slope and conform to the range of maximum building heights indicated by the development criteria shown on Exhibit 3.
5. Lower Campus Zone, Sub-Areas D and E - maximum building height shall not exceed the height of the existing Hoag Cancer Center which is fifty-seven and one-half (57.5) feet above mean sea level.

D. Building Setbacks

Setbacks for the Hoag Hospital Planned Community are shown on Exhibit 3.

1. Setbacks will be provided along property boundaries adjacent to the Villa Balboa condominiums, as defined below:
 - a. Upper Campus western boundary setback shall be the prolongation of the westerly edge of the existing cafeteria/laboratory building to the points of intersection with the easterly curb line of the existing service drive, then continuing along said line of the existing service drive.
 - b. Lower Campus northern boundary, all of which will have a 20-foot minimum building setback.
2. The setback on West Coast Highway easterly of the hospital entry signal shall be fifteen (15) feet.

In addition, vertical articulation shall be required for buildings easterly of the signal within one-hundred fifty (150) feet of the West Coast Highway frontage, as follows:

1st Floor: Up to eighteen (18) feet in height no additional articulation is required. If the 1st floor exceeds eighteen (18) feet in height, it shall be subject to the articulation requirements of the 2nd Floor.

2nd Floor, up to thirty-two (32) feet in height: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 2nd floor setback of twenty (20) feet.

3rd Floor and above: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 3rd floor and above setback of twenty-five (25) feet.

The setback on West Coast Highway westerly of the hospital entry signal shall be forty-five (45) feet.

In addition, vertical articulation shall be required for buildings westerly of the signal for buildings within one-hundred fifty (150) feet of the West Coast Highway frontage, as follows:

1st Floor: Up to eighteen (18) feet in height no additional articulation is required. If the 1st floor exceeds eighteen (18) feet in height, it shall be subject to the articulation requirements of the 2nd Floor.

2nd Floor, up to thirty-two (32) feet in height: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 2nd floor setback of fifty-five (55) feet.

3rd Floor and above: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 3rd floor and above setback of sixty-five (65) feet.

In order to avoid any future structures in this area (within 150 feet of West Coast Highway) from presenting an unacceptable linear mass, no single structure shall be greater than two-hundred fifty (250) linear feet in width. Additionally, 20% of the linear frontage within one-hundred fifty (150) feet of West Coast Highway shall be open and unoccupied by buildings.

10% of the linear length of Height Zones A and B as viewed from the existing bicycle/pedestrian trail, exclusive of that area adjacent to the consolidated portion of the view park, shall be maintained as view corridors between buildings.

These requirements may be altered for individual buildings, if requested by the hospital, through the site plan review process defined in Section IX.

3. There will be no building setbacks along the westerly boundary of the Lower Campus (adjacent to the municipal parking lot at Superior and West Coast Highway).
4. A twenty (20) foot setback from property line shall be provided along Newport Boulevard from Hospital Road to a point six-hundred (600) feet south; a twenty-five (25) foot setback from property line shall be provided along the remainder of Newport Boulevard and along the Newport Boulevard/West Coast Highway Interchange.
5. A ten (10) foot building setback from the property line shall be provided along Hospital Road.

E. Lighting

The lighting systems shall be designed and maintained in such a manner as to shield the light source and to minimize light spillage and glare to the adjacent residential uses. The plans shall be prepared and signed by a licensed Electrical Engineer.

F. Roof Treatment

Prior to the issuance of building permits, the project sponsor shall submit plans which illustrate that major mechanical equipment will not be located on the roof of any structure on the Lower Campus. Minor rooftop equipment, necessary for operating purposes, will comply with all building height criteria, and shall be designed and screened to blend into the building roof using materials compatible with roofing materials.

G. Signs

All signs shall be as specified under the Hoag Hospital Sign Program, Part VI.

H. Parking

All parking shall be as specified in Part VII, Hoag Hospital Parking Regulations.

I. Landscape

All landscaping shall be as specified in the Hoag Hospital Landscape Regulations, Part VIII.

J. Mechanical and Trash Areas

Prior to issuance of a building permit, the project sponsor shall submit plans to the City Planning Department which illustrate that all mechanical equipment and trash areas will be screened from public streets and immediately adjacent residential properties.

K. West Hoag Drive Circulation Limitations

The project sponsor shall continue to limit the use of that portion of West Hoag Drive adjacent to residential uses located on the Upper Campus. Deliveries to loading areas shall not occur after 8:00 PM or before 7:00 AM daily. The project sponsor shall physically restrict access to the roadway between these hours and appropriate signage indicating permitted delivery hours and access limitations shall be installed and maintained at all times. Night time deliveries and vehicular access to the loading area located along West Hoag Drive are allowed where critical supplies, services or materials are necessary for the continued operation of the hospital.

L. Loading Dock

The project sponsor shall provide a sound wall along West Hoag Drive as shown in the approximate location on Exhibit 4. Said wall shall be installed within 12 months of project approval, subject to issuance of required permits. To the maximum degree feasible, the sound wall shall be constructed to retain existing vegetation, which serves as a visual screen. Please refer to Section VIII, D. for additional landscaping requirements related to the sound wall. Mitigation measures to reduce the noise levels in the Loading Dock Area shall be incorporated into the design and operations of the hospital; such mitigation shall include relocation of the trash compactor and baler, limiting the hours of truck deliveries to the loading dock area, and enclosure of the trash compactor.

M. Noise Standards

Noise generated at the Hoag Hospital property shall be governed by the City of Newport Beach Noise Ordinance, except as noted below for the Loading Dock Area. Refer to Exhibit 5, *Loading Dock Area Location*, for the location.

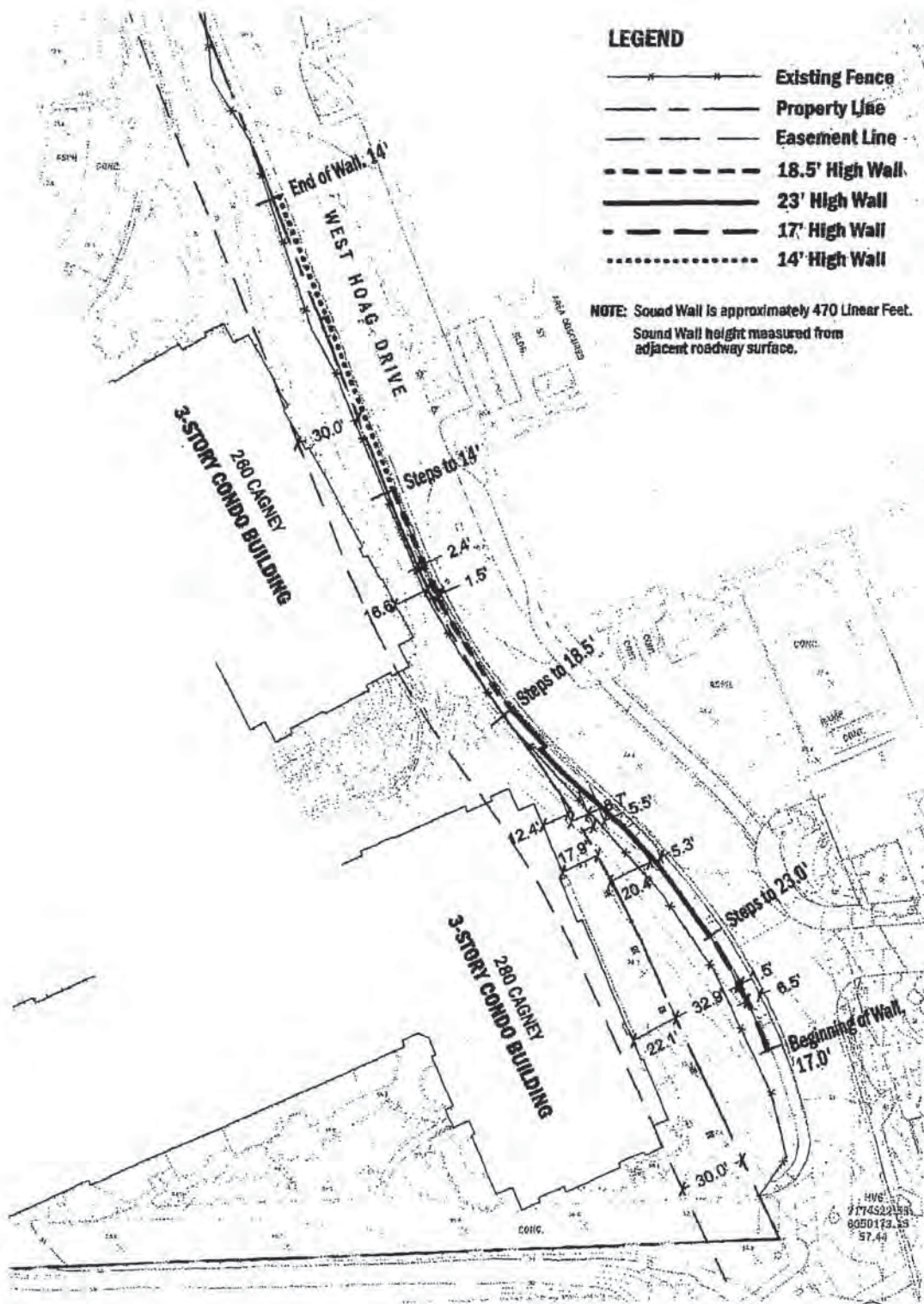
1. The applicable noise standard at the Hoag Hospital property line adjacent to the Loading Dock Area shall be as follows:

	<u>7 AM – 10 PM</u>	<u>10 PM – 7 AM</u>
	Daytime	Nighttime
Leq (15 min)	65 dBA	55 dBA

2. Within the Loading Dock Area during daytime hours, vehicles shall be exempt from applicable noise standards as listed above.

Vehicle idling shall be prohibited on West Hoag Drive and within the loading dock areas, except that refrigerated vehicles may idle while at the loading docks when refrigeration is necessary.

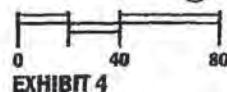
In addition, the grease pit cleaning which is exempt from the City Noise Ordinance as a maintenance activity shall occur on a Saturday between the hours of 11:00 AM and 3:00 PM.



SOUND WALL LOCATION PLAN

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

April 3, 2008



VI. HOAG HOSPITAL SIGN PROGRAM

A. Purpose and Intent

1. The purpose of this Sign Program is to provide adequate, consistent and aesthetically pleasing on-building wall and ground-mounted signage based upon the provisions set forth by the City of Newport Beach Sign Ordinance and the information signage requirements of Hoag Hospital.
2. The intent of this Sign Program is to produce uniform standards for Hoag Hospital.

B. General Sign Standards

1. All signs visible at the exterior of any building or facility of the Hospital, ground-mounted or on-building, may be illuminated or non-illuminated, depending upon need. Illumination method may be by external or internal source. No sign shall be constructed or installed to rotate, gyrate, blink or move, or create the illusion of motion, in any fashion.
2. All signs attached to building or facility exteriors shall be mounted as is appropriate to the architectural design features of said building or facility.
3. All signs together with the entirety of their supports, braces, guys, anchors, attachments and decor shall be properly maintained, legible, functional and safe with regard to appearance, structural integrity and electrical service.
4. All street signs shall be subject to review and approval of the City Traffic Engineer, and shall be in compliance with Ordinance 110-L.
5. For purposes of this section, a building shall be defined as any occupied structure or any occupied portion of a structure that is constructed as an addition to an existing structure and identified as a separate building for way finding purposes. Individual building numbers uniquely define the buildings on the Hoag campus.

C. Number of Signs Allowed

1. One (1) double-faced primary identification ground-mounted sign or two (2) single-faced gateway entry signs shall be allowed per street frontage. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Total maximum signage area shall not exceed two hundred (200) square feet and shall not exceed ten (10) feet in height per sign and street frontage. This sign may occur as a wall sign, to be located upon a project

boundary perimeter wall, subject to the same number and area maximums described above. This sign may also occur as part of an entry gateway system.

2. Primary entrance identification shall be allowed at the main entrance to the facility and at the main entrance to the Emergency Department. If freestanding, this sign type shall not exceed a maximum height of eight (8) feet average height above finished grade. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Maximum sign area shall not exceed seventy (70) square feet.
3. Secondary building and entrance identification signs shall be allowed. If freestanding, this sign type shall not exceed a maximum height of nine (9) feet average height above finished grade. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Maximum sign area shall not exceed fifty (50) square feet whether freestanding or wall-mounted.
4. Vehicular and pedestrian directional signs shall be allowed. This sign type may occur as a single-faced, double-faced, or triple-faced sign. The sign shall be sized to allow for proper readability given the number of lines of copy, speed of traffic, setback off the road and viewing distance. This sign type shall not exceed a maximum height of eleven (11) feet average height above finished grade.
5. Donor recognition signage shall be allowed, one (1) at each building elevation. Maximum sign area shall not exceed one hundred seventy-five (175) square feet for donor recognition signage.
6. Hospital identification signs shall be allowed upon hospital towers, one (1) at each elevation. The maximum sign area shall not exceed two hundred seventy-five (275) square feet. Any hospital identification signage on the elevation facing west (Villa Balboa property line) may not be illuminated.
7. On the Lower Campus, two (2) building-mounted identification signs will be allowed per structure and shall not be placed so as to directly face the Villa Balboa property. Such signs shall adhere to the requirements above for secondary building and entrance identification signage and shall be no higher than the roof line of the building upon which they are mounted.
8. Each public parking structure shall be allowed one (1) identification sign above each entrance and exit of the structure. The maximum sign area of each identification sign shall not exceed thirty (30) square feet. Adjacent regulatory parking signage does not count toward the maximum sign area.

VII. HOAG HOSPITAL PARKING REGULATIONS

A. General

1. Off-street parking for Hoag Hospital shall be provided on-site. Parking may be on surface lots, subterranean or in parking structures.
2. The design and layout of all parking areas shall be subject to the review and approval of the City Traffic Engineer and the Public Works Department.
3. Parking lot lighting shall be developed in accordance with City standards and shall be designed in a manner which minimizes impacts on adjacent land uses. Nighttime lighting shall be limited to that necessary for security and shielded down from any adjacent residential area. The plans shall be prepared and signed by a licensed electrical engineer, with a letter from the engineer stating that the requirements have been met. The lighting plan shall be subject to review and approval of the City Planning Department.

B. Requirements for Off-Street Parking

Parking requirements for specific sites shall be based upon the parking criteria established in Table

2. All parking shall be determined based upon the area allocated to the use categories.

TABLE 2

PARKING REQUIREMENTS

<u>Use Category</u>	<u>Parking Requirements</u>
Outpatient Services	2.31 spaces/1,000 square feet (1)
Support	0.0 spaces/1,000 square feet (1)(2)
Administrative	5.3 spaces/1,000 square feet (1)
Residential Care	1.0 spaces/1,000 square feet (3)
Medical Offices	4.0 spaces/1,000 square feet (3)
Inpatient	2.35 spaces/1,000 square feet (1)

(1)	Parking factor based on parking analysis prepared by Linscott, Law & Greenspan dated October 15, 2001 for Traffic Study 2001-002 approved by Planning Commission Resolution No. 1542.
(2)	Support Services generates parking demand that is accounted for in one of the other categories.
(3)	Parking requirements based upon a study prepared by LSA Associates dated September 27, 1991.

VIII. HOAG HOSPITAL LANDSCAPE REGULATIONS

A. General

1. Detailed landscape and irrigation plans, prepared by a registered Architect or under the direction of a Landscape Architect, shall be reviewed by the City prior to issuance of a Certificate of Use and Occupancy. The Landscape Plan shall include a concept for rooftop parking and parking structures if proposed for the Lower Campus. Trees shall not be used, however planter boxes, green roof treatments or trellis systems shall be designed to provide added visual relief of rooftop parking or parking structures. All rooftop or top of parking structure landscaping proposals shall conform to the building height limits established in this text.
2. Parking lot trees shall be no less than twenty-four (24) inch box size.
3. Shrubs to be planted in containers shall not be less than five (5) gallon size. Ground covers will be planted from one (1) gallon containers or from rooted cuttings.
4. Every effort should be made to avoid using plants with invasive and shallow root systems.
5. Earth berms shall be rounded and natural in character, designed to obscure automobiles and to add interest to the site. Wheel stops shall be so placed as necessary to avoid damage to trees, irrigation systems, shrubs and other planting materials.
6. Trees in parking lots should be limited in variety. Selection should be repeated to give continuity. Regular spacing or the introduction of irregular groupings may also be considered to add interest and variety. Care should be exercised to allow plants to grow and maintain their mature size without restriction.
7. Emphasis shall be placed on the use of native, drought-tolerant, non-invasive plants on the Lower Campus. On the Upper Campus, naturalized vegetation selections, as well as those plants allowed on the Lower Campus, will be emphasized. Automatically controlled irrigation systems shall be designed to avoid surface runoff and over-watering.
8. Installation and maintenance of landscape, screening and irrigation systems per Exhibit #6, Exhibit #7 and Exhibit #8. All improvements shall be shown on landscape and irrigation plans to be reviewed and approved by the Planning Department and which shall be in substantial compliance with the Exhibits #6, #7 and #8. Hoag shall complete all of the improvements within the timelines set forth in Exhibit #6.

B. Maintenance

1. All planting areas are to be kept free of weeds and debris and cultivated as necessary to maintain.
2. Lawn and ground cover areas are to be kept trimmed and/or mowed regularly.
3. All plantings are to be kept in a healthy and growing condition. Fertilization, cultivation and tree pruning are to be carried out as part of a regularly scheduled annual maintenance program.
4. Irrigation systems are to be kept in good working condition at all times. On-going monitoring, adjustments and cleaning of systems are to be part of regular maintenance procedures.
5. Stakes, guys and tree ties on trees should be checked regularly for correct function; ties shall be adjusted to avoid creating abrasions or girdling of branches or central leaders.
6. Damage to plantings created by vandalism, automobile or acts of nature shall be corrected within thirty (30) days.
7. Plantings and irrigation are to be maintained in accordance with the approved plans.

C. Special Landscaped Street

West Coast Highway is designated in the Hoag Hospital Planned Community as a special landscaped street. A fifteen (15) foot building setback from right-of-way/property line is required along West Coast Highway. Only driveways, parking and signage structures are allowed in the setback areas. Parking areas shall be screened from view of West Coast Highway with landscaped berms.

Landscaping along West Coast Highway shall consist of trees, ground cover and shrubbery. All unpaved areas not utilized for parking or circulation shall be landscaped in a similar manner. Installed trees are to be no smaller than twenty-four (24) inch box.

D. Villa Balboa Landscape Zone

The area between the Hoag property line and the sound wall will be referred to as the Villa Balboa Landscape Zone. This portion of the Hoag Hospital property will have a specific landscape process to ensure consultation with Villa Balboa on the planting and maintenance of the area. Existing landscaping on Villa Balboa's side of the wall shall be preserved to the extent feasible or replaced with specimen plant material as designated on a plan to be approved by the Planning Director after consultation with the Villa Balboa Community Association. The plan

shall also include sufficient additional landscaping to screen or soften the soundwall required pursuant to Section V.L. Hoag shall maintain all landscaping on Hoag's property and to the extent new plant material is installed as a result of wall construction by Hoag on the Villa Balboa property adjacent to the Villa Balboa Landscape Zone (with their permission), Hoag shall maintain such new plant material on Villa Balboa's property for a period of two years after installation to ensure healthy growth. All landscape installation shall occur within 45 days of the completion of the wall or earlier. Any future modifications made to said wall and landscaping shall be reviewed and approved by the Planning Director.

E. Parking Areas

A minimum of 5% of the surface parking areas shall be devoted to planting areas. Planting areas around building shall not be included in parking area landscape calculations. Planting of trees may be in groups and need not be regularly spaced. Alternative landscape programs may be developed, including perimeter parking area landscaping, berming and depressing of parking areas to provide additional screening. Alternative landscape programs shall be subject to the review of the Newport Beach Planning Department.

A rooftop landscaping program shall be developed for parking structures and rooftop parking proposed for the Lower Campus and shall be subject to the review and the approval of the Newport Beach Planning Department.

IX. SITE PLAN REVIEW

A. Purpose

The Council finds that development on the Lower Campus of Hoag Hospital may have the potential to affect the aesthetics of the community. The effect of this section is to establish a Site Plan Review requirement for certain individual projects - to insure that these projects conform with the goals and policies of the General Plan, provisions of this Planned Community Development Plan, the Development Agreement and the standards set forth below in sub-section F. The following classifications of projects are subject to the Site Plan Review:

Planning Commission review:

1. Any project that differs from setback, horizontal and vertical articulation requirements as set forth in Section V.D.2.

Planning Director's review:

1. Any project that could have the potential to generate emissions that could have an impact to visual resources.
2. Any project that could have the potential to generate emissions creating objectionable odors or other impacts to air quality.
3. Replacement of existing cooling towers, ~~except for casualty.~~

B. Findings

The City finds, determines and declares that the establishment of Site Plan Review procedures contained in this section promotes the health, safety, and general welfare of the community by ensuring that the development of Hoag Hospital proceeds in a manner which will not result in inadequate and poorly planned landscape areas, excessive building bulk on arterial roadways, inappropriate placement of structures and impairment of the benefits of occupancy and use of existing properties in the area.

C. Application

Site Plan Review approval shall be obtained for any new structure or the addition to an existing structure, as outlined in Section IX.A above, prior to the issuance of a grading or building permit or issuance of an approval in concept for Coastal Commission or Office of Statewide Health Planning and Development review.

D. Plans and Diagrams to be Submitted

The following plans and diagrams shall be submitted to the Planning Commission for approval:

1. A plot plan, drawn to scale, showing the arrangement of buildings, driveways, pedestrian ways, off-street parking and off-street loading areas, landscaped areas, signs, fences and walks. The plot plan shall show the location of entrances and exits, and the direction of traffic flow into and out of off-street parking and loading areas, the location of each parking space and loading space, and areas for turning and maneuvering vehicles. The plot plan shall indicate how utility and drainage are to be provided.
2. A landscape plan, drawn to scale, showing the locations of existing trees (proposed to be removed and proposed to be retained); and indicating the amount, type, and location of any landscaped areas, planting beds and plant materials with adequate provisions for automatic irrigation.
3. Grading plans when necessary to ensure development properly related to the site and to surrounding properties and structures.
4. Scale drawings of exterior lighting showing size, location, materials, intensity and relationship to adjacent streets and properties.
5. Architectural drawings, renderings or sketches, drawn to scale, showing all elevations of the proposed buildings and structures as they will appear upon completion.
6. Any other plans, diagrams, drawings or additional information necessary to adequately consider the proposed development and to determine compliance with the purposes of this chapter.

E. Fee

The applicant shall pay a fee as established by Resolution of the City Council to the City with each application for Site Plan Review under this chapter.

F. Standards

In addition to the general purposes set forth in sub-section A, in order to carry out the purposes of this chapter as established by said section, the Site Plan Review procedures established by this Section shall be applied according to and in compliance with the following standards, when applicable:

1. The development is in compliance with all other provisions of the Planned Community Development Criteria and District Regulations (P-C Text);
2. Development shall be compatible with the character of the neighborhood and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;
3. Development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special

consideration given to the mass and bulk of buildings and the streetscape on West Coast Highway;

4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.
5. Potential impacts shall be mitigated to less than significant levels.

G. Public Hearing - Required Notice

A public hearing shall be held on all Site Plan Review applications. Notice of such hearing shall be mailed not less than ten (10) days before the hearing date, postage prepaid, using addresses from the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses, to owners of property within a radius of three hundred (300) feet of the exterior boundaries of the subject property. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this Section. In addition to the mailed notice, such hearing shall be posted in not less than two (2) conspicuous places on or close to the property at least ten (10) days prior to the hearing.

H. Action by the Planning Director

If all applicable standards established by this Section are met, the Planning Director shall approve the development. Conditions may be applied when the proposed development does not comply with applicable standards and shall be such as to bring said development into conformity.

If the development is disapproved, the Director shall specify the standard or standards that are not met.

A Site Plan Review decision of the Planning Director shall be subject to review by the Planning Commission either by appeal, or upon its own motion, or upon the request of the Planning Director. The action of the Planning Director on any Site Plan Review shall be final and effective twenty-one (21) days following the Director's action thereon unless, within the twenty-one (21) day appeal period an appeal in writing has been filed by the applicant, or any other person, the Planning Director has requested a review of its decision, or unless the Planning Commission, not more than twenty-one (21) days after the Director's action, on its own motion, elects to review and act on the action of the Director, unless the applicant consents to an extension of time. The Planning Commission may affirm, reverse or modify the decision. Such action by the Planning Commission shall be final, unless subsequently appealed or reviewed.

I. Action by the Planning Commission

If all applicable standards established by this Section are met, the Planning Commission shall approve the development. Conditions may be applied when the proposed development does not comply with applicable standards and shall be such as to bring said development into conformity.

If the development is disapproved, the Commission shall specify the standard or standards that are not met.

A Site Plan Review decision of the Planning Commission shall be subject to review by the City Council either by appeal, or upon its own motion, or upon the request of the Commission. The action of the Commission on any Site Plan Review shall be final and effective twenty-one (21) days following the Commission action thereon unless, within the twenty-one (21) day appeal period an appeal in writing has been filed by the applicant, or any other person, the Commission has requested a review of its decision, or unless the City Council, not more than twenty-one (21) days after the Commission action, on its own motion, elects to review and act on the action of the Commission, unless the applicant consents to an extension of time. The City Council may affirm, reverse or modify the decision. Such action by the City Council shall be final.

J. Appeal to the City Council

Any Site Plan Review decision of the Commission may be appealed to the City Council by the applicant or any other person, at any time within twenty-one (21) days after the date of the Commission decision. An appeal to the City Council shall be taken by filing a letter of appeal in duplicate, with the Planning Department. Such letter shall set forth the grounds upon which the appeal is based and shall be accompanied by a fee as established by Resolution of the City Council.

K. Action by the City Council

An appeal shall be heard and acted on by the City Council within sixty (60) days of filing a letter of appeal, and the City Council may affirm, reverse or modify the decision of the Commission. The decision of the City Council is final.

L. Expiration and Revocation of Site Plan Review Approvals

1. Expiration. Any Site Plan Review granted in accordance with the terms of this Title shall expire within twenty-four (24) months from the date of approval if a building permit has not been issued prior to the expiration date and subsequently construction is diligently pursued until completion, unless at the time of approval the Planning Commission has specified a different period of time.
2. Violation of Terms. Any Site Plan Review granted in accordance with the terms of this Title may be revoked if any of the conditions or terms of such Site Plan Review are violated or if any law or ordinance is violated in connection therewith.
3. Hearing. The Planning Commission shall hold a hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within sixty (60) days after receipt of the recommendation of the Planning Commission.

LANDSCAPE WATER

HOAG HOSPITAL LOWER CAMPUS IMPROVEMENT PROJECT

Location	Area	Description	Landscape Element	Schedule	Government/Agency Status	Anticipated Outcome / Effect
Hoag Lower Campus	Area 1 - Co Gen	Additional tree planting per community request	Add 5, 48" box evergreen screen trees and new irrigation	May 2007 installed	Project completed	Screen/soften views of west end of Co Gen Building From PCH
	Area 2 - Co Gen	Additional tree planting per community request	Add 3, 48" box evergreen screen trees and new irrigation	To commence May 2008 (initial completion July 2008)	Coastal Comm. Approved 2/08	Added softening of Co Gen Plaza
	Area 3 - Co Gen	Add green screen vines per community request	Attach metal green screen lattice structure to cover east building elevation	To commence May 2008 (initial completion July 2008)	Coastal Comm. Approved 2/08	Screen/soften specific views of Co Gen Building
	Area 4 - Co Gen Building	Clean up and regrade area with added shrub and groundcover planting	Additional shrubs, groundcover and new irrigation system added upon completion of wall project	Nov 2007 installed	Project completed	Added visual quality and erosion control
	Area 5 - Corridor Street	Tree shrub and groundcover planting	24 trees, shrubs and groundcover plantings and new water conserving irrigation system installed as part of Lower Campus Wall Project	Nov 2007 installed	Project completed	Added campus visual quality screening and erosion control
	Area 6 - Retaining Wall Corridor Street	Tree and shrub planting	8, 24" box evergreen screen trees installed as part of Lower Campus Wall Project	May 2007 installed	Project completed	Screen and soften views of retaining wall
	Area 7 - West Parking Area Islands	Tree planting	12, 36" box flowering trees and 4 2in palm trees and irrigation system at end islands installed as part of Lower Campus Wall Project	Nov 2007 installed	Project completed	Soften views of open parking lot areas Increased shade and visual enhancement to parking area
	Area 8 - West Parking Area Islands	Tree planting	Install 22, 36" box flowering trees and 3 2in palm trees	Installed no later than Dec 2009	Installation shall commence no later than 60 days of COP issuance by the Coastal Comm.	Soften views of open parking lot areas and increase shade and visual enhancement to parking areas
Hoag Lower Campus	Area 9 - Corridor Retaining Wall	Flowering bougainvillea shrub planting	550, bougainvillea shrubs installed as part of Lower Campus Wall Project	Nov 2007 installed	Project completed	Colorful edge definition and softening of views along top of retaining wall
	Area 10 - Corridor Retaining Wall	Regrade area and fence shrub and groundcover planting	Shrubs, groundcover, fencing and new irrigation system	Installed no later than Dec 2009	Installation shall commence no later than 120 days of COP issuance by the Coastal Comm.	Enhanced overall campus visual quality, safety and erosion control
	Area 11 - West Co Gen Building	Additional tree shrubs & groundcover planting	17 trees, shrubs and groundcover and new irrigation system	Dec 2007 installed	Project completed	Added Visual Quality, Parking area screening and building drop off and entry area definition
Hoag Lower Campus	Area 12 - Corridor Retaining Wall	Replace trees, shrub and groundcover and enhance planting area	Trees, shrub & groundcovers and new irrigation system	Installation scheduled Dec 2009	Pending city approval in concept and Coastal Comm Approval	Improve & unify campus planting character along PCH frontage when utilized
	Area 13 - West Parking Area Islands	Additional green screen and tree/shrub planting	Install approx. 670 linear feet of green screen along PCH frontage	Installed no later than Dec 2009	Immediately upon issuance of an Approval in Concept (AIC) by the City of Newport Beach an application shall be submitted for said improvements to the Coastal Comm. Construction of said improvements shall be completed no later than 18 months after COP issuance by the Coastal Comm.	Green views of west parking lot from PCH
	Area 14 - Corridor Retaining Wall	Temporary native hydroseed and groundcover planting	Add coastal wild flower and grass Hydroseed planting with permanent parking lot with landscape improvements added	Hydroseed and irrigation installed Dec 2007	Hydroseed and irrigation completed	Erosion/silt control and enhanced visual quality pending future parking area installation
	Color Code Indicating Current Project Status					
	Green	Indicates current improvements that have been installed per previous approvals				
	Yellow	Indicates improvements installed but not apart of required permits				
	Orange	Indicates improvements in design phase yet to be submitted for city or agency approvals				
	Blue	Indicates improvements proposed but not approved for installation				
						APR 15/08 1/10/08 Revised 4/15/08 for City Council Meeting

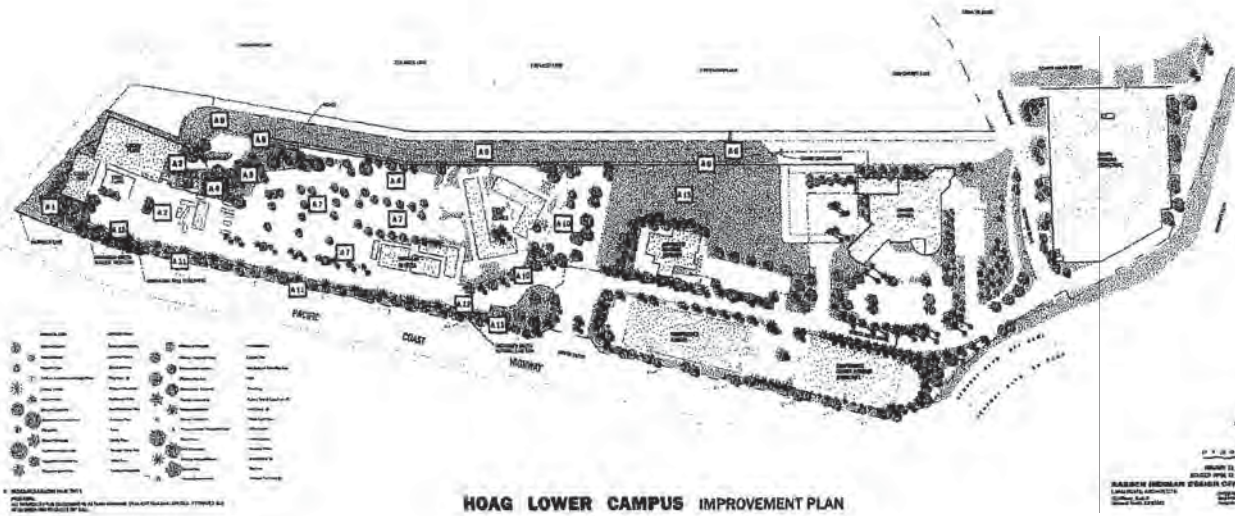
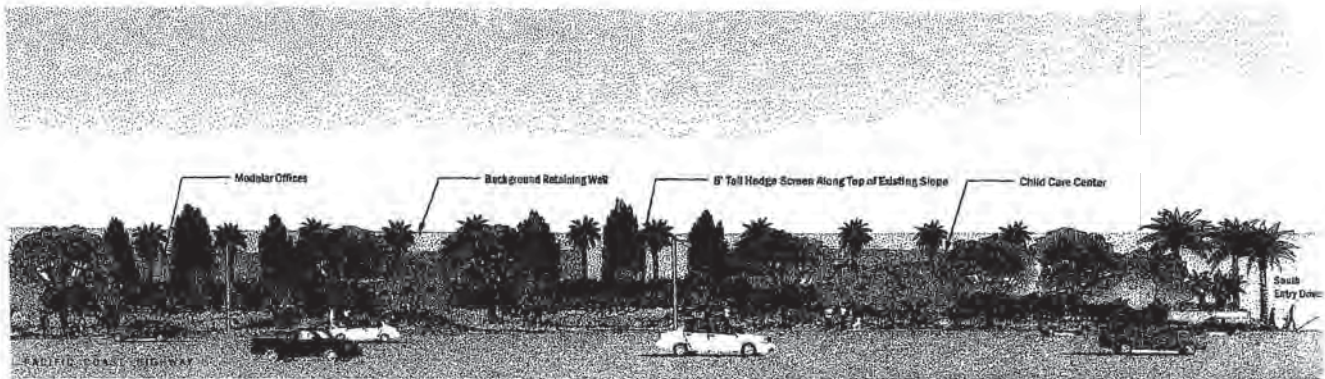


Exhibit #7



PARTIAL ELEVATION - PCH LANDSCAPE SCREEN (DRAFT)

Rabbit-Henry
ARCHITECTS
1000 S. GATEWAY BLVD.
SUITE 100
SANTA ANA, CA 92701
(714) 944-1111

Hoag Memorial Hospital Presbyterian
Simpson Beach, CA

Exhibit #8

32

04/14/2008

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, LaVonne M. Harkless, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Ordinance No. 2008-10 as duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 13th day of May 2008, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Henn, Rosansky, Curry, Daigle, Gardner, Mayor Selich

Noes: None

Absent: Webb

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 14th day of May 2008.

(Seal)



LaVonne M. Harkless

City Clerk
City of Newport Beach, California

CERTIFICATE OF PUBLICATION

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, LAVONNE M. HARKLESS, City Clerk of the City of Newport Beach, California, do hereby certify that Ordinance No. 2008-10 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in The Daily Pilot, a daily newspaper of general circulation on the following date, to wit: May 17, 2008.

In witness whereof, I have hereunto subscribed my name this _____ day of _____ 2008.

City Clerk
City of Newport Beach, California

EXHIBIT C

LEGAL DESCRIPTION OF PROPERTY

Parcel 1:

That portion of Lots 169 and 170 in Block 2 and a portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

Parcel 2:

That portion of Lot 172 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

EXHIBIT D

LEGAL DEPICTION OF PROPERTY

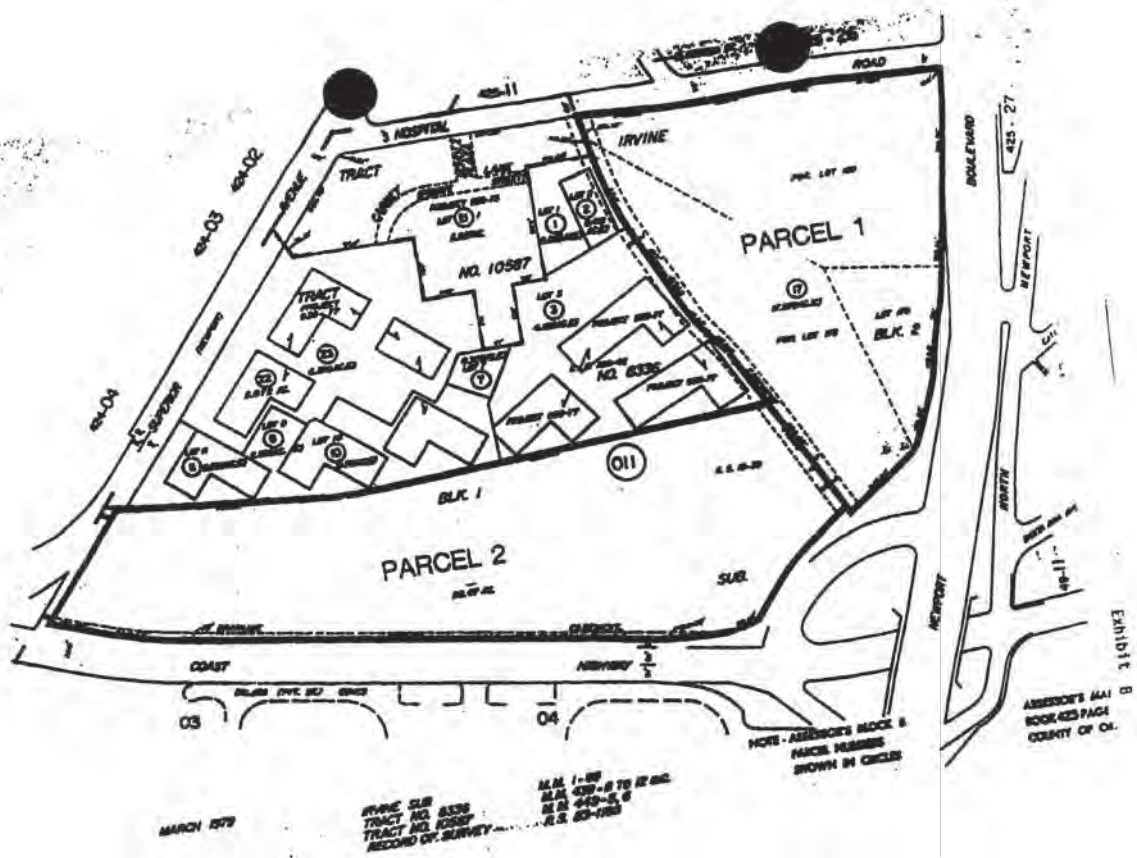


EXHIBIT F

MELINDA HOAG SMITH CENTER FOR HEALTHY LIVING AGENCY PARTNERS

Melinda Hoag Smith Center for Healthy Living



hoag

Melinda Hoag Smith
Center for Healthy Living

The Melinda Hoag Smith Center for Healthy Living (MHSCHL) is a robust one-stop-shop of interconnected and supportive services that promote health and well-being. The Center houses a wide variety of non-profit partner agencies and the programs that address key issues affecting the health of our community. The Center provides culturally sensitive services and resources that enable prevention, address the root causes of disease and improve health outcomes. Services are offered in English and/or Spanish depending on the program.

There is no fee to become a member of the Center. The membership provides access to a majority of agencies and services, at no cost, however there may be health insurance prerequisites.

For more information or to set an appointment, please call us at 949-764-6551 or stop by for an in person visit.

Hours of Operation:

Monday-Friday 8 a.m. – 7 p.m. | Saturday 8 a.m. – 4 p.m.

Vision

Inspire and empower our community to take control of their own health and wellbeing. Provide culturally sensitive services and resources that enable prevention, address the root causes of disease and improve health outcomes. Offer services that meet the needs of the whole person: mind, body and spirit.

Mission

To work synergistically in a shared location with our partner agencies and community residents to bridge the gaps in services, build capacity and maximize impact in our under-resourced communities.



Partner agencies and programs offered include:

AGENCY	SERVICES PROVIDED
Academy of International Dance	Ballet and hip-hop classes
Art and Creativity 4 Healing	Art workshops designed to aid with stress reduction and to increase coping skills
Be the Change Yoga	Yoga classes for all levels
Big Brothers Big Sisters of OC	Youth mentoring for those 6 -16 years of age
Cancer Kinship	Mentorship, education and support programming for cancer patients in any stage of diagnosis, treatment or remission
Children's Bureau	General needs assessment, case management and linkage to resources Healthy Habits educational series
Children's Health Connection	Provides connections to health services, health screenings and health education along with safety equipment
CHOC PODER (Prevention of Obesity and Diabetes through Education and Resources)	Health and wellness education including nutrition and physical fitness
CIELO – (Community for Innovation, Entrepreneurship, Leadership & Opportunities)	Support and educational workshops related to business and entrepreneurial skills, resume writing, financial and computer literacy
Community Action Partnership	Healthy Couples/Families workshops which focus on enhancing interpersonal skills and problem solving skills
Costa Mesa Family Resource Center	Social, educational and support services for children and families. Services offered in English/Spanish. Collaborative partners: Human Options, Children's Bureau, Girls Inc., Raise Foundation, Help Me Grow, and Strong Families Strong Children.
Council on Aging	English as a Second Language (ESL) classes for adults; Balance and Mobility classes; computer skills classes; HICAP – support & education regarding MediCare benefits
CPR, First Aid Certification	CPR and First Aid Certification for adults
Crime Survivors	Support groups, self-defense classes and resources for victims of crimes
Drumming Circles	Stress reduction drumming circles for adults
Girls Inc.	Afterschool programming for boys & girls: homework support; spring and summer camps; dance classes; Science Technology, Engineering, Arts and Math (STEAM) classes
Help Me Grow OC	Developmental screenings for young children; resources for enhancing child development
Hoag – ASPIRE (After School Program: Intervention and Resiliency Education)	Intensive Outpatient Program (IOP) for 13-17 year olds experiencing mental health difficulties; program guides teens and their families through skills-based training. (Need private health insurance)
Hoag – Case Management	Case management and linkage to resources
Hoag – Health Coaching	Health and wellness coaching
Hoag – Health Ministries	Faith community nursing outreach, seasonal flu clinic and blood pressure clinics
Hoag – Mental Health Center	Short term outpatient counseling services for individuals, couples and/or families Support groups and educational classes English, Spanish and Farsi speaking therapist (Sliding-scale fee)
Hoag – OC Vital Brain Aging Program	Complimentary memory screening for adults over age 45
Hoag – Promotora/Community Health Worker	Support and resources for adults experiencing stress and mental health challenges
Human Options	Domestic violence prevention and intervention services, counseling, parenting classes, PEP (Personal Empowerment Program), support groups
MOMS OC	Preparation for childbirth classes, Mommy & Me classes
NAMI – National Alliance for the Mentally Ill	Support groups and educational classes for family members and caregivers who have a loved one (child or adult) living with mental illness
Olive Crest	Parenting classes
Orange County Department of Child Support Services	Assistance for parents with obtaining, modifying and collecting child support
Orange County Public Health Nursing	Nursing case management, nursing assessment, health education

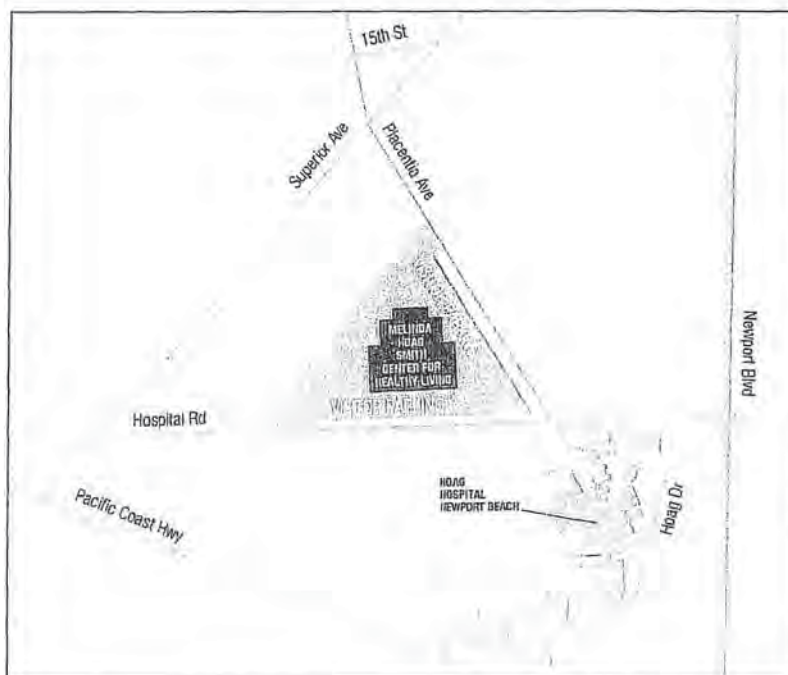
Partner agencies and programs offered include:

AGENCY	SERVICES PROVIDED
Pilates	Pilates classes for adults
Project Youth, OC Bar Foundation	Youth diversion programs – "SHORTSTOP" and "Stop Short of Addiction"; Health and wellness programing for women – "Madres Unidas"
Project Self Sufficiency	Support, mentoring and linkage to resources for single parents enrolled in college
Public Law Center	Civil legal services and individual counseling focusing on family law related matters for low income adults and families
Raise Foundation	Linkage to resources, assistance with applications for government programs; MediCal, CalFresh (food stamps); CalWorks (Cash aid); Volunteer opportunities through: Youth Advisory Council (YAC); Community Engagement Advisory Committee (CEAC)
Second Harvest	Food distribution for families in need (must be an adult to participate)
SOS Children & Family Health Center	Full scope primary care including preventive health care, urgent medical care and chronic disease management (health insurance requirements and/or sliding scale available)
SOS Dr. Robert & Dorothy Beauchamp Child and Family Dental Center	General and specialty dental services for infants to adults
SPIN – Serving People in Need	Housing assistance for families in need, GAPP –guided assistance to permanent placement
Strong Families Strong Children	Team of peer navigators and clinical case managers help provide support, resources, and counseling for active duty or veteran family members
Susan G. Komen OC	Breast health and cancer prevention education, mammogram screenings, survivor support groups
United Way	Tax preparation assistance for low income families
Youth Employment Services	Securing and maintaining employment assistance for 16-24 year olds
Zumba	Zumba classes for adults and Zumbini classes for adult caregivers and young children

Melinda Hoag Smith Center for Healthy Living

307 Placentia Avenue
Newport Beach, CA 92663

On the corner of Placentia and Hospital Road
(across the street from Hoag Hospital).
Entrance to parking lot is off Placentia.



hoag

Melinda Hoag Smith
Center for Healthy Living

307 Placentia Avenue
Newport Beach, CA 92663
949-764-6551
hoag.org/MHSCHL

EXHIBIT F

THIRD AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

**THIRD AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT
NO. 5**

BETWEEN

THE CITY OF NEWPORT BEACH

AND

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

*(Pursuant to California Government Code Sections 65864-65869.5
and Newport Beach Municipal Code Chapter 15.45)*

Approved July __, 2019
Ordinance No. 2019-12

THIRD AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

(Pursuant to California Government Code sections 65864-65869.5)

This THIRD AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5 ("**Third Amendment**") is entered into and effective on the date it is recorded with the Orange County Recorder ("**Effective Date**") by and between the CITY OF NEWPORT BEACH, a California municipal corporation ("**City**"), on the one hand, and HOAG MEMORIAL HOSPITAL PRESBYTERIAN, a California nonprofit public benefit corporation ("**Hoag**"), on the other. City and Hoag are sometimes collectively referred to in this Third Amendment as the "**Parties**" and individually as a "**Party**."

RECITALS

A. Hoag is the fee owner of approximately thirty eight (38) acres of real property located in the City of Newport Beach, County of Orange, State of California, located at 1 Hoag Drive (Assessor Parcel Nos. 423-011-30, 423-011-28), ("**Property**"). The Property is more particularly described in the legal description attached hereto and as Exhibit A and incorporated herein by reference, and as more particularly depicted as attached hereto in Exhibit B and incorporated herein by reference.

B. City and Hoag entered into that certain Development Agreement Between the City of Newport Beach and Hoag Memorial Hospital Presbyterian dated February 14, 1994, for reference purposes and recorded in the Official Records of Orange County on March 23, 1994, as document number 94-0207276 ("**Agreement**") attached hereto as Exhibit C with a twenty five (25) year Term of the Agreement.

C. City and Hoag entered into that certain Amendment to Restated Development Agreement No. 5 dated June 17, 2008, and recorded in the Official Records of Orange County on the same date, as document number 2008000289321 ("**Amendment**") attached hereto as Exhibit D which incorporated references to a Supplemental EIR and amendment to the General Plan, an increase in public benefits, designation of the City as the point of sale to the extent allowed under applicable law, and amendments to the Hoag Hospital Planned Community Text.

D. City and Hoag entered into that Second Amendment to Restated Development Agreement No. 5 and recorded in the Official Records of Orange County on June 3, 2019, as document number 2019000188999 ("**Second Amendment**") attached hereto as Exhibit E which extended the Term of the Agreement for an additional six (6) months. The **Agreement**, **Amendment**, and **Second Amendment** may collectively be referred to herein as "**Amended Agreement**."

E. City and Hoag now wish to enter into that Third Amendment to Restated Development Agreement No. 5 ("**Third Amendment**") extending the term and providing additional public benefits.

F. On June 20, 2019, the Planning Commission held a noticed public hearing on this Third Amendment and considered the testimony and information submitted by City staff, Hoag, and members of the public. Consistent with applicable provisions of the Development Agreement

Statute and Ordinance, the Planning Commission adopted Resolution No. PC2019-019, recommending the City Council approve this Third Amendment.

G. On July 9, 2019, the City Council held a noticed public hearing on this Third Amendment and considered the testimony and information submitted by City staff, Hoag, and members of the public. On July 23, 2019, consistent with applicable provisions of the Development Agreement Statute and Ordinance, the City Council held second reading and adopted Ordinance No. 2019-12 approving this Third Amendment.

H. This Third Amendment is consistent with the City of Newport Beach General Plan, including without limitation the General Plan's designation of the Property as "Private Institutions - PI," Ordinance No. 2007-6, entitled "Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code ("NBMC") Regarding Development Agreements" that amended the terms of NBMC Section 15.45 (the "**Development Agreement Statute and Ordinance**"), the Agreement, Amendment and Second Amendment.

I. In recognition of the significant public benefits provided, the City Council has found that this Third Amendment: (i) is consistent with the City of Newport Beach General Plan as of the date of the Agreement, the Second Amendment, and this Third Amendment; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) is consistent and has been approved consistent with the final Environmental Impact Report (FEIR No. 142) ("**FEIR**") and the supplemental Environmental Impact Report (EIR No. ER2007-003) (SCH#1991071003) ("**EIR**") that have been certified by the City Council on or before the date of approval, which analyzed the environmental effects of the proposed development of the project on the Property, and all of the findings, conditions of approval and mitigation measures related thereto; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 *et. seq.* and Chapter 15.45 of the NBMC.

AGREEMENT

NOW, THEREFORE, City and Hoag agree as follows:

1. **Term of Agreement.** Section 6.3 of the Amended Agreement is hereby amended in its entirety to read as follows:

"Term of Agreement. The term of this agreement (the "Term") shall begin on the Effective Date and continue until September 15, 2029, unless otherwise terminated or modified pursuant to its terms."

2. **Public Benefits Pursuant to Third Amendment.** Section 8.6. entitled "Public Benefits Pursuant to Third Amendment" is hereby added to the Amended Agreement to read as follows:

"Public Benefit Pursuant to Third Amendment. City and Hoag acknowledge and agree that this Third Amendment and Amended Agreement confer private benefits on Hoag that should be balanced by commensurate public benefits to the community of Newport Beach. Based thereon, Hoag agrees as follows:

- a. Hoag agrees to pay a total of Three Million Dollars (\$3,000,000.00) in ten (10) equal annual installments of Three Hundred Thousand Dollars (\$300,000.00) to one or more non-profit community partner(s) to operate a homeless shelter, as recommended by the Newport Beach Homeless Task Force and approved by the City Council. The initial Three Hundred Thousand Dollar (\$300,000.00) installment is due and payable by Hoag to the community partner(s) determined by the City Council within thirty (30) calendar days of Hoag receiving written notice from the City. Thereafter, prior to the anniversary of the Effective Date of this Third Amendment, the City shall provide Hoag with thirty (30) calendar days' notice in the event of a change to the designated community partner(s). Subsequent installments of Three Hundred Thousand Dollars (\$300,000.00) shall be paid by Hoag to the community partner(s), designated by the City Council, on the anniversary of the Effective Date of this Third Amendment. If the City Council does not identify any community partner(s) in accordance with the foregoing, Hoag will deposit the funds in a trust account until a community partner(s) is/are identified. Upon written notice by the City to Hoag that a community partner(s) is/are identified then the funds deposited in the trust account will be released to the community partner(s) to pay for all or a portion of the cost to operate the homeless shelter. Without limiting Hoag's obligations set forth herein, Hoag, at its option, may be involved in the co-naming of the homeless shelter.
 - b. During the term of this Third Amendment, the public benefits provided in Section 8.6(a), above, shall be in addition to the annual funding Hoag provides through the Melinda Hoag Smith Center for Healthy Living Agency Partners at its discretion to the non-profit organizations identified in Exhibit F as may be amended from time to time.
 - c. Hoag recognizes that services from the Melinda Hoag Smith Center may be available to any member of the public including, but not limited to, members considered homeless.
3. **Full Force and Effect.** Except as modified by this Third Amendment, the Amended Agreement, attached hereto as Exhibit C, Exhibit D, and Exhibit E respectively, are incorporated into this Third Amendment and shall remain in full force and effect.
 4. **Recitals.** The Recitals set forth above are true and correct and incorporated herein by reference.
 5. **Counterparts.** This Third Amendment may be signed by the Parties in different counterparts and the signature pages combined shall create a single document binding on all Parties.
 6. **Recordation.** The City Clerk of City shall record this Third Amendment in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.100.

[SIGNATURE PAGE FOLLOWS]

**SIGNATURE PAGE TO
THIRD AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5**

CITY:

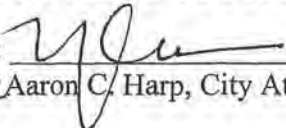
CITY OF NEWPORT BEACH,
a California municipal corporation and charter city

By: _____
Diane B. Dixon, Mayor

ATTEST:

By: _____
Leilani I. Brown, City Clerk

APPROVED AS TO FORM:

By:  _____
For Aaron C. Harp, City Attorney

HOAG:

HOAG MEMORIAL HOSPITAL
PRESBYTERIAN,
a California nonprofit public benefit corporation

By: _____
Name: Sanford Smith, AIA
Title: Senior Vice President Real Estate & Facilities

By: _____
Name: Andrew Guarni
Title: Senior Vice President and Chief Financial
Officer

(All Signatures to Be Notarized)

Attachments -

- Exhibit A: Legal Description
- Exhibit B: Legal Depiction
- Exhibit C: Development Agreement dated February 14, 1994
- Exhibit D: Amendment to Restated Development Agreement No. 5 dated June 17, 2008
- Exhibit E: Second Amendment to Restated Development Agreement No. 5
- Exhibit F: Melinda Hoag Smith Center for Healthy Living Agency Partners

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)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

(seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Parcel 1:

That portion of Lots 169 and 170 in Block 2 and a portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

Parcel 2:

That portion of Lot 172 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

EXHIBIT B

LEGAL DEPICTION OF THE PROPERTY

EXHIBIT C

DEVELOPMENT AGREEMENT DATED FEBRUARY 14, 1994

**EXEMPT RECORDING REQUEST PER
GOVERNMENT CODE 6103**

Recording Requested By and
When Recorded Return to:

City Clerk / *by P. m.*
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92659-1768

DOC # 94-0207276
23-MAR-1994 03:59 PM

Recorded in Official Records
of Orange County, California
Lee A. Branch, County Recorder
Page 1 of 61 Fees: \$ 0.00
Tax: \$ 0.00



**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF NEWPORT BEACH
AND
HOAG MEMORIAL HOSPITAL PRESBYTERIAN**

61
R
1
OF -

Approved February 14, 1994
Ordinance No. 94-8

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into between the City of Newport Beach (the "City"), and Hoag Memorial Hospital Presbyterian ("Hoag").

1. RECITALS. This Agreement relates to the following:

1.1 Purpose of Agreement. This Agreement is intended to:

- (a) Enable Hoag to adapt to the ever changing health care needs of those residents within its service area by authorizing design parameters of new or additional facilities in a manner that will allow Hoag to respond to rapid changes in medical and health care technology and delivery systems.
- (b) Establish strict, binding limits on the amount and height of permitted development as well as ensure compliance with numerous conditions on the density, location, and timing of construction to minimize, to the extent feasible, any environmental impacts of Hoag's proposed expansion.
- (c) Impose exactions such as dedication of property, construction of public improvements and/or the installation of landscaping visible to the public, which, when considered in conjunction with the public services provided by Hoag, benefit the general public.

1.2 Authorization. This Agreement is authorized by, and is consistent with, the provisions of 65864 et seq. of the Government Code of the State of California, and Chapter 15.45 of the Newport Beach Municipal Code.

1.3 Interest of Hoag. Hoag is the legal and/or equitable owner of approximately forty (40) acres of real property located in the City and more particularly described in Exhibit "A" and depicted in Exhibit "B" (the "Property").

1.4 Development of the Property. This Agreement authorizes development on the Property consistent with the Hoag Memorial Hospital Presbyterian Master Plan and Planned Community Development Plan ("Master Plan", a copy of which is attached to this Agreement as Exhibit "C" and incorporated by reference when appropriate), subject to the conditions and mitigation measures identified in Environmental Impact Report No. 142 and imposed by the City Council as conditions to approval of the Master Plan and this Agreement and, for all development within

the coastal zone subject to approval of a coastal development permit by the California Coastal Commission or its successor agency.

- 1.5 Planning Commission/City Council Hearings. The Planning Commission, after giving appropriate notice, held public hearings to consider a development agreement, the proposed Master Plan, and the EIR on December 5, 1991, January 9, 1992, January 23, 1992, February 6, 1992, and February 20, 1992. The City Council conducted public hearings on the Master Plan, this Agreement and the EIR on March 23, 1992, March 30, 1992, April 13, 1992 and May 11, 1992.
- 1.6 Consistency. This Agreement is consistent with the various elements of the Newport Beach General Plan, the Master Plan, and other applicable ordinances, plans, and policies of the City. This Agreement is also consistent with the purpose and intent of state and local laws authorizing development agreements in that it represents comprehensive planning, provides certainty in the approval of subsequent projects subject to compliance with conditions, reduces the economic costs of development by providing assurance to Hoag that it may generally proceed with projects in accordance with existing regulations, and provides assurance to adjoining property owners that limits on the height of structures and amount of development as specified in the Master Plan and this Agreement will remain in full force and effect for a period of twenty-five (25) years.
- 1.7 Police Power. The City Council has determined that this Agreement is in the best interests of the health, safety and general welfare of the City, its residents and the public, was entered into pursuant to, and represents a valid exercise of, the City's police power, and has been approved in accordance with the provisions of state and local law that establish procedures for the approval of development agreements.
- 1.8 City Ordinance. On February 14, 1994, the City Council adopted Ordinance No. 94-8 approving this Agreement and authorizing the City to enter into this Agreement. The Adopting Ordinance will become effective on March 16, 1994.

2. DEFINITIONS.

- 2.1 The "Adopting Ordinance" refers to City Ordinance No. 94-8, adopted on February 14, 1994, by the City Council, which approved and authorized the City to enter into this Agreement.
- 2.2 "Agreement" refers to this "Development Agreement Between the City of Newport Beach and Hoag Memorial Hospital Presbyterian".

- 2.3 "Annual Review" refers to the review of Hoag's good faith compliance with this Agreement and conditions on development as set forth in Section 5.
- 2.4 The "Approval Date" means the date on which the City Council voted to adopt the Adopting Ordinance.
- 2.5 All forms of use of the verb "assign" and the nouns "assignment" and "assignee" shall include all contexts of hypothecations, sales, conveyances, transfers, leases, and assignments.
- 2.55 "California Coastal Commission" refers to the California State Resources Agency established under the California Coastal Act of 1976.
- 2.6 "CEQA" and the "CEQA Guidelines" refers to the California Environmental Quality Act and the CEQA Guidelines promulgated by the Secretary of Resources of the State of California, including any amendments adopted subsequent to the Effective Date.
- 2.7 "City" refers to the City of Newport Beach, California.
- 2.8 "City Council" refers to the City Council of the City.
- 2.9 "Cure Period" refers to the period of time during which a Default may be cured pursuant to Section 9.
- 2.10 A "day" or "days" refers to a calendar day, unless expressly stated to be a business day.
- 2.11 A "Default" refers to any material default, breach, or violation of the provisions of this Agreement. A "City Default" refers to a Default by the City, while a "Hoag Default" refers to a default by Hoag.
- 2.12 The "Effective Date" refers to the effective date of the Adopting Ordinance and is the effective date of this Agreement. provided however, the Agreement has been approved by the California Coastal Commission, and the Executive Director of the Coastal Commission is in receipt of a copy of this Agreement signed by both parties.
- 2.13 The "EIR" refers to final Environmental Impact Report No. 142 of the City of Newport Beach and Supplemental Environmental Impact Report No. 142.
- 2.14 An "Estoppel Certificate" refers to the document certifying the status of this Agreement required by Section 5.6 in the form of Exhibit "D".

- 2.15 An "Exaction" refers to those specific dedications and improvements required of Hoag and set forth in Section 8.2 below.
- 2.16 An "Exhibit" refers to an exhibit to this Agreement. All Exhibits are incorporated as a substantive part of this Agreement. The Exhibits to this Agreement are:
- Exhibit A: Legal Description of the Property
- Exhibit B: Map of the Property
- Exhibit C: The Master Plan
- Exhibit D: Estoppel Certificate
- 2.17 "Existing General Regulations" means those General Regulations approved by the City on or before the Approval Date (irrespective of their effective date) and not rescinded or superseded by City action taken on or before the Approval Date.
- 2.18 "Future General Regulations" means those General Regulations (see Section 2.19 below) adopted by the City after the Approval Date.
- 2.19 "General Regulations" means those ordinances, rules, regulations, policies, and guidelines of the City, which are generally applicable to the use of land and/or construction within the City and include, the Fair Share Traffic Contribution Fee Ordinance, Uniform Building Codes and water and sewer connection and fee ordinances.
- 2.20 "General Plan" refers to the City's General Plan in effect on the Approval Date, plus all amendments to the General Plan adopted by the City on or before the Approval Date and effective prior to the Effective Date.
- 2.21 "Hoag" refers to Hoag Memorial Hospital Presbyterian, a non-profit corporation.
- 2.22 "Includes" and all contexts and forms of the words "includes" and "including" shall be interpreted to also state "but not limited to."
- 2.23 "Master Plan" refers to the Hoag Memorial Hospital Presbyterian Master Plan and Planned Community Development Plan which was adopted by the City on May 26, 1992 (Exhibit "C").
- 2.24 "Mortgagee" refers to the holder of a beneficial interest under any mortgage, deed of trust, sale-leaseback agreement, or other

transaction under which all or a portion of the Property, including those portions acquired by assignees, is used as security (a "Mortgage") or the owner of any interest in all or any portion of the Property under a Mortgage, including those portions acquired by assignees.

- 2.25 "Notice" refers to any written notice or demand between the Parties required or permitted by this Agreement.
- 2.26 The "Parties" refers to the City and Hoag and a "Party" shall refer to either of the Parties.
- 2.27 "Planning Commission" refers to the Planning Commission of the City.
- 2.28 The "Project" refers to the proposed development of the Property pursuant to the Master Plan and this Agreement.
- 2.29 "Project Specific Approvals" means all site-specific (meaning specifically applicable to the Property only and not generally applicable to some or all other properties within the City) plans, subdivision maps, permits, or other entitlement. Project Specific Approvals include subdivision maps, site plan review, conditional use permits, coastal development permits, variances, grading and building permits, as well as amendments or modifications to those plans, maps and permits. Project Specific Approvals does not include Existing or Future General Regulations.
- 2.30 The "Property" refers to the real property described on Exhibit "A" and depicted on Exhibit "B."

3. CONDITIONS TO DEVELOPMENT.

- 3.1 Introduction. The provisions of this Section express the intent of the parties regarding the extent to which this Agreement vests Hoag's right to proceed with the development described in the Master Plan. Hoag acknowledges that its right to proceed with development described in the Master Plan is subject to numerous conditions and mitigation measures including the following:
 - (a) The specific limitations and restrictions contained in the Master Plan;
 - (b) Conditions and mitigation measures imposed by the City Council to mitigate significant effects identified in the EIR;

- (c) Conditions imposed by the City as a result of subsequent or supplemental environmental analysis pursuant to provisions of CEQA and the CEQA Guidelines;
- (d) Conditions imposed by the City Council in conjunction with the approval of Traffic Study No. 81 and Variance No. 1180;
- (e) Compliance with the terms and conditions specified in this Agreement.
- (f) Compliance with Existing General Regulations.

3.2 Compliance with Master Plan Conditions/Mitigation Measures.
 Hoag acknowledges that City Council approval of the Master Plan and this Agreement was subject to compliance with numerous conditions and mitigation measures designed to minimize or eliminate the significant adverse effects of the Project and ensure the health, safety, and welfare of nearby residents as well as Hoag patients and employees. Many of these conditions and mitigation measures impose specific development standards and requirements to be implemented in conjunction with further study and analysis of site or subsurface conditions before grading or construction. Specific mitigation measures that require compliance with, or satisfaction of, standards before grading or construction can occur include the following:

- (a) Slope excavation techniques which insure stability;
- (b) Grading and excavation techniques which minimize disturbance to adjacent residents and the general public;
- (c) Identification of potential faults on site and construction of buildings pursuant to recommendations of certified geologists and in a manner which insures that nearby residents, Hoag patients and Hoag employees are not exposed to a significant risk of injury;
- (d) Evaluation of soil corrosivity and removal of corrosive soils or use of corrosion resistant construction materials;
- (e) Mitigation of impacts caused by removal of wetlands through off-site restoration as required by resource agencies;
- (f) Preparation and approval of a project trip generation study prior to development of Phase I of the Master Plan (if Hoag proposes a land use other than specified in the approved Traffic Study);

- (g) Preparation and approval of a project trip generation study as a condition to construction of development in Phases II and III of the Master Plan;
- (h) Preparation and approval of a Traffic Phasing Ordinance analysis prior to construction of development in Phase II and Phase III of the Master Plan;
- (i) Preparation of a view impact analysis of each proposed building prior to issuance of permits;
- (j) Analysis and mitigation of emissions in accordance with the regulations of the South Coast Air Quality Management District;
- (k) Preparation and approval of a construction phasing and traffic control plan for each phase of development.

Hoag's right to develop the Property pursuant to the Master Plan is contingent upon compliance with, and satisfaction of, the conditions and mitigation measures imposed by the City Council as of the Approval Date, conditions imposed by the California Coastal Commission required for approval of coastal development permits, as well as conditions and mitigation measures resulting from subsequent environmental analysis as specified in Paragraph 3.3.

- 3.25 Future Coastal Act discretionary review may result in specific mitigation measures to ensure consistency with the Coastal Act that require compliance with, or satisfaction of, standards before grading or construction can occur.

3.3 Program EIR. Hoag acknowledges that the EIR is a "Program EIR." The EIR analyzes the impacts of construction phased over time and, pursuant to CEQA, City is under a continuing obligation to analyze Hoag's requests for Project Specific Approvals to ensure the environmental impacts associated with the request were fully addressed in the EIR. Subsequent environmental documentation is required if this analysis reveals environmental impacts not fully addressed in the program EIR, identifies new impacts, or concludes the specific request is not consistent with the project described in the EIR. Hoag acknowledges the right and obligation of the City and the Coastal Commission or its successor agency to impose additional conditions as the result of the subsequent environmental analysis required by CEQA.

- 3.4 Mitigation Monitoring Plan. City shall prepare a Mitigation Monitoring Plan ("Plan") within sixty (60) days after the Effective Date. Hoag shall not submit any application for Project Specific Approval until the Plan has been approved by the City Council and the Executive Director of the Coastal Commission or the appropriate entity of its successor agency.

The Plan shall comply with and satisfy the requirements of CEQA and the Guidelines and the Coastal Act. The Plan shall be available to the public upon request.

- 3.5 Compliance with General Regulations. Hoag is required to comply with the Existing General Regulations. As to those Existing General Regulations which require the payment of fees, costs, and expenses, Hoag shall pay the fee, cost, or expense required as of the date on which Hoag submits the application for Project Specific Approval. Hoag shall also comply with any Future General Regulations that do not impair Hoag's ability to develop the Property in accordance with the density, intensity, height and location of development specified in the Master Plan. Hoag shall also comply with all provisions of the Uniform Building Code, whether adopted before or after the Approval Date, which are in effect at the time applications for Project Specific Approvals are submitted. Hoag shall also comply with the Coastal Act and the City's certified Local Coastal Program.

4. RIGHT TO DEVELOPMENT.

- 4.1 Right to Develop. Subject to compliance with the provisions of Sections 3 and 8.2, Hoag shall have a vested right to develop and receive Project Specific Approvals for construction on the Property to the full extent permitted by the Master Plan. Subject to the provisions of Sections 3 and 8, City shall only take action which complies with and is consistent with the Master Plan and this Agreement unless Hoag otherwise consents in writing. Subject to this Subsection, City shall have the authority to impose only those Exactions which are specifically described in this Agreement, except as expressly required (as opposed to permitted) by state or federal law.
- 4.2 Reservations or Dedications of Land. Except as expressly provided in this Agreement, no dedications or reservations of the Property shall be required of Hoag in conjunction with the application or issuance of any Project Specific Approvals.
- 4.3 Conflicting Measures. Except as expressly provided in this Agreement, no initiative measure, moratorium, referendum (except as provided in Government Code Section 65857.5), ordinance, statute or other provision of law which in any way limits or restricts development of the Property to the full extent permitted by the Master Plan and this Agreement (including density, intensity, timing, phasing, and sequencing) shall be applied to the Property during the term of this Agreement.

- 4.4 Time for Construction and Completion of Project. Subject to the provisions of this Agreement and the Master Plan, Hoag shall have the right to decide the timing, phasing, and sequencing of construction on the Property and shall be entitled to apply for, and receive approval of, in a timely manner, permits or approvals at any time.

5. ANNUAL REVIEW.

- 5.1 City and Hoag Responsibilities. At least every twelve (12) months during the Term, the City shall review Hoag's good faith substantial compliance with this Agreement (the "Annual Review"). After the Annual Review, the City's finding of good faith compliance by Hoag shall be conclusive for the purposes of future Annual Reviews or legal action between the Parties. Either Party may address any requirements of the Agreement during the Annual Review. However, fifteen (15) days' written Notice of any requirement to be addressed shall be made by the requesting Party. If, at the time of the review, an issue not previously identified in writing is required to be addressed, the review shall be continued at the request of either Party to afford sufficient time for analysis and preparation of a response.
- 5.2 Public Hearing. The Annual Review shall be conducted at a public hearing noticed in accordance with the provisions of Chapter 15.45 of the Newport Beach Municipal Code.
- 5.3 Information to be Provided to Hoag. The City shall mail to Hoag a copy of the staff report and related exhibits concerning Agreement performance a minimum of ten (10) days before the Annual Review.
- 5.4 Mitigation Review. The annual review shall include a detailed report of compliance with the various conditions and mitigation measures contained within the mitigation monitoring plan. The report shall include an analysis of the view impacts of buildings constructed in comparison to the anticipated views as depicted in the EIR. For the five year monitoring period imposed by the Department of Fish and Game Streambed Alteration Agreement entered into between the Department of Fish and Game and Hoag, the annual review shall also assess the success of any off-site wetlands mitigation. Five years after the completion of the Department of Fish and Game monitoring period, Hoag shall submit a final report assessing the success of the off-site wetlands mitigation in its annual review. If the survival and cover requirements set forth in the Streambed Alteration Agreement have not been met, Hoag shall be responsible for replacement planting to achieve these requirements. Hoag shall be found in compliance with this Agreement unless the City Council determines, based upon the

evidence presented at the Annual Review, that Hoag has not complied with all mitigation measures and conditions including those imposed as a result of subsequent environmental analysis, applicable to the grading of, or building on, the Property as of the date of the Annual Review.

5.5 Review Letter. If Hoag is found to be in compliance with the Agreement after the Annual Review, the City shall issue, within ten (10) days of Hoag's written request, a letter to Hoag stating that the Agreement remains in effect and Hoag is not in Default.

5.6 Estoppel Certificate. Either Party may at any time deliver written Notice to the other Party requesting an estoppel certificate (the "Estoppel Certificate") stating:

- (a) The Agreement is in full force and effect and is a binding obligation of the Parties.
- (b) The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments.
- (c) No Default in the performance of the requesting Party's obligations under the Agreement exists or, if a Default does exist, the nature and amount of any Default.

A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request. The Planning Director may sign Estoppel Certificates on behalf of the city. An Estoppel Certificate may be relied on by assignees and Mortgagees. The Estoppel Certificate shall be substantially in the same form as Exhibit "D."

5.7 Failure to Conduct Annual Review. The City's failure to conduct an Annual Review shall not constitute or be asserted by the City as Hoag's Default.

6. GENERAL PROVISIONS.

6.1 Effective Date. This Agreement and the obligations of the Parties shall be effective as of the Effective Date. However, this Agreement shall bind the Parties as of the Approval Date, subject only to the Adopting Ordinance becoming effective pursuant to California law.

6.2 Applicability to Coastal Zone. This Agreement shall not be applicable to those portions of the Property located within the Coastal Zone as defined by the California Coastal Act (Division

20, California Public Resources Code, beginning with Section 30000) until either (1) the required local coastal program for the Property has been certified by the California Coastal Commission or (2) the California Coastal Commission has approved this Agreement. This Subsection is intended solely to comply with the provisions of California Government Code Section 65869 and shall be of no force or effect if Section 65869 is repealed.

- 6.3 Term of Agreement. The term of this Agreement (the "Term") shall begin on the Effective Date and continue for twenty-five (25) years unless otherwise terminated or modified pursuant to this Agreement. Any modifications to this Agreement prior to effective certification of the City's Local Coastal Program (LCP), are subject to the review and approval of the Coastal Commission or its successor agency.
- 6.4 Assignment. Hoag has the absolute right to assign (see Section 2.5) its rights and/or delegate its obligations under this Agreement as part of an assignment of all or a portion of the Property. Any assignment shall be subject to the provisions of this Agreement. As long as Hoag owns any part of the Property, Hoag may assign the benefits of this Agreement without delegating the obligations for the portion of the Property assigned. If that occurs, however, the benefits assigned shall remain subject to the performance by Hoag of the corresponding obligations.

Where an assignment includes the delegation of both the benefits and the corresponding obligations, those obligations become solely the obligations of the assignee. If an assignee is in Default, then as to Hoag or any assignees not in Default, the Default shall not constitute their Default, give grounds for termination of their rights under this Agreement or be a basis for an enforcement action against them.

- 6.5 Amendment of Agreement.
- (a) Subject to the provisions of Subsection (b), and subject to approval of the Coastal Commission or its successor agency prior to effective certification of the City's Local Coastal Program (LCP), this Agreement may be amended from time to time by the mutual consent of the Parties, or their successors in interest, but only in the manner provided by the Government Code and this Agreement. After any amendment, the term "Agreement" shall refer to the amended Agreement.
- (b) The City Council shall not approve, and Hoag shall not request, any amendment to the provisions of the Master Plan or this Agreement that would increase the maximum

permitted gross floor area or the maximum permitted building height (within any lettered building envelope) above that established by the Master Plan as of the Effective Date of this Agreement. This Subsection shall prevail over any conflicting ordinance, resolution, policy or plan adopted by the City Council.

6.6 Enforcement. This Agreement is enforceable by each of the Parties and their respective successors and assigns.

6.7 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

- (a) Expiration of the twenty-five (25) year term;
- (b) Entry, after all appeals have been exhausted, of a final judgment or issuance of a final order directing the City to set aside, withdraw, or abrogate the City's approval of this Agreement or any material part of the Project; or,
- (c) The effective date of a Party's election to terminate the Agreement as provided in Section 9.3 of this Agreement.

6.8 Hoag shall defend, indemnify and hold harmless the City and its officers and employees with respect to any claim, loss or damage in any way related to the grading, excavation or stabilization of the slopes adjacent to the view parks by Hoag or its employees, agents contractors or representatives. This Section is not intended to impose liability on Hoag for the acts of persons other than Hoag or its agents, representatives or contractors.

6.9 Hoag shall enter into an agreement with City to accept ownership of, and responsibility for maintenance of, the existing methane gas venting flare and any device for collecting gas that is subsequently installed on the Property pursuant to conditions or mitigation measures imposed in conjunction with the Master Plan approval or subsequent environmental analysis.

7. CONFLICTS OF LAW.

7.1 Conflict with State and Federal Laws and Regulations. Where state or federal laws or regulations prevent compliance with one or more provisions of this Agreement, those provisions shall be modified, through revision or suspension, to the

extent necessary to comply with such state or federal laws or regulations and the modified Agreement shall remain in effect, subject to the following:

- (a) the City shall not request modification of this Agreement pursuant to this provision unless and until the City Council makes a finding that such modification is required (as opposed to permitted) by state and federal laws or regulations;
- (b) the modifications must be limited to those required (as opposed to permitted) by the state or federal laws;
- (c) the modified Agreement must be consistent with the state or federal laws or regulations which required modification or suspension;
- (d) the intended material benefits of this Agreement must still be received by each of the Parties after modification;
- (e) neither the modification nor any applicable local, state, or federal laws or regulations, may render the modified Agreement impractical to enforce; and
- (f) Hoag consents in writing to the modification.
- (g) Any modifications, prior to effective certification of the City's Local Coastal Program (LCP) are subject to approval of the Coastal Commission or its successor agency.

Hoag shall have the right to seek judicial review of any proposed modification to ensure compliance with this Section.

- 7.2 Effect of Termination. If this Agreement is terminated as a result of changes in state or federal law, Hoag remains obligated to comply with the provisions of Section 8.2(a) and (b), unless Hoag has completed construction of less than twenty-five percent (25%) of the maximum permitted development.

8. PUBLIC BENEFITS/EXACTIONS.

- 8.1 Public Benefits. City and Hoag agree that this Agreement confers a substantial public benefit by enabling Hoag to construct facilities most appropriate to changes in medical technology and thereby better satisfy the health care needs of residents within its service area. In addition, the Master

Plan and this Agreement confer benefits on the public and nearby residents by imposing long term restrictions on the height, amount and location of development as well as the public improvements described in Section 8.2.

8.2 Exactions. Hoag shall, as a condition to the right to develop, do the following:

- (a) Prior to commencement of development, irrevocably offer to dedicate and grade the proposed linear and consolidated view park identified in Figure 3.2.1 of Volume 1 of the EIR. The City shall accept the offer of dedication within sixty (60) days after the initial grading permit has been finalled by the City. The first stage of development shall include grading of the public linear and consolidated viewpark identified in Figure 3.2.1. of Volume I of the EIR. Hoag shall grade and excavate the slope adjacent to the proposed .28 (28/100) acre consolidated public view park and .52 (52/100) acre public linear view park in a way that ensures stability of the park and adjacent slopes. The grade (between the bicycle path and edge of slope) of the view parks shall be the minimum necessary to insure adequate drainage. The improvement for the linear and consolidated public parks shall be completed within three (3) years after the offer of dedication has been accepted by the City. The City shall ensure that adequate erosion control measures are implemented prior to construction.
- (b) Subsequent to the approval of this Agreement by the Coastal Commission and the expiration of any statute of limitation for filing a legal challenge to this Agreement, the Master Plan, or the EIR, Hoag shall deposit Two Hundred and Fifty Thousand Dollars (\$250,000.00) in an account, and at a financial institution, acceptable to City. The account shall be in the name of the City provided, however, Hoag shall have the right to access the funds in the event, but only to the extent that, Hoag constructs or installs the improvements described in (i) or (ii). Funds in the account shall be applied to the following projects (in order of priority upon notice to proceed served by City on Hoag):
 - (i) The construction of a sidewalk and installation of landscaping in the CalTrans right-of-way along the west side of Newport Boulevard southerly of Hospital Road;

- (ii) The construction of facilities necessary to bring reclaimed water to West Newport and/or the Property;

Any funds remaining in the account after completion of the projects described in (i) and (ii) shall be used by the City to fund, in whole or in part, a public improvement in the vicinity of the property.

- (c) City and Hoag shall conduct a study of possible future improvements in and around the easterly end of Semeniuk Slough that would, among other things, improve the appearance of the area and, potentially, serve as a component to improve public access from residential areas in West Newport to park land and public recreation facilities proposed in conjunction with development of the West Newport Oil Company property. The study shall analyze, among other things, the type of improvements that would improve the area without adversely impacting wetlands, the possible location of pedestrian trails and the potential for those trails to improve access to proposed recreational facilities, phasing of the improvements, potential public benefits, and the cost of the improvements. As a part of the study, Hoag and City shall meet and confer with resource agencies relative to the type and extent of improvements that may be permitted in or adjacent to wetlands. Hoag shall fund the study and participate in the cost of constructing any improvements in the area that the City Council determines are feasible and in the public interest, provided, however, the financial contribution of Hoag, including the costs of the study and improvements, shall not exceed Two Hundred Thousand Dollars (\$200,000.00).
- (d) Hoag's obligations pursuant to Subsection (c) are contingent on Coastal Commission approval of the Master Plan and attached as Exhibit C to this Agreement with no significant reduction in entitlement from that authorized in the Master Plan. Hoag's obligations pursuant to Subsection (b) shall be reduced through good faith negotiations in the event the Coastal Commission reduces entitlement by ten percent (10%) or more from that authorized in the Master Plan.

9. DEFAULT, REMEDIES AND TERMINATION.

- 9.1 General Provisions. In the event of a Default (see Section 2.11), the Party alleging a Default shall give the other Party

a written Notice of Default. The Notice of Default shall specify the nature of the alleged Default, and a reasonable manner and sufficient period of time (not less than thirty (30) days) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of the Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then a Default shall be deemed not to exist.

- 9.2 Option to Institute Legal Proceedings or to Terminate. If an alleged Default is not cured within the Cure Period, the noticing Party must give the defaulting Party a Notice of intent to terminate the Agreement. Within thirty (30) days after giving of the Notice, the City Council shall hold a public hearing in the manner set forth in Government Code Sections 65865, 65867, and 65868, as amended, to consider and review the matter.
- 9.3 Notice of Termination. After considering the evidence presented to the City Council, the Party alleging the Default, at its option, may give written Notice of termination of the Agreement to the other Party and the Agreement shall be terminated immediately upon giving the Notice. A termination shall be valid only if good cause exists and clear and convincing evidence was presented to the City Council to establish the existence of a Default. The findings of the City Council as to the existence of a Default shall have no weight in any legal proceeding brought to determine the existence of a Default. The validity of any termination may be challenged pursuant to Section 11.16, in which case the court must render an independent judgment, on the basis of clear and convincing evidence, as to the existence of good cause for termination. Termination may result only from a material Default of a material provision of this Agreement.
- 9.4 Waiver. Failure or delay in giving Notice of Default shall not waive a Party's right to give future Notice of the same or any other Default.
- 9.5 Default by Hoag. If the City alleges a Hoag Default, the City shall conduct a hearing utilizing the Annual Review procedures required by this Agreement before the City may commence legal proceedings to terminate this Agreement.
- 9.6 Default by the City. If Hoag alleges a City Default, Hoag, without limiting any of its other remedies, shall not be

obligated to proceed with or complete the Project or any phase of the Project, nor to perform any further obligations under the Agreement. Upon a City Default, any resulting delays in Hoag's performance shall neither be Hoag's Default nor constitute grounds for termination or cancellation of the Agreement by the City.

10.0 ENCUMBRANCES AND RELEASES ON PROPERTY.

- 10.1 Discretion to Encumber. Hoag may encumber all or any portion of the Property in any manner. The City acknowledges that lenders providing financing may require technical modifications to the Agreement which do not materially alter the intent of the Parties. The City agrees to meet, upon request, with Hoag and/or lenders to negotiate in good faith any lender request for modification. The City agrees to not withhold unreasonably its consent to such modification. Any such modification, prior to effective certification of the City's Local Coastal Program (LCP), is subject to the review and approval of the Executive Director of the Coastal Commission or its successor agency.
- 10.2 Entitlement to Written Notice of Default. Any Mortgagee and its successors and assigns, upon written request to the City, shall be entitled to receive from the City written Notice of any Hoag Default at the same time Hoag is provided with Notice pursuant to Section 9.1.

11.0 MISCELLANEOUS PROVISIONS.

- 11.1 Notices. All Notices (see Section 2.26) shall be written and delivered by personal delivery (including Federal Express and other commercial express delivery services providing acknowledgments or receipt), registered, certified, or express mail, or telegram to the addresses set forth below. Receipt shall be deemed complete as follows:
- (a) For personal delivery, upon actual receipt;
 - (b) For registered, certified, or express mail, upon the delivery date or attempted delivery date as shown on the return receipt; and
 - (c) For telegram, upon the transmission of the telegram.
- Notices shall be addressed as follows:

To the City: City Clerk
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92660
Attention: City Attorney
Attention: City Manager

To Hoag: Hoag Memorial Hospital Presbyterian
301 Newport Boulevard
Newport Beach, CA 92663
Attention: President

With a copy to:

Tim Paone
Paone, Callahan, McHolm & Winton
19100 Von Karman, 8th Floor
P.O. Box 19613
Irvine, CA 92713-9613

The addresses to which Notices shall be sent may be changed by giving Notice of a new address.

11.2 Enforced Delay; Extension of Time of Performance. Neither Party shall be deemed to be in Default where delays or non-performance are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, oil spills, casualties, acts of nature, unavailability of materials, governmental restrictions imposed or mandated by governmental entities, suspension of rights in accordance with the existence of unforeseen circumstances, litigation, or similar bases for excused performance. If written Notice of such delay is given to the other Party within thirty (30) days after such delay begins an extension of time for performance shall be granted in writing for the period of the delay, or longer as may be mutually agreed upon. In no event shall the term of this Agreement be extended as a result of the application of this Subsection.

11.3 Severability. If any material part of the Agreement is found by a court to be invalid, void, or illegal, the Parties shall modify the Agreement to implement the original intent of the Parties. These steps may include the waiver by either of the Parties of their right under the unenforceable provision. If, however, the Agreement objectively cannot be modified to implement the original intent of the Parties and the Party substantially benefitted by the material provision does not waive its rights under the unenforceable provision, the entire

Agreement shall become void. For purposes of this Section, and without excluding the possible materiality of other provisions of this Agreement, all provisions of Sections 3, 4 and 8 are deemed "material."

- 11.4 Entire Agreement. This Agreement constitutes the entire understanding and Agreement of the Parties regarding the subject matter of this Agreement. This Agreement supersedes all negotiations and previous agreements between the Parties regarding that subject matter.
- 11.5 Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the Party making the waiver and, prior to affective certification of the City's Local Coastal Program (LCP), are subject to approval of the Coastal Commission or its successor agency.
- 11.6 Incorporation of Recitals. The Recitals set forth in Section 1 are part of this Agreement.
- 11.7 Covenant of Good Faith and Fair Dealing. Neither Party shall do anything which shall have the effect of harming or injuring the right of the other Party to receive the benefits of this Agreement.
- 11.8 Further Actions and Instruments. Upon the request of either Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.
- 11.9 Successors and Assigns. Subject to Section 6.3 above, the burdens of this Agreement shall be binding upon, and the benefits of the Agreement inure to, all successors-in-interest and assigns of the Parties.
- 11.10 Construction of Agreement. All language in all parts of this Agreement shall be construed as a whole and given its fair meaning. The captions of the paragraphs and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of construction. This Agreement shall be governed by the laws of the State of California. This Agreement is not intended to impermissibly contract away the

legislative and governmental functions of the City, and in particular, the City's police powers or to surrender or abrogate the city's governmental powers over the Property.

- 11.11 Authority to Execute. The person executing this Agreement on behalf of Hoag warrants and represents that he/she has the authority to do so and the authority to bind Hoag to the performance of Hoag's obligations under this Agreement.
- 11.12 Consent. Any consent required by the Parties in carrying out the terms of this Agreement shall not unreasonably be withheld.
- 11.13 Effect on Title. This Agreement shall not continue as an encumbrance against any portion of the Property as to which this Agreement has terminated.
- 11.14 Recording. The City Clerk shall cause a copy of this Agreement to be executed by the City and recorded in the Official Records of Orange County no later than ten (10) days after the Effective Date. The recordation of this Agreement is deemed a ministerial act and the failure of the City to record the Agreement as required by this Section and Government Code Section 65868.5 does not make the Agreement void or ineffective.
- 11.15 Institution of Legal Action. In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any Default, to enforce any provision of this Agreement, to enjoin any threatened or attempted violation of this Agreement, to recover damages for any Default, or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Superior Court of the County of Orange, State of California, or in the Federal District Court in the Central District of California.
- 11.16 Attorneys' Fees. In any arbitration, quasi-judicial, administrative, or judicial proceeding between the Parties initiated with respect to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all costs, expenses, and disbursements in connection with such action.

Date: 2-23-94, 1994

CITY OF NEWPORT BEACH

By: *Clarence Turner*
Clarence Turner, Mayor

Date: March 9, 1994

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

By: *Albert J. Auer*
Albert J. Auer
Chairman of the Board

wb\hoagch4.fnl
1/21/94

LEGAL DESCRIPTION

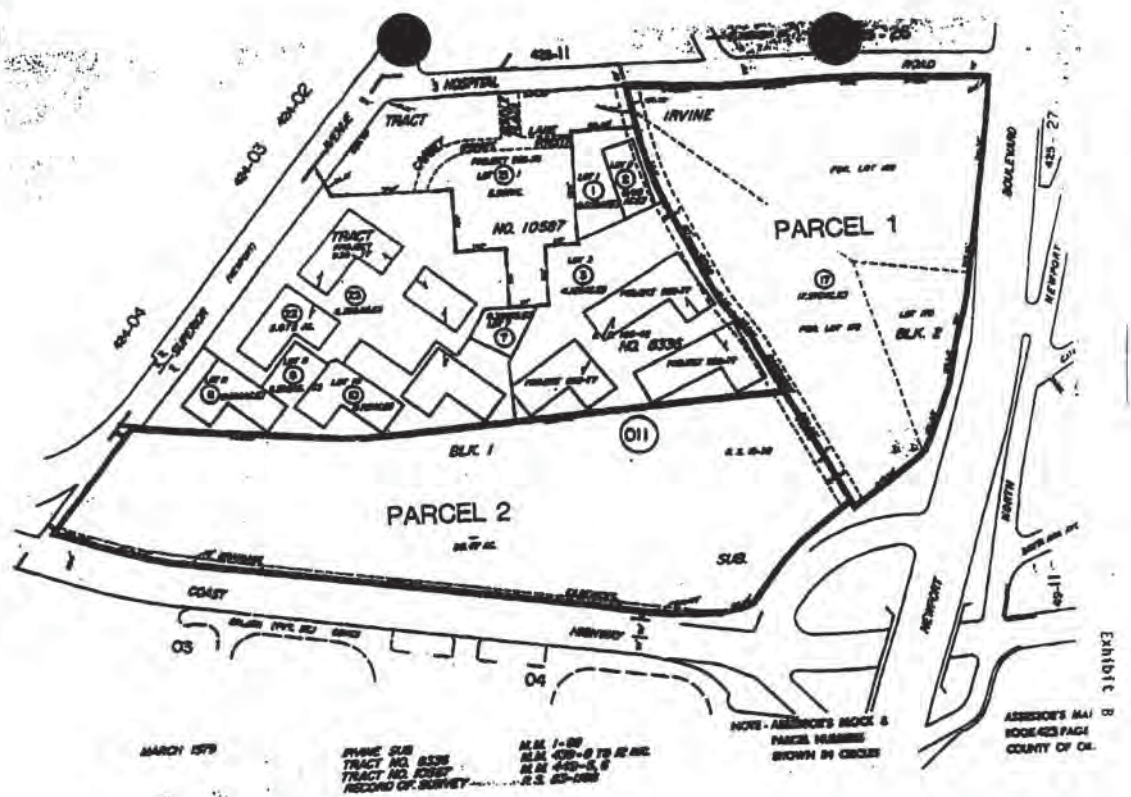
The subject property is the following real property in the City of Newport Beach, County of Orange, State of California:

Parcel 1:

That portion of Lots 169 and 170 in Block 2 and a portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

Parcel 2:

That portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.



HOAG MEMORIAL HOSPITAL PRESBYTERIAN

**PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS**

**Recommended for Approval
by the Planning Commission
February 20, 1992**

**Adopted by the City Council
City of Newport Beach
Ordinance No. 92-3
May 26, 1992**

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I. INTRODUCTION

Background

The Hoag Memorial Hospital Presbyterian Planned Community District in the City of Newport Beach has been developed in accordance with the Newport Beach General Plan. The purpose of this Planned Community District is to provide a method whereby property may be classified and developed for hospital-related uses. The specifications of this District are intended to provide land use and development standards supportive of the proposed use while ensuring compliance with the intent of all applicable regulatory codes.

The Planned Community District includes district regulations and a development plan for both the upper and lower campuses of Hoag Hospital. In general, over the long term, the upper campus will become oriented primarily towards emergency, acute and critical care (predominantly inpatient) uses and the lower campus will be developed with predominantly outpatient uses, residential care and support services.

Whenever the regulations contained in the Planned Community text conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the Planned Community text shall take precedence. The Municipal Code shall regulate this development when such regulations are not provided within these district regulations. All development within the Planned Community boundaries shall comply with all provisions of the Uniform Building Code and other governing building codes.

II. GENERAL NOTES

1. Water service to the Planned Community District will be provided by the City of Newport Beach.
2. Development of the subject property will be undertaken in accordance with the flood protection policies of the City of Newport Beach.
3. All development of the site is subject to the provisions of the City Council Policies K-5 and K-6 regarding archaeological and paleontological resources.
4. Except as otherwise stated in this text, the requirements of the Newport Beach Zoning Ordinance shall apply. The contents of this text notwithstanding, all construction within the boundaries of this Planned Community District shall comply with all provisions of the Uniform Building Code, other various codes related thereto and local amendments.
5. All buildings shall meet Title 24 requirements. Design of buildings shall take into account the location of building air intake to maximize ventilation efficiency, the incorporation of natural ventilation, and implementation of energy conserving heating and lighting systems.
6. Any fire equipment and access shall be approved by the Newport Beach Fire Department.
7. New mechanical appurtenances on building rooftops and utility vaults, excluding communications devices, on the upper campus shall be screened from view in a manner compatible with building materials. Rooftop mechanical appurtenances or utility vaults shall be screened on the lower campus. Noise shall not exceed 55 dBA at all property lines. No new mechanical appurtenances may exceed the building height limitations as defined in these district regulations.

8. Grading and erosion control shall be carried out in accordance with the provisions of the City of Newport Beach Grading Ordinance and shall be subject to permits issued by the Building and Planning Departments.
9. Sewage disposal facilities within the Planned Community will be provided by Orange County Sanitation District No. 5. Prior to issuance of any building permits it shall be demonstrated to the satisfaction of the Planning Department that adequate sewer facilities will be available. Prior to the occupancy of any structure it shall be further demonstrated that adequate sewer facilities exist.
10. Mass grading and grading by development phases shall be allowed provided that landscaping of exposed slopes shall be installed within 30 days of the completion of grading.

III. DEFINITIONS

Building Elevation:

1. a vertical distance of a building above or below a fixed reference level, i.e., MSL (mean sea level).
2. a flat scale drawing of the front, rear, or side of a building.

Building Envelope: the volume in which a building may be built as circumscribed by setback lines and maximum allowable building heights.

Building Height: the vertical distance measured from the finished grade to the highest point of the structure. At all points, the height measurement shall run with the slope of the land.

Emergency Room: a service and facility designated to provide acute emergency medical services for possible life threatening situations.

Fast Aid: low acuity medical treatment for non-life threatening situations.

General Plan: the General Plan of the City of Newport Beach and all elements thereof.

Grade: for the purpose of determining building height:

1. Finished - the ground level elevation which exists after any grading or other site preparation related to, or to be incorporated into, a proposed new development or alteration of existing developments. (Grades may be worked into buildings to allow for subterranean parking.)
2. Natural - the elevation of the ground surface in its natural state before man-made alterations.
3. Existing - the current elevation of ground surface.

Inpatient Uses: hospital patient services which require overnight stay.

Landscape Area: the landscape area shall include on-site walks, plazas, water, rooftop

landscaping and all other areas not devoted to building footprints or vehicular parking and drive surfaces.

Mean Sea Level: a reference or datum mark measuring land elevation using the average level of the ocean between high and low tides.

Outpatient Uses: hospital patient services which do not require overnight stay.

Residential Care: medically-oriented residential units that do not require the acuity level generally associated with inpatient services but require overnight stays.

Site Area: for the purpose of determining development area:

1. Gross - parcel area prior to dedications.
2. Net - parcel area after dedications.

Special Landscaped Street: West Coast Highway is designated as a special landscaped street, containing special landscape requirements.

Streets: reference to all streets or rights-of-way within this ordinance shall mean dedicated vehicular rights-of-way.

IV. DEVELOPMENT PLAN

Project Characteristics

The upper campus of Hoag Hospital is located on a triangular site of approximately 17.57 acres and is bounded by Newport Boulevard to the east, Hospital Road to the north and existing residential developments (the Versailles and Villa Balboa/Seafaire condominiums) to the west. The lower campus is located north of West Coast Highway, south of the Versailles and Villa Balboa/Seafaire Condominiums, west of Newport Boulevard and east of Superior Avenue. It contains approximately 20.41 acres and adjoins the upper campus at its eastern boundary. The upper campus is, and will continue to be, oriented towards inpatient functions, while the lower campus will be developed with predominantly outpatient, residential care and support services.

Development Plan

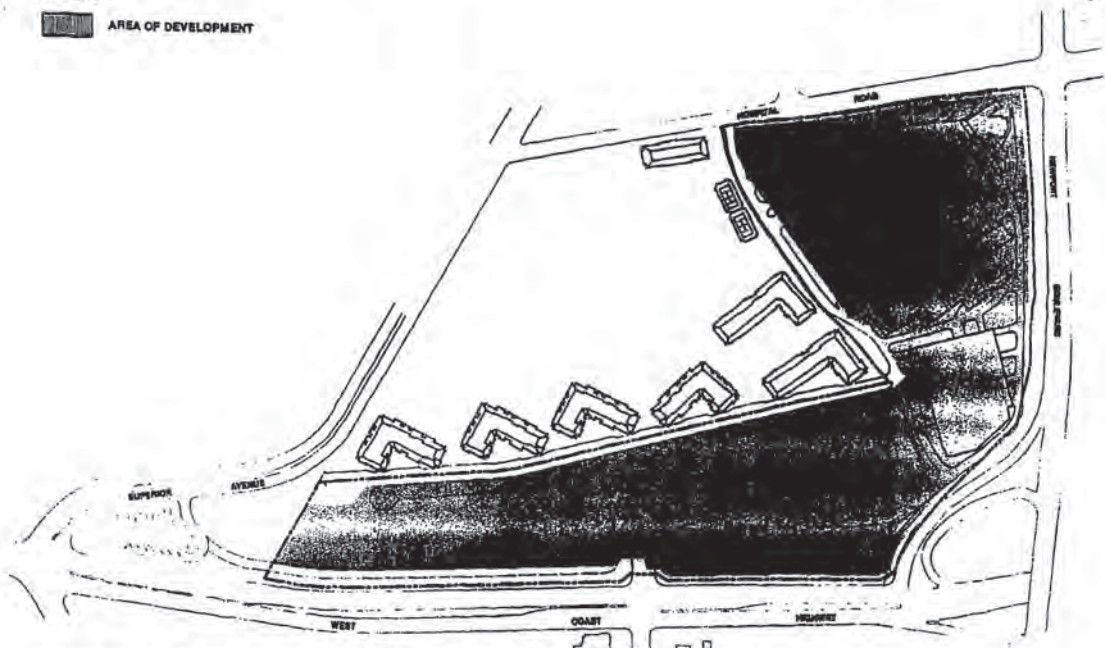
The Planned Community Development Plan for Hoag Hospital is shown on Exhibit 1. From 1990 to 2015, many of the existing buildings shown on the Development Plan for the upper campus may be redeveloped in order to functionally respond to the needs of the Hospital and conform to the requirements of State agencies.

The Development Plan includes a 0.8 acre view park adjacent to the bike trail between the lower campus and the Villa Balboa/Seafaire Condominiums. This view park includes a twenty-foot wide linear park area adjacent to the bike path (approximately 0.5 acres) and a consolidated view park at the westerly edge of the property (approximately 0.3 acres). A bike trail connection is also provided between the existing bike trails at the northern and southern boundaries of the lower campus. Access to the lower campus will be from West Coast Highway and Superior Avenue, as well as from Hospital Road, via the upper campus. Exhibit 2 shows the internal circulation for Hoag Hospital.

The Development Plan does not specify building locations or specific hospital related uses. Instead, a developable area is identified based on the regulations established for this Planned Community District. Because of the dynamic nature of the health care industry which leads to rapid technological changes that effect how health care services are delivered, the Development Plan for Hoag Hospital sets development caps as a function of allowable densities established by the Newport Beach General Plan.

LEGEND

 **AREA OF DEVELOPMENT**



**PLANNED COMMUNITY DEVELOPMENT PLAN
HOAG MEMORIAL HOSPITAL PRESBYTERIAN**

May 26, 1992

EXHIBIT 1








The statistical analysis (Table 1) provides a summary of a potential development profile for Hoag Hospital. In order to provide flexibility for the hospital to respond to changes in the health care industry, while at the same time ensuring that trip generation restrictions are adhered to and the overall development cap is not exceeded, this Development Plan allows Hoag Hospital to adjust the development profile provided in the statistical analysis. For example, if changing hospital needs necessitate the development of additional outpatient uses, this development would be allowed, consistent with the Development Plan, as long as a corresponding adjustment in square footage and trip generation for another use were to occur.

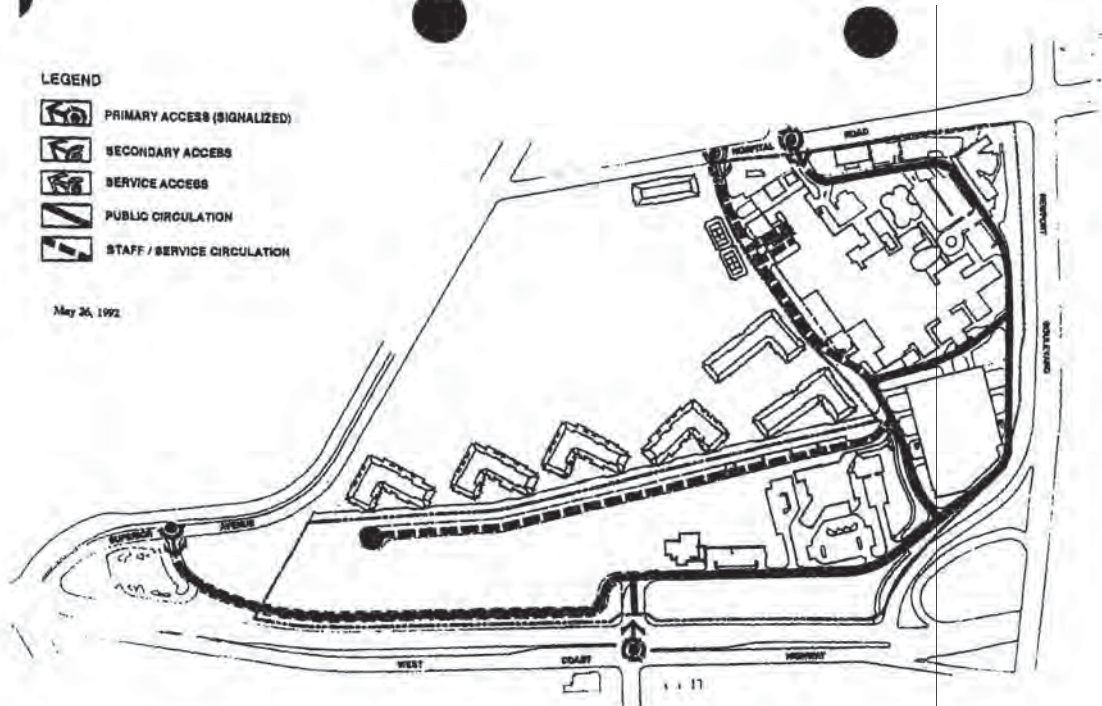
This Development Plan allows Hoag Hospital to adjust the development profile provided in the statistical analysis (Table 1) as long as the development limit (i.e., square feet) or the trip generation limit for the peak period (as identified in the Environmental Impact Report) established within each phase of development is not exceeded.

Adjustments to the Development Plan may be allowed if the total square footage or trip generation allowed in the current phase of development is exceeded, if the total development or trip generation allowed under the Development Plan is not exceeded.

LEGEND

-  PRIMARY ACCESS (SIGNALIZED)
-  SECONDARY ACCESS
-  SERVICE ACCESS
-  PUBLIC CIRCULATION
-  STAFF / SERVICE CIRCULATION

May 26, 1992



VEHICULAR ACCESS

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

EXHIBIT 2



Table 1
STATISTICAL ANALYSIS¹

<u>Use</u>	<u>Square Feet</u>
Lower Campus	
Existing:	
Outpatient Services (Hoag Cancer Center)	65,000
Child Care	7,800
Subtotal:	<u>72,800</u>
Phase I:	
Outpatient Services	115,000
Support Service	55,000
Administrative	30,000
Subtotal:	<u>200,000</u>
Phases II & III:	
Subtotal:	<u>305,089</u>
<u>Total Lower Campus</u>	<u>577,889</u>
Upper Campus	
Existing²:	480,000
Phase I:	
Outpatient Services	25,000
Inpatient	115,000
Subtotal:	<u>140,000</u>
Phases II & III:	<u>145,349</u>
<u>Total Upper Campus</u>	<u>765,349</u>
GRAND TOTAL	1,343,238³

¹ Full development of the upper and lower campuses is anticipated to occur over an approximate 20-year period and will likely occur in three, seven-year phases.

² Up to 50% of the existing upper campus may be redeveloped by master plan buildout.

³ Based on development allowed under the General Plan at a floor area ratio to gross site area of .65 for the lower campus and 1.0 for the upper campus. Building Bulk limit for the lower campus is 0.90 for all structures which includes above grade covered parking.

V. DISTRICT REGULATIONS

The following regulations apply to all development within the Hoag Hospital Planned Community. The individual uses listed under the five permitted use categories is not an exhaustive list. Other hospital-related uses which fit into the five permitted use categories are allowed by definition. Prior to the issuance of a building permit, plot plans, elevations and any other such documents deemed necessary by the Planning, Building and Public Works Departments shall be submitted for the review and approval of the Planning, Building, and Public Works Departments.

A. Permitted Uses

I. Lower Campus

a) Hospital facilities, including, but not limited to:

- i. Outpatient services:
 - Antepartum Testing
 - Cancer Center
 - Skilled Nursing
 - Rehabilitation
 - Conditioning
 - Surgery Center
 - Clinical Center
 - Day Hospital
 - Back and Neck Center
 - Biofeedback
 - Breast Imaging Center
 - CT Scan
 - Dialysis
 - EEG/EMG/NICE Laboratory
 - First Aid Center
 - Fertility Services
 - G.I. Laboratory
 - Laboratory
 - Magnetic Resonance Imaging
 - Nuclear Medicine
 - Occupational Therapy
 - Pediatrics
 - Pharmacy
 - Physical Therapy
 - Pulmonary Services

- Radiation Therapy
- Radiology
- Respiratory Therapy
- Sleep Disorder Center
- Speech Therapy
- Ultrasound

ii. Administration:

- Admitting
- Auxiliary Office
- Business Offices
- Information
- Registration
- Patient Relations
- Social Services

iii. Support Services:

- Employee Child Care
- Health Education
- Power/Mechanical/Auxiliary Support and Storage
- Food Services
- Cashier
- Chapel/Chaplaincy Service
- Conference Center
- Dietitian
- Gift Shop
- Laboratory
- Medical Library
- Medical Records
- Pharmacy
- Engineering/Maintenance
- Shipping/Receiving
- Microwave, Satellite, and Other Communication Facilities

iv. Residential Care:

- Substance Abuse
- Mental Health Services
- Extended Care
- Hospice Care
- Self or Minimal Care
- Congregate Care

v. Medical/Support Offices

- b) Methane gas flare burner, collection wells and associated system components.
- c) Accessory uses normally incidental to hospital development.
- d) Temporary structures and uses, including modular buildings.

2. Upper Campus

a) Hospital facilities, including, but not limited to:

i) Inpatient uses:

- Critical Care
- Emergency Care Unit
- Birth Suites
- Cardiology
- Cardiac Care Unit
- Intensive Care Unit
- Mother/Baby Unit
- Surgery/Waiting Rooms
- Radiology
- Laboratory
- Pharmacy

ii) Outpatient services as allowed on the lower campus

iii) Administrative uses as allowed on the lower campus

iv) Support services as allowed on the lower campus

v) Residential care as allowed on the lower campus

vi) Heliport (subject to Conditional Use Permit)

- b) Accessory uses normally incidental to hospital development.
- c) Temporary structures and uses, including modular buildings.

B. Prohibited Uses

1. Lower Campus
 - a) Emergency Room
 - b) Heliport

C. Maximum Building Height

The maximum building height of all buildings shall be in accordance with Exhibit 3 which established the following height zones:

1. Upper Campus Tower Zone - maximum building height not to exceed the existing tower (235 feet above mean sea level).
2. Upper Campus Midrise Zone - maximum building height not to exceed 140 feet above mean sea level.
3. Upper Campus Parking zone - maximum building height not to exceed 80 feet above mean sea level, exclusive of elevator tower.
4. Lower Campus Zone, Sub-Areas A, B, C, F and G - within each sub-area no building shall exceed the height of the existing slope and conform to the range of maximum building heights indicated on the development criteria Exhibit 3.
5. Lower Campus Zone, Sub-Areas D and E - maximum building height shall not exceed the height of the existing Hoag Cancer Center (57.5 feet above mean sea level).

D. Setbacks

Setbacks for the Hoag Hospital Planned Community are shown on Exhibit 3.

1. Setbacks will be provided along property boundaries adjacent to the Villa Balboa / Seafaire Condominiums, as defined below:
 - a) Upper campus western boundary setback shall be the prolongation of the westerly edge of the existing cafeteria/laboratory building to the points of intersection with the easterly curb line of the existing service drive, then continuing along said line of the existing service drive.
 - b) Lower campus northern boundary, all of which will have a 20' minimum building setback.

LEGEND

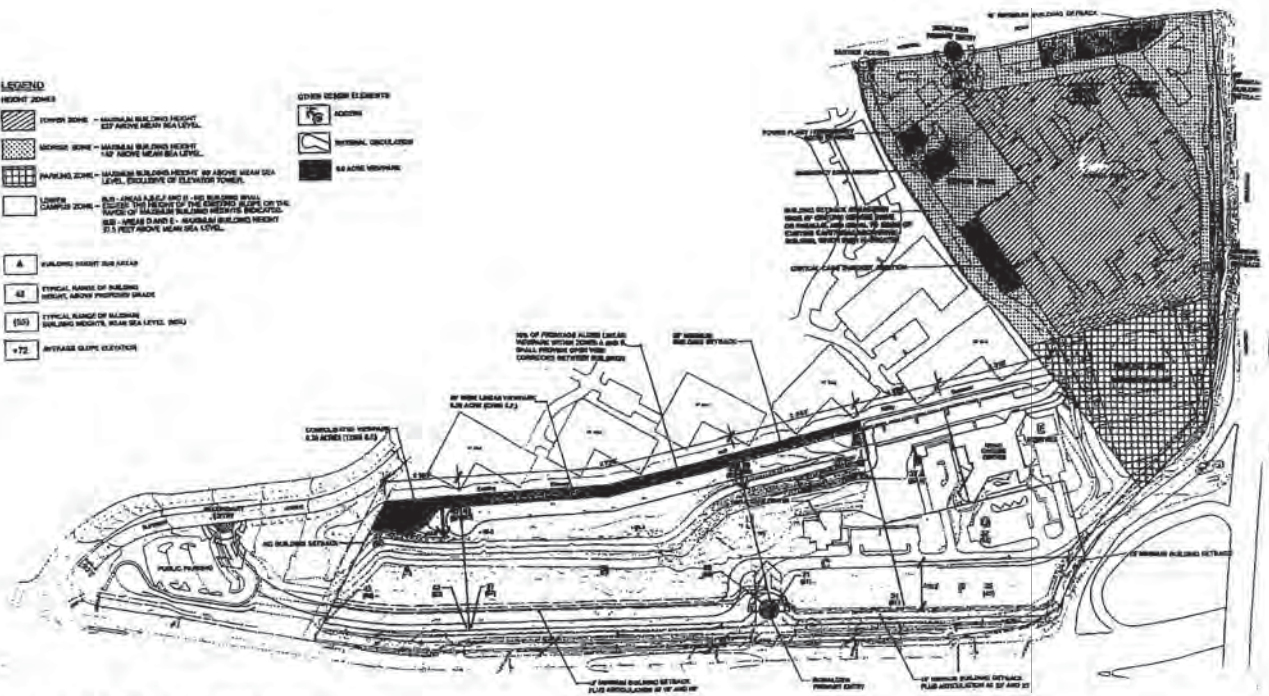
HEIGHT ZONES

- ZONE 1 - MAXIMUM BUILDING HEIGHT 100 FEET ABOVE MEAN SEA LEVEL
- ZONE 2 - MAXIMUM BUILDING HEIGHT 150 FEET ABOVE MEAN SEA LEVEL
- ZONE 3 - MAXIMUM BUILDING HEIGHT 200 FEET ABOVE MEAN SEA LEVEL, EXCLUSIVE OF ELEVATOR TOWERS
- ZONE 4 - MAXIMUM BUILDING HEIGHT 250 FEET ABOVE MEAN SEA LEVEL, EXCLUSIVE OF ELEVATOR TOWERS
- ZONE 5 - MAXIMUM BUILDING HEIGHT 300 FEET ABOVE MEAN SEA LEVEL, EXCLUSIVE OF ELEVATOR TOWERS

- BUILDING HEIGHT SURVEY AREA
- TYPICAL HEIGHT OF BUILDING
- TYPICAL HEIGHT OF BUILDING
- TYPICAL HEIGHT OF BUILDING
- TYPICAL HEIGHT OF BUILDING

OTHER DESIGN ELEMENTS

- ACCESS
- INTERNAL CIRCULATION
- 64 ACRE WETLAND



DEVELOPMENT CRITERIA HOAG MEMORIAL HOSPITAL PRESBYTERIAN

May 20, 1991

EXHIBIT 1
V&A

2. The setback on West Coast Highway easterly of the hospital entry signal shall be 15 feet.

In addition, vertical articulation shall be required for buildings easterly of the signal within 150 feet of the West Coast Highway frontage, as follows:

1st Floor: Up to 18 feet in height no additional articulation is required. If the 1st floor exceeds 18 feet in height, it shall be subject to the articulation requirements of the 2nd Floor.

2nd Floor (up to 32' in height): A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 2nd floor setback of 20 feet.

3rd Floor and above: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 3rd floor and above setback of 25 feet.

The setback on West Coast Highway westerly of the hospital entry signal shall be 45 feet.

In addition, vertical articulation shall be required for buildings westerly of the signal for buildings within 150 feet of the West Coast Highway frontage, as follows:

1st Floor: Up to 18 feet in height no additional articulation is required. If the 1st floor exceeds 18 feet in height, it shall be subject to the articulation requirements of the 2nd Floor.

2nd Floor (up to 32' in height): A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 2nd floor setback of 55 feet.

3rd Floor and above: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 3rd floor and above setback of 65 feet.

In order to avoid any future structures in this area (within 150 feet of West Coast Highway) from presenting an unacceptable linear mass, no single structure shall be greater than 250 linear feet in width. Additionally, 20% of the linear frontage within 150 feet of West Coast Highway shall be open and unoccupied by buildings.

10% of the linear length of height zones A and B as viewed from the existing bicycle/pedestrian trail, exclusive of that area adjacent to the consolidated portion of the view park, shall be maintained as view corridors between buildings.

These requirements may be altered for individual buildings, if requested by the hospital, through the site plan review process defined in Section IX.

3. There will be no building setbacks along the boundary with CalTrans east property at Superior Avenue and West Coast Highway.
4. A 20 foot setback from property line shall be provided along Newport Boulevard from Hospital Road to a point 600 feet south; a 25 foot setback from property line shall be provided along the remainder of Newport Boulevard and along the Newport Boulevard/West Coast Highway Interchange.
5. A ten (10) foot building setback from the property line shall be provided along Hospital Road.

E. Lighting

The lighting systems shall be designed and maintained in such a manner as to conceal the light source and to minimize light spillage and glare to the adjacent residential uses. The plans shall be prepared and signed by a licensed Electrical Engineer.

F. Roof Treatment

Prior to the issuance of building permits, the project sponsor shall submit plans which illustrate that major mechanical equipment will not be located on the roof of any structure on the Lower Campus. Rather, such buildings will have clean rooftops. Minor rooftop equipment necessary for operating purposes will comply with all building height criteria, and shall be concealed and screened to blend into the building roof using materials compatible with roofing materials.

G. Signs

All signs shall be as specified under the Hoag Hospital Sign Program, Part VI.

H. Parking

All parking shall be as specified in Part VII, Hoag Hospital Parking Regulations.

L. Landscape

All landscaping shall be as specified in the Hoag Hospital Landscape Regulations, Part VIII.

J. Mechanical and Trash Enclosures

Prior to issuance of a building permit, the project sponsor shall submit plans to the City Planning Department which illustrate that all mechanical equipment and trash areas will be screened from public streets, alleys and adjoining properties.

K. Internal Circulation

1. Prior to the issuance of a grading permit for any of the proposed Master Plan facilities, the project sponsor shall implement a pilot program that controls usage of the Upper and Lower Campus service roads during non-working hours. Such controls may include requesting that the majority of vendors deliver products (other than emergency products) during working hours (i.e. 7:00 a.m. to 8:00 p.m.), signage to restrict use of the road by Hospital employees, physicians, patients and visitors during non-working hours, and other methods to restrict use. The Hospital will also request that vendors not deliver (i.e. scheduled and routine deliveries) on the weekends.

This restriction specifically applies to scheduled and routine deliveries. The results of this program will be submitted to the City prior to the issuance of the grading permit. If such results indicate that such controls do not significantly impact the operations of the Hospital, and provided that requests for specified vendor delivery times is consistent with future Air Quality Management Plan procedures, the City may require that the program be implemented as hospital policy. If operation impacts are significant, other mitigation measures will be investigated at that time to reduce service road impacts to the adjacent residential units.

2. The lower campus service road shall include provisions for controlled access to limit usage to physicians and staff, and service vehicles.

L. Loading Dock

Within one year from the date of final approval of the Planned Community District Regulations and Development Plan by the California Coastal Commission, as an interim measure, the project sponsor shall implement an acoustical and/or landscape screen to provide a visual screen from and reduce noise to adjoining residences from the loading dock area.

The design process for the Critical Care Surgery Addition shall include an architectural and acoustical study to insure the inclusion of optimal acoustical screening of the loading dock area by that addition.

Subsequent to the construction of the Critical Care Surgery Addition, an additional acoustical study shall be conducted to assess the sound attenuation achieved by that addition. If no significant sound attenuation is achieved, the hospital shall submit an architectural and acoustical study assessing the feasibility and sound attenuation implications of enclosing the loading dock area. If enclosure is determined to be physically feasible and effective in reducing noise impacts along the service access road, enclosure shall be required. Any enclosure required pursuant to this requirement may encroach into any required setback upon the review and approval of a Modification as set forth in Chapter 20.81 of the Newport Beach Municipal Code.

VI. HOAG HOSPITAL SIGN PROGRAM

A. Purpose and Intent

1. The purpose of this Sign Program is to provide adequate, consistent and aesthetically pleasing on-building wall and ground-mounted signage based upon the provisions set forth by the City of Newport Beach Sign Ordinance and the information signage requirements of Hoag Hospital.
2. The intent of this Sign Program is to produce uniform standards for Hoag Hospital.

B. General Sign Standards

1. All signs visible at the exterior of any building or facility of the Hospital, ground mounted or on-building, may be illuminated or non-illuminated, depending upon need. Illumination method may be by external or internal source. No sign shall be constructed or installed to rotate, gyrate, blink or move, nor create the illusion of motion, in any fashion.
2. All signs attached to building or facility exteriors shall be flush or surface mounted as is appropriate to the architectural design features of said building or facility.
3. All signs together with the entirety of their supports, braces, guys, anchors, attachments and decor shall be properly maintained, legible, functional and safe with regard to appearance, structural integrity and electrical service.
4. All street signs shall be subject to review and approval of the City Traffic Engineer, and shall be in compliance with Ordinance 110-L.

C. Number of Signs Allowed

1. One (1) double-faced primary identification ground-mounted sign or two single faced gateway entry signs shall be allowed per street frontage. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Total maximum signage area shall not exceed two hundred (200) square feet and shall not exceed ten (10) feet in height per sign and street frontage. This sign may occur as a wall sign, to be located upon a project boundary perimeter wall, subject

to the same number and area maximums described above. This sign may also occur as part of an entry gateway system.

2. Secondary identification signs shall be allowed. This sign type shall not exceed a maximum height of 48" average height above finished grade. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Maximum sign area shall not exceed thirty-five (35) square feet. This sign may occur as a wall sign to be located upon a project boundary perimeter wall, subject to the same number and area maximums described above.
3. Vehicular and pedestrian directional signs shall be allowed. This sign type may occur as a single-faced or double-faced sign. This sign type shall occur with the sign suspended between two upright supports having the same depth (thickness) as the sign cabinet described above.
4. Hospital identification signs shall be allowed upon hospital tower parapets, one (1) at each elevation. The elevation facing west (Villa Balboa property line) may not be illuminated.
5. On the lower campus, one (1) building-mounted identification sign will be allowed per structure and shall not be placed so as to directly face the Villa Balboa/Seafaire property. Such signs will be no higher than the roof line of the building upon which they are mounted.

VII. HOAG HOSPITAL PARKING REGULATIONS

A. General

1. Off-street parking for Hoag Hospital shall be provided on-site. Parking may be on surface lots, subterranean or in parking structures.
2. The design and layout of all parking areas shall be subject to the review and approval of the city Traffic Engineer and the Public Works Department.
3. Parking lot lighting shall be developed in accordance with City standards and shall be designed in a manner which minimizes impacts on adjacent land uses. Nighttime lighting shall be limited to that necessary for security and shielded down from any adjacent residential area. The plans shall be prepared and signed by a licensed electrical engineer, with a letter from the engineer stating that the requirements has been met. The lighting plan shall be subject to review and approval of the City Planning Department.

B. Requirements for Offstreet Parking

Parking requirements for specific sites shall be based upon the parking criteria established in Table 2. All parking shall be determined based upon building type and the area allotted to the following functions. Any area which is calculated as part of the total floor area limitation shall be included in the gross floor area to determine the parking requirement.

Table 2
PARKING REQUIREMENTS

<u>Use Category</u>	<u>Parking Requirements</u>
Outpatient Services	2.0 spaces/1,000 square feet*
Support	1.0 spaces/1,000 square feet*
Administrative	4.0 spaces/1,000 square feet*
Residential Care	1.0 spaces/1,000 square feet*
Medical Offices	4.0 spaces/1,000 square feet*
Inpatient	1.25 spaces/1,000 square feet**

* Parking requirements are based on a study performed by DKS Associates in May, 1987.

** Parking requirement is based on current Hoag Hospital parking demand.

VIII. HOAG HOSPITAL LANDSCAPE REGULATIONS

A. General

1. Detailed landscape and irrigation plans, prepared by a registered Architect or under the direction of a Landscape Architect, shall be reviewed by the Planning and Parks, Beaches and Recreation Departments and approved by the Public Work Departments prior to issuance of a building permit and installed prior to issuance of Certificate of Use and Occupancy. The Landscape Plan may include a concept for the roofs and the parking structures. Trees shall not be used, but a planter box or trellis system shall be designed to provide visual relief of parking structures. All landscaping shall conform to the building height limits established in this text.
2. Parking lot trees shall be no less than fifteen (15) gallon size.
3. Shrubs to be planted in containers shall not be less than one (1) gallon size. Ground covers will be planted from (1) gallon containers or from root cuttings.
4. Every effort should be made to avoid using plants with invasive and shallow root systems.
5. Earth berms shall be rounded and natural in character, designed to obscure automobiles and to add interest to the site. Wheel stops shall be so placed that damage to trees, irrigation units and shrubs is avoided.
6. Trees in parking lots should be limited in variety. Selection should be repeated to give continuity. Regular spacing is not required and irregular groupings may add interest. Care should be exercised to allow plants to grow and maintain their ultimate size without restriction.
7. Heavy emphasis shall be placed on the use of drought-resistant native and naturalized vegetation and the use of an irrigation system designed to avoid surface runoff and over-watering.

B. Maintenance

1. All planting areas are to be kept free of weeds and debris.
2. Lawn and ground covers are to be kept trimmed and/or mowed regularly.

3. All plantings are to be kept in a healthy and growing condition. Fertilization, cultivation and tree pruning are to be carried out as part of regular maintenance.
4. Irrigation systems are to be kept in working condition. Adjustment and cleaning of system should be part of regular maintenance.
5. Stakes, guys and ties on trees should be checked regularly for correct function; ties to be adjusted to avoid creating abrasions or girdling to the stems.
6. Damage to plantings created by vandalism, automobile or acts of nature shall be corrected within thirty (30) days.

C. Special Landscaped Street

West Coast Highway is designated in the Hoag Hospital Planned Community as a special landscaped street. A 15' building setback from right-of-way / property line is required along West Coast Highway. Only driveways, parking and signage are allowed in the setback area. Parking areas shall be screened from view of West Coast Highway with landscaped berms.

Landscaping along West Coast Highway shall consist of trees, ground cover and shrubbery. All unpaved areas not utilized for parking or circulation shall be landscaped in a similar manner. Tree size to be no less than twenty-four (24) inch box.

D. Villa Balboa Landscape Zone

The area between the Villa Balboa/Hoag property line and the loading dock service access road shall be landscaped except for any driveway, walkway, or other hardscape elements in said area. The purpose of the landscaping will be to screen and buffer residential units from hospital activities.

E. Parking Areas

A minimum of 5% of the surface parking areas shall be devoted to planting areas. Planting areas around building shall not be included in parking area. Planting of trees may be in groups and need not necessarily be in regular spacing. Alternative landscape programs may be developed, including perimeter parking area landscaping, berming and depressing of parking areas. Alternative landscape programs shall be subject to the review of the Parks, Beaches and Recreation Department and the approval of the Planning and Public Works Departments.

A rooftop landscaping program may be developed for parking structures and shall be subject to the review of the Parks, Beaches and Recreation Department and the approval of the Planning and Public Works Departments. Rooftop landscaping shall conform to height restrictions.

IX. SITE PLAN REVIEW.

A. Purpose

The City Council finds that development on the West Coast Highway frontage of the lower campus of Hoag Hospital may have the potential to affect the aesthetics of the West Newport area as viewed from surrounding arterial roadways. The effect of this section is to establish a Site Plan Review requirement by the Planning Commission for certain individual projects which are proposed by the hospital to differ from the setback, horizontal and vertical articulation requirements as set forth in Section V.D.2. to insure that these projects conform with the objectives of the General Plan and the Master Plan for Hoag Hospital.

B. Findings

The City finds, determines and declares that the establishment of Site Plan Review procedures contained in this section promotes the health, safety, and general welfare of the community by ensuring that the development of Hoag Hospital proceeds in a manner which will not result in inadequate and poorly planned landscape areas, excessive building bulk on arterial roadways, inappropriate placement of structures and impairment of the benefits of occupancy and use of existing properties in the area.

C. Application

Site Plan Review approval shall be obtained prior to the issuance of a grading or building permit for any new structure or the addition to an existing structure which does not conform to the provisions of Section V.D.2.

D. Plans and Diagrams to be Submitted

The following plans and diagrams shall be submitted to the Planning Commission for approval:

1. A plot plan, drawn to scale, showing the arrangement of buildings, driveways, pedestrian ways, off-street parking and off-street loading areas, landscaped areas, signs, fences and walks. The plot plan shall show the location of entrances and exits, and the direction of traffic flow into and out of off-street parking and loading areas, the location of each parking space and loading space, and areas for turning and maneuvering vehicles. The plot plan shall indicate how utility and drainage are to be provided.

2. A landscape plan, drawn to scale, showing the locations of existing trees proposed to be removed and proposed to be retained; and indicating the amount, type, and location of landscaped areas, planting beds and plant materials with adequate provisions for irrigation.
3. Grading plans when necessary to ensure development properly related to the site and to surrounding properties and structures.
4. Scale drawings of exterior lighting showing size, location, materials, intensity and relationship to adjacent streets and properties.
5. Architectural drawings, renderings or sketches, drawn to scale, showing all elevations of the proposed buildings and structures as they will appear upon completion.
6. Any other plans, diagrams, drawings or additional information necessary to adequately consider the proposed development and to determine compliance with the purposes of this chapter.

E. Fee

The applicant shall pay a fee as established by Resolution of the City Council to the City with each application for Site Plan Review under this chapter.

F. Standards

In addition to the general purposes set forth in sub-section B, in order to carry out the purposes of this chapter as established by said section, the site plan review procedures established by this Section shall be applied according to and in compliance with the following standards, when applicable:

1. The development is in compliance with all other provisions of the Planned Community Development Criteria and District Regulations (P-C Text);
2. Development shall be compatible with the character of the neighborhood and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;
3. Development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on West Coast Highway;

4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.

G. Public Hearing - Required Notice

A public hearing shall be held on all Site Plan Review applications. Notice of such hearing shall be mailed not less than ten (10) days before the hearing date, postage prepaid, using addresses from the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses, to owners of property within a radius of three hundred (300) feet of the exterior boundaries of the subject property. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this Section. In addition to the mailed notice, such hearing shall be posted in not less than two conspicuous places on or close to the property at least ten (10) days prior to the hearing.

H. Action by the Planning Commission

If all applicable standards established by this Section are met, the Planning Commission shall approve the development. Conditions may be applied when the proposed development does not comply with applicable standards and shall be such as to bring said development into conformity.

If the development is disapproved, the Commission shall specify the standard or standards that are not met.

A Site Plan Review decision of the Planning Commission shall be subject to review by the City Council either by appeal, or upon its own motion, or upon the request of the Commission. The action of the Commission on any Site Plan Review shall be final and effective twenty-one (21) days following the Commission action thereon unless, within the twenty-one (21) day appeal period an appeal in writing has been filed by the applicant, or any other person, the Commission has requested a review of its decision, or unless the City Council, not more than twenty-one (21) days after the Commission action, on its own motion, elects to review and act on the action of the Commission, unless the applicant consents to an extension of time. The City Council may affirm, reverse or modify the decision. Such action by the City Council shall be final.

I. Appeal to the City Council

Any Site Plan Review decision of the Commission may be appealed to the City Council by the applicant or any other person, at any time within twenty-one (21) days after the date of the Commission decision. An appeal to the City Council shall be taken by filing a letter of appeal in duplicate, with the Planning Department. Such letter shall set forth the grounds upon which the appeal is based and shall be accompanied by a fee as established by Resolution of the City Council.

J. Action by the City Council

An appeal shall be heard and acted on by the City Council, and the City Council may affirm, reverse or modify the decision of the Commission. The decision of the City Council is final.

K. Expiration and Revocation of Site Plan Review Approvals

1. **Expiration.** Any Site Plan Review granted in accordance with the terms of this Title shall expire within 24 months from the date of approval if a building permit has not been issued prior to the expiration date and subsequently construction is diligently pursued until completion, unless at the time of approval the Planning Commission has specified a different period of time.
2. **Violation of Terms.** Any Site Plan Review granted in accordance with the terms of this Title may be revoked if any of the conditions or terms of such Site Plan Review are violated or if any law or ordinance is violated in connection therewith.
3. **Hearing.** The Planning Commission shall hold a hearing on any proposed revocation after giving written notice to the permittee at least ten days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within 60 days after receipt of the recommendation of the Planning Commission.

E:\... \Planning\PCTEXT\HOAGHOSP

CITY OF NEWPORT BEACH
**HEIGHT LIMITATION
 ZONES-COMMERCIAL**

	26 / 35 FEET
	32 / 50 FEET
	HIGHRISE 375 FT.

NOTE:
 ALL R-1, R-1.5, R-2 ZONES 24/28 FEET
 ALL R-3, R-4, MFR ZONES 26 / 32 FEET



ADP 28, 1978
 REVISION DATE: 2-27-92

Revision Date: May 26, 1992

Exhibit D

**EXHIBIT D
ESTOPPEL CERTIFICATE**

Date Requested: _____
Date of Certificate: _____

On _____, the City of Newport Beach approved the "Development Agreement Between the City of Newport Beach and Hoag Memorial Hospital Presbyterian" (the "Development Agreement").

This Estoppel Certificate certifies that, as of the "Date of Certificate" set forth above:

CHECK WHERE APPLICABLE

- ____ 1. The Development Agreement remains binding and effective;
- ____ 2. The Development Agreement has not been amended;
- ____ 3. The Development Agreement has been amended in the following respects:

- ____ 4. Neither Hoag nor any of its successors are in default under the Development Agreement;
- ____ 5. The following defaults exist under the Development Agreement:

This Estoppel Certificate may be relied upon by any transferee or mortgagee of any interest in the property which is subject of the Development Agreement.

CITY OF NEWPORT BEACH

BY: _____
NAME: _____
TITLE: _____

EXHIBIT D

ENCLOSURE / 2000.1

EXHIBIT D

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5
DATED JUNE 17, 2008

This Document was electronically recorded by
ER Cert Mail D

RECORDING REQUEST BY, AND
WHEN RECORDED MAIL TO:

City Clerk
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92659-1768

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder



NO FEE

2008000289321 12:35pm 06/17/08

120 33 A17 56

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EXEMPT FROM FILING FEES CAL. GOV'T CODE § 6103

(Space above this line for Recorder's use)

EXEMPT RECORDING REQUEST PER
GOVERNMENT CODE 27383

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

BETWEEN

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

AND

THE CITY OF NEWPORT BEACH

*(Pursuant to California Government Code Sections 65864-65869.5
and Newport Beach Municipal Code Chapter 15.45)*

Approved May 13, 2008
Ordinance No. 2008-10

FINAL
5/16/08 10001.34
H&O: #58720 v1

RECORDING REQUEST BY, AND
WHEN RECORDED MAIL TO:

City Clerk
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92659-1768

EXEMPT FROM FILING FEES CAL. GOV'T CODE § 6103
(Space above this line for Recorder's use)

EXEMPT RECORDING REQUEST PER
GOVERNMENT CODE 27383

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

BETWEEN

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

AND

THE CITY OF NEWPORT BEACH

*(Pursuant to California Government Code Sections 65864-65869.5
and Newport Beach Municipal Code Chapter 15.45)*

Approved May 13, 2008
Ordinance No. 2008-10

FINAL
5/16/08 10001.34
H&O: #58720 vl

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

(Hoag Memorial Hospital Presbyterian)

THIS AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5 ("Amendment") is entered into and effective on the date it is recorded with the Orange County Recorder (the "Effective Date") by and between the City of Newport Beach (hereinafter "City") and Hoag Memorial Hospital Presbyterian (hereinafter "Hoag").

RECITALS

1. The "RECITALS" to the Restated Development Agreement are amended to add new Sections 1.9 through Section 1.19(f) to read as follows:

1.9 Hoag Property. Hoag is the fee owner of approximately 38 acres of real property located in the City divided between the Upper Campus and the Lower Campus and more particularly described in Exhibit "A" and depicted on Exhibit "B" (the "Property").

1.10 Hoag Healthcare Services. Hoag is a modern, state-of-the-art acute care, not-for-profit hospital providing a comprehensive mix of healthcare services to treat virtually any routine or complex medical condition. Hoag features centers of excellence that include Hoag Cancer Center, Hoag Heart and Vascular Institute, Hoag Neuroscience Institute, Hoag Orthopedic Services and Hoag Women's Health Services, as well as advanced medical programs in many other specialties.

1.11 Hoag Community Benefit Programs. In addition to providing state-of-the-art hospital, diagnostic imaging and emergency room care medical services, Hoag is involved in many other community benefit programs such as police and SWAT team, fire department and paramedic support services, designating the City as the point of sale for major hospital equipment purchases and construction projects, providing financial and transportation support for the City's senior Oasis Center, and providing methane gas flare burnoff to mitigate methane gas fumes along Pacific Coast Highway. Hoag's community medicine program allocates approximately \$10 million annually toward improving the community's overall health, primarily through disease prevention and wellness and health promotion, especially for those vulnerable and disadvantaged populations.

1.12 EIR No. 142 and P.C. Text. On May 26, 1992, the City Council of City ("City Council") certified the Hoag Hospital Master Plan Final EIR No. 142 and adopted the Hoag Memorial Hospital Presbyterian Master Plan ("Hoag Master Plan") and the Planned Community Development Criteria and District Regulations ("P.C. Text") setting forth the development standards and terms and conditions by which the Property may be developed, including the maximum permissible building area, building height limits and permitted land uses.

1.13 Square Footage of Buildable Area. Under the existing Hoag Master Plan and P.C. Text, the Property allows a total of 1,343,238 square feet of buildable area with 577,889 square feet allocated to the Lower Campus and 765,349 square feet allocated to the Upper Campus.

1.14 Development Agreement No. 5. On May 26, 1992, the City Council adopted Ordinance No. 92-4 approving Development Agreement No. 5 between the City and Hoag incorporating the Hoag Master Plan and P.C. Text and granting vested rights to Hoag to develop the Property pursuant to the Hoag Master Plan and P.C. Text for the term of the Development Agreement. The Development Agreement was recorded in the Official Records of Orange County, California on August 4, 1993 as Instrument No. 63-0522236.

1.15 Restated Development Agreement. On February 14, 1994, the City Council of City adopted Ordinance No. 94-8 approving an Amendment and Restatement of Development Agreement No. 5 ("Restated Development Agreement") incorporating certain provisions clarifying the role, review and approval authority of the California Coastal Commission for development of the Property to ensure consistency and compliance with the California Coastal Act. The Restated Development Agreement was recorded in the Official Records of Orange County, California on March 23, 1994 as Instrument No. 94-0207276.

1.16 First Amendment to P.C. Text. On August 13, 2002, the City Council adopted Ordinance No. 2002-17 approving the First Amendment to the P.C. Text to provide that certain non-occupied building areas are not counted towards the maximum permissible building floor areas for development of the Property.

1.17 Noise Limitation. The existing PC Text provides that noise generated from Hoag Hospital from new mechanical appurtenances shall not exceed 55 dBA at the Property lines. This noise limitation was established prior to the adoption of the City's

Noise Element in the General Plan and Noise Ordinance. It is proposed that noise generated and originating from the Property be governed by the City Noise Ordinance with certain exceptions.

1.18 Noise Attenuation. Hoag has taken significant actions to attenuate noise generated from mechanical equipment and has installed landscape screening and walls to mitigate and buffer noise and improve aesthetic impacts for adjacent residential properties.

1.19 Restated Development Agreement Amendments. The City and Hoag propose to further amend the Restated Development Agreement by this Amendment to incorporate references to: a Supplemental EIR; an amendment to the City General Plan; an increase in the Public Benefits; designation of the City as the point of sale to the extent allowed under applicable law; and amendments to the Hoag Hospital Planned Community Text ("P.C. Text") to, among other things:

(a) eliminate the reference to 1.0 Floor Area Ratio ("FAR") for the Upper Campus and the .65 FAR for the Lower Campus in the General Plan Land Use Element. In place of the reference to the FAR's, an absolute maximum allowable building area of 1,343,238 square feet will remain available for development of the entire Property comprised of the Upper Campus and the Lower Campus;

(b) maintain a cap under the General Plan Land Use Element Amendment for development of the Lower Campus at 577,889 square feet (if no square footage is reallocated) and establish a cap on development of the Upper Campus at 990,349 square feet (if all 225,000 square feet are reallocated from the Lower Campus to the Upper Campus);

(c) allow the transfer of up to 225,000 square feet of buildable area from the Lower Campus to the Upper Campus, which, if all 225,000 square feet are reallocated, would result in a maximum allowed density of 990,349 square feet for the Upper Campus and a reduction to permit 352,889 square feet of allowable development for the Lower Campus;

(d) to modify the noise standards applicable to the Property;

(e) delete a provision that required the City and Hoag to conduct a study of possible future improvements in and around the easterly end of the Semeniuk Slough, including a requirement that Hoag fund the study and potential future improvements in an amount not to exceed \$200,000; and

(f) incorporate the Second Amendment to the P.C. Text.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 1.5 of the Restated Development Agreement entitled *Planning Commission/City Council Hearings* is amended to read as follows:

"1.5 Planning Commission/City Council Hearings. The Planning Commission, after giving appropriate notice, held public hearings to consider a development agreement, the proposed Master Plan, and the EIR on December 5, 1991, January 9, 1992, January 23, 1992, February 6, 1992 and February 20, 1992. The City Council conducted public hearings on the Master Plan, this Agreement and the EIR on March 23, 1992, March 30, 1992, April 13, 1992 and May 11, 1992. The Planning Commission, after giving appropriate notice, held a public hearing to consider this Amendment, the Supplemental EIR, the General Plan Amendment, and the Second Amendment to the P.C. Text on January 31, 2008, February 7, 2008, March 6, 2008 and March 20, 2008. The City Council conducted a public hearing on this Amendment, the Supplemental EIR, the General Plan Amendment and the Second Amendment to the P.C. Text on April 16, 2008."

2. Section 1.8 of the Restated Development Agreement entitled *City Ordinance* is amended to read as follows:

"1.8 City Ordinance. On February 14, 1994, the City Council adopted Ordinance No. 94-8 approving a Restated Development Agreement No. 5 incorporating certain provisions clarifying the role, review and approval authority of the California Coastal Commission for development of the Property to ensure consistency and compliance with the California Coastal Act. The Adopting Ordinance became effective on March 16, 1994. On May 13, 2008, the City Council adopted Ordinance No. 2008-10 approving

this Amendment and authorizing the City to enter into this Amendment. The adopting ordinance will become effective on June 12, 2008."

3. Section 2.1 of the Restated Development Agreement entitled *The Adopting Ordinance* is amended to read as follows:

"2.1 The "Adopting Ordinance" refers to City Ordinance No. 94-8, adopted on February 14, 1994, by the City Council, which approved and authorized the City to enter into this Agreement. "Adopting Ordinance" further refers to Ordinance No. 2008-10 adopted on May 13, 2008 by the City Council, which approved and authorized the City to enter into this Amendment."

4. Section 2.2 of the Restated Development Agreement entitled *Agreement* is amended to read as follows:

"2.2 "Agreement" refers to the "Restated Development Agreement Between the City of Newport Beach and Hoag Memorial Hospital Presbyterian," and this Amendment."

5. Section 2.13 of the Restated Development Agreement entitled *The EIR* is amended to read as follows:

"2.13 The "EIR" refers to final Environmental Impact Report No. 142 of the City of Newport Beach, and Supplemental Environmental Impact Report No. 142."

6. Section 2.23 of the Restated Development Agreement entitled *Master Plan* is amended to read as follows:

"2.23 "Master Plan" refers to the Hoag Memorial Hospital Presbyterian Master Plan and Planned Community Development Plan which was adopted by the City on May 26, 1992 (Exhibit "C"), as amended."

7. Section 3 of the Restated Development Agreement entitled *Conditions to Development* is amended to add a new paragraph after Subsection (f) to read as follows:

"Notwithstanding the provisions of this Section, any provisions set forth in this Amendment shall supersede and control over any inconsistencies with this Section."

8. Section 3.3 of the Restated Development Agreement entitled *Program EIR* is amended to read as follows:

"3.3 Program EIR. Hoag acknowledges that the EIR is a "Program EIR" and includes Supplemental Environmental Impact Report No. 142. The EIR analyzes the impacts of construction phased over time and, pursuant to CEQA, City is under a continuing obligation to analyze Hoag's requests for Project Specific Approvals to ensure the environmental impacts associated with the request were fully addressed in the EIR. Subsequent environmental documentation is required if this analysis reveals environmental impacts not fully addressed in the program EIR, identifies new impacts, or concludes the specific request is not consistent with the project described in the EIR. Hoag acknowledges the right and obligation of the City and the Coastal Commission or its successor agency to impose additional conditions as the result of the subsequent environmental analysis required by CEQA."

9. Section 4.1 of the Restated Development Agreement entitled *Right to Develop* is amended to read as follows:

"4.1 Right to Develop. Subject to compliance with the provisions of Sections 3 and 8.2, Hoag shall have a vested right to develop and receive Project Specific Approvals for construction on the Property to the full extent permitted by the Master Plan, as amended. Subject to the provisions of Sections 3 and 8, City shall only take action which complies with and is consistent with the Master Plan, as amended, the Restated Development Agreement and this Amendment unless Hoag otherwise consents in writing. Subject to this Subsection, City shall have the authority to impose only those Exactions which are specifically described in this Agreement, except as expressly required (as opposed to permitted) by state or federal law."

10. Section 5.2 of the Restated Development Agreement entitled *Mitigation Review* is amended to read as follows:

"5.2 Public Hearing. The Annual Review shall be conducted at a public hearing noticed in accordance with the provisions of Chapter 15.45 of the Newport Beach Municipal Code. Annual reviews should be scheduled in April of each year."

11. Section 5.4 of the Restated Development Agreement entitled Mitigation Review is amended to read as follows:

"5.4 Mitigation Review. The annual review shall include a detailed report of compliance with the various conditions and mitigation measures contained within the mitigation monitoring plan. The report shall also include a noise regulation compliance assessment that includes noise measurements prepared by a qualified noise consultant on a yearly basis. The noise assessment shall identify noise regulation compliance issues and recommended measures to abate any noncompliance. The report shall include an analysis of the view impacts of buildings constructed in comparison to the anticipated views as depicted in the EIR. Hoag shall be found in compliance with this Agreement unless the City Council determines, based upon the evidence presented at the Annual Review, that Hoag has not complied with all mitigation measures and conditions including those imposed as a result of subsequent environmental analysis, applicable to the grading of, or building on, the Property as of the date of the Annual Review. Hoag shall pay the City administrative costs incurred in conducting Annual Reviews. Hoag shall reimburse the City for costs incurred by the City associated with Fluor Enterprises' review of the cogeneration plant during the 2008 Annual Review."

12. Section 8.2 of the Restated Development Agreement entitled *Exactions* is hereby amended to delete Subsection (c), which reads as follows:

"(c) City and Hoag shall conduct a study of possible future improvements in and around the easterly end of Semeniuk Slough that would, among other things, improve the appearance of the area and, potentially, serve as a component to improve public access from residential areas in West Newport to park land and public recreation facilities proposed in conjunction with development of the West Newport Oil Company property. The study shall analyze, among other things, the type of improvements that would improve the area without adversely impacting wetlands, the possible location of pedestrian trails and the potential for those trails to improve access to proposed recreational facilities, phasing of the improvements, potential public benefits, and the cost of the improvements. As a part of the study, Hoag and City shall meet and confer with resource agencies relative to the type and extent of improvements that may be permitted in or adjacent to wetlands. Hoag shall fund the study and participate in the cost of constructing any improvements in the area that the City Council determines are feasible and in the public interest, provided, however, the financial contribution of Hoag, including the costs of the study and improvements, shall not exceed Two Hundred Thousand Dollars (\$200,000.00)."

13. Section 8.2 of the Restated Development Agreement entitled *Exactions* is hereby amended to renumber Subsection (d) to Subsection (c); and to add a new Subsection (d) to read as follows:

"(d) City and Hoag acknowledge and agree that the Restated Development Agreement and this Amendment confer private benefits on Hoag that should be balanced by commensurate public benefits in favor of the City. Accordingly, the City and Hoag intend to provide consideration to balance the private and public benefits by the imposition of a Development Agreement Fee, which fee shall be used to reimburse the City for public improvements in the area and to fund certain additional needed public improvements identified by the City. Hoag shall pay to the City a Development Agreement Fee of Three Million Dollars (\$3,000,000). Payment of one-half of the Development Agreement Fee of \$1.5 million shall be made upon the Effective Date of this Amendment. Payment of the remaining one-half of the Development Agreement Fee of \$1.5 million shall be paid to City 12 months from the Effective Date of this Amendment or at the time of issuance of the first building permit by the City for development of a project on the Upper Campus as provided in Exhibit "C" attached to this Amendment, whichever occurs earlier.

The first \$1.5 million of the Development Agreement Fee shall be used to reimburse the City and/or pay for the costs associated with the following projects: (i) construction of the Superior Avenue medians extending from Ticonderoga Street to Dana Road; (ii) construction of the right-turn pocket for southbound Newport Boulevard to westbound Hospital Road; and (iii) funding of the operational improvements and traffic signal upgrade at the Hospital Road and Placentia intersection ("Priority Public Improvements"). Construction of the first two Priority Public Improvements listed above occurred during 2007, and the third is anticipated to occur in 2008. The City shall be obligated to pay the actual cost difference, if any, for construction of these Priority Public Improvements. However, if there are any funds remaining after construction of the Priority Public Improvements is completed, the City may retain the funds to be used for other City projects or services that benefit the public. The City shall also have the sole authority to decide the design, cost and scope of the Priority Public Improvements and the sufficiency of City's performance on the Public Improvement Projects shall not be subject to Hoag's approval.

The balance of the Development Agreement Fee (\$1.5 million) and any funds remaining after the construction of the Priority Public Improvements shall be used by the City in the City's sole discretion to

offset costs associated with other City and community projects or services that benefit the public such as, among other things, public parks (for example, Sunset View Consolidated Park), landscaping improvements adjacent to public right of ways, sound abatement programs, public buildings, public road improvements, water quality improvements, law enforcement, fire fighting, emergency preparedness and other public safety facilities.”

14. A new section, Section 8.3, shall be added to the Restated Development Agreement entitled *Sales/Use Tax Origin*, to read as follows:

“8.3 Sales/ Use Tax Origin

(a) Hoag will include in its general contractor construction contract a provision that Hoag’s general contractor and subcontractors, to the extent allowed by applicable law, will obtain a Board of Equalization sales/use tax subpermit for the jobsite at the Project Property and allocate all eligible sales and use tax payments for individual contracts over \$5 million to the City. Hoag will provide Hoag’s general contractor and subcontractors with the name and contact information of the City’s Revenue Manager and notice of the Revenue Manager’s availability to meet and confer with them on the implementation of the Board of Equalization sales/use tax subpermit procedures. Hoag will further include a notice in its general contractor construction contract that prior to beginning a qualified construction project, the general contractor and subcontractors are encouraged to meet with the City’s Revenue Manager to review the process to be followed with respect to sales and use taxes. Hoag will further include a provision in its general contractor construction contract that the general contractor or subcontractors will certify in writing that the person(s) responsible for filing the tax return understands the process of reporting the tax to the City and will follow the guidelines set forth in the relevant sections of the Sales and Use Tax Regulations. Hoag shall not be responsible for failure of Hoag’s general contractor or subcontractors to follow the procedures set forth in this Section.

Hoag, if readily available, shall provide to the City or any City designated representative the names, addresses, phone numbers and contact name of the general contractor and all subcontractors.

(b) Hoag will continue to follow the Direct Payment Permit Process established in the Revenue and Taxation Code and use the permit for all qualifying individual purchases in excess of \$100,000 so that the local share of its sales/use tax payments is allocated to the City as the point of sale.

(c) It is understood and agreed that any fixtures, materials and equipment with a purchase total that exceeds \$100,000 purchased directly by Hoag and shipped to Hoag's Newport Beach location may also be eligible for direct allocation of sales/use tax to the City. Upon request of the City, Hoag will provide City on a semi-annual basis with a list of purchases exceeding the \$100,000 threshold during the preceding six-month period, including the amount of the purchase and, if readily available, the name and contact information for the vendor upon request by the City. The City agrees to review the semi-annual list of purchases made by Hoag and advise Hoag of any missed opportunities for direct allocation. Hoag agrees to file its Direct Payment Permit with vendors identified by the City in an effort to improve the direct allocation of the local share of sales/use tax payments in future periods."

15. A new section, Section 8.4, shall be added to the Restated Development Agreement entitled *Sunset View Park Improvements*, to read as follows:

"8.4 Hoag shall reimburse the City up to \$ 150,000 for the installation of groundcover, shrubs and irrigation systems within the unimproved portion of Sunset View Park and Superior Avenue, approximately 20,500 square feet in area, located northerly of the cogeneration building. Reimbursement to the City shall be within 30 days of Hoag receiving an invoice from the City."

16. A new section, Section 8.5, shall be added to the Restated Development Agreement entitled *Cogeneration Plant Energy Curtailment*, to read as follows:

"8.5 Hoag shall install a weather station capable of identifying ambient conditions necessary in documenting cogeneration plant and cooling tower operations. The weather station shall be tied into the cogeneration plant controls in order to maximize automatic responses to prevailing weather conditions, assisting in managing the operational changes and load shifting, as well as to provide periodic reports on plant operations.

Hoag shall not construct or erect additional cooling towers within the Hoag Lower Campus.

Hoag shall reduce the effective heat rejection by 33% at the existing cooling towers and such reduction shall be measured from a baseline (to be measured at the cooling towers) of operating three existing generators and absorption chillers at 100% of design capacity.

This reduced capacity operation shall be implemented daily between November 1st and April 30th, between the hours of 7:00 AM and 7:00 PM when the relative humidity is equal to or above 60% and when ambient temperatures are equal to or less than 55 degrees Fahrenheit.

17. Section 11.1(c) of the Restated Development Agreement entitled *Notices* is hereby amended to delete:

"with a copy to: Tim Paone
Paone, Callahan, McHolm & Winton
19100 Von Karman, 8th Floor
P.O. Box 19613
Irvine, CA 92713-9613"

and to add:

"with a copy to: Dennis D. O'Neil
Hewitt & O'Neil LLP
19900 MacArthur Blvd., Suite 1050
Irvine, CA 92612

with a copy to: Gary McKitterick
Allen Matkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, 5th Floor
Irvine, CA 92614-7321"

18. A new Section 11.17 shall be added to the Restated Development Agreement as follows:

"11.17 Indemnification/Hold Harmless. To the fullest extent permitted by law, Hoag shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of this Amendment, including, but not limited to, the approval of the Planned Community Text and/or the City's related California Environmental Quality Act determinations, the certification of the Supplemental Environmental Impact Report, the adoption of a Mitigation Program, and/or statement of overriding considerations for this Project. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Hoag, City, and/or the parties initiating or bringing such proceeding. Hoag shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Hoag shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition."

19. Exhibit C of the Restated Development Agreement shall incorporate the First Amendment to the P.C. Text as part of this Second Amendment to the P.C. Text in revised Exhibit C entitled:

"HOAG MEMORIAL HOSPITAL PRESBYTERIAN

PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS

Recommended for Approval
by the Planning Commission
March 20, 2008

Adopted by the City Council
City of Newport Beach
Ordinance No.2008-10
May 13, 2008"

20. Except as provided for in this Amendment and not otherwise superseded by this Amendment, the provisions set forth in the Restated Development Agreement, all of the other terms, conditions, provisions and exhibits of the Restated Development Agreement continue to have full force and effect as provided therein and this Amendment shall constitute an integral part of the Restated Development Agreement. Exhibits A through C constitute a part of this Amendment and are incorporated into this Amendment in full by this reference.

21. In the event there is any conflict between any provision of the Restated Development Agreement and this Amendment, the later approved and recorded document shall prevail in interpretation, operation and implementation.

22. The City Clerk shall cause a copy of this Amendment to be recorded with the Office of the County Recorder of Orange County, California within ten (10) days following the effective date of adoption of the Ordinance approving this Amendment.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Development Agreement No. 5 to be binding as of the Effective Date.

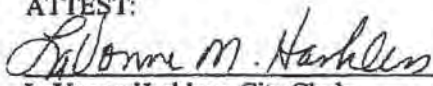
CITY:

THE CITY OF NEWPORT BEACH, a municipal corporation of the State of California

By: 


Edward D. Selich, Mayor

ATTEST:


LaVonne Harkless, City Clerk



APPROVED AS TO FORM:


For Robin Clauson, City Attorney

OWNER:

HOAG MEMORIAL HOSPITAL
PRESBYTERIAN, a California nonprofit public
benefit corporation

By: 

Richard F. Afable, M.D.
President and CEO

(All Signatures to be Notarized)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of ORANGE

On JUNE 11, 2008 before me, LEILANI I. BROWN, NOTARY PUBLIC

personally appeared EDWARD D. SELLICH



Place Notary Seal Above

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 signature(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 Leilani I. Brown

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On May 19, 2008 before me, Debara Hames, Notary Public
(Here insert name and title of the officer)

personally appeared Richard Afable

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is 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~~ signature~~(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.

Debara Hames
Signature of Notary Public



(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

DESCRIPTION OF THE ATTACHED DOCUMENT

Amendment to Restated Development
(Title or description of attached document)

Agreement No. 5
(Title or description of attached document continued)

Number of Pages 33 Document Date 5-19-08

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
- ☒ Corporate Officer
President And CEO
(Title)
- ☐ Partner(s)
- ☐ Attorney-in-Fact
- ☐ Trustee(s)
- ☐ Other _____

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, ~~is~~ / are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

EXHIBIT A

LEGAL DESCRIPTION

The subject property is the following real property in the City of Newport Beach, County of Orange, State of California:

Parcel 1:

That portion of Lots 169 and 170 in Block 2 and a portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

Parcel 2:

That portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

[illegible]

B-1

EXHIBIT C

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

**PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS**

Adopted May 13, 2008

Ordinance No. 2008-9

Effective June 12, 2008

FINAL
5/16/08 10001.34
H&O: #58720 vl

C-1

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

**PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS**

Recommended for Approval
by the Planning Commission
March 20, 2008

Adopted by the City Council
City of Newport Beach
Ordinance No. 2008-10
May 13, 2008

Hoag Memorial Hospital Presbyterian Planned Community Development Criteria and District Regulations

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I. INTRODUCTION

Background

The Hoag Memorial Hospital Presbyterian Planned Community District in the City of Newport Beach has been developed in accordance with the Newport Beach General Plan. The purpose of this Planned Community District is to provide a method whereby property may be classified and developed for hospital-related uses. The specifications of this District are intended to provide land use and development standards supportive of the proposed use while ensuring compliance with the intent of all applicable regulatory codes.

The Planned Community District includes district regulations and a development plan for both the Upper and Lower Campuses of Hoag Hospital. In general, over the long term, the Upper Campus will become oriented primarily towards emergency, acute and critical care (predominantly inpatient) uses and the Lower Campus will be developed with predominantly outpatient uses, residential care and support services.

Whenever the regulations contained in the Planned Community text conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the Planned Community text shall take precedence. The Municipal Code shall regulate this development when such regulations are not provided within these district regulations. All development within the Planned Community boundaries shall comply with all provisions of the Uniform Building Code and other governing building codes.

II. GENERAL NOTES

1. Water service to the Planned Community District will be provided by the City of Newport Beach.
2. Development of the subject property will be undertaken in accordance with the flood protection policies of the City of Newport Beach.
3. All development of the site is subject to the provisions of the City Council Policies K-4 and K-5 regarding paleontological and archaeological resources.
4. Except as otherwise stated in this text, the requirements of the Newport Beach Zoning Ordinance shall apply. The contents of this text notwithstanding, all construction within the boundaries of this Planned Community District shall comply with all provisions of the Uniform Building Code, other various codes related thereto and local amendments.
5. All buildings shall meet Title 24 requirements or the requirements of the California Office of Statewide Health Planning and Development as applicable. Design of buildings shall take into account the location of building air intake to maximize ventilation efficiency, the incorporation of natural ventilation, and implementation of energy conserving heating and lighting systems.
6. Any fire equipment and access shall be approved by the Newport Beach Fire Department.
7. Excluding communications devices on the Upper Campus, new mechanical appurtenances on building rooftops and utility vaults on the Upper and Lower Campuses shall be screened from view in a manner compatible with building materials. Rooftop mechanical appurtenances or utility vaults shall be designed utilizing compatible architectural materials on the Lower Campus. No new mechanical appurtenances may exceed the building height limitations as defined in these district regulations.
8. Grading and erosion control shall be carried out in accordance with the provisions of the City of Newport Beach Excavation and Grading Code and shall be subject to permits issued by the Building and Planning Departments.
9. Sewage disposal facilities within the Planned Community will be provided by Orange County Sanitation District No. 5. Prior to issuance of any building permits it shall be demonstrated to the satisfaction of the Planning Department that adequate sewer facilities will be available. Prior to the occupancy of any structure it shall be further demonstrated that adequate sewer facilities exist.
10. Mass grading and grading by development phases shall be allowed provided that landscaping of exposed slopes shall commence within thirty (30) days of the completion of grading.

III. DEFINITIONS

Building Elevation:

1. A vertical distance of a building above or below a fixed reference level, i.e., MSL (mean sea level).
2. A flat scale drawing of the front, rear, or side of a building.

Building Envelope: The volume in which a building may be built as circumscribed by setback lines and maximum allowable building heights.

Building Height: The vertical distance measured from the finished grade to the highest point of the structure. At all points, the height measurement shall run with the slope of the land.

Emergency Room: A service and facility designated to provide acute emergency medical services for possible life threatening situations.

Entitlement, Gross Floor Area: Any area of a building, or portion thereof, including the surrounding exterior walls, but excluding:

1. Area of a building utilized for stairwells and elevator shafts on levels other than the first level of a building in which they appear;
2. Area of a medical building, that is not used for general or routine occupancy but rather is for interstitial or mechanical occupancies, that measures less than 19 feet from finished floor to ceiling;
3. As applied to new construction permits issued on or after August 13, 2002, area of a building used specifically for base isolation and structural system upgrades directly related to requirements of governmental agencies and is not for general or routine occupancy; and
4. As applied to new construction permits issued on or after August 13, 2002, enclosed rooftop mechanical levels not for general or routine occupancy.

First Aid: Low acuity medical treatment for non-life threatening situations.

General Plan: The General Plan of the City of Newport Beach and all elements thereof.

Grade: For the purpose of determining building height:

1. Finished - the ground level elevation which exists after any grading or other site preparation related to, or to be incorporated into, a proposed new development or alteration of existing developments. (Grades may be worked into buildings to allow for subterranean parking.)

Hoag Memorial Hospital Presbyterian Planned Community Development Criteria and District Regulations

2. Natural - the elevation of the ground surface in its natural state before man-made alterations.
3. Existing - the current elevation of ground surface.

Inpatient Uses: Hospital patient services which require twenty-four (24) hour or more stays.

Landscape Area: The landscape area shall include on-site walks, plazas, water, rooftop landscaping and all other areas not devoted to building footprints or vehicular parking and drive surfaces.

Mean Sea Level: A reference or datum mark measuring land elevation using the average level of the ocean between high and low tides.

Outpatient Uses: Hospital patient services which do not exceed twenty-four (24) hours.

Residential Care: Medically-oriented residential units that do not require the acuity level generally associated with inpatient services but require overnight stays.

Site Area: For the purpose of determining development area:

1. Gross - parcel area prior to dedications.
2. Net - parcel area after dedications.

Streets: Reference to all streets or rights-of-way within this ordinance shall mean dedicated vehicular rights-of-way.

IV. DEVELOPMENT PLAN

Project Characteristics

The Upper Campus of Hoag Hospital is located on a triangular site of approximately 17.57 acres and is bounded by Newport Boulevard to the east, Hospital Road to the north and existing residential developments to the west. The Lower Campus is located north of West Coast Highway, south of the Sunset View linear and consolidated park and Villa Balboa Condominiums, west of Newport Boulevard and east of Superior Avenue. It contains approximately 37.38 total acres, including 8,603 square feet of land encumbered by a roadway easement. The Lower Campus adjoins the Upper Campus at its eastern boundary. The Upper Campus is, and will continue to be, oriented towards inpatient functions, while the Lower Campus will be developed with predominantly outpatient, residential care and support services.

Development Plan

The Planned Community Development Plan for Hoag Hospital is shown on Exhibit 1, *Planned Community Site and Boundary Map*. Through the year 2017, many of the existing buildings shown on the Development Plan for the Upper Campus may be redeveloped in order to functionally respond to the needs of the Hospital and conform to the requirements of State agencies.

Access to the Lower Campus will be from West Coast Highway and from Hospital Road, via the Upper Campus. Exhibit 2, *Vehicular Access*, shows the internal circulation for Hoag Hospital.

The Development Plan does not specify building locations or specific hospital-related uses. Instead, a developable area is identified based on the regulations established for this Planned Community District. Because of the dynamic nature of the health care industry which leads to rapid technological changes that effect how health care services are delivered, the Development Plan for Hoag Hospital sets development caps as a function of allowable densities established by the Newport Beach General Plan.

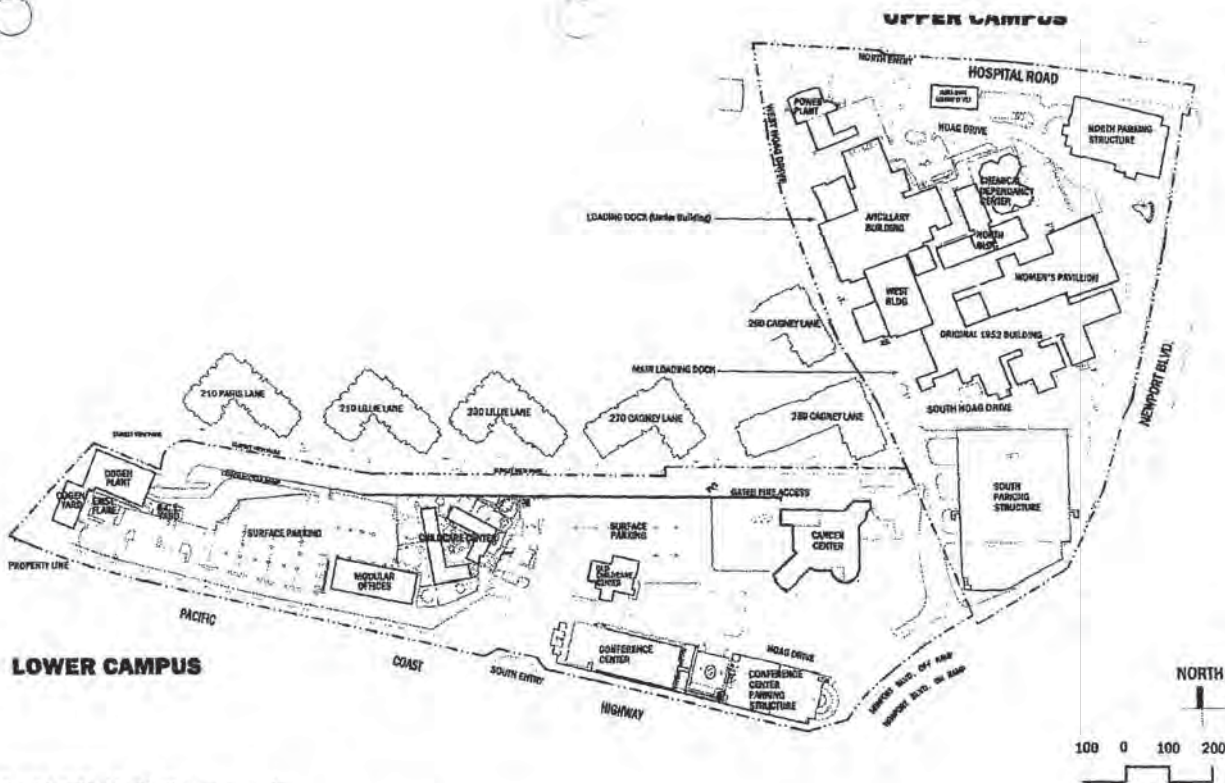
The maximum allowable building area for Hoag Hospital, which encompasses both the Lower Campus and the Upper Campus, is 1,343,238 square feet. Each Campus is also subject to a maximum allowable building area limit: the maximum allowable building area for the Upper Campus is 990,349 square feet; the maximum allowable building area for the Lower Campus is 577,889 square feet. Table 1, *Building Area Statistical Analysis*, provides a summary of allowable square footage for both the Upper and Lower Campuses.

Implementation, Program EIR and Subsequent Project Specific Approvals

Hoag has acknowledged that the Environmental Impact Report prepared for the development and implementation of the Hoag Master Plan pursuant to this Planned Community Development Plan is a "Program EIR." The City has prepared and certified two program Environmental Impact Reports - Hoag Hospital Master Plan Final Program EIR (Final EIR No. 142) and a Supplemental EIR for the Master Plan Update (SCH#1991071003). The EIRs analyze the impacts of construction phased over time and, pursuant to CEQA, the City is under a continuing

Hoag Memorial Hospital Presbyterian Planned Community Development Criteria and District Regulations

obligation to analyze Hoag's requests for Project Specific Approvals to ensure the environmental impacts associated with the requests were fully addressed in the EIRs. Subsequent environmental documentation is required if this analysis reveals environmental impacts not fully addressed in the program EIRs, identifies new impacts, or concludes the specific request is not consistent with the project described in the EIRs. Hoag acknowledges the right and obligation of the City and the Coastal Commission or its successor agency to impose additional conditions as the result of the subsequent environmental analysis required by CEQA.







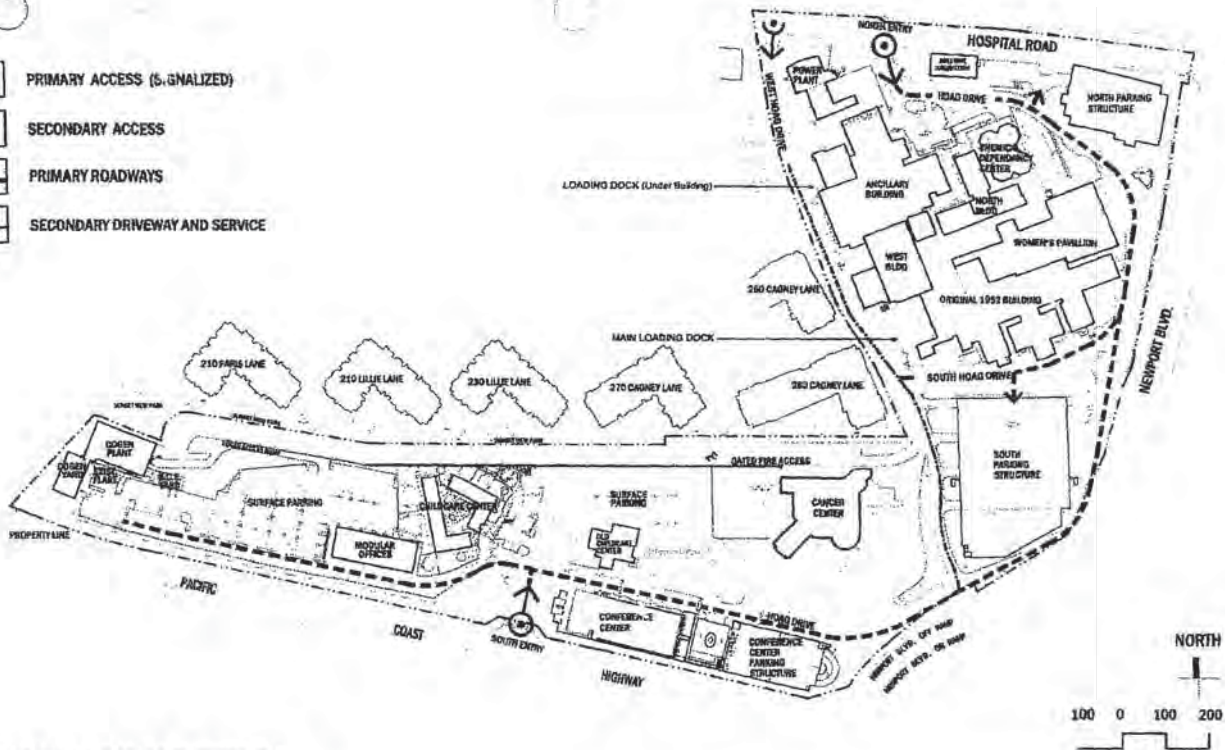
Note: Buildings labeled for identification purposes only

**PLANNED COMMUNITY SITE AND BOUNDARY MAP
HOAG MEMORIAL HOSPITAL PRESBYTERIAN**

EXHIBIT 1
08.20.07
REVISED 01.22.08

LEGEND

-  PRIMARY ACCESS (SIGNALIZED)
-  SECONDARY ACCESS
-  PRIMARY ROADWAYS
-  SECONDARY DRIVEWAY AND SERVICE



Note: Buildings labeled for identification purposes only

**VEHICULAR ACCESS
HOAG MEMORIAL HOSPITAL PRESBYTERIAN**

NORTH
100 0 100 200
SCALE: 1"=200'
EXHIBIT 2
08.20.07
REVISED 01.22.08

TABLE 1

BUILDING AREA STATISTICAL ANALYSIS

**TOTAL OF LOWER CAMPUS & UPPER CAMPUS BUILDING AREAS -
MAXIMUM ALLOWABLE: 1,343,238 SQUARE-FEET**

	Site Area	Allowable Building Area	Existing ¹	Net Remaining	Maximum Allowable
UPPER CAMPUS	765,349 sq. ft.	765,349 sq. ft.	698,121 sq. ft.	67,228 sq. ft.	990,349 sq. ft. ²
LOWER CAMPUS	862,815 sq. ft.	577,889 sq. ft.	188,149 sq. ft.	389,740 sq. ft.	577,889 sq. ft.
TOTALS	1,618,164 sq. ft.	1,343,238 sq. ft.	886,270 sq. ft.	456,968 sq. ft.	1,343,238 sq. ft. ³

¹ As of the date of adoption.

² Up to 225,000 square-feet can be transferred from the Lower to the Upper Campus

³ Demolition of some existing structures on the Upper Campus will occur to ensure maximum square-feet will not exceed 1,343,238 square-feet

V. DISTRICT REGULATIONS

The following regulations apply to all development within the Hoag Hospital Planned Community. The individual uses listed under the five permitted use categories are not an exhaustive list. Other hospital-related uses which fit into the five (5) permitted use categories are allowed. Prior to the issuance of a building permit, plot plans, elevations and any other such documents deemed necessary by the Planning, Building, Public Works, and Fire Departments shall be submitted for the review and approval of the Planning, Building, Public Works, and Fire Departments.

A. Permitted Uses

I. Lower Campus

a. Hospital facilities, including, but not limited to:

(1) Outpatient services:

- (a) Antepartum Testing
- (b) Cancer Center
- (c) Skilled Nursing
- (d) Rehabilitation
- (e) Surgery Center
- (f) Clinical Center
- (g) Day Hospital
- (h) Back and Neck Center
- (i) Biofeedback
- (j) Breast Imaging Center
- (k) Dialysis
- (l) EEG/EMG/NICE Laboratory
- (m) First Aid Center
- (n) Fertility Services
- (o) G.I. Laboratory
- (p) Magnetic Resonance Imaging
- (q) Neurology
- (r) Nuclear Medicine
- (s) Occupational Therapy
- (t) Pediatrics
- (u) Pharmacy
- (v) Physical Therapy
- (w) Pulmonary Services
- (x) Radiation Therapy
- (y) Respiratory Therapy
- (z) Sleep Disorder Center
- (aa) Speech Therapy
- (bb) Ultrasound
- (cc) Urgent Care

(2) Administration:

- (a) Admitting
- (b) Auxiliary Office
- (c) Business Offices
- (d) Information Desk
- (e) Registration
- (f) Patient Relations
- (g) Social Services

(3) Support Services:

- (a) Employee Child Care
- (b) Health Education
- (c) Power/Mechanical/Auxiliary Support and Storage
- (d) Food Services
- (e) Cashier
- (f) Chapel/Chaplaincy Service
- (g) Conference Center
- (h) Dietitian
- (i) Gift Shop
- (j) Laboratory
- (k) Medical Library
- (l) Medical Records
- (m) Pharmacy
- (n) Parking Facilities⁴
- (o) Engineering/Maintenance
- (p) Shipping/Receiving
- (q) Microwave, Satellite, and Other Communication Facilities

(4) Residential Care:

- (a) Substance Abuse
- (b) Mental Health Services
- (c) Extended Care
- (d) Hospice Care
- (e) Self or Minimal Care
- (f) Congregate Care

(5) Medical/Support Offices

⁴ Parking structures or decks do not count toward square-footage

Hoag Memorial Hospital Presbyterian Planned Community Development Criteria and District Regulations

- b. Methane gas flare burner, collection wells and associated system components.
 - c. Accessory uses normally incidental to hospital development.
 - d. Temporary structures and uses, including modular buildings.
2. Upper Campus
- a. Hospital facilities, including, but not limited to:
 - (1) Inpatient uses including, but not limited to:
 - (a) Critical Care
 - (b) Emergency Department
 - (c) Birthing Suites
 - (d) Cardiology
 - (e) Cardiac Care Unit
 - (f) Intensive Care Unit
 - (g) Mother/Baby Unit
 - (h) Surgery
 - (i) Laboratory
 - (j) Pharmacy
 - (k) Patient Beds
 - (2) Outpatient services as allowed on the Lower Campus
 - (3) Administrative uses as allowed on the Lower Campus
 - (4) Support services as allowed on the Lower Campus
 - (5) Residential care as allowed on the Lower Campus
 - (6) Heliport (subject to Conditional Use Permit)⁵
 - b. Accessory uses normally incidental to hospital development.
 - c. Temporary structures and uses, including modular buildings.

⁵ Does not count toward square-footage

B. Prohibited Uses

1. Lower Campus
 - a. Emergency Room
 - b. Heliport
 - c. Conversion of mechanical or structural spaces to uses that allow general or routine occupancy
2. Upper Campus
 - a. Conversion of mechanical or structural spaces to uses that allow general or routine occupancy

C. Maximum Building Height

The maximum building height of all buildings shall be in accordance with Exhibit 3, *Development Criteria Plan*, which establishes the following height zones:

1. Upper Campus Tower Zone - maximum building height not to exceed the existing tower which is two-hundred thirty-five (235) feet above mean sea level.
2. Upper Campus Mid-rise Zone - maximum building height not to exceed one-hundred forty (140) feet above mean sea level.
3. Upper Campus Parking Zone - maximum building height not to exceed eighty (80) feet above mean sea level, exclusive of elevator towers.
4. Lower Campus Zone, Sub-Areas A, B, C, F and G - within each sub-area no building shall exceed the height of the existing slope and conform to the range of maximum building heights indicated by the development criteria shown on Exhibit 3.
5. Lower Campus Zone, Sub-Areas D and E - maximum building height shall not exceed the height of the existing Hoag Cancer Center which is fifty-seven and one-half (57.5) feet above mean sea level.

D. Building Setbacks

Setbacks for the Hoag Hospital Planned Community are shown on Exhibit 3.

1. Setbacks will be provided along property boundaries adjacent to the Villa Balboa condominiums, as defined below:
 - a. Upper Campus western boundary setback shall be the prolongation of the westerly edge of the existing cafeteria/laboratory building to the points of intersection with the easterly curb line of the existing service drive, then continuing along said line of the existing service drive.
 - b. Lower Campus northern boundary, all of which will have a 20-foot minimum building setback.
2. The setback on West Coast Highway easterly of the hospital entry signal shall be fifteen (15) feet.

In addition, vertical articulation shall be required for buildings easterly of the signal within one-hundred fifty (150) feet of the West Coast Highway frontage, as follows:

1st Floor: Up to eighteen (18) feet in height no additional articulation is required. If the 1st floor exceeds eighteen (18) feet in height, it shall be subject to the articulation requirements of the 2nd Floor.

2nd Floor, up to thirty-two (32) feet in height: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 2nd floor setback of twenty (20) feet.

3rd Floor and above: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 3rd floor and above setback of twenty-five (25) feet.

The setback on West Coast Highway westerly of the hospital entry signal shall be forty-five (45) feet.

In addition, vertical articulation shall be required for buildings westerly of the signal for buildings within one-hundred fifty (150) feet of the West Coast Highway frontage, as follows:

1st Floor: Up to eighteen (18) feet in height no additional articulation is required. If the 1st floor exceeds eighteen (18) feet in height, it shall be subject to the articulation requirements of the 2nd Floor.

2nd Floor, up to thirty-two (32) feet in height: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 2nd floor setback of fifty-five (55) feet.

3rd Floor and above: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 3rd floor and above setback of sixty-five (65) feet.

In order to avoid any future structures in this area (within 150 feet of West Coast Highway) from presenting an unacceptable linear mass, no single structure shall be greater than two-hundred fifty (250) linear feet in width. Additionally, 20% of the linear frontage within one-hundred fifty (150) feet of West Coast Highway shall be open and unoccupied by buildings.

10% of the linear length of Height Zones A and B as viewed from the existing bicycle/pedestrian trail, exclusive of that area adjacent to the consolidated portion of the view park, shall be maintained as view corridors between buildings.

These requirements may be altered for individual buildings, if requested by the hospital, through the site plan review process defined in Section IX.

3. There will be no building setbacks along the westerly boundary of the Lower Campus (adjacent to the municipal parking lot at Superior and West Coast Highway).
4. A twenty (20) foot setback from property line shall be provided along Newport Boulevard from Hospital Road to a point six-hundred (600) feet south; a twenty-five (25) foot setback from property line shall be provided along the remainder of Newport Boulevard and along the Newport Boulevard/West Coast Highway Interchange.
5. A ten (10) foot building setback from the property line shall be provided along Hospital Road.

E. Lighting

The lighting systems shall be designed and maintained in such a manner as to shield the light source and to minimize light spillage and glare to the adjacent residential uses. The plans shall be prepared and signed by a licensed Electrical Engineer.

F. Roof Treatment

Prior to the issuance of building permits, the project sponsor shall submit plans which illustrate that major mechanical equipment will not be located on the roof of any structure on the Lower Campus. Minor rooftop equipment, necessary for operating purposes, will comply with all building height criteria, and shall be designed and screened to blend into the building roof using materials compatible with roofing materials.

G. Signs

All signs shall be as specified under the Hoag Hospital Sign Program, Part VI.

H. Parking

All parking shall be as specified in Part VII, Hoag Hospital Parking Regulations.

I. Landscape

All landscaping shall be as specified in the Hoag Hospital Landscape Regulations, Part VIII.

J. Mechanical and Trash Areas

Prior to issuance of a building permit, the project sponsor shall submit plans to the City Planning Department which illustrate that all mechanical equipment and trash areas will be screened from public streets and immediately adjacent residential properties.

K. West Hoag Drive Circulation Limitations

The project sponsor shall continue to limit the use of that portion of West Hoag Drive adjacent to residential uses located on the Upper Campus. Deliveries to loading areas shall not occur after 8:00 PM or before 7:00 AM daily. The project sponsor shall physically restrict access to the roadway between these hours and appropriate signage indicating permitted delivery hours and access limitations shall be installed and maintained at all times. Night time deliveries and vehicular access to the loading area located along West Hoag Drive are allowed where critical supplies, services or materials are necessary for the continued operation of the hospital.

L. Loading Dock

The project sponsor shall provide a sound wall along West Hoag Drive as shown in the approximate location on Exhibit 4. Said wall shall be installed within 12 months of project approval, subject to issuance of required permits. To the maximum degree feasible, the sound wall shall be constructed to retain existing vegetation, which serves as a visual screen. Please refer to Section VIII, D. for additional landscaping requirements related to the sound wall. Mitigation measures to reduce the noise levels in the Loading Dock Area shall be incorporated into the design and operations of the hospital; such mitigation shall include relocation of the trash compactor and baler, limiting the hours of truck deliveries to the loading dock area, and enclosure of the trash compactor.

M. Noise Standards

Noise generated at the Hoag Hospital property shall be governed by the City of Newport Beach Noise Ordinance, except as noted below for the Loading Dock Area. Refer to Exhibit 5, *Loading Dock Area Location*, for the location.

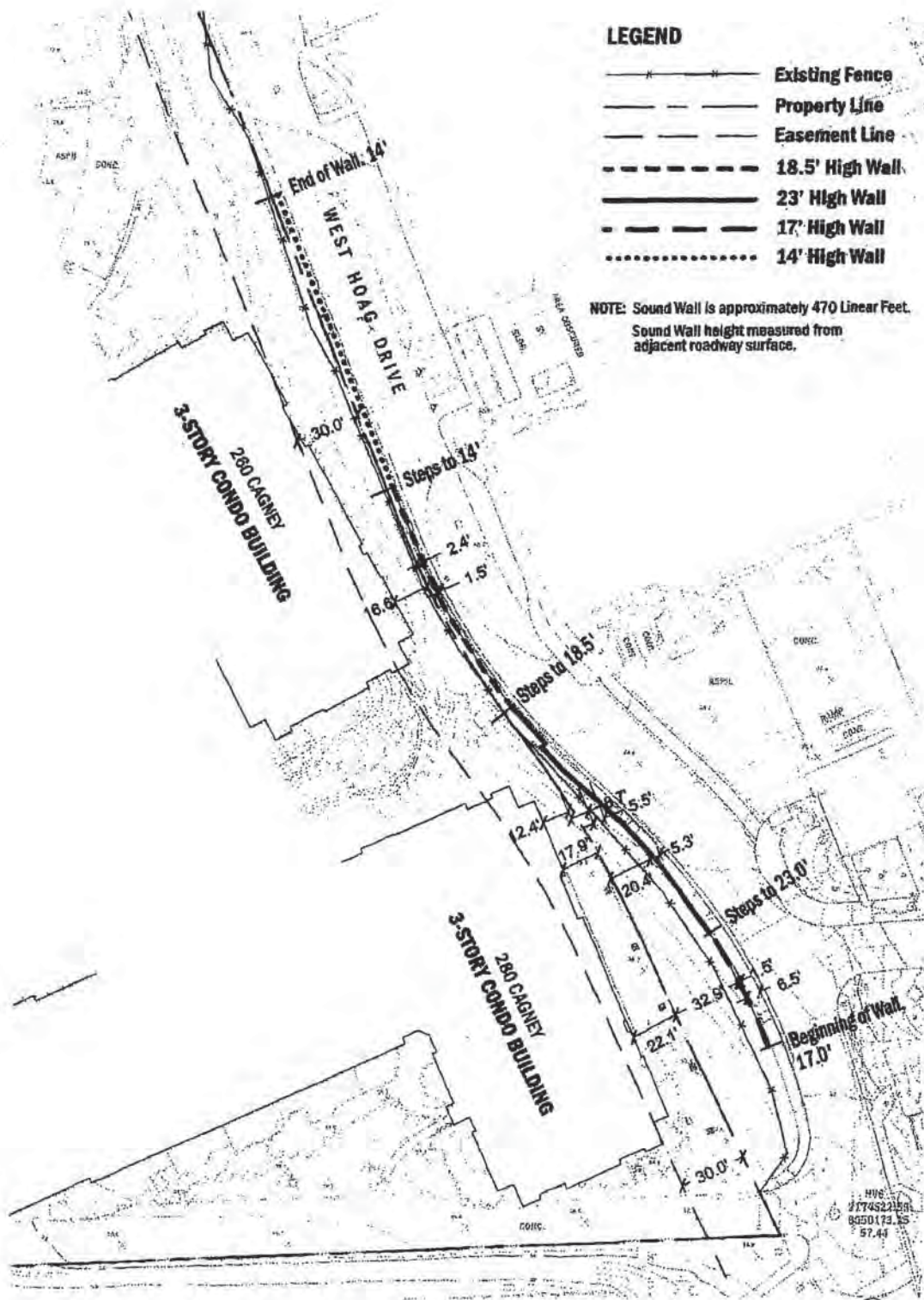
1. The applicable noise standard at the Hoag Hospital property line adjacent to the Loading Dock Area shall be as follows:

	<u>7 AM – 10 PM</u>	<u>10 PM – 7 AM</u>
	Daytime	Nighttime
Leq (15 min)	65 dBA	55 dBA

2. Within the Loading Dock Area during daytime hours, vehicles shall be exempt from applicable noise standards as listed above.

Vehicle idling shall be prohibited on West Hoag Drive and within the loading dock areas, except that refrigerated vehicles may idle while at the loading docks when refrigeration is necessary.

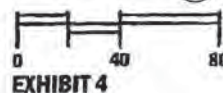
In addition, the grease pit cleaning which is exempt from the City Noise Ordinance as a maintenance activity shall occur on a Saturday between the hours of 11:00 AM and 3:00 PM.



SOUND WALL LOCATION PLAN

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

April 3, 2008



VI. HOAG HOSPITAL SIGN PROGRAM

A. Purpose and Intent

1. The purpose of this Sign Program is to provide adequate, consistent and aesthetically pleasing on-building wall and ground-mounted signage based upon the provisions set forth by the City of Newport Beach Sign Ordinance and the information signage requirements of Hoag Hospital.
2. The intent of this Sign Program is to produce uniform standards for Hoag Hospital.

B. General Sign Standards

1. All signs visible at the exterior of any building or facility of the Hospital, ground-mounted or on-building, may be illuminated or non-illuminated, depending upon need. Illumination method may be by external or internal source. No sign shall be constructed or installed to rotate, gyrate, blink or move, or create the illusion of motion, in any fashion.
2. All signs attached to building or facility exteriors shall be mounted as is appropriate to the architectural design features of said building or facility.
3. All signs together with the entirety of their supports, braces, guys, anchors, attachments and decor shall be properly maintained, legible, functional and safe with regard to appearance, structural integrity and electrical service.
4. All street signs shall be subject to review and approval of the City Traffic Engineer, and shall be in compliance with Ordinance 110-L.
5. For purposes of this section, a building shall be defined as any occupied structure or any occupied portion of a structure that is constructed as an addition to an existing structure and identified as a separate building for way finding purposes. Individual building numbers uniquely define the buildings on the Hoag campus.

C. Number of Signs Allowed

1. One (1) double-faced primary identification ground-mounted sign or two (2) single-faced gateway entry signs shall be allowed per street frontage. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Total maximum signage area shall not exceed two hundred (200) square feet and shall not exceed ten (10) feet in height per sign and street frontage. This sign may occur as a wall sign, to be located upon a project

boundary perimeter wall, subject to the same number and area maximums described above. This sign may also occur as part of an entry gateway system.

2. Primary entrance identification shall be allowed at the main entrance to the facility and at the main entrance to the Emergency Department. If freestanding, this sign type shall not exceed a maximum height of eight (8) feet average height above finished grade. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Maximum sign area shall not exceed seventy (70) square feet.
3. Secondary building and entrance identification signs shall be allowed. If freestanding, this sign type shall not exceed a maximum height of nine (9) feet average height above finished grade. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Maximum sign area shall not exceed fifty (50) square feet whether freestanding or wall-mounted.
4. Vehicular and pedestrian directional signs shall be allowed. This sign type may occur as a single-faced, double-faced, or triple-faced sign. The sign shall be sized to allow for proper readability given the number of lines of copy, speed of traffic, setback off the road and viewing distance. This sign type shall not exceed a maximum height of eleven (11) feet average height above finished grade.
5. Donor recognition signage shall be allowed, one (1) at each building elevation. Maximum sign area shall not exceed one hundred seventy-five (175) square feet for donor recognition signage.
6. Hospital identification signs shall be allowed upon hospital towers, one (1) at each elevation. The maximum sign area shall not exceed two hundred seventy-five (275) square feet. Any hospital identification signage on the elevation facing west (Villa Balboa property line) may not be illuminated.
7. On the Lower Campus, two (2) building-mounted identification signs will be allowed per structure and shall not be placed so as to directly face the Villa Balboa property. Such signs shall adhere to the requirements above for secondary building and entrance identification signage and shall be no higher than the roof line of the building upon which they are mounted.
8. Each public parking structure shall be allowed one (1) identification sign above each entrance and exit of the structure. The maximum sign area of each identification sign shall not exceed thirty (30) square feet. Adjacent regulatory parking signage does not count toward the maximum sign area.

VII. HOAG HOSPITAL PARKING REGULATIONS

A. General

1. Off-street parking for Hoag Hospital shall be provided on-site. Parking may be on surface lots, subterranean or in parking structures.
2. The design and layout of all parking areas shall be subject to the review and approval of the City Traffic Engineer and the Public Works Department.
3. Parking lot lighting shall be developed in accordance with City standards and shall be designed in a manner which minimizes impacts on adjacent land uses. Nighttime lighting shall be limited to that necessary for security and shielded down from any adjacent residential area. The plans shall be prepared and signed by a licensed electrical engineer, with a letter from the engineer stating that the requirements have been met. The lighting plan shall be subject to review and approval of the City Planning Department.

B. Requirements for Off-Street Parking

Parking requirements for specific sites shall be based upon the parking criteria established in Table 2. All parking shall be determined based upon the area allocated to the use categories.

TABLE 2

PARKING REQUIREMENTS

<u>Use Category</u>	<u>Parking Requirements</u>
Outpatient Services	2.31 spaces/1,000 square feet (1)
Support	0.0 spaces/1,000 square feet (1)(2)
Administrative	5.3 spaces/1,000 square feet (1)
Residential Care	1.0 spaces/1,000 square feet (3)
Medical Offices	4.0 spaces/1,000 square feet (3)
Inpatient	2.35 spaces/1,000 square feet (1)

(1) Parking factor based on parking analysis prepared by Linscott, Law & Greenspan dated October 15, 2001 for Traffic Study 2001-002 approved by Planning Commission Resolution No. 1542.
(2) Support Services generates parking demand that is accounted for in one of the other categories.
(3) Parking requirements based upon a study prepared by LSA Associates dated September 27, 1991.

VIII. HOAG HOSPITAL LANDSCAPE REGULATIONS

A. General

1. Detailed landscape and irrigation plans, prepared by a registered Architect or under the direction of a Landscape Architect, shall be reviewed by the City prior to issuance of a Certificate of Use and Occupancy. The Landscape Plan shall include a concept for rooftop parking and parking structures if proposed for the Lower Campus. Trees shall not be used, however planter boxes, green roof treatments or trellis systems shall be designed to provide added visual relief of rooftop parking or parking structures. All rooftop or top of parking structure landscaping proposals shall conform to the building height limits established in this text.
2. Parking lot trees shall be no less than twenty-four (24) inch box size.
3. Shrubs to be planted in containers shall not be less than five (5) gallon size. Ground covers will be planted from one (1) gallon containers or from rooted cuttings.
4. Every effort should be made to avoid using plants with invasive and shallow root systems.
5. Earth berms shall be rounded and natural in character, designed to obscure automobiles and to add interest to the site. Wheel stops shall be so placed as necessary to avoid damage to trees, irrigation systems, shrubs and other planting materials.
6. Trees in parking lots should be limited in variety. Selection should be repeated to give continuity. Regular spacing or the introduction of irregular groupings may also be considered to add interest and variety. Care should be exercised to allow plants to grow and maintain their mature size without restriction.
7. Emphasis shall be placed on the use of native, drought-tolerant, non-invasive plants on the Lower Campus. On the Upper Campus, naturalized vegetation selections, as well as those plants allowed on the Lower Campus, will be emphasized. Automatically controlled irrigation systems shall be designed to avoid surface runoff and over-watering.
8. Installation and maintenance of landscape, screening and irrigation systems per Exhibit #6, Exhibit #7 and Exhibit #8. All improvements shall be shown on landscape and irrigation plans to be reviewed and approved by the Planning Department and which shall be in substantial compliance with the Exhibits #6, #7 and #8. Hoag shall complete all of the improvements within the timelines set forth in Exhibit #6.

B. Maintenance

1. All planting areas are to be kept free of weeds and debris and cultivated as necessary to maintain.
2. Lawn and ground cover areas are to be kept trimmed and/or mowed regularly.
3. All plantings are to be kept in a healthy and growing condition. Fertilization, cultivation and tree pruning are to be carried out as part of a regularly scheduled annual maintenance program.
4. Irrigation systems are to be kept in good working condition at all times. On-going monitoring, adjustments and cleaning of systems are to be part of regular maintenance procedures.
5. Stakes, guys and tree ties on trees should be checked regularly for correct function; ties shall be adjusted to avoid creating abrasions or girdling of branches or central leaders.
6. Damage to plantings created by vandalism, automobile or acts of nature shall be corrected within thirty (30) days.
7. Plantings and irrigation are to be maintained in accordance with the approved plans.

C. Special Landscaped Street

West Coast Highway is designated in the Hoag Hospital Planned Community as a special landscaped street. A fifteen (15) foot building setback from right-of-way/property line is required along West Coast Highway. Only driveways, parking and signage structures are allowed in the setback areas. Parking areas shall be screened from view of West Coast Highway with landscaped berms.

Landscaping along West Coast Highway shall consist of trees, ground cover and shrubbery. All unpaved areas not utilized for parking or circulation shall be landscaped in a similar manner. Installed trees are to be no smaller than twenty-four (24) inch box.

D. Villa Balboa Landscape Zone

The area between the Hoag property line and the sound wall will be referred to as the Villa Balboa Landscape Zone. This portion of the Hoag Hospital property will have a specific landscape process to ensure consultation with Villa Balboa on the planting and maintenance of the area. Existing landscaping on Villa Balboa's side of the wall shall be preserved to the extent feasible or replaced with specimen plant material as designated on a plan to be approved by the Planning Director after consultation with the Villa Balboa Community Association. The plan

shall also include sufficient additional landscaping to screen or soften the soundwall required pursuant to Section V.L. Hoag shall maintain all landscaping on Hoag's property and to the extent new plant material is installed as a result of wall construction by Hoag on the Villa Balboa property adjacent to the Villa Balboa Landscape Zone (with their permission), Hoag shall maintain such new plant material on Villa Balboa's property for a period of two years after installation to ensure healthy growth. All landscape installation shall occur within 45 days of the completion of the wall or earlier. Any future modifications made to said wall and landscaping shall be reviewed and approved by the Planning Director.

E. Parking Areas

A minimum of 5% of the surface parking areas shall be devoted to planting areas. Planting areas around building shall not be included in parking area landscape calculations. Planting of trees may be in groups and need not be regularly spaced. Alternative landscape programs may be developed, including perimeter parking area landscaping, berming and depressing of parking areas to provide additional screening. Alternative landscape programs shall be subject to the review of the Newport Beach Planning Department.

A rooftop landscaping program shall be developed for parking structures and rooftop parking proposed for the Lower Campus and shall be subject to the review and the approval of the Newport Beach Planning Department.

IX. SITE PLAN REVIEW

A. Purpose

The Council finds that development on the Lower Campus of Hoag Hospital may have the potential to affect the aesthetics of the community. The effect of this section is to establish a Site Plan Review requirement for certain individual projects - to insure that these projects conform with the goals and policies of the General Plan, provisions of this Planned Community Development Plan, the Development Agreement and the standards set forth below in sub-section F. The following classifications of projects are subject to the Site Plan Review:

Planning Commission review:

1. Any project that differs from setback, horizontal and vertical articulation requirements as set forth in Section V.D.2.

Planning Director's review:

1. Any project that could have the potential to generate emissions that could have an impact to visual resources.
2. Any project that could have the potential to generate emissions creating objectionable odors or other impacts to air quality.
3. Replacement of existing cooling towers, ~~except for casualty.~~

B. Findings

The City finds, determines and declares that the establishment of Site Plan Review procedures contained in this section promotes the health, safety, and general welfare of the community by ensuring that the development of Hoag Hospital proceeds in a manner which will not result in inadequate and poorly planned landscape areas, excessive building bulk on arterial roadways, inappropriate placement of structures and impairment of the benefits of occupancy and use of existing properties in the area.

C. Application

Site Plan Review approval shall be obtained for any new structure or the addition to an existing structure, as outlined in Section IX.A above, prior to the issuance of a grading or building permit or issuance of an approval in concept for Coastal Commission or Office of Statewide Health Planning and Development review.

D. Plans and Diagrams to be Submitted

The following plans and diagrams shall be submitted to the Planning Commission for approval:

1. A plot plan, drawn to scale, showing the arrangement of buildings, driveways, pedestrian ways, off-street parking and off-street loading areas, landscaped areas, signs, fences and walks. The plot plan shall show the location of entrances and exits, and the direction of traffic flow into and out of off-street parking and loading areas, the location of each parking space and loading space, and areas for turning and maneuvering vehicles. The plot plan shall indicate how utility and drainage are to be provided.
2. A landscape plan, drawn to scale, showing the locations of existing trees (proposed to be removed and proposed to be retained); and indicating the amount, type, and location of any landscaped areas, planting beds and plant materials with adequate provisions for automatic irrigation.
3. Grading plans when necessary to ensure development properly related to the site and to surrounding properties and structures.
4. Scale drawings of exterior lighting showing size, location, materials, intensity and relationship to adjacent streets and properties.
5. Architectural drawings, renderings or sketches, drawn to scale, showing all elevations of the proposed buildings and structures as they will appear upon completion.
6. Any other plans, diagrams, drawings or additional information necessary to adequately consider the proposed development and to determine compliance with the purposes of this chapter.

E. Fee

The applicant shall pay a fee as established by Resolution of the City Council to the City with each application for Site Plan Review under this chapter.

F. Standards

In addition to the general purposes set forth in sub-section A, in order to carry out the purposes of this chapter as established by said section, the Site Plan Review procedures established by this Section shall be applied according to and in compliance with the following standards, when applicable:

1. The development is in compliance with all other provisions of the Planned Community Development Criteria and District Regulations (P-C Text);
2. Development shall be compatible with the character of the neighborhood and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;
3. Development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special

consideration given to the mass and bulk of buildings and the streetscape on West Coast Highway;

4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.
5. Potential impacts shall be mitigated to less than significant levels.

G. Public Hearing - Required Notice

A public hearing shall be held on all Site Plan Review applications. Notice of such hearing shall be mailed not less than ten (10) days before the hearing date, postage prepaid, using addresses from the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses, to owners of property within a radius of three hundred (300) feet of the exterior boundaries of the subject property. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this Section. In addition to the mailed notice, such hearing shall be posted in not less than two (2) conspicuous places on or close to the property at least ten (10) days prior to the hearing.

H. Action by the Planning Director

If all applicable standards established by this Section are met, the Planning Director shall approve the development. Conditions may be applied when the proposed development does not comply with applicable standards and shall be such as to bring said development into conformity.

If the development is disapproved, the Director shall specify the standard or standards that are not met.

A Site Plan Review decision of the Planning Director shall be subject to review by the Planning Commission either by appeal, or upon its own motion, or upon the request of the Planning Director. The action of the Planning Director on any Site Plan Review shall be final and effective twenty-one (21) days following the Director's action thereon unless, within the twenty-one (21) day appeal period an appeal in writing has been filed by the applicant, or any other person, the Planning Director has requested a review of its decision, or unless the Planning Commission, not more than twenty-one (21) days after the Director's action, on its own motion, elects to review and act on the action of the Director, unless the applicant consents to an extension of time. The Planning Commission may affirm, reverse or modify the decision. Such action by the Planning Commission shall be final, unless subsequently appealed or reviewed.

I. Action by the Planning Commission

If all applicable standards established by this Section are met, the Planning Commission shall approve the development. Conditions may be applied when the proposed development does not comply with applicable standards and shall be such as to bring said development into conformity.

If the development is disapproved, the Commission shall specify the standard or standards that are not met.

A Site Plan Review decision of the Planning Commission shall be subject to review by the City Council either by appeal, or upon its own motion, or upon the request of the Commission. The action of the Commission on any Site Plan Review shall be final and effective twenty-one (21) days following the Commission action thereon unless, within the twenty-one (21) day appeal period an appeal in writing has been filed by the applicant, or any other person, the Commission has requested a review of its decision, or unless the City Council, not more than twenty-one (21) days after the Commission action, on its own motion, elects to review and act on the action of the Commission, unless the applicant consents to an extension of time. The City Council may affirm, reverse or modify the decision. Such action by the City Council shall be final.

J. Appeal to the City Council

Any Site Plan Review decision of the Commission may be appealed to the City Council by the applicant or any other person, at any time within twenty-one (21) days after the date of the Commission decision. An appeal to the City Council shall be taken by filing a letter of appeal in duplicate, with the Planning Department. Such letter shall set forth the grounds upon which the appeal is based and shall be accompanied by a fee as established by Resolution of the City Council.

K. Action by the City Council

An appeal shall be heard and acted on by the City Council within sixty (60) days of filing a letter of appeal, and the City Council may affirm, reverse or modify the decision of the Commission. The decision of the City Council is final.

L. Expiration and Revocation of Site Plan Review Approvals

1. Expiration. Any Site Plan Review granted in accordance with the terms of this Title shall expire within twenty-four (24) months from the date of approval if a building permit has not been issued prior to the expiration date and subsequently construction is diligently pursued until completion, unless at the time of approval the Planning Commission has specified a different period of time.
2. Violation of Terms. Any Site Plan Review granted in accordance with the terms of this Title may be revoked if any of the conditions or terms of such Site Plan Review are violated or if any law or ordinance is violated in connection therewith.
3. Hearing. The Planning Commission shall hold a hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within sixty (60) days after receipt of the recommendation of the Planning Commission.

LANDSCAPE MATRIX

Location	Area	Description	Landscape Element	Schedule	Government/Agency Status	Anticipated Outcome / Effect
Hoag Lower Campus	Area 1 - Co Gen	Additional tree planting per community request	Add 5, 48" box evergreen screen trees and new irrigation	Nov 2007 installed	Project completed	Screen/soften views of west end of Co Gen Building From PCH
	Area 2 - Co Gen	Additional tree planting per community request	Add 3, 48" box evergreen screen trees and new irrigation	To commence May 2008 Install completion July 2008	Coastal Comm. Approved 2/08	Added softening of Co Gen Plaza
	Area 3 - Co Gen	Add green screen lattice per community request	Attach metal green screen lattice structure to cover east building elevation	To commence May 2008 Install completion July 2008	Coastal Comm. Approved 2/08	Screen/soften specific views of Co Gen Building
	Area 4 - Co Gen Upper Parking Lot	Plant flowering vines to cover green screen	Plant flowering vines to cover green screen	To commence May 2008 Install completion July 2008	Coastal Comm. Approved 2/08	Screen/soften specific views of Co Gen Building
	Area 5 - Co Gen Upper Parking Lot	Clean up and regrade area with added shrub and groundcover planting	Additional shrubs, groundcover and new irrigation system added upon completion of wall project	Nov 2007 installed	Project completed	Added visual quality and erosion control
	Area 6 - Co Gen Upper Parking Lot	Tree shrub and groundcover planting	24 trees, shrubs and groundcover plantings and new water conserving irrigation system Installed as part of Lower Campus Wall Project	Nov 2007 installed	Project completed	Added campus visual quality screening and erosion control
	Area 7 - Co Gen Upper Parking Lot	Trees and shrub planting	4, 24" box evergreen screen trees Installed as part of Lower Campus Wall Project	Nov 2007 installed	Project completed	Screen and soften views of retaining wall
Hoag Lower Campus	Area 8 - West Parking Lot	Tree planting	12, 36" box flowering trees and 4 fan palm trees and irrigation system at end islands Installed as part of Lower Campus Wall Project	Nov 2007 installed	Project completed	Soften views of open parking lot areas Increased shade and visual enhancement to parking area
	Area 9 - West Parking Lot	Tree planting	Install 22, 36" box flowering trees and 3 fan palm trees	Installed no later than Dec 2009	Installation shall commence no later than 60 days of CDP issuance by the Coastal Comm.	Soften views of open parking lot areas and increase shade and visual enhancement to parking area
	Area 10 - West Parking Lot	Flowering bougainvillea shrub planting	550, bougainvillea shrubs installed as part of Lower Campus Wall Project	Nov 2007 installed	Project completed	Colorful edge definition and softening of views along top of retaining wall
	Area 11 - West Parking Lot	Regrade area and trees shrub and groundcover planting	Shrubs, groundcover, fencing and new irrigation system	Installed no later than Dec 2009	Installation shall commence no later than 120 days of CDP issuance by the Coastal Comm.	Enhanced overall campus visual quality, safety and erosion control
Hoag Lower Campus	Area 12 - West Parking Lot	Additional trees shrubs & groundcover planting	17 trees, shrubs and groundcover and new irrigation system	Dec 2007 installed	Project completed	Added Visual Quality, Fencing area screening and defining drop off and entry area definition
	Area 13 - West Parking Lot	Replace trees, shrub and groundcover and enhance planting area	Trees, shrub & groundcover and new irrigation system	Installation schedule Dec 2009	Pending city approval in concept and Coastal Comm Approval	Improve & unify campus planting character along PCH frontage after utilities installed
	Area 14 - West Parking Lot	Additional green screen and treeshrub planting	Install approx. 870 linear feet of green screen along PCH frontage	Installed no later than Dec 2009	Immediately upon issuance of an Approval in Concept (AIC) by the City of Newport Beach an application shall be submitted for said improvements to the Coastal Comm. Consultation of said improvements shall be completed no later than 18 months after CDP issuance by the Coastal Comm.	Screen views of west parking lot from PCH
	Area 15 - West Parking Lot	Temporary native hydroseed groundcover planting	Add coastal wild flowers and grass Hydroseed planting until permanent parking lot with landscape improvements added	Hydroseed and irrigation installed Dec 2007	Hydroseed and irrigation completed	Erosion/silt control and enhanced visual quality pending future parking area installation
Color Code Indicating Current Project Status						
Green		Indicates current improvements that have been initiated per previous approvals				
Yellow		Indicates improvements initiated but not apart of required permits				
Blue		Indicates improvements in design phase yet to be submitted for city or agency approvals				
Pink		Indicates improvements proposed but not approved for installation				

Revised 4/15/08
Revised 4/15/08 for City Council Meeting

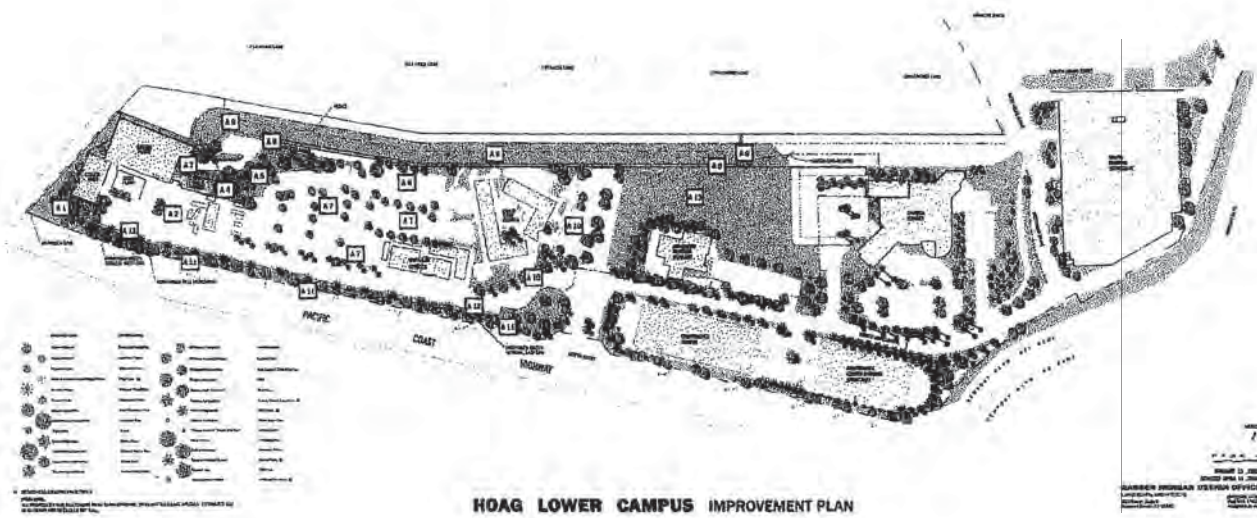
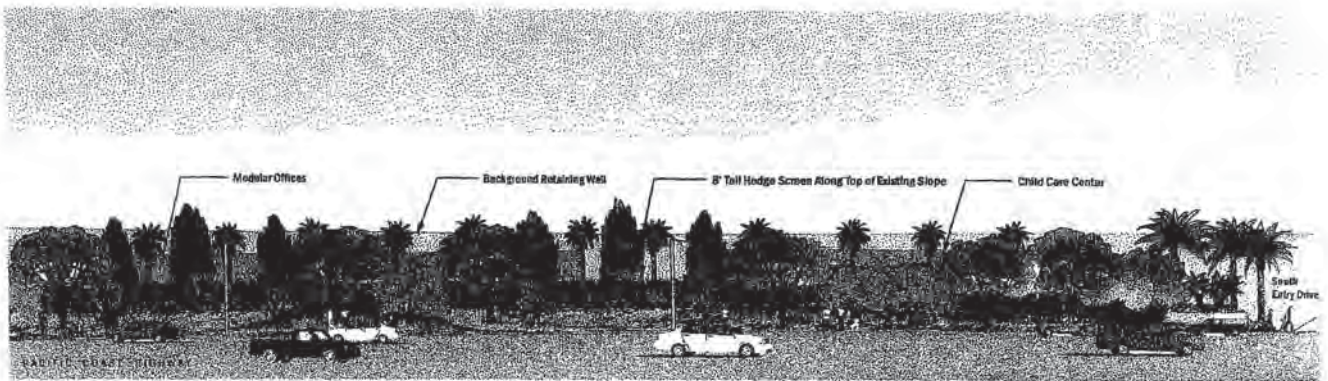


Exhibit #7



PARTIAL ELEVATION - PCH LANDSCAPE SCREEN (DRAFT)

Robb/Henman
ARCHITECTS
P.C.

Hoag Memorial Hospital Presbyterian
Troy, OH, OH

Exhibit # 33 04/14/2006

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, LaVonne M. Harkless, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Ordinance No. 2008-10 as duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 13th day of May 2008, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Henn, Rosansky, Curry, Daigle, Gardner, Mayor Selich

Noes: None

Absent: Webb

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 14th day of May 2008.

(Seal)



LaVonne M. Harkless

City Clerk
City of Newport Beach, California

CERTIFICATE OF PUBLICATION

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, LAVONNE M. HARKLESS, City Clerk of the City of Newport Beach, California, do hereby certify that Ordinance No. 2008-10 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in The Daily Pilot, a daily newspaper of general circulation on the following date, to wit: May 17, 2008.

In witness whereof, I have hereunto subscribed my name this _____ day of _____ 2008.

City Clerk
City of Newport Beach, California

EXHIBIT E

SECOND AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

**SECOND AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT
NO. 5**

BETWEEN

THE CITY OF NEWPORT BEACH

AND

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

*(Pursuant to California Government Code Sections 65864-65869.5
and Newport Beach Municipal Code Chapter 15.45)*

Approved February __, 2019
Ordinance No. 2019-__

SECOND AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

(Pursuant to California Government Code sections 65864-65869.5)

This SECOND AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT ("**Second Amendment**") is entered into and effective on the date it is recorded with the Orange County Recorder ("**Effective Date**") by and between the CITY OF NEWPORT BEACH, a California municipal corporation ("**City**"), on the one hand, and HOAG MEMORIAL HOSPITAL PRESBYTERIAN, a California nonprofit public benefit corporation ("**Hoag**"), on the other. City and Hoag are sometimes collectively referred to in this Second Amendment as the "**Parties**" and individually as a "**Party**."

RECITALS

A. Hoag is the fee owner of approximately thirty eight (38) acres of real property located in the City of Newport Beach, County of Orange, State of California, located at 1 Hoag Drive (Assessor's Parcel No.'s 423-011-30, 423-011-28), ("**Property**"). The Property is more particularly described in the legal description attached hereto and as Exhibit C and incorporated herein by reference, and as more particularly depicted as attached hereto in Exhibit D and incorporated herein by reference.

B. City and Hoag entered into that certain Development Agreement dated February 14, 1994, for reference purposes and recorded in the Official Records of Orange County on March 23, 1994, as document number 94-0207276 ("**Agreement**").

C. City and Hoag entered into that certain Amendment to Restated Development Agreement No. 5 dated June 17, 2008, and recorded in the Official Records of Orange County on the same date, as document number 2008000289321 ("**Amendment**"). All terms not otherwise defined in this Second Amendment shall have the meanings given them in the Amendment and the Agreement.

D. Under the Agreement, the Term of the Agreement was for twenty five (25) years and the Parties now desire to enter into this Second Amendment to the Agreement to extend the Term another six (6) months.

E. On March 13, 2007, the City Council adopted Ordinance No. 2007-6, entitled "Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code ("NBMC") Regarding Development Agreements" that amended the terms of NBMC Section 15.45 (the "**Development Agreement Statute and Ordinance**"). This Second Amendment is consistent with the Development Agreement Statute and Ordinance.

G. This Second Amendment is consistent with the City of Newport Beach General Plan, including without limitation the General Plan's designation of the Property as "Private Institutions - PI," and the Amendment and Agreement.

H. On January 17, 2019, the Planning Commission held a properly noticed public hearing on this Second Amendment and considered the testimony and information submitted by City staff, Hoag, and members of the public. On January 17, 2019, consistent with applicable provisions of the Development Agreement Statute and Ordinance, the Planning Commission

adopted Resolution No. PC2019-003, recommending the City Council approve this Second Amendment.

I. In recognition of the significant public benefits that the Agreement, as amended, provides, the City Council has found that this Second Amendment: (i) is consistent with the City of Newport Beach General Plan as of the date of the Agreement, the Amendment, and this Second Amendment; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) is consistent and has been approved consistent with the final Environmental Impact Report (FEIR No. 142) ("**FEIR**") and the supplemental Environmental Impact Report (EIR No. ER2007-003) (SCH#1991071003) ("**EIR**") that have been certified by the City Council on or before the Agreement Date, which analyzed the environmental effects of the proposed development of the Project on the Property, and all of the findings, conditions of approval and mitigation measures related thereto; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 and NBMC chapter 15.45.

J. On February 26, 2019, the City Council held a properly noticed public hearing on this Second Amendment and considered the testimony and information submitted by City staff, Hoag, and members of the public. On _____, 2019, consistent with applicable provisions of the Development Agreement Statute and Ordinance, the City Council held second reading and adopted Ordinance No. 2019-__, finding the Second Amendment to be consistent with the City of Newport Beach General Plan and approving this Second Amendment.

AGREEMENT

NOW, THEREFORE, City and Hoag agree as follows:

1. **Term of Agreement.** Section 6.3 is hereby amended in its entirety to read as follows:

"**Term of Agreement.** The term of this Agreement (the "Term") shall begin on the Effective Date and continue until September 15, 2019, unless otherwise terminated or modified pursuant to this Agreement. Any modifications to this Agreement prior to effective certification of the City's Local Coastal Program ("LCP"), are subject to the review and approval of the Coastal Commission or its successor agency."

2. **Full Force and Effect.** Except as modified by this Second Amendment, the Agreement and Amendment, attached hereto as Exhibit A and Exhibit B, respectively, are incorporated into this Second Amendment and shall remain in full force and effect.

3. **Recitals.** The Recitals set forth above are true and correct and incorporated herein by reference.

4. **Counterparts.** This Second Amendment may be signed by the Parties in different counterparts and the signature pages combined shall create a single document binding on all Parties.

5. **Recordation.** The City Clerk of City shall record this Second Amendment in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.100.

[SIGNATURE PAGE FOLLOWS]

Attachments - Exhibit A: Development Agreement dated February 14, 1994

Exhibit B: Amendment to Restated Development Agreement No. 5 dated June 17, 2008

Exhibit C: Legal Description

Exhibit D: Legal Depiction

**SIGNATURE PAGE TO
SECOND AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5**

CITY:


CITY OF NEWPORT BEACH,
a California municipal corporation and charter city

By: _____
Diane B. Dixon, Mayor

ATTEST:

By: _____
Leilani I. Brown, City Clerk

APPROVED AS TO FORM:

By:  _____ for
Aaron C. Harp, City Attorney *am 02/15/14*

HOAG:

HOAG MEMORIAL HOSPITAL
PRESBYTERIAN,
a California nonprofit public benefit corporation

By: _____
Name: Sanford Smith, AIA
Title: Senior Vice President Real Estate & Facilities

By: _____
Name: Andrew Guarni
Title: Senior Vice President and Chief Financial
Officer

(All Signatures to Be Notarized)

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)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

(seal)

EXHIBIT A

DEVELOPMENT AGREEMENT DATED FEBRUARY 14, 1994

**PREMPT RECORDING REQUEST PER
GOVERNMENT CODE 6103**

Recording Requested By and
When Recorded Return to:

City Clerk */by P. M.*
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92659-1768

DOC # 94-0207276
23-MAR-1994 03:59 PM

Recorded in Official Records
of Orange County, California
Lee A. Branch, County Recorder
Page 1 of 61 Fees: \$ 0.00
Tax: \$ 0.00



**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF NEWPORT BEACH
AND
HOAG MEMORIAL HOSPITAL PRESBYTERIAN**

61
R
1
OF -

Approved February 14, 1994
Ordinance No. 94-8

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into between the City of Newport Beach (the "City"), and Hoag Memorial Hospital Presbyterian ("Hoag").

1. RECITALS. This Agreement relates to the following:

1.1 Purpose of Agreement. This Agreement is intended to:

- (a) Enable Hoag to adapt to the ever changing health care needs of those residents within its service area by authorizing design parameters of new or additional facilities in a manner that will allow Hoag to respond to rapid changes in medical and health care technology and delivery systems.
- (b) Establish strict, binding limits on the amount and height of permitted development as well as ensure compliance with numerous conditions on the density, location, and timing of construction to minimize, to the extent feasible, any environmental impacts of Hoag's proposed expansion.
- (c) Impose exactions such as dedication of property, construction of public improvements and/or the installation of landscaping visible to the public, which, when considered in conjunction with the public services provided by Hoag, benefit the general public.

1.2 Authorization. This Agreement is authorized by, and is consistent with, the provisions of 65864 et seq. of the Government Code of the State of California, and Chapter 15.45 of the Newport Beach Municipal Code.

1.3 Interest of Hoag. Hoag is the legal and/or equitable owner of approximately forty (40) acres of real property located in the City and more particularly described in Exhibit "A" and depicted in Exhibit "B" (the "Property").

1.4 Development of the Property. This Agreement authorizes development on the Property consistent with the Hoag Memorial Hospital Presbyterian Master Plan and Planned Community Development Plan ("Master Plan", a copy of which is attached to this Agreement as Exhibit "C" and incorporated by reference when appropriate), subject to the conditions and mitigation measures identified in Environmental Impact Report No. 142 and imposed by the City Council as conditions to approval of the Master Plan and this Agreement and, for all development within

the coastal zone subject to approval of a coastal development permit by the California Coastal Commission or its successor agency.

- 1.5 Planning Commission/City Council Hearings. The Planning Commission, after giving appropriate notice, held public hearings to consider a development agreement, the proposed Master Plan, and the EIR on December 5, 1991, January 9, 1992, January 23, 1992, February 6, 1992, and February 20, 1992. The City Council conducted public hearings on the Master Plan, this Agreement and the EIR on March 23, 1992, March 30, 1992, April 13, 1992 and May 11, 1992.
- 1.6 Consistency. This Agreement is consistent with the various elements of the Newport Beach General Plan, the Master Plan, and other applicable ordinances, plans, and policies of the City. This Agreement is also consistent with the purpose and intent of state and local laws authorizing development agreements in that it represents comprehensive planning, provides certainty in the approval of subsequent projects subject to compliance with conditions, reduces the economic costs of development by providing assurance to Hoag that it may generally proceed with projects in accordance with existing regulations, and provides assurance to adjoining property owners that limits on the height of structures and amount of development as specified in the Master Plan and this Agreement will remain in full force and effect for a period of twenty-five (25) years.
- 1.7 Police Power. The City Council has determined that this Agreement is in the best interests of the health, safety and general welfare of the City, its residents and the public, was entered into pursuant to, and represents a valid exercise of, the City's police power, and has been approved in accordance with the provisions of state and local law that establish procedures for the approval of development agreements.
- 1.8 City Ordinance. On February 14, 1994, the City Council adopted Ordinance No. 94-8 approving this Agreement and authorizing the City to enter into this Agreement. The Adopting Ordinance will become effective on March 16, 1994.

2. DEFINITIONS.

- 2.1 The "Adopting Ordinance" refers to City Ordinance No. 94-8, adopted on February 14, 1994, by the City Council, which approved and authorized the City to enter into this Agreement.
- 2.2 "Agreement" refers to this "Development Agreement Between the City of Newport Beach and Hoag Memorial Hospital Presbyterian".

- 2.3 "Annual Review" refers to the review of Hoag's good faith compliance with this Agreement and conditions on development as set forth in Section 5.
- 2.4 The "Approval Date" means the date on which the City Council voted to adopt the Adopting Ordinance.
- 2.5 All forms of use of the verb "assign" and the nouns "assignment" and "assignee" shall include all contexts of hypothecations, sales, conveyances, transfers, leases, and assignments.
- 2.55 "California Coastal Commission" refers to the California State Resources Agency established under the California Coastal Act of 1976.
- 2.6 "CEQA" and the "CEQA Guidelines" refers to the California Environmental Quality Act and the CEQA Guidelines promulgated by the Secretary of Resources of the State of California, including any amendments adopted subsequent to the Effective Date.
- 2.7 "City" refers to the City of Newport Beach, California.
- 2.8 "City Council" refers to the City Council of the City.
- 2.9 "Cure Period" refers to the period of time during which a Default may be cured pursuant to Section 9.
- 2.10 A "day" or "days" refers to a calendar day, unless expressly stated to be a business day.
- 2.11 A "Default" refers to any material default, breach, or violation of the provisions of this Agreement. A "City Default" refers to a Default by the City, while a "Hoag Default" refers to a default by Hoag.
- 2.12 The "Effective Date" refers to the effective date of the Adopting Ordinance and is the effective date of this Agreement. provided however, the Agreement has been approved by the California Coastal Commission, and the Executive Director of the Coastal Commission is in receipt of a copy of this Agreement signed by both parties.
- 2.13 The "EIR" refers to final Environmental Impact Report No. 142 of the City of Newport Beach and Supplemental Environmental Impact Report No. 142.
- 2.14 An "Estoppel Certificate" refers to the document certifying the status of this Agreement required by Section 5.6 in the form of Exhibit "D".

- 2.15 An "Exaction" refers to those specific dedications and improvements required of Hoag and set forth in Section 8.2 below.
- 2.16 An "Exhibit" refers to an exhibit to this Agreement. All Exhibits are incorporated as a substantive part of this Agreement. The Exhibits to this Agreement are:
- Exhibit A: Legal Description of the Property
- Exhibit B: Map of the Property
- Exhibit C: The Master Plan
- Exhibit D: Estoppel Certificate
- 2.17 "Existing General Regulations" means those General Regulations approved by the City on or before the Approval Date (irrespective of their effective date) and not rescinded or superseded by City action taken on or before the Approval Date.
- 2.18 "Future General Regulations" means those General Regulations (see Section 2.19 below) adopted by the City after the Approval Date.
- 2.19 "General Regulations" means those ordinances, rules, regulations, policies, and guidelines of the City, which are generally applicable to the use of land and/or construction within the City and include, the Fair Share Traffic Contribution Fee Ordinance, Uniform Building Codes and water and sewer connection and fee ordinances.
- 2.20 "General Plan" refers to the City's General Plan in effect on the Approval Date, plus all amendments to the General Plan adopted by the City on or before the Approval Date and effective prior to the Effective Date.
- 2.21 "Hoag" refers to Hoag Memorial Hospital Presbyterian, a non-profit corporation.
- 2.22 "Includes" and all contexts and forms of the words "includes" and "including" shall be interpreted to also state "but not limited to."
- 2.23 "Master Plan" refers to the Hoag Memorial Hospital Presbyterian Master Plan and Planned Community Development Plan which was adopted by the City on May 26, 1992 (Exhibit "C").
- 2.24 "Mortgagee" refers to the holder of a beneficial interest under any mortgage, deed of trust, sale-leaseback agreement, or other

transaction under which all or a portion of the Property, including those portions acquired by assignees, is used as security (a "Mortgage") or the owner of any interest in all or any portion of the Property under a Mortgage, including those portions acquired by assignees.

- 2.25 "Notice" refers to any written notice or demand between the Parties required or permitted by this Agreement.
- 2.26 The "Parties" refers to the City and Hoag and a "Party" shall refer to either of the Parties.
- 2.27 "Planning Commission" refers to the Planning Commission of the City.
- 2.28 The "Project" refers to the proposed development of the Property pursuant to the Master Plan and this Agreement.
- 2.29 "Project Specific Approvals" means all site-specific (meaning specifically applicable to the Property only and not generally applicable to some or all other properties within the City) plans, subdivision maps, permits, or other entitlement. Project Specific Approvals include subdivision maps, site plan review, conditional use permits, coastal development permits, variances, grading and building permits, as well as amendments or modifications to those plans, maps and permits. Project Specific Approvals does not include Existing or Future General Regulations.
- 2.30 The "Property" refers to the real property described on Exhibit "A" and depicted on Exhibit "B."

3. CONDITIONS TO DEVELOPMENT.

- 3.1 Introduction. The provisions of this Section express the intent of the parties regarding the extent to which this Agreement vests Hoag's right to proceed with the development described in the Master Plan. Hoag acknowledges that its right to proceed with development described in the Master Plan is subject to numerous conditions and mitigation measures including the following:
 - (a) The specific limitations and restrictions contained in the Master Plan;
 - (b) Conditions and mitigation measures imposed by the City Council to mitigate significant effects identified in the EIR;

- (c) Conditions imposed by the City as a result of subsequent or supplemental environmental analysis pursuant to provisions of CEQA and the CEQA Guidelines;
- (d) Conditions imposed by the City Council in conjunction with the approval of Traffic Study No. 81 and Variance No. 1180;
- (e) Compliance with the terms and conditions specified in this Agreement.
- (f) Compliance with Existing General Regulations.

3.2 Compliance with Master Plan Conditions/Mitigation Measures. Hoag acknowledges that City Council approval of the Master Plan and this Agreement was subject to compliance with numerous conditions and mitigation measures designed to minimize or eliminate the significant adverse effects of the Project and ensure the health, safety, and welfare of nearby residents as well as Hoag patients and employees. Many of these conditions and mitigation measures impose specific development standards and requirements to be implemented in conjunction with further study and analysis of site or subsurface conditions before grading or construction. Specific mitigation measures that require compliance with, or satisfaction of, standards before grading or construction can occur include the following:

- (a) Slope excavation techniques which insure stability;
- (b) Grading and excavation techniques which minimize disturbance to adjacent residents and the general public;
- (c) Identification of potential faults on site and construction of buildings pursuant to recommendations of certified geologists and in a manner which insures that nearby residents, Hoag patients and Hoag employees are not exposed to a significant risk of injury;
- (d) Evaluation of soil corrosivity and removal of corrosive soils or use of corrosion resistant construction materials;
- (e) Mitigation of impacts caused by removal of wetlands through off-site restoration as required by resource agencies;
- (f) Preparation and approval of a project trip generation study prior to development of Phase I of the Master Plan (if Hoag proposes a land use other than specified in the approved Traffic Study);

- (g) Preparation and approval of a project trip generation study as a condition to construction of development in Phases II and III of the Master Plan;
- (h) Preparation and approval of a Traffic Phasing Ordinance analysis prior to construction of development in Phase II and Phase III of the Master Plan;
- (i) Preparation of a view impact analysis of each proposed building prior to issuance of permits;
- (j) Analysis and mitigation of emissions in accordance with the regulations of the South Coast Air Quality Management District;
- (k) Preparation and approval of a construction phasing and traffic control plan for each phase of development.

Hoag's right to develop the Property pursuant to the Master Plan is contingent upon compliance with, and satisfaction of, the conditions and mitigation measures imposed by the City Council as of the Approval Date, conditions imposed by the California Coastal Commission required for approval of coastal development permits, as well as conditions and mitigation measures resulting from subsequent environmental analysis as specified in Paragraph 3.3.

- 3.25 Future Coastal Act discretionary review may result in specific mitigation measures to ensure consistency with the Coastal Act that require compliance with, or satisfaction of, standards before grading or construction can occur.

3.3 Program EIR. Hoag acknowledges that the EIR is a "Program EIR." The EIR analyzes the impacts of construction phased over time and, pursuant to CEQA, City is under a continuing obligation to analyze Hoag's requests for Project Specific Approvals to ensure the environmental impacts associated with the request were fully addressed in the EIR. Subsequent environmental documentation is required if this analysis reveals environmental impacts not fully addressed in the program EIR, identifies new impacts, or concludes the specific request is not consistent with the project described in the EIR. Hoag acknowledges the right and obligation of the City and the Coastal Commission or its successor agency to impose additional conditions as the result of the subsequent environmental analysis required by CEQA.

- 3.4 Mitigation Monitoring Plan. City shall prepare a Mitigation Monitoring Plan ("Plan") within sixty (60) days after the Effective Date. Hoag shall not submit any application for Project Specific Approval until the Plan has been approved by the City Council and the Executive Director of the Coastal Commission or the appropriate entity of its successor agency.

The Plan shall comply with and satisfy the requirements of CEQA and the Guidelines and the Coastal Act. The Plan shall be available to the public upon request.

- 3.5 Compliance with General Regulations. Hoag is required to comply with the Existing General Regulations. As to those Existing General Regulations which require the payment of fees, costs, and expenses, Hoag shall pay the fee, cost, or expense required as of the date on which Hoag submits the application for Project Specific Approval. Hoag shall also comply with any Future General Regulations that do not impair Hoag's ability to develop the Property in accordance with the density, intensity, height and location of development specified in the Master Plan. Hoag shall also comply with all provisions of the Uniform Building Code, whether adopted before or after the Approval Date, which are in effect at the time applications for Project Specific Approvals are submitted. Hoag shall also comply with the Coastal Act and the City's certified Local Coastal Program.

4. RIGHT TO DEVELOPMENT.

- 4.1 Right to Develop. Subject to compliance with the provisions of Sections 3 and 8.2, Hoag shall have a vested right to develop and receive Project Specific Approvals for construction on the Property to the full extent permitted by the Master Plan. Subject to the provisions of Sections 3 and 8, City shall only take action which complies with and is consistent with the Master Plan and this Agreement unless Hoag otherwise consents in writing. Subject to this Subsection, City shall have the authority to impose only those Exactions which are specifically described in this Agreement, except as expressly required (as opposed to permitted) by state or federal law.
- 4.2 Reservations or Dedications of Land. Except as expressly provided in this Agreement, no dedications or reservations of the Property shall be required of Hoag in conjunction with the application or issuance of any Project Specific Approvals.
- 4.3 Conflicting Measures. Except as expressly provided in this Agreement, no initiative measure, moratorium, referendum (except as provided in Government Code Section 65857.5), ordinance, statute or other provision of law which in any way limits or restricts development of the Property to the full extent permitted by the Master Plan and this Agreement (including density, intensity, timing, phasing, and sequencing) shall be applied to the Property during the term of this Agreement.

- 4.4 Time for Construction and Completion of Project. Subject to the provisions of this Agreement and the Master Plan, Hoag shall have the right to decide the timing, phasing, and sequencing of construction on the Property and shall be entitled to apply for, and receive approval of, in a timely manner, permits or approvals at any time.

5. ANNUAL REVIEW.

- 5.1 City and Hoag Responsibilities. At least every twelve (12) months during the Term, the City shall review Hoag's good faith substantial compliance with this Agreement (the "Annual Review"). After the Annual Review, the City's finding of good faith compliance by Hoag shall be conclusive for the purposes of future Annual Reviews or legal action between the Parties. Either Party may address any requirements of the Agreement during the Annual Review. However, fifteen (15) days' written Notice of any requirement to be addressed shall be made by the requesting Party. If, at the time of the review, an issue not previously identified in writing is required to be addressed, the review shall be continued at the request of either Party to afford sufficient time for analysis and preparation of a response.
- 5.2 Public Hearing. The Annual Review shall be conducted at a public hearing noticed in accordance with the provisions of Chapter 15.45 of the Newport Beach Municipal Code.
- 5.3 Information to be Provided to Hoag. The City shall mail to Hoag a copy of the staff report and related exhibits concerning Agreement performance a minimum of ten (10) days before the Annual Review.
- 5.4 Mitigation Review. The annual review shall include a detailed report of compliance with the various conditions and mitigation measures contained within the mitigation monitoring plan. The report shall include an analysis of the view impacts of buildings constructed in comparison to the anticipated views as depicted in the EIR. For the five year monitoring period imposed by the Department of Fish and Game Streambed Alteration Agreement entered into between the Department of Fish and Game and Hoag, the annual review shall also assess the success of any off-site wetlands mitigation. Five years after the completion of the Department of Fish and Game monitoring period, Hoag shall submit a final report assessing the success of the off-site wetlands mitigation in its annual review. If the survival and cover requirements set forth in the Streambed Alteration Agreement have not been met, Hoag shall be responsible for replacement planting to achieve these requirements. Hoag shall be found in compliance with this Agreement unless the City Council determines, based upon the

evidence presented at the Annual Review, that Hoag has not complied with all mitigation measures and conditions including those imposed as a result of subsequent environmental analysis, applicable to the grading of, or building on, the Property as of the date of the Annual Review.

5.5 Review Letter. If Hoag is found to be in compliance with the Agreement after the Annual Review, the City shall issue, within ten (10) days of Hoag's written request, a letter to Hoag stating that the Agreement remains in effect and Hoag is not in Default.

5.6 Estoppel Certificate. Either Party may at any time deliver written Notice to the other Party requesting an estoppel certificate (the "Estoppel Certificate") stating:

- (a) The Agreement is in full force and effect and is a binding obligation of the Parties.
- (b) The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments.
- (c) No Default in the performance of the requesting Party's obligations under the Agreement exists or, if a Default does exist, the nature and amount of any Default.

A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request. The Planning Director may sign Estoppel Certificates on behalf of the city. An Estoppel Certificate may be relied on by assignees and Mortgagees. The Estoppel Certificate shall be substantially in the same form as Exhibit "D."

5.7 Failure to Conduct Annual Review. The City's failure to conduct an Annual Review shall not constitute or be asserted by the City as Hoag's Default.

6. GENERAL PROVISIONS.

6.1 Effective Date. This Agreement and the obligations of the Parties shall be effective as of the Effective Date. However, this Agreement shall bind the Parties as of the Approval Date, subject only to the Adopting Ordinance becoming effective pursuant to California law.

6.2 Applicability to Coastal Zone. This Agreement shall not be applicable to those portions of the Property located within the Coastal Zone as defined by the California Coastal Act (Division

20, California Public Resources Code, beginning with Section 30000) until either (1) the required local coastal program for the Property has been certified by the California Coastal Commission or (2) the California Coastal Commission has approved this Agreement. This Subsection is intended solely to comply with the provisions of California Government Code Section 65869 and shall be of no force or effect if Section 65869 is repealed.

- 6.3 Term of Agreement. The term of this Agreement (the "Term") shall begin on the Effective Date and continue for twenty-five (25) years unless otherwise terminated or modified pursuant to this Agreement. Any modifications to this Agreement prior to effective certification of the City's Local Coastal Program (LCP), are subject to the review and approval of the Coastal Commission or its successor agency.
- 6.4 Assignment. Hoag has the absolute right to assign (see Section 2.5) its rights and/or delegate its obligations under this Agreement as part of an assignment of all or a portion of the Property. Any assignment shall be subject to the provisions of this Agreement. As long as Hoag owns any part of the Property, Hoag may assign the benefits of this Agreement without delegating the obligations for the portion of the Property assigned. If that occurs, however, the benefits assigned shall remain subject to the performance by Hoag of the corresponding obligations.

Where an assignment includes the delegation of both the benefits and the corresponding obligations, those obligations become solely the obligations of the assignee. If an assignee is in Default, then as to Hoag or any assignees not in Default, the Default shall not constitute their Default, give grounds for termination of their rights under this Agreement or be a basis for an enforcement action against them.

- 6.5 Amendment of Agreement.
- (a) Subject to the provisions of Subsection (b), and subject to approval of the Coastal Commission or its successor agency prior to effective certification of the City's Local Coastal Program (LCP), this Agreement may be amended from time to time by the mutual consent of the Parties, or their successors in interest, but only in the manner provided by the Government Code and this Agreement. After any amendment, the term "Agreement" shall refer to the amended Agreement.
- (b) The City Council shall not approve, and Hoag shall not request, any amendment to the provisions of the Master Plan or this Agreement that would increase the maximum

permitted gross floor area or the maximum permitted building height (within any lettered building envelope) above that established by the Master Plan as of the Effective Date of this Agreement. This Subsection shall prevail over any conflicting ordinance, resolution, policy or plan adopted by the City Council.

6.6 Enforcement. This Agreement is enforceable by each of the Parties and their respective successors and assigns.

6.7 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

- (a) Expiration of the twenty-five (25) year term;
- (b) Entry, after all appeals have been exhausted, of a final judgment or issuance of a final order directing the City to set aside, withdraw, or abrogate the City's approval of this Agreement or any material part of the Project; or,
- (c) The effective date of a Party's election to terminate the Agreement as provided in Section 9.3 of this Agreement.

6.8 Hoag shall defend, indemnify and hold harmless the City and its officers and employees with respect to any claim, loss or damage in any way related to the grading, excavation or stabilization of the slopes adjacent to the view parks by Hoag or its employees, agents contractors or representatives. This Section is not intended to impose liability on Hoag for the acts of persons other than Hoag or its agents, representatives or contractors.

6.9 Hoag shall enter into an agreement with City to accept ownership of, and responsibility for maintenance of, the existing methane gas venting flare and any device for collecting gas that is subsequently installed on the Property pursuant to conditions or mitigation measures imposed in conjunction with the Master Plan approval or subsequent environmental analysis.

7. CONFLICTS OF LAW.

7.1 Conflict with State and Federal Laws and Regulations. Where state or federal laws or regulations prevent compliance with one or more provisions of this Agreement, those provisions shall be modified, through revision or suspension, to the

extent necessary to comply with such state or federal laws or regulations and the modified Agreement shall remain in effect, subject to the following:

- (a) the City shall not request modification of this Agreement pursuant to this provision unless and until the City Council makes a finding that such modification is required (as opposed to permitted) by state and federal laws or regulations;
- (b) the modifications must be limited to those required (as opposed to permitted) by the state or federal laws;
- (c) the modified Agreement must be consistent with the state or federal laws or regulations which required modification or suspension;
- (d) the intended material benefits of this Agreement must still be received by each of the Parties after modification;
- (e) neither the modification nor any applicable local, state, or federal laws or regulations, may render the modified Agreement impractical to enforce; and
- (f) Hoag consents in writing to the modification.
- (g) Any modifications, prior to effective certification of the City's Local Coastal Program (LCP) are subject to approval of the Coastal Commission or its successor agency.

Hoag shall have the right to seek judicial review of any proposed modification to ensure compliance with this Section.

- 7.2 Effect of Termination. If this Agreement is terminated as a result of changes in state or federal law, Hoag remains obligated to comply with the provisions of Section 8.2(a) and (b), unless Hoag has completed construction of less than twenty-five percent (25%) of the maximum permitted development.

8. PUBLIC BENEFITS/EXACTIONS.

- 8.1 Public Benefits. City and Hoag agree that this Agreement confers a substantial public benefit by enabling Hoag to construct facilities most appropriate to changes in medical technology and thereby better satisfy the health care needs of residents within its service area. In addition, the Master

Plan and this Agreement confer benefits on the public and nearby residents by imposing long term restrictions on the height, amount and location of development as well as the public improvements described in Section 8.2.

8.2 Exactions. Hoag shall, as a condition to the right to develop, do the following:

- (a) Prior to commencement of development, irrevocably offer to dedicate and grade the proposed linear and consolidated view park identified in Figure 3.2.1 of Volume 1 of the EIR. The City shall accept the offer of dedication within sixty (60) days after the initial grading permit has been finalled by the City. The first stage of development shall include grading of the public linear and consolidated viewpark identified in Figure 3.2.1. of Volume I of the EIR. Hoag shall grade and excavate the slope adjacent to the proposed .28 (28/100) acre consolidated public view park and .52 (52/100) acra public linear view park in a way that ensures stability of the park and adjacent slopes. The grade (between the bicycle path and edge of slope) of the view parks shall be the minimum necessary to insure adequate drainage. The improvement for the linear and consolidated public parks shall be completed within three (3) years after the offer of dedication has been accepted by the City. The City shall ensure that adequate erosion control measures are implemented prior to construction.
- (b) Subsequent to the approval of this Agreement by the Coastal Commission and the expiration of any statute of limitation for filing a legal challenge to this Agreement, the Master Plan, or the EIR, Hoag shall deposit Two Hundred and Fifty Thousand Dollars (\$250,000.00) in an account, and at a financial institution, acceptable to City. The account shall be in the name of the City provided, however, Hoag shall have the right to access the funds in the event, but only to the extent that, Hoag constructs or installs the improvements described in (i) or (ii). Funds in the account shall be applied to the following projects (in order of priority upon notice to proceed served by City on Hoag):
 - (i) The construction of a sidewalk and installation of landscaping in the CalTrans right-of-way along the west side of Newport Boulevard southerly of Hospital Road;

- (ii) The construction of facilities necessary to bring reclaimed water to West Newport and/or the Property;

Any funds remaining in the account after completion of the projects described in (i) and (ii) shall be used by the City to fund, in whole or in part, a public improvement in the vicinity of the property.

- (c) City and Hoag shall conduct a study of possible future improvements in and around the easterly end of Semenik Slough that would, among other things, improve the appearance of the area and, potentially, serve as a component to improve public access from residential areas in West Newport to park land and public recreation facilities proposed in conjunction with development of the West Newport Oil Company property. The study shall analyze, among other things, the type of improvements that would improve the area without adversely impacting wetlands, the possible location of pedestrian trails and the potential for those trails to improve access to proposed recreational facilities, phasing of the improvements, potential public benefits, and the cost of the improvements. As a part of the study, Hoag and City shall meet and confer with resource agencies relative to the type and extent of improvements that may be permitted in or adjacent to wetlands. Hoag shall fund the study and participate in the cost of constructing any improvements in the area that the City Council determines are feasible and in the public interest, provided, however, the financial contribution of Hoag, including the costs of the study and improvements, shall not exceed Two Hundred Thousand Dollars (\$200,000.00).
- (d) Hoag's obligations pursuant to Subsection (c) are contingent on Coastal Commission approval of the Master Plan and attached as Exhibit C to this Agreement with no significant reduction in entitlement from that authorized in the Master Plan. Hoag's obligations pursuant to Subsection (b) shall be reduced through good faith negotiations in the event the Coastal Commission reduces entitlement by ten percent (10%) or more from that authorized in the Master Plan.

9. DEFAULT, REMEDIES AND TERMINATION.

- 9.1 General Provisions. In the event of a Default (see Section 2.11), the Party alleging a Default shall give the other Party

a written Notice of Default. The Notice of Default shall specify the nature of the alleged Default, and a reasonable manner and sufficient period of time (not less than thirty (30) days) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of the Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then a Default shall be deemed not to exist.

- 9.2 Option to Institute Legal Proceedings or to Terminate. If an alleged Default is not cured within the Cure Period, the noticing Party must give the defaulting Party a Notice of intent to terminate the Agreement. Within thirty (30) days after giving of the Notice, the City Council shall hold a public hearing in the manner set forth in Government Code Sections 65865, 65867, and 65868, as amended, to consider and review the matter.
- 9.3 Notice of Termination. After considering the evidence presented to the City Council, the Party alleging the Default, at its option, may give written Notice of termination of the Agreement to the other Party and the Agreement shall be terminated immediately upon giving the Notice. A termination shall be valid only if good cause exists and clear and convincing evidence was presented to the City Council to establish the existence of a Default. The findings of the City Council as to the existence of a Default shall have no weight in any legal proceeding brought to determine the existence of a Default. The validity of any termination may be challenged pursuant to Section 11.16, in which case the court must render an independent judgment, on the basis of clear and convincing evidence, as to the existence of good cause for termination. Termination may result only from a material Default of a material provision of this Agreement.
- 9.4 Waiver. Failure or delay in giving Notice of Default shall not waive a Party's right to give future Notice of the same or any other Default.
- 9.5 Default by Hoag. If the City alleges a Hoag Default, the City shall conduct a hearing utilizing the Annual Review procedures required by this Agreement before the City may commence legal proceedings to terminate this Agreement.
- 9.6 Default by the City. If Hoag alleges a City Default, Hoag, without limiting any of its other remedies, shall not be

obligated to proceed with or complete the Project or any phase of the Project, nor to perform any further obligations under the Agreement. Upon a City Default, any resulting delays in Hoag's performance shall neither be Hoag's Default nor constitute grounds for termination or cancellation of the Agreement by the City.

10.0 ENCUMBRANCES AND RELEASES ON PROPERTY.

- 10.1 Discretion to Encumber. Hoag may encumber all or any portion of the Property in any manner. The City acknowledges that lenders providing financing may require technical modifications to the Agreement which do not materially alter the intent of the Parties. The City agrees to meet, upon request, with Hoag and/or lenders to negotiate in good faith any lender request for modification. The City agrees to not withhold unreasonably its consent to such modification. Any such modification, prior to effective certification of the City's Local Coastal Program (LCP), is subject to the review and approval of the Executive Director of the Coastal Commission or its successor agency.
- 10.2 Entitlement to Written Notice of Default. Any Mortgagee and its successors and assigns, upon written request to the City, shall be entitled to receive from the City Written Notice of any Hoag Default at the same time Hoag is provided with Notice pursuant to Section 9.1.

11.0 MISCELLANEOUS PROVISIONS.

- 11.1 Notices. All Notices (see Section 2.26) shall be written and delivered by personal delivery (including Federal Express and other commercial express delivery services providing acknowledgments or receipt), registered, certified, or express mail, or telegram to the addresses set forth below. Receipt shall be deemed complete as follows:
- (a) For personal delivery, upon actual receipt;
 - (b) For registered, certified, or express mail, upon the delivery date or attempted delivery date as shown on the return receipt; and
 - (c) For telegram, upon the transmission of the telegram.
- Notices shall be addressed as follows:

To the City: City Clerk
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92660
Attention: City Attorney
Attention: City Manager

To Hoag: Hoag Memorial Hospital Presbyterian
301 Newport Boulevard
Newport Beach, CA 92663
Attention: President

With a copy to:

Tim Paone
Paone, Callahan, McHolm & Winton
19100 Von Karman, 8th Floor
P.O. Box 19613
Irvine, CA 92713-9613

The addresses to which Notices shall be sent may be changed by giving Notice of a new address.

- 11.2 Enforced Delay: Extension of Time of Performance. Neither Party shall be deemed to be in Default where delays or non-performance are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, oil spills, casualties, acts of nature, unavailability of materials, governmental restrictions imposed or mandated by governmental entities, suspension of rights in accordance with the existence of unforeseen circumstances, litigation, or similar bases for excused performance. If written Notice of such delay is given to the other Party within thirty (30) days after such delay begins an extension of time for performance shall be granted in writing for the period of the delay, or longer as may be mutually agreed upon. In no event shall the term of this Agreement be extended as a result of the application of this Subsection.

- 11.3 Severability. If any material part of the Agreement is found by a court to be invalid, void, or illegal, the Parties shall modify the Agreement to implement the original intent of the Parties. These steps may include the waiver by either of the Parties of their right under the unenforceable provision. If, however, the Agreement objectively cannot be modified to implement the original intent of the Parties and the Party substantially benefitted by the material provision does not waive its rights under the unenforceable provision, the entire

Agreement shall become void. For purposes of this Section, and without excluding the possible materiality of other provisions of this Agreement, all provisions of Sections 3, 4 and 8 are deemed "material."

- 11.4 Entire Agreement. This Agreement constitutes the entire understanding and Agreement of the Parties regarding the subject matter of this Agreement. This Agreement supersedes all negotiations and previous agreements between the Parties regarding that subject matter.
- 11.5 Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the Party making the waiver and, prior to effective certification of the City's Local Coastal Program (LCP), are subject to approval of the Coastal Commission or its successor agency.
- 11.6 Incorporation of Recitals. The Recitals set forth in Section 1 are part of this Agreement.
- 11.7 Covenant of Good Faith and Fair Dealing. Neither Party shall do anything which shall have the effect of harming or injuring the right of the other Party to receive the benefits of this Agreement.
- 11.8 Further Actions and Instruments. Upon the request of either Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.
- 11.9 Successors and Assigns. Subject to Section 6.3 above, the burdens of this Agreement shall be binding upon, and the benefits of the Agreement inure to, all successors-in-interest and assigns of the Parties.
- 11.10 Construction of Agreement. All language in all parts of this Agreement shall be construed as a whole and given its fair meaning. The captions of the paragraphs and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of construction. This Agreement shall be governed by the laws of the State of California. This Agreement is not intended to impermissibly contract away the

legislative and governmental functions of the City, and in particular, the City's police powers or to surrender or abrogate the city's governmental powers over the Property.

- 11.11 Authority to Execute. The person executing this Agreement on behalf of Hoag warrants and represents that he/she has the authority to do so and the authority to bind Hoag to the performance of Hoag's obligations under this Agreement.
- 11.12 Consent. Any consent required by the Parties in carrying out the terms of this Agreement shall not unreasonably be withheld.
- 11.13 Effect on Title. This Agreement shall not continue as an encumbrance against any portion of the Property as to which this Agreement has terminated.
- 11.14 Recording. The City Clerk shall cause a copy of this Agreement to be executed by the City and recorded in the Official Records of Orange County no later than ten (10) days after the Effective Date. The recordation of this Agreement is deemed a ministerial act and the failure of the City to record the Agreement as required by this Section and Government Code Section 65868.5 does not make the Agreement void or ineffective.
- 11.15 Institution of Legal Action. In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any Default, to enforce any provision of this Agreement, to enjoin any threatened or attempted violation of this Agreement, to recover damages for any Default, or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Superior Court of the County of Orange, State of California, or in the Federal District Court in the Central District of California.
- 11.16 Attorneys' Fees. In any arbitration, quasi-judicial, administrative, or judicial proceeding between the Parties initiated with respect to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all costs, expenses, and disbursements in connection with such action.

Date: 2-23-94, 1994

CITY OF NEWPORT BEACH

By: Clarence Turner
Clarence Turner, Mayor

Date: March 9, 1994

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

By: Albert J. Auer
Albert J. Auer
Chairman of the Board

wb\hoagde4.fnt
1/21/94

LEGAL DESCRIPTION

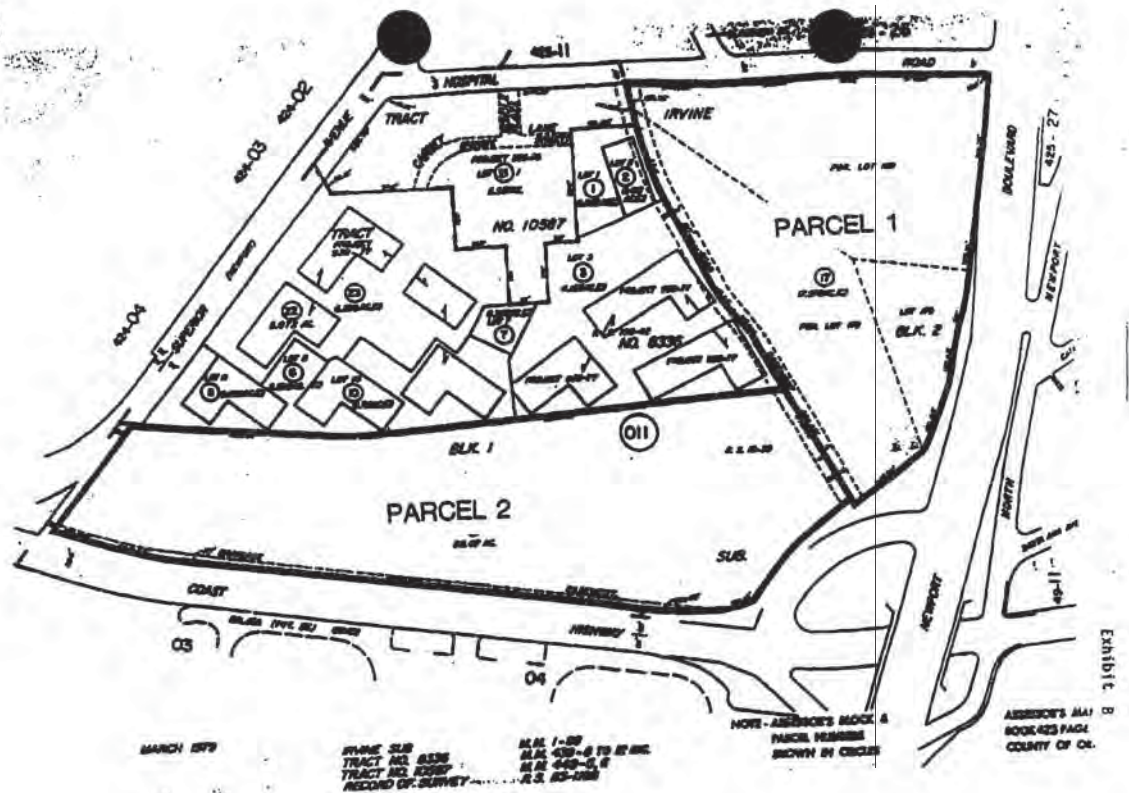
The subject property is the following real property in the City of Newport Beach, County of Orange, State of California:

Parcel 1:

That portion of Lots 169 and 170 in Block 2 and a portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

Parcel 2:

That portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.



HOAG MEMORIAL HOSPITAL PRESBYTERIAN

**PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS**

**Recommended for Approval
by the Planning Commission
February 20, 1992**

**Adopted by the City Council
City of Newport Beach
Ordinance No. 92-3
May 26, 1992**

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I. INTRODUCTION

Background

The Hoag Memorial Hospital Presbyterian Planned Community District in the City of Newport Beach has been developed in accordance with the Newport Beach General Plan. The purpose of this Planned Community District is to provide a method whereby property may be classified and developed for hospital-related uses. The specifications of this District are intended to provide land use and development standards supportive of the proposed use while ensuring compliance with the intent of all applicable regulatory codes.

The Planned Community District includes district regulations and a development plan for both the upper and lower campuses of Hoag Hospital. In general, over the long term, the upper campus will become oriented primarily towards emergency, acute and critical care (predominantly inpatient) uses and the lower campus will be developed with predominantly outpatient uses, residential care and support services.

Whenever the regulations contained in the Planned Community text conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the Planned Community text shall take precedence. The Municipal Code shall regulate this development when such regulations are not provided within these district regulations. All development within the Planned Community boundaries shall comply with all provisions of the Uniform Building Code and other governing building codes.

II. GENERAL NOTES

1. Water service to the Planned Community District will be provided by the City of Newport Beach.
2. Development of the subject property will be undertaken in accordance with the flood protection policies of the City of Newport Beach.
3. All development of the site is subject to the provisions of the City Council Policies K-5 and K-6 regarding archaeological and paleontological resources.
4. Except as otherwise stated in this text, the requirements of the Newport Beach Zoning Ordinance shall apply. The contents of this text notwithstanding, all construction within the boundaries of this Planned Community District shall comply with all provisions of the Uniform Building Code, other various codes related thereto and local amendments.
5. All buildings shall meet Title 24 requirements. Design of buildings shall take into account the location of building air intake to maximize ventilation efficiency, the incorporation of natural ventilation, and implementation of energy conserving heating and lighting systems.
6. Any fire equipment and access shall be approved by the Newport Beach Fire Department.
7. New mechanical appurtenances on building rooftops and utility vaults, excluding communications devices, on the upper campus shall be screened from view in a manner compatible with building materials. Rooftop mechanical appurtenances or utility vaults shall be screened on the lower campus. Noise shall not exceed 55 dBA at all property lines. No new mechanical appurtenances may exceed the building height limitations as defined in these district regulations.

8. Grading and erosion control shall be carried out in accordance with the provisions of the City of Newport Beach Grading Ordinance and shall be subject to permits issued by the Building and Planning Departments.
9. Sewage disposal facilities within the Planned Community will be provided by Orange County Sanitation District No. 5. Prior to issuance of any building permits it shall be demonstrated to the satisfaction of the Planning Department that adequate sewer facilities will be available. Prior to the occupancy of any structure it shall be further demonstrated that adequate sewer facilities exist.
10. Mass grading and grading by development phases shall be allowed provided that landscaping of exposed slopes shall be installed within 30 days of the completion of grading.

III. DEFINITIONS

Building Elevation:

1. a vertical distance of a building above or below a fixed reference level, i.e., MSL (mean sea level).
2. a flat scale drawing of the front, rear, or side of a building.

Building Envelope: the volume in which a building may be built as circumscribed by setback lines and maximum allowable building heights.

Building Height: the vertical distance measured from the finished grade to the highest point of the structure. At all points, the height measurement shall run with the slope of the land.

Emergency Room: a service and facility designated to provide acute emergency medical services for possible life threatening situations.

Fast Aid: low acuity medical treatment for non-life threatening situations.

General Plan: the General Plan of the City of Newport Beach and all elements thereof.

Grade: for the purpose of determining building height:

1. Finished - the ground level elevation which exists after any grading or other site preparation related to, or to be incorporated into, a proposed new development or alteration of existing developments. (Grades may be worked into buildings to allow for subterranean parking.)
2. Natural - the elevation of the ground surface in its natural state before man-made alterations.
3. Existing - the current elevation of ground surface.

Inpatient Uses: hospital patient services which require overnight stay.

Landscape Area: the landscape area shall include on-site walks, plazas, water, rooftop

landscaping and all other areas not devoted to building footprints or vehicular parking and drive surfaces.

Mean Sea Level: a reference or datum mark measuring land elevation using the average level of the ocean between high and low tides.

Outpatient Uses: hospital patient services which do not require overnight stay.

Residential Care: medically-oriented residential units that do not require the acuity level generally associated with inpatient services but require overnight stays.

Site Area: for the purpose of determining development area:

1. Gross - parcel area prior to dedications.
2. Net - parcel area after dedications.

Special Landscaped Street: West Coast Highway is designated as a special landscaped street, containing special landscape requirements.

Streets: reference to all streets or rights-of-way within this ordinance shall mean dedicated vehicular rights-of-way.

IV. DEVELOPMENT PLAN

Project Characteristics

The upper campus of Hoag Hospital is located on a triangular site of approximately 17.57 acres and is bounded by Newport Boulevard to the east, Hospital Road to the north and existing residential developments (the Versailles and Villa Balboa/Seafaire condominiums) to the west. The lower campus is located north of West Coast Highway, south of the Versailles and Villa Balboa/Seafaire Condominiums, west of Newport Boulevard and east of Superior Avenue. It contains approximately 20.41 acres and adjoins the upper campus at its eastern boundary. The upper campus is, and will continue to be, oriented towards inpatient functions, while the lower campus will be developed with predominantly outpatient, residential care and support services.

Development Plan

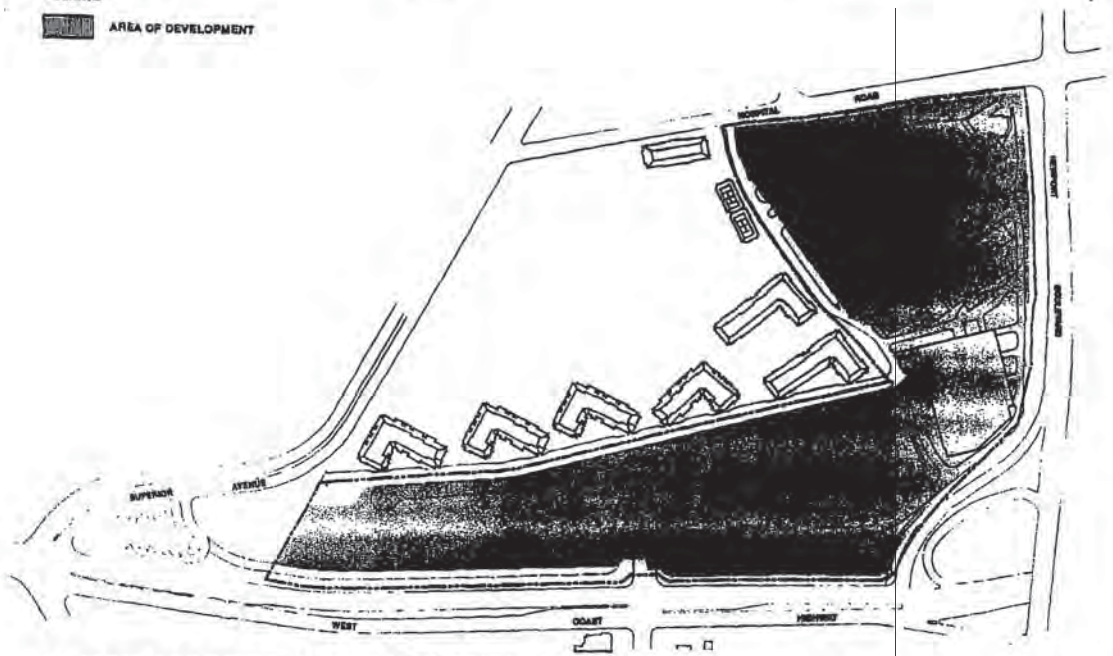
The Planned Community Development Plan for Hoag Hospital is shown on Exhibit 1. From 1990 to 2015, many of the existing buildings shown on the Development Plan for the upper campus may be redeveloped in order to functionally respond to the needs of the Hospital and conform to the requirements of State agencies.

The Development Plan includes a 0.8 acre view park adjacent to the bike trail between the lower campus and the Villa Balboa/Seafaire Condominiums. This view park includes a twenty-foot wide linear park area adjacent to the bike path (approximately 0.5 acres) and a consolidated view park at the westerly edge of the property (approximately 0.3 acres). A bike trail connection is also provided between the existing bike trails at the northern and southern boundaries of the lower campus. Access to the lower campus will be from West Coast Highway and Superior Avenue, as well as from Hospital Road, via the upper campus. Exhibit 2 shows the internal circulation for Hoag Hospital.

The Development Plan does not specify building locations or specific hospital related uses. Instead, a developable area is identified based on the regulations established for this Planned Community District. Because of the dynamic nature of the health care industry which leads to rapid technological changes that effect how health care services are delivered, the Development Plan for Hoag Hospital sets development caps as a function of allowable densities established by the Newport Beach General Plan.

LEGEND

AREA OF DEVELOPMENT



PLANNED COMMUNITY DEVELOPMENT PLAN
HOAG MEMORIAL HOSPITAL PRESBYTERIAN

May 26, 1993

EXHIBIT 1








The statistical analysis (Table 1) provides a summary of a potential development profile for Hoag Hospital. In order to provide flexibility for the hospital to respond to changes in the health care industry, while at the same time ensuring that trip generation restrictions are adhered to and the overall development cap is not exceeded, this Development Plan allows Hoag Hospital to adjust the development profile provided in the statistical analysis. For example, if changing hospital needs necessitate the development of additional outpatient uses, this development would be allowed, consistent with the Development Plan, as long as a corresponding adjustment in square footage and trip generation for another use were to occur.

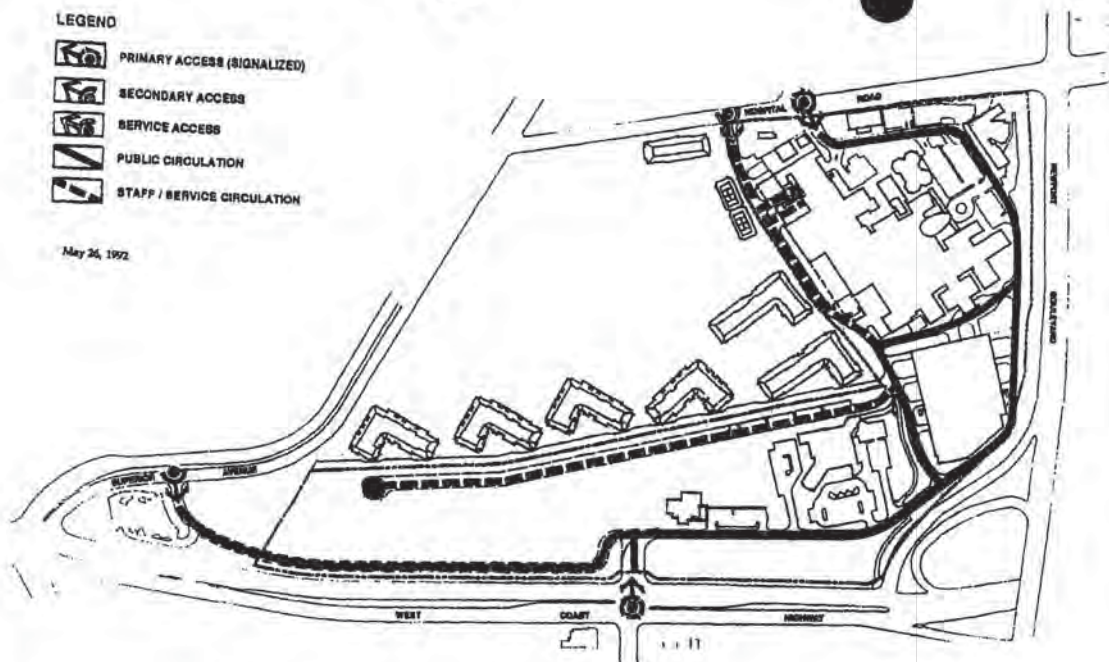
This Development Plan allows Hoag Hospital to adjust the development profile provided in the statistical analysis (Table 1) as long as the development limit (i.e., square feet) or the trip generation limit for the peak period (as identified in the Environmental Impact Report) established within each phase of development is not exceeded.

Adjustments to the Development Plan may be allowed if the total square footage or trip generation allowed in the current phase of development is exceeded, if the total development or trip generation allowed under the Development Plan is not exceeded.

LEGEND

-  PRIMARY ACCESS (SIGNALIZED)
-  SECONDARY ACCESS
-  SERVICE ACCESS
-  PUBLIC CIRCULATION
-  STAFF / SERVICE CIRCULATION

May 26, 1992



VEHICULAR ACCESS
HOAG MEMORIAL HOSPITAL PRESBYTERIAN

EXHIBIT 2



Table 1
STATISTICAL ANALYSIS¹

Use	Square Feet
Lower Campus	
Existing:	
Outpatient Services (Hoag Cancer Center)	65,000
Child Care	7,800
Subtotal:	<u>72,800</u>
Phase I:	
Outpatient Services	115,000
Support Service	55,000
Administrative	30,000
Subtotal:	<u>200,000</u>
Phases II & III:	
Subtotal:	<u>305,089</u>
<u>Total Lower Campus</u>	<u>577,889</u>
Upper Campus	
Existing²:	480,000
Phase I:	
Outpatient Services	25,000
Inpatient	115,000
Subtotal:	<u>140,000</u>
Phases II & III:	145,349
<u>Total Upper Campus</u>	<u>765,349</u>
GRAND TOTAL	1,343,238³

¹ Full development of the upper and lower campuses is anticipated to occur over an approximate 20-year period and will likely occur in three, seven-year phases.

² Up to 50% of the existing upper campus may be redeveloped by master plan buildout.

³ Based on development allowed under the General Plan at a floor area ratio to gross site area of .65 for the lower campus and 1.0 for the upper campus. Building Bulk limit for the lower campus is 0.90 for all structures which includes above grade covered parking.

V. DISTRICT REGULATIONS

The following regulations apply to all development within the Hoag Hospital Planned Community. The individual uses listed under the five permitted use categories is not an exhaustive list. Other hospital-related uses which fit into the five permitted use categories are allowed by definition. Prior to the issuance of a building permit, plot plans, elevations and any other such documents deemed necessary by the Planning, Building and Public Works Departments shall be submitted for the review and approval of the Planning, Building, and Public Works Departments.

A. Permitted Uses

1. Lower Campus

a) Hospital facilities, including, but not limited to:

i. Outpatient services:

- Antepartum Testing
- Cancer Center
- Skilled Nursing
- Rehabilitation
- Conditioning
- Surgery Center
- Clinical Center
- Day Hospital
- Back and Neck Center
- Biofeedback
- Breast Imaging Center
- CT Scan
- Dialysis
- EEG/EMG/NICE Laboratory
- First Aid Center
- Fertility Services
- G.I. Laboratory
- Laboratory
- Magnetic Resonance Imaging
- Nuclear Medicine
- Occupational Therapy
- Pediatrics
- Pharmacy
- Physical Therapy
- Pulmonary Services

- Radiation Therapy
- Radiology
- Respiratory Therapy
- Sleep Disorder Center
- Speech Therapy
- Ultrasound

ii. Administration:

- Admitting
- Auxiliary Office
- Business Offices
- Information
- Registration
- Patient Relations
- Social Services

iii. Support Services:

- Employee Child Care
- Health Education
- Power/Mechanical/Auxiliary Support and Storage
- Food Services
- Cashier
- Chapel/Chaplaincy Service
- Conference Center
- Dietitian
- Gift Shop
- Laboratory
- Medical Library
- Medical Records
- Pharmacy
- Engineering/Maintenance
- Shipping/Receiving
- Microwave, Satellite, and Other Communication Facilities

iv. Residential Care:

- Substance Abuse
- Mental Health Services
- Extended Care
- Hospice Care
- Self or Minimal Care
- Congregate Care

v. Medical/Support Offices

- b) Methane gas flare burner, collection wells and associated system components.
- c) Accessory uses normally incidental to hospital development.
- d) Temporary structures and uses, including modular buildings.

2. Upper Campus

- a) Hospital facilities, including, but not limited to:
 - i) Inpatient uses:
 - Critical Care
 - Emergency Care Unit
 - Birth Suites
 - Cardiology
 - Cardiac Care Unit
 - Intensive Care Unit
 - Mother/Baby Unit
 - Surgery/Waiting Rooms
 - Radiology
 - Laboratory
 - Pharmacy
 - ii) Outpatient services as allowed on the lower campus
 - iii) Administrative uses as allowed on the lower campus
 - iv) Support services as allowed on the lower campus
 - v) Residential care as allowed on the lower campus
 - vi) Heliport (subject to Conditional Use Permit)
- b) Accessory uses normally incidental to hospital development.
- c) Temporary structures and uses, including modular buildings.

B. Prohibited Uses

1. Lower Campus
 - a) Emergency Room
 - b) Heliport

C. Maximum Building Height

The maximum building height of all buildings shall be in accordance with Exhibit 3 which established the following height zones:

1. Upper Campus Tower Zone - maximum building height not to exceed the existing tower (235 feet above mean sea level).
2. Upper Campus Midrise Zone - maximum building height not to exceed 140 feet above mean sea level.
3. Upper Campus Parking zone - maximum building height not to exceed 80 feet above mean sea level, exclusive of elevator tower.
4. Lower Campus Zone, Sub-Areas A, B, C, F and G - within each sub-area no building shall exceed the height of the existing slope and conform to the range of maximum building heights indicated on the development criteria Exhibit 3.
5. Lower Campus Zone, Sub-Areas D and E - maximum building height shall not exceed the height of the existing Hoag Cancer Center (57.5 feet above mean sea level).






D. Setbacks





Setbacks for the Hoag Hospital Planned Community are shown on Exhibit 3.

1. Setbacks will be provided along property boundaries adjacent to the Villa Balboa / Seafaire Condominiums, as defined below:
 - a) Upper campus western boundary setback shall be the prolongation of the westerly edge of the existing cafeteria/laboratory building to the points of intersection with the easterly curb line of the existing service drive, then continuing along said line of the existing service drive.
 - b) Lower campus northern boundary, all of which will have a 20' minimum building setback.

LEGEND

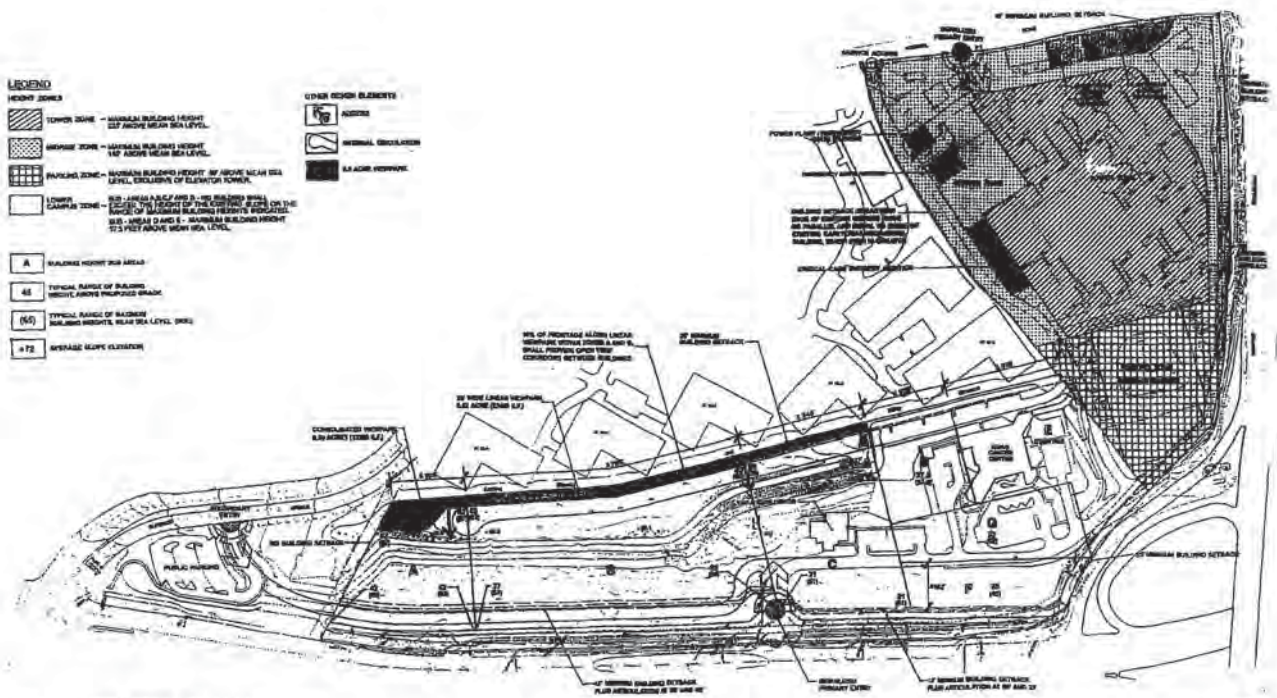
HEIGHT ZONES

-  TOWER ZONE - MAXIMUM BUILDING HEIGHT 127' ABOVE MEAN SEA LEVEL.
-  MEDIUM ZONE - MAXIMUM BUILDING HEIGHT 110' ABOVE MEAN SEA LEVEL.
-  BUILDING ZONE - MAXIMUM BUILDING HEIGHT 80' ABOVE MEAN SEA LEVEL, EXCLUDING OF ELEVATION TOWER.
-  LOW ZONE - MAXIMUM BUILDING HEIGHT 60' ABOVE MEAN SEA LEVEL, EXCLUDING OF ELEVATION TOWER.
-  CHANGE ZONE - MAXIMUM BUILDING HEIGHT 60' ABOVE MEAN SEA LEVEL, EXCLUDING OF ELEVATION TOWER.

-  A BUILDING HEIGHT ZONE AREA
-  66 TYPICAL RANGE OF BUILDING HEIGHT, ABOVE MEAN SEA LEVEL.
-  60 TYPICAL RANGE OF BUILDING HEIGHT, ABOVE MEAN SEA LEVEL.
-  72 AVERAGE BUILDING ELEVATION

OTHER DESIGN ELEMENTS

-  ACCESS
-  MINIMAL OBSCURATION
-  SEA ADJACENT PROPERTY



DEVELOPMENT CRITERIA HOAG MEMORIAL HOSPITAL PRESBYTERIAN

May 26, 1972

EXHIBIT 2

2. The setback on West Coast Highway easterly of the hospital entry signal shall be 15 feet.

In addition, vertical articulation shall be required for buildings easterly of the signal within 150 feet of the West Coast Highway frontage, as follows:

1st Floor: Up to 18 feet in height no additional articulation is required. If the 1st floor exceeds 18 feet in height, it shall be subject to the articulation requirements of the 2nd Floor.

2nd Floor (up to 32' in height): A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 2nd floor setback of 20 feet.

3rd Floor and above: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 3rd floor and above setback of 25 feet.

The setback on West Coast Highway westerly of the hospital entry signal shall be 45 feet.

In addition, vertical articulation shall be required for buildings westerly of the signal for buildings within 150 feet of the West Coast Highway frontage, as follows:

1st Floor: Up to 18 feet in height no additional articulation is required. If the 1st floor exceeds 18 feet in height, it shall be subject to the articulation requirements of the 2nd Floor.

2nd Floor (up to 32' in height): A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 2nd floor setback of 55 feet.

3rd Floor and above: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 3rd floor and above setback of 65 feet.

In order to avoid any future structures in this area (within 150 feet of West Coast Highway) from presenting an unacceptable linear mass, no single structure shall be greater than 250 linear feet in width. Additionally, 20% of the linear frontage within 150 feet of West Coast Highway shall be open and unoccupied by buildings.

10% of the linear length of height zones A and B as viewed from the existing bicycle/pedestrian trail, exclusive of that area adjacent to the consolidated portion of the view park, shall be maintained as view corridors between buildings.

These requirements may be altered for individual buildings, if requested by the hospital, through the site plan review process defined in Section IX.

3. There will be no building setbacks along the boundary with CalTrans east property at Superior Avenue and West Coast Highway.
4. A 20 foot setback from property line shall be provided along Newport Boulevard from Hospital Road to a point 600 feet south; a 25 foot setback from property line shall be provided along the remainder of Newport Boulevard and along the Newport Boulevard/West Coast Highway Interchange.
5. A ten (10) foot building setback from the property line shall be provided along Hospital Road.

E. Lighting

The lighting systems shall be designed and maintained in such a manner as to conceal the light source and to minimize light spillage and glare to the adjacent residential uses. The plans shall be prepared and signed by a licensed Electrical Engineer.

F. Roof Treatment

Prior to the issuance of building permits, the project sponsor shall submit plans which illustrate that major mechanical equipment will not be located on the roof of any structure on the Lower Campus. Rather, such buildings will have clean rooftops. Minor rooftop equipment necessary for operating purposes will comply with all building height criteria, and shall be concealed and screened to blend into the building roof using materials compatible with roofing materials.

G. Signs

All signs shall be as specified under the Hoag Hospital Sign Program, Part VI.

H. Parking

All parking shall be as specified in Part VII, Hoag Hospital Parking Regulations.

I. Landscape

All landscaping shall be as specified in the Hoag Hospital Landscape Regulations, Part VIII.

J. Mechanical and Trash Enclosures

Prior to issuance of a building permit, the project sponsor shall submit plans to the City Planning Department which illustrate that all mechanical equipment and trash areas will be screened from public streets, alleys and adjoining properties.

K. Internal Circulation

1. Prior to the issuance of a grading permit for any of the proposed Master Plan facilities, the project sponsor shall implement a pilot program that controls usage of the Upper and Lower Campus service roads during non-working hours. Such controls may include requesting that the majority of vendors deliver products (other than emergency products) during working hours (i.e. 7:00 a.m. to 8:00 p.m.), signage to restrict use of the road by Hospital employees, physicians, patients and visitors during non-working hours, and other methods to restrict use. The Hospital will also request that vendors not deliver (i.e. scheduled and routine deliveries) on the weekends.

This restriction specifically applies to scheduled and routine deliveries. The results of this program will be submitted to the City prior to the issuance of the grading permit. If such results indicate that such controls do not significantly impact the operations of the Hospital, and provided that requests for specified vendor delivery times is consistent with future Air Quality Management Plan procedures, the City may require that the program be implemented as hospital policy. If operation impacts are significant, other mitigation measures will be investigated at that time to reduce service road impacts to the adjacent residential units.

2. The lower campus service road shall include provisions for controlled access to limit usage to physicians and staff, and service vehicles.

L. Loading Dock

Within one year from the date of final approval of the Planned Community District Regulations and Development Plan by the California Coastal Commission, as an interim measure, the project sponsor shall implement an acoustical and/or landscape screen to provide a visual screen from and reduce noise to adjoining residences from the loading dock area.

The design process for the Critical Care Surgery Addition shall include an architectural and acoustical study to insure the inclusion of optimal acoustical screening of the loading dock area by that addition.

Subsequent to the construction of the Critical Care Surgery Addition, an additional acoustical study shall be conducted to assess the sound attenuation achieved by that addition. If no significant sound attenuation is achieved, the hospital shall submit an architectural and acoustical study assessing the feasibility and sound attenuation implications of enclosing the loading dock area. If enclosure is determined to be physically feasible and effective in reducing noise impacts along the service access road, enclosure shall be required. Any enclosure required pursuant to this requirement may encroach into any required setback upon the review and approval of a Modification as set forth in Chapter 20.81 of the Newport Beach Municipal Code.

VI. HOAG HOSPITAL SIGN PROGRAM

A. Purpose and Intent

1. The purpose of this Sign Program is to provide adequate, consistent and aesthetically pleasing on-building wall and ground-mounted signage based upon the provisions set forth by the City of Newport Beach Sign Ordinance and the information signage requirements of Hoag Hospital.
2. The intent of this Sign Program is to produce uniform standards for Hoag Hospital.

B. General Sign Standards

1. All signs visible at the exterior of any building or facility of the Hospital, ground mounted or on-building, may be illuminated or non-illuminated, depending upon need. Illumination method may be by external or internal source. No sign shall be constructed or installed to rotate, gyrate, blink or move, nor create the illusion of motion, in any fashion.
2. All signs attached to building or facility exteriors shall be flush or surface mounted as is appropriate to the architectural design features of said building or facility.
3. All signs together with the entirety of their supports, braces, guys, anchors, attachments and decor shall be properly maintained, legible, functional and safe with regard to appearance, structural integrity and electrical service.
4. All street signs shall be subject to review and approval of the City Traffic Engineer, and shall be in compliance with Ordinance 110-L.

C. Number of Signs Allowed

1. One (1) double-faced primary identification ground-mounted sign or two single faced gateway entry signs shall be allowed per street frontage. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Total maximum signage area shall not exceed two hundred (200) square feet and shall not exceed ten (10) feet in height per sign and street frontage. This sign may occur as a wall sign, to be located upon a project boundary perimeter wall, subject

to the same number and area maximums described above. This sign may also occur as part of an entry gateway system.

2. Secondary identification signs shall be allowed. This sign type shall not exceed a maximum height of 48" average height above finished grade. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Maximum sign area shall not exceed thirty-five (35) square feet. This sign may occur as a wall sign to be located upon a project boundary perimeter wall, subject to the same number and area maximums described above.
3. Vehicular and pedestrian directional signs shall be allowed. This sign type may occur as a single-faced or double-faced sign. This sign type shall occur with the sign suspended between two upright supports having the same depth (thickness) as the sign cabinet described above.
4. Hospital identification signs shall be allowed upon hospital tower parapets, one (1) at each elevation. The elevation facing west (Villa Balboa property line) may not be illuminated.
5. On the lower campus, one (1) building-mounted identification sign will be allowed per structure and shall not be placed so as to directly face the Villa Balboa/Seafaire property. Such signs will be no higher than the roof line of the building upon which they are mounted.

VII. HOAG HOSPITAL PARKING REGULATIONS

A. General

1. Off-street parking for Hoag Hospital shall be provided on-site. Parking may be on surface lots, subterranean or in parking structures.
2. The design and layout of all parking areas shall be subject to the review and approval of the city Traffic Engineer and the Public Works Department.
3. Parking lot lighting shall be developed in accordance with City standards and shall be designed in a manner which minimizes impacts on adjacent land uses. Nighttime lighting shall be limited to that necessary for security and shielded down from any adjacent residential area. The plans shall be prepared and signed by a licensed electrical engineer, with a letter from the engineer stating that the requirements has been met. The lighting plan shall be subject to review and approval of the City Planning Department.

B. Requirements for Offstreet Parking

Parking requirements for specific sites shall be based upon the parking criteria established in Table 2. All parking shall be determined based upon building type and the area allotted to the following functions. Any area which is calculated as part of the total floor area limitation shall be included in the gross floor area to determine the parking requirement.

Table 2
PARKING REQUIREMENTS

<u>Use Category</u>	<u>Parking Requirements</u>
Outpatient Services	2.0 spaces/1,000 square feet*
Support	1.0 spaces/1,000 square feet*
Administrative	4.0 spaces/1,000 square feet*
Residential Care	1.0 spaces/1,000 square feet*
Medical Offices	4.0 spaces/1,000 square feet*
Inpatient	1.25 spaces/1,000 square feet**

* Parking requirements are based on a study performed by DKS Associates in May, 1987.

** Parking requirement is based on current Hoag Hospital parking demand.

VIII. HOAG HOSPITAL LANDSCAPE REGULATIONS

A. General

1. Detailed landscape and irrigation plans, prepared by a registered Architect or under the direction of a Landscape Architect, shall be reviewed by the Planning and Parks, Beaches and Recreation Departments and approved by the Public Work Departments prior to issuance of a building permit and installed prior to issuance of Certificate of Use and Occupancy. The Landscape Plan may include a concept for the roofs and the parking structures. Trees shall not be used, but a planter box or trellis system shall be designed to provide visual relief of parking structures. All landscaping shall conform to the building height limits established in this text.
2. Parking lot trees shall be no less than fifteen (15) gallon size.
3. Shrubs to be planted in containers shall not be less than one (1) gallon size. Ground covers will be planted from (1) gallon containers or from root cuttings.
4. Every effort should be made to avoid using plants with invasive and shallow root systems.
5. Earth berms shall be rounded and natural in character, designed to obscure automobiles and to add interest to the site. Wheel stops shall be so placed that damage to trees, irrigation units and shrubs is avoided.
6. Trees in parking lots should be limited in variety. Selection should be repeated to give continuity. Regular spacing is not required and irregular groupings may add interest. Care should be exercised to allow plants to grow and maintain their ultimate size without restriction.
7. Heavy emphasis shall be placed on the use of drought-resistant native and naturalized vegetation and the use of an irrigation system designed to avoid surface runoff and over-watering.

B. Maintenance

1. All planting areas are to be kept free of weeds and debris.
2. Lawn and ground covers are to be kept trimmed and/or mowed regularly.

3. All plantings are to be kept in a healthy and growing condition. Fertilization, cultivation and tree pruning are to be carried out as part of regular maintenance.
4. Irrigation systems are to be kept in working condition. Adjustment and cleaning of system should be part of regular maintenance.
5. Stakes, guys and ties on trees should be checked regularly for correct function; ties to be adjusted to avoid creating abrasions or girdling to the stems.
6. Damage to plantings created by vandalism, automobile or acts of nature shall be corrected within thirty (30) days.

C. Special Landscaped Street

West Coast Highway is designated in the Hoag Hospital Planned Community as a special landscaped street. A 15' building setback from right-of-way / property line is required along West Coast Highway. Only driveways, parking and signage are allowed in the setback area. Parking areas shall be screened from view of West Coast Highway with landscaped berms.

Landscaping along West Coast Highway shall consist of trees, ground cover and shrubbery. All unpaved areas not utilized for parking or circulation shall be landscaped in a similar manner. Tree size to be no less than twenty-four (24) inch box.

D. Villa Balboa Landscape Zone

The area between the Villa Balboa/Hoag property line and the loading dock service access road shall be landscaped except for any driveway, walkway, or other hardscape elements in said area. The purpose of the landscaping will be to screen and buffer residential units from hospital activities.

E. Parking Areas

A minimum of 5% of the surface parking areas shall be devoted to planting areas. Planting areas around building shall not be included in parking area. Planting of trees may be in groups and need not necessarily be in regular spacing. Alternative landscape programs may be developed, including perimeter parking area landscaping, berming and depressing of parking areas. Alternative landscape programs shall be subject to the review of the Parks, Beaches and Recreation Department and the approval of the Planning and Public Works Departments.

A rooftop landscaping program may be developed for parking structures and shall be subject to the review of the Parks, Beaches and Recreation Department and the approval of the Planning and Public Works Departments. Rooftop landscaping shall conform to height restrictions.

IX. SITE PLAN REVIEW.

A. Purpose

The City Council finds that development on the West Coast Highway frontage of the lower campus of Hoag Hospital may have the potential to affect the aesthetics of the West Newport area as viewed from surrounding arterial roadways. The effect of this section is to establish a Site Plan Review requirement by the Planning Commission for certain individual projects which are proposed by the hospital to differ from the setback, horizontal and vertical articulation requirements as set forth in Section V.D.2. to insure that these projects conform with the objectives of the General Plan and the Master Plan for Hoag Hospital.

B. Findings

The City finds, determines and declares that the establishment of Site Plan Review procedures contained in this section promotes the health, safety, and general welfare of the community by ensuring that the development of Hoag Hospital proceeds in a manner which will not result in inadequate and poorly planned landscape areas, excessive building bulk on arterial roadways, inappropriate placement of structures and impairment of the benefits of occupancy and use of existing properties in the area.

C. Application

Site Plan Review approval shall be obtained prior to the issuance of a grading or building permit for any new structure or the addition to an existing structure which does not conform to the provisions of Section V.D.2.

D. Plans and Diagrams to be Submitted

The following plans and diagrams shall be submitted to the Planning Commission for approval:

1. A plot plan, drawn to scale, showing the arrangement of buildings, driveways, pedestrian ways, off-street parking and off-street loading areas, landscaped areas, signs, fences and walks. The plot plan shall show the location of entrances and exits, and the direction of traffic flow into and out of off-street parking and loading areas, the location of each parking space and loading space, and areas for turning and maneuvering vehicles. The plot plan shall indicate how utility and drainage are to be provided.

2. A landscape plan, drawn to scale, showing the locations of existing trees proposed to be removed and proposed to be retained; and indicating the amount, type, and location of landscaped areas, planting beds and plant materials with adequate provisions for irrigation.
3. Grading plans when necessary to ensure development properly related to the site and to surrounding properties and structures.
4. Scale drawings of exterior lighting showing size, location, materials, intensity and relationship to adjacent streets and properties.
5. Architectural drawings, renderings or sketches, drawn to scale, showing all elevations of the proposed buildings and structures as they will appear upon completion.
6. Any other plans, diagrams, drawings or additional information necessary to adequately consider the proposed development and to determine compliance with the purposes of this chapter.

E. Fee

The applicant shall pay a fee as established by Resolution of the City Council to the City with each application for Site Plan Review under this chapter.

F. Standards

In addition to the general purposes set forth in sub-section B, in order to carry out the purposes of this chapter as established by said section, the site plan review procedures established by this Section shall be applied according to and in compliance with the following standards, when applicable:

1. The development is in compliance with all other provisions of the Planned Community Development Criteria and District Regulations (P-C Text);
2. Development shall be compatible with the character of the neighborhood and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;
3. Development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on West Coast Highway;

4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.

G. Public Hearing - Required Notice

A public hearing shall be held on all Site Plan Review applications. Notice of such hearing shall be mailed not less than ten (10) days before the hearing date, postage prepaid, using addresses from the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses, to owners of property within a radius of three hundred (300) feet of the exterior boundaries of the subject property. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this Section. In addition to the mailed notice, such hearing shall be posted in not less than two conspicuous places on or close to the property at least ten (10) days prior to the hearing.

H. Action by the Planning Commission

If all applicable standards established by this Section are met, the Planning Commission shall approve the development. Conditions may be applied when the proposed development does not comply with applicable standards and shall be such as to bring said development into conformity.

If the development is disapproved, the Commission shall specify the standard or standards that are not met.

A Site Plan Review decision of the Planning Commission shall be subject to review by the City Council either by appeal, or upon its own motion, or upon the request of the Commission. The action of the Commission on any Site Plan Review shall be final and effective twenty-one (21) days following the Commission action thereon unless, within the twenty-one (21) day appeal period an appeal in writing has been filed by the applicant, or any other person, the Commission has requested a review of its decision, or unless the City Council, not more than twenty-one (21) days after the Commission action, on its own motion, elects to review and act on the action of the Commission, unless the applicant consents to an extension of time. The City Council may affirm, reverse or modify the decision. Such action by the City Council shall be final.

I. Appeal to the City Council

Any Site Plan Review decision of the Commission may be appealed to the City Council by the applicant or any other person, at any time within twenty-one (21) days after the date of the Commission decision. An appeal to the City Council shall be taken by filing a letter of appeal in duplicate, with the Planning Department. Such letter shall set forth the grounds upon which the appeal is based and shall be accompanied by a fee as established by Resolution of the City Council.

J. Action by the City Council

An appeal shall be heard and acted on by the City Council, and the City Council may affirm, reverse or modify the decision of the Commission. The decision of the City Council is final.

K. Expiration and Revocation of Site Plan Review Approvals

1. **Expiration.** Any Site Plan Review granted in accordance with the terms of this Title shall expire within 24 months from the date of approval if a building permit has not been issued prior to the expiration date and subsequently construction is diligently pursued until completion, unless at the time of approval the Planning Commission has specified a different period of time.
2. **Violation of Terms.** Any Site Plan Review granted in accordance with the terms of this Title may be revoked if any of the conditions or terms of such Site Plan Review are violated or if any law or ordinance is violated in connection therewith.
3. **Hearing.** The Planning Commission shall hold a hearing on any proposed revocation after giving written notice to the permittee at least ten days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within 60 days after receipt of the recommendation of the Planning Commission.

F:\... \Planning\PCTEXT\HOAGHOSP

CITY OF NEWPORT BEACH
**HEIGHT LIMITATION
 ZONES-COMMERCIAL**

	26 / 35 FEET
	32 / 50 FEET
	HIGHRISE 375 FT.

NOTE:
 ALL R-1, R-1.5, R-2 ZONES 24/28 FEET
 ALL R-3, R-4, MFR ZONES 26/32 FEET



JUL 23, 1974
 REVISION DATE: 8-17-88

Revision Date: May 26, 1992

Exhibit D

**EXHIBIT D
ESTOPPEL CERTIFICATE**

Date Requested: _____
Date of Certificate: _____

On _____, the City of Newport Beach approved the "Development Agreement Between the City of Newport Beach and Hoag Memorial Hospital Presbyterian" (the "Development Agreement").

This Estoppel Certificate certifies that, as of the "Date of Certificate" set forth above:

CHECK WHERE APPLICABLE

- _____ 1. The Development Agreement remains binding and effective;
- _____ 2. The Development Agreement has not been amended;
- _____ 3. The Development Agreement has been amended in the following respects:

- _____ 4. Neither Hoag nor any of its successors are in default under the Development Agreement;
- _____ 5. The following defaults exist under the Development Agreement:

This Estoppel Certificate may be relied upon by any transferee or mortgagee of any interest in the property which is subject of the Development Agreement.

CITY OF NEWPORT BEACH

BY: _____
NAME: _____
TITLE: _____

EXHIBIT D

BMH / 10/11

EXHIBIT B

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5
DATED JUNE 17, 2008

This Document was electronically recorded by
ER Cert Mail D

RECORDING REQUEST BY, AND
WHEN RECORDED MAIL TO:

City Clerk
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92659-1768

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder



NO FEE

2008000289321 12:35pm 06/17/08

120 33 A17 66

0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

EXEMPT FROM FILING FEES CAL. GOV'T CODE § 6103

(Space above this line for Recorder's use)

EXEMPT RECORDING REQUEST PER
GOVERNMENT CODE 27383

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

BETWEEN

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

AND

THE CITY OF NEWPORT BEACH

*(Pursuant to California Government Code Sections 65864-65869.5
and Newport Beach Municipal Code Chapter 15.45)*

Approved May 13, 2008
Ordinance No. 2008-10

FINAL
5/16/08 10001.34
H&O: #58720 v1

RECORDING REQUEST BY, AND
WHEN RECORDED MAIL TO:

City Clerk
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92659-1768

EXEMPT FROM FILING FEES CAL. GOV'T CODE § 6103

(Space above this line for Recorder's use)

**EXEMPT RECORDING REQUEST PER
GOVERNMENT CODE 27383**

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

BETWEEN

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

AND

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*(Pursuant to California Government Code Sections 65864-65869.5
and Newport Beach Municipal Code Chapter 15.45)*

**Approved May 13, 2008
Ordinance No. 2008-10**

FINAL
5/16/08 10001.34
H&O: #58720 v1

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

(Hoag Memorial Hospital Presbyterian)

THIS AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5 ("Amendment") is entered into and effective on the date it is recorded with the Orange County Recorder (the "Effective Date") by and between the City of Newport Beach (hereinafter "City") and Hoag Memorial Hospital Presbyterian (hereinafter "Hoag").

RECITALS

1. The "RECITALS" to the Restated Development Agreement are amended to add new Sections 1.9 through Section 1.19(f) to read as follows:

1.9 Hoag Property. Hoag is the fee owner of approximately 38 acres of real property located in the City divided between the Upper Campus and the Lower Campus and more particularly described in Exhibit "A" and depicted on Exhibit "B" (the "Property").

1.10 Hoag Healthcare Services. Hoag is a modern, state-of-the-art acute care, not-for-profit hospital providing a comprehensive mix of healthcare services to treat virtually any routine or complex medical condition. Hoag features centers of excellence that include Hoag Cancer Center, Hoag Heart and Vascular Institute, Hoag Neuroscience Institute, Hoag Orthopedic Services and Hoag Women's Health Services, as well as advanced medical programs in many other specialties.

1.11 Hoag Community Benefit Programs. In addition to providing state-of-the-art hospital, diagnostic imaging and emergency room care medical services, Hoag is involved in many other community benefit programs such as police and SWAT team, fire department and paramedic support services, designating the City as the point of sale for major hospital equipment purchases and construction projects, providing financial and transportation support for the City's senior Oasis Center, and providing methane gas flare burnoff to mitigate methane gas fumes along Pacific Coast Highway. Hoag's community medicine program allocates approximately \$10 million annually toward improving the community's overall health, primarily through disease prevention and wellness and health promotion, especially for those vulnerable and disadvantaged populations.

1.12 EIR No. 142 and P.C. Text. On May 26, 1992, the City Council of City ("City Council") certified the Hoag Hospital Master Plan Final EIR No. 142 and adopted the Hoag Memorial Hospital Presbyterian Master Plan ("Hoag Master Plan") and the Planned Community Development Criteria and District Regulations ("P.C. Text") setting forth the development standards and terms and conditions by which the Property may be developed, including the maximum permissible building area, building height limits and permitted land uses.

1.13 Square Footage of Buildable Area. Under the existing Hoag Master Plan and P.C. Text, the Property allows a total of 1,343,238 square feet of buildable area with 577,889 square feet allocated to the Lower Campus and 765,349 square feet allocated to the Upper Campus.

1.14 Development Agreement No. 5. On May 26, 1992, the City Council adopted Ordinance No. 92-4 approving Development Agreement No. 5 between the City and Hoag incorporating the Hoag Master Plan and P.C. Text and granting vested rights to Hoag to develop the Property pursuant to the Hoag Master Plan and P.C. Text for the term of the Development Agreement. The Development Agreement was recorded in the Official Records of Orange County, California on August 4, 1993 as Instrument No. 63-0522236.

1.15 Restated Development Agreement. On February 14, 1994, the City Council of City adopted Ordinance No. 94-8 approving an Amendment and Restatement of Development Agreement No. 5 ("Restated Development Agreement") incorporating certain provisions clarifying the role, review and approval authority of the California Coastal Commission for development of the Property to ensure consistency and compliance with the California Coastal Act. The Restated Development Agreement was recorded in the Official Records of Orange County, California on March 23, 1994 as Instrument No. 94-0207276.

1.16 First Amendment to P.C. Text. On August 13, 2002, the City Council adopted Ordinance No. 2002-17 approving the First Amendment to the P.C. Text to provide that certain non-occupied building areas are not counted towards the maximum permissible building floor areas for development of the Property.

1.17 Noise Limitation. The existing PC Text provides that noise generated from Hoag Hospital from new mechanical appurtenances shall not exceed 55 dBA at the Property lines. This noise limitation was established prior to the adoption of the City's

Noise Element in the General Plan and Noise Ordinance. It is proposed that noise generated and originating from the Property be governed by the City Noise Ordinance with certain exceptions.

1.18 Noise Attenuation. Hoag has taken significant actions to attenuate noise generated from mechanical equipment and has installed landscape screening and walls to mitigate and buffer noise and improve aesthetic impacts for adjacent residential properties.

1.19 Restated Development Agreement Amendments. The City and Hoag propose to further amend the Restated Development Agreement by this Amendment to incorporate references to: a Supplemental EIR; an amendment to the City General Plan; an increase in the Public Benefits; designation of the City as the point of sale to the extent allowed under applicable law; and amendments to the Hoag Hospital Planned Community Text ("P.C. Text") to, among other things:

(a) eliminate the reference to 1.0 Floor Area Ratio ("FAR") for the Upper Campus and the .65 FAR for the Lower Campus in the General Plan Land Use Element. In place of the reference to the FAR's, an absolute maximum allowable building area of 1,343,238 square feet will remain available for development of the entire Property comprised of the Upper Campus and the Lower Campus;

(b) maintain a cap under the General Plan Land Use Element Amendment for development of the Lower Campus at 577,889 square feet (if no square footage is reallocated) and establish a cap on development of the Upper Campus at 990,349 square feet (if all 225,000 square feet are reallocated from the Lower Campus to the Upper Campus);

(c) allow the transfer of up to 225,000 square feet of buildable area from the Lower Campus to the Upper Campus, which, if all 225,000 square feet are reallocated, would result in a maximum allowed density of 990,349 square feet for the Upper Campus and a reduction to permit 352,889 square feet of allowable development for the Lower Campus;

(d) to modify the noise standards applicable to the Property;

(e) delete a provision that required the City and Hoag to conduct a study of possible future improvements in and around the easterly end of the Semeniuk Slough, including a requirement that Hoag fund the study and potential future improvements in an amount not to exceed \$200,000; and

(f) incorporate the Second Amendment to the P.C. Text.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 1.5 of the Restated Development Agreement entitled *Planning Commission/City Council Hearings* is amended to read as follows:

"1.5 Planning Commission/City Council Hearings. The Planning Commission, after giving appropriate notice, held public hearings to consider a development agreement, the proposed Master Plan, and the EIR on December 5, 1991, January 9, 1992, January 23, 1992, February 6, 1992 and February 20, 1992. The City Council conducted public hearings on the Master Plan, this Agreement and the EIR on March 23, 1992, March 30, 1992, April 13, 1992 and May 11, 1992. The Planning Commission, after giving appropriate notice, held a public hearing to consider this Amendment, the Supplemental EIR, the General Plan Amendment, and the Second Amendment to the P.C. Text on January 31, 2008, February 7, 2008, March 6, 2008 and March 20, 2008. The City Council conducted a public hearing on this Amendment, the Supplemental EIR, the General Plan Amendment and the Second Amendment to the P.C. Text on April 16, 2008."

2. Section 1.8 of the Restated Development Agreement entitled *City Ordinance* is amended to read as follows:

"1.8 City Ordinance. On February 14, 1994, the City Council adopted Ordinance No. 94-8 approving a Restated Development Agreement No. 5 incorporating certain provisions clarifying the role, review and approval authority of the California Coastal Commission for development of the Property to ensure consistency and compliance with the California Coastal Act. The Adopting Ordinance became effective on March 16, 1994. On May 13, 2008, the City Council adopted Ordinance No. 2008-10 approving

this Amendment and authorizing the City to enter into this Amendment. The adopting ordinance will become effective on June 12, 2008."

3. Section 2.1 of the Restated Development Agreement entitled *The Adopting Ordinance* is amended to read as follows:

"2.1 The "Adopting Ordinance" refers to City Ordinance No. 94-8, adopted on February 14, 1994, by the City Council, which approved and authorized the City to enter into this Agreement. "Adopting Ordinance" further refers to Ordinance No. 2008-10 adopted on May 13, 2008 by the City Council, which approved and authorized the City to enter into this Amendment."

4. Section 2.2 of the Restated Development Agreement entitled *Agreement* is amended to read as follows:

"2.2 "Agreement" refers to the "Restated Development Agreement Between the City of Newport Beach and Hoag Memorial Hospital Presbyterian," and this Amendment."

5. Section 2.13 of the Restated Development Agreement entitled *The EIR* is amended to read as follows:

"2.13 The "EIR" refers to final Environmental Impact Report No. 142 of the City of Newport Beach, and Supplemental Environmental Impact Report No. 142."

6. Section 2.23 of the Restated Development Agreement entitled *Master Plan* is amended to read as follows:

"2.23 "Master Plan" refers to the Hoag Memorial Hospital Presbyterian Master Plan and Planned Community Development Plan which was adopted by the City on May 26, 1992 (Exhibit "C"), as amended."

7. Section 3 of the Restated Development Agreement entitled *Conditions to Development* is amended to add a new paragraph after Subsection (f) to read as follows:

"Notwithstanding the provisions of this Section, any provisions set forth in this Amendment shall supersede and control over any inconsistencies with this Section."

8. Section 3.3 of the Restated Development Agreement entitled *Program EIR* is amended to read as follows:

"3.3 Program EIR. Hoag acknowledges that the EIR is a "Program EIR" and includes Supplemental Environmental Impact Report No. 142. The EIR analyzes the impacts of construction phased over time and, pursuant to CEQA, City is under a continuing obligation to analyze Hoag's requests for Project Specific Approvals to ensure the environmental impacts associated with the request were fully addressed in the EIR. Subsequent environmental documentation is required if this analysis reveals environmental impacts not fully addressed in the program EIR, identifies new impacts, or concludes the specific request is not consistent with the project described in the EIR. Hoag acknowledges the right and obligation of the City and the Coastal Commission or its successor agency to impose additional conditions as the result of the subsequent environmental analysis required by CEQA."

9. Section 4.1 of the Restated Development Agreement entitled *Right to Develop* is amended to read as follows:

"4.1 Right to Develop. Subject to compliance with the provisions of Sections 3 and 8.2, Hoag shall have a vested right to develop and receive Project Specific Approvals for construction on the Property to the full extent permitted by the Master Plan, as amended. Subject to the provisions of Sections 3 and 8, City shall only take action which complies with and is consistent with the Master Plan, as amended, the Restated Development Agreement and this Amendment unless Hoag otherwise consents in writing. Subject to this Subsection, City shall have the authority to impose only those Exactions which are specifically described in this Agreement, except as expressly required (as opposed to permitted) by state or federal law."

10. Section 5.2 of the Restated Development Agreement entitled *Mitigation Review* is amended to read as follows:

"5.2 Public Hearing. The Annual Review shall be conducted at a public hearing noticed in accordance with the provisions of Chapter 15.45 of the Newport Beach Municipal Code. Annual reviews should be scheduled in April of each year."

11. Section 5.4 of the Restated Development Agreement entitled Mitigation Review is amended to read as follows:

"5.4 Mitigation Review. The annual review shall include a detailed report of compliance with the various conditions and mitigation measures contained within the mitigation monitoring plan. The report shall also include a noise regulation compliance assessment that includes noise measurements prepared by a qualified noise consultant on a yearly basis. The noise assessment shall identify noise regulation compliance issues and recommended measures to abate any noncompliance. The report shall include an analysis of the view impacts of buildings constructed in comparison to the anticipated views as depicted in the EIR. Hoag shall be found in compliance with this Agreement unless the City Council determines, based upon the evidence presented at the Annual Review, that Hoag has not complied with all mitigation measures and conditions including those imposed as a result of subsequent environmental analysis, applicable to the grading of, or building on, the Property as of the date of the Annual Review. Hoag shall pay the City administrative costs incurred in conducting Annual Reviews. Hoag shall reimburse the City for costs incurred by the City associated with Fluor Enterprises' review of the cogeneration plant during the 2008 Annual Review."

12. Section 8.2 of the Restated Development Agreement entitled *Exactions* is hereby amended to delete Subsection (c), which reads as follows:

"(c) City and Hoag shall conduct a study of possible future improvements in and around the easterly end of Semeniuk Slough that would, among other things, improve the appearance of the area and, potentially, serve as a component to improve public access from residential areas in West Newport to park land and public recreation facilities proposed in conjunction with development of the West Newport Oil Company property. The study shall analyze, among other things, the type of improvements that would improve the area without adversely impacting wetlands, the possible location of pedestrian trails and the potential for those trails to improve access to proposed recreational facilities, phasing of the improvements, potential public benefits, and the cost of the improvements. As a part of the study, Hoag and City shall meet and confer with resource agencies relative to the type and extent of improvements that may be permitted in or adjacent to wetlands. Hoag shall fund the study and participate in the cost of constructing any improvements in the area that the City Council determines are feasible and in the public interest, provided, however, the financial contribution of Hoag, including the costs of the study and improvements, shall not exceed Two Hundred Thousand Dollars (\$200,000.00)."

13. Section 8.2 of the Restated Development Agreement entitled *Exactions* is hereby amended to renumber Subsection (d) to Subsection (c); and to add a new Subsection (d) to read as follows:

"(d) City and Hoag acknowledge and agree that the Restated Development Agreement and this Amendment confer private benefits on Hoag that should be balanced by commensurate public benefits in favor of the City. Accordingly, the City and Hoag intend to provide consideration to balance the private and public benefits by the imposition of a Development Agreement Fee, which fee shall be used to reimburse the City for public improvements in the area and to fund certain additional needed public improvements identified by the City. Hoag shall pay to the City a Development Agreement Fee of Three Million Dollars (\$3,000,000). Payment of one-half of the Development Agreement Fee of \$1.5 million shall be made upon the Effective Date of this Amendment. Payment of the remaining one-half of the Development Agreement Fee of \$1.5 million shall be paid to City 12 months from the Effective Date of this Amendment or at the time of issuance of the first building permit by the City for development of a project on the Upper Campus as provided in Exhibit "C" attached to this Amendment, whichever occurs earlier.

The first \$1.5 million of the Development Agreement Fee shall be used to reimburse the City and/or pay for the costs associated with the following projects: (i) construction of the Superior Avenue medians extending from Ticonderoga Street to Dana Road; (ii) construction of the right-turn pocket for southbound Newport Boulevard to westbound Hospital Road; and (iii) funding of the operational improvements and traffic signal upgrade at the Hospital Road and Placentia intersection ("Priority Public Improvements"). Construction of the first two Priority Public Improvements listed above occurred during 2007, and the third is anticipated to occur in 2008. The City shall be obligated to pay the actual cost difference, if any, for construction of these Priority Public Improvements. However, if there are any funds remaining after construction of the Priority Public Improvements is completed, the City may retain the funds to be used for other City projects or services that benefit the public. The City shall also have the sole authority to decide the design, cost and scope of the Priority Public Improvements and the sufficiency of City's performance on the Public Improvement Projects shall not be subject to Hoag's approval.

The balance of the Development Agreement Fee (\$1.5 million) and any funds remaining after the construction of the Priority Public Improvements shall be used by the City in the City's sole discretion to

offset costs associated with other City and community projects or services that benefit the public such as, among other things, public parks (for example, Sunset View Consolidated Park), landscaping improvements adjacent to public right of ways, sound abatement programs, public buildings, public road improvements, water quality improvements, law enforcement, fire fighting, emergency preparedness and other public safety facilities."

14. A new section, Section 8.3, shall be added to the Restated Development Agreement entitled *Sales/Use Tax Origin*, to read as follows:

"8.3 Sales/ Use Tax Origin

(a) Hoag will include in its general contractor construction contract a provision that Hoag's general contractor and subcontractors, to the extent allowed by applicable law, will obtain a Board of Equalization sales/use tax subpermit for the jobsite at the Project Property and allocate all eligible sales and use tax payments for individual contracts over \$5 million to the City. Hoag will provide Hoag's general contractor and subcontractors with the name and contact information of the City's Revenue Manager and notice of the Revenue Manager's availability to meet and confer with them on the implementation of the Board of Equalization sales/use tax subpermit procedures. Hoag will further include a notice in its general contractor construction contract that prior to beginning a qualified construction project, the general contractor and subcontractors are encouraged to meet with the City's Revenue Manager to review the process to be followed with respect to sales and use taxes. Hoag will further include a provision in its general contractor construction contract that the general contractor or subcontractors will certify in writing that the person(s) responsible for filing the tax return understands the process of reporting the tax to the City and will follow the guidelines set forth in the relevant sections of the Sales and Use Tax Regulations. Hoag shall not be responsible for failure of Hoag's general contractor or subcontractors to follow the procedures set forth in this Section.

Hoag, if readily available, shall provide to the City or any City designated representative the names, addresses, phone numbers and contact name of the general contractor and all subcontractors.

(b) Hoag will continue to follow the Direct Payment Permit Process established in the Revenue and Taxation Code and use the permit for all qualifying individual purchases in excess of \$100,000 so that the local share of its sales/use tax payments is allocated to the City as the point of sale.

(c) It is understood and agreed that any fixtures, materials and equipment with a purchase total that exceeds \$100,000 purchased directly by Hoag and shipped to Hoag's Newport Beach location may also be eligible for direct allocation of sales/use tax to the City. Upon request of the City, Hoag will provide City on a semi-annual basis with a list of purchases exceeding the \$100,000 threshold during the preceding six-month period, including the amount of the purchase and, if readily available, the name and contact information for the vendor upon request by the City. The City agrees to review the semi-annual list of purchases made by Hoag and advise Hoag of any missed opportunities for direct allocation. Hoag agrees to file its Direct Payment Permit with vendors identified by the City in an effort to improve the direct allocation of the local share of sales/use tax payments in future periods."

15. A new section, Section 8.4, shall be added to the Restated Development Agreement entitled *Sunset View Park Improvements*, to read as follows:

"8.4 Hoag shall reimburse the City up to \$ 150,000 for the installation of groundcover, shrubs and irrigation systems within the unimproved portion of Sunset View Park and Superior Avenue, approximately 20,500 square feet in area, located northerly of the cogeneration building. Reimbursement to the City shall be within 30 days of Hoag receiving an invoice from the City."

16. A new section, Section 8.5, shall be added to the Restated Development Agreement entitled *Cogeneration Plant Energy Curtailment*, to read as follows:

"8.5 Hoag shall install a weather station capable of identifying ambient conditions necessary in documenting cogeneration plant and cooling tower operations. The weather station shall be tied into the cogeneration plant controls in order to maximize automatic responses to prevailing weather conditions, assisting in managing the operational changes and load shifting, as well as to provide periodic reports on plant operations.

Hoag shall not construct or erect additional cooling towers within the Hoag Lower Campus.

Hoag shall reduce the effective heat rejection by 33% at the existing cooling towers and such reduction shall be measured from a baseline (to be measured at the cooling towers) of operating three existing generators and absorption chillers at 100% of design capacity.

This reduced capacity operation shall be implemented daily between November 1st and April 30th, between the hours of 7:00 AM and 7:00 PM when the relative humidity is equal to or above 60% and when ambient temperatures are equal to or less than 55 degrees Fahrenheit.

17. Section 11.1(c) of the Restated Development Agreement entitled *Notices* is hereby amended to delete:

"with a copy to: Tim Paone
Paone, Callahan, McHolm & Winton
19100 Von Karman, 8th Floor
P.O. Box 19613
Irvine, CA 92713-9613"

and to add:

"with a copy to: Dennis D. O'Neil
Hewitt & O'Neil LLP
19900 MacArthur Blvd., Suite 1050
Irvine, CA 92612

with a copy to: Gary McKitterick
Allen Matkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, 5th Floor
Irvine, CA 92614-7321"

18. A new Section 11.17 shall be added to the Restated Development Agreement as follows:

"11.17 Indemnification/Hold Harmless. To the fullest extent permitted by law, Hoag shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of this Amendment, including, but not limited to, the approval of the Planned Community Text and/or the City's related California Environmental Quality Act determinations, the certification of the Supplemental Environmental Impact Report, the adoption of a Mitigation Program, and/or statement of overriding considerations for this Project. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Hoag, City, and/or the parties initiating or bringing such proceeding. Hoag shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Hoag shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition."

19. Exhibit C of the Restated Development Agreement shall incorporate the First Amendment to the P.C. Text as part of this Second Amendment to the P.C. Text in revised Exhibit C entitled:

"HOAG MEMORIAL HOSPITAL PRESBYTERIAN

PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS

Recommended for Approval
by the Planning Commission
March 20, 2008

Adopted by the City Council
City of Newport Beach
Ordinance No.2008-10
May 13, 2008"

20. Except as provided for in this Amendment and not otherwise superseded by this Amendment, the provisions set forth in the Restated Development Agreement, all of the other terms, conditions, provisions and exhibits of the Restated Development Agreement continue to have full force and effect as provided therein and this Amendment shall constitute an integral part of the Restated Development Agreement. Exhibits A through C constitute a part of this Amendment and are incorporated into this Amendment in full by this reference.

21. In the event there is any conflict between any provision of the Restated Development Agreement and this Amendment, the later approved and recorded document shall prevail in interpretation, operation and implementation.

22. The City Clerk shall cause a copy of this Amendment to be recorded with the Office of the County Recorder of Orange County, California within ten (10) days following the effective date of adoption of the Ordinance approving this Amendment.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Development Agreement No. 5 to be binding as of the Effective Date.

CITY:

THE CITY OF NEWPORT BEACH, a municipal corporation of the State of California

By: _____

Edward D. Selich, Mayor

ATTEST:

LaVonne M. Harkless
LaVonne Harkless, City Clerk



APPROVED AS TO FORM:

Aan C. Han
for Robin Clauson, City Attorney

OWNER:

HOAG MEMORIAL HOSPITAL
PRESBYTERIAN, a California nonprofit public
benefit corporation

By: _____

Richard F. Afable, M.D.
President and CEO

(All Signatures to be Notarized)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of ORANGE

On JUNE 11, 2008 before me, LEILANI I. BROWN, NOTARY PUBLIC

personally appeared EDWARD D. SAUGH



Place Notary Seal Above

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 signature(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

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On May 19, 2008 before me, Debra HAMES, Notary Public
(Here insert name and title of the officer)

personally appeared Richard A. Fable

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is 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~~ signature~~(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.

Debra HAMES
Signature of Notary Public



(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Amendment to Restated Development
(Title or description of attached document)

Agreement No. 5
(Title or description of attached document continued)

Number of Pages 33 Document Date 5-19-08

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
☒ Corporate Officer
President and CEO
(Title)
☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, ~~is~~ /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

EXHIBIT A
LEGAL DESCRIPTION

The subject property is the following real property in the City of Newport Beach, County of Orange, State of California:

Parcel 1:

That portion of Lots 169 and 170 in Block 2 and a portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

Parcel 2:

That portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

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H&O: #58720 v1

A-1

FINAL
5/16/68 10001.34
H&O-551720 v1

B-1

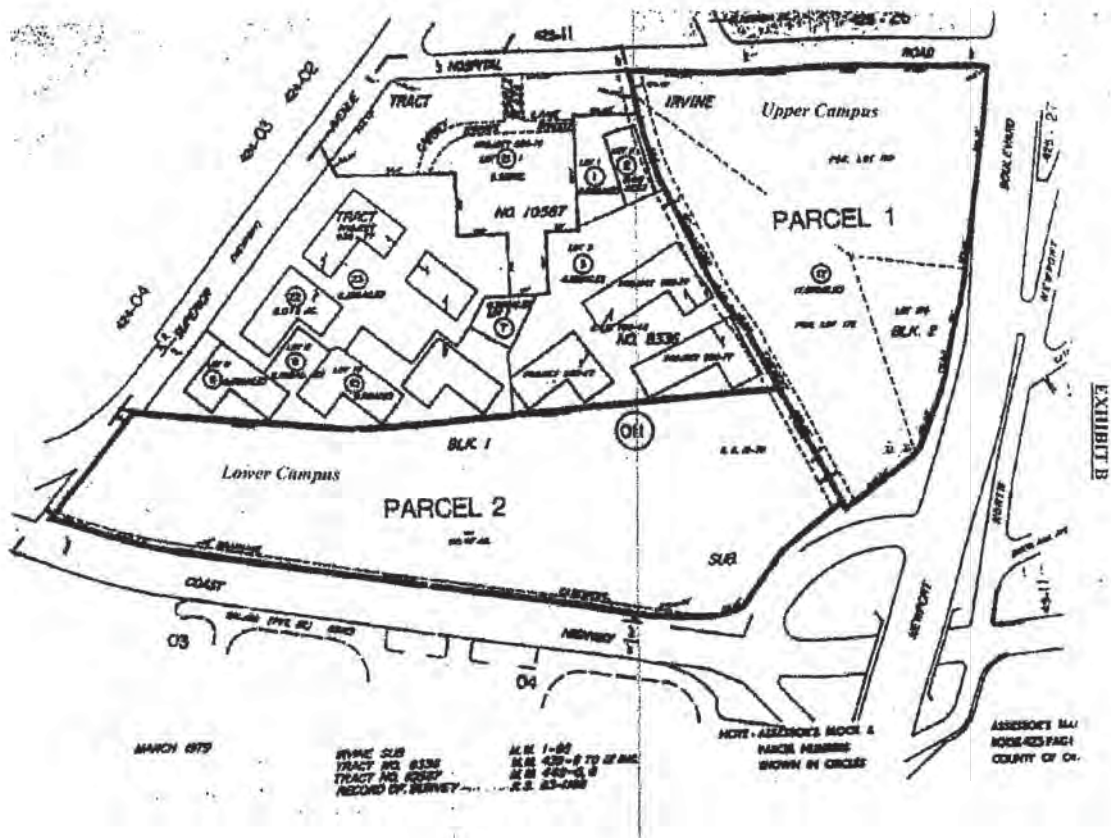


EXHIBIT C

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

**PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS**

Adopted May 13, 2008

Ordinance No. 2008-9

Effective June 12, 2008

FINAL
5/16/08 10001.34
H&O: #58720 vl

C-1

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

**PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS**

Recommended for Approval
by the Planning Commission
March 20, 2008

Adopted by the City Council
City of Newport Beach
Ordinance No. 2008-10
May 13, 2008

Hoag Memorial Hospital Presbyterian Planned Community Development Criteria and District Regulations

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I. INTRODUCTION

Background

The Hoag Memorial Hospital Presbyterian Planned Community District in the City of Newport Beach has been developed in accordance with the Newport Beach General Plan. The purpose of this Planned Community District is to provide a method whereby property may be classified and developed for hospital-related uses. The specifications of this District are intended to provide land use and development standards supportive of the proposed use while ensuring compliance with the intent of all applicable regulatory codes.

The Planned Community District includes district regulations and a development plan for both the Upper and Lower Campuses of Hoag Hospital. In general, over the long term, the Upper Campus will become oriented primarily towards emergency, acute and critical care (predominantly inpatient) uses and the Lower Campus will be developed with predominantly outpatient uses, residential care and support services.

Whenever the regulations contained in the Planned Community text conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the Planned Community text shall take precedence. The Municipal Code shall regulate this development when such regulations are not provided within these district regulations. All development within the Planned Community boundaries shall comply with all provisions of the Uniform Building Code and other governing building codes.

II. GENERAL NOTES

1. Water service to the Planned Community District will be provided by the City of Newport Beach.
2. Development of the subject property will be undertaken in accordance with the flood protection policies of the City of Newport Beach.
3. All development of the site is subject to the provisions of the City Council Policies K-4 and K-5 regarding paleontological and archaeological resources.
4. Except as otherwise stated in this text, the requirements of the Newport Beach Zoning Ordinance shall apply. The contents of this text notwithstanding, all construction within the boundaries of this Planned Community District shall comply with all provisions of the Uniform Building Code, other various codes related thereto and local amendments.
5. All buildings shall meet Title 24 requirements or the requirements of the California Office of Statewide Health Planning and Development as applicable. Design of buildings shall take into account the location of building air intake to maximize ventilation efficiency, the incorporation of natural ventilation, and implementation of energy conserving heating and lighting systems.
6. Any fire equipment and access shall be approved by the Newport Beach Fire Department.
7. Excluding communications devices on the Upper Campus, new mechanical appurtenances on building rooftops and utility vaults on the Upper and Lower Campuses shall be screened from view in a manner compatible with building materials. Rooftop mechanical appurtenances or utility vaults shall be designed utilizing compatible architectural materials on the Lower Campus. No new mechanical appurtenances may exceed the building height limitations as defined in these district regulations.
8. Grading and erosion control shall be carried out in accordance with the provisions of the City of Newport Beach Excavation and Grading Code and shall be subject to permits issued by the Building and Planning Departments.
9. Sewage disposal facilities within the Planned Community will be provided by Orange County Sanitation District No. 5. Prior to issuance of any building permits it shall be demonstrated to the satisfaction of the Planning Department that adequate sewer facilities will be available. Prior to the occupancy of any structure it shall be further demonstrated that adequate sewer facilities exist.
10. Mass grading and grading by development phases shall be allowed provided that landscaping of exposed slopes shall commence within thirty (30) days of the completion of grading.

III. DEFINITIONS

Building Elevation:

1. A vertical distance of a building above or below a fixed reference level, i.e., MSL (mean sea level).
2. A flat scale drawing of the front, rear, or side of a building.

Building Envelope: The volume in which a building may be built as circumscribed by setback lines and maximum allowable building heights.

Building Height: The vertical distance measured from the finished grade to the highest point of the structure. At all points, the height measurement shall run with the slope of the land.

Emergency Room: A service and facility designated to provide acute emergency medical services for possible life threatening situations.

Entitlement, Gross Floor Area: Any area of a building, or portion thereof, including the surrounding exterior walls, but excluding:

1. Area of a building utilized for stairwells and elevator shafts on levels other than the first level of a building in which they appear;
2. Area of a medical building, that is not used for general or routine occupancy but rather is for interstitial or mechanical occupancies, that measures less than 19 feet from finished floor to ceiling;
3. As applied to new construction permits issued on or after August 13, 2002, area of a building used specifically for base isolation and structural system upgrades directly related to requirements of governmental agencies and is not for general or routine occupancy; and
4. As applied to new construction permits issued on or after August 13, 2002, enclosed rooftop mechanical levels not for general or routine occupancy.

First Aid: Low acuity medical treatment for non-life threatening situations.

General Plan: The General Plan of the City of Newport Beach and all elements thereof.

Grade: For the purpose of determining building height:

1. Finished - the ground level elevation which exists after any grading or other site preparation related to, or to be incorporated into, a proposed new development or alteration of existing developments. (Grades may be worked into buildings to allow for subterranean parking.)

Hoag Memorial Hospital Presbyterian Planned Community Development Criteria and District Regulations

2. Natural - the elevation of the ground surface in its natural state before man-made alterations.
3. Existing - the current elevation of ground surface.

Inpatient Uses: Hospital patient services which require twenty-four (24) hour or more stays.

Landscape Area: The landscape area shall include on-site walks, plazas, water, rooftop landscaping and all other areas not devoted to building footprints or vehicular parking and drive surfaces.

Mean Sea Level: A reference or datum mark measuring land elevation using the average level of the ocean between high and low tides.

Outpatient Uses: Hospital patient services which do not exceed twenty-four (24) hours.

Residential Care: Medically-oriented residential units that do not require the acuity level generally associated with inpatient services but require overnight stays.

Site Area: For the purpose of determining development area:

1. Gross - parcel area prior to dedications.
2. Net - parcel area after dedications.

Streets: Reference to all streets or rights-of-way within this ordinance shall mean dedicated vehicular rights-of-way.

IV. DEVELOPMENT PLAN

Project Characteristics

The Upper Campus of Hoag Hospital is located on a triangular site of approximately 17.57 acres and is bounded by Newport Boulevard to the east, Hospital Road to the north and existing residential developments to the west. The Lower Campus is located north of West Coast Highway, south of the Sunset View linear and consolidated park and Villa Balboa Condominiums, west of Newport Boulevard and east of Superior Avenue. It contains approximately 37.38 total acres, including 8,603 square feet of land encumbered by a roadway easement. The Lower Campus adjoins the Upper Campus at its eastern boundary. The Upper Campus is, and will continue to be, oriented towards inpatient functions, while the Lower Campus will be developed with predominantly outpatient, residential care and support services.

Development Plan

The Planned Community Development Plan for Hoag Hospital is shown on Exhibit 1, *Planned Community Site and Boundary Map*. Through the year 2017, many of the existing buildings shown on the Development Plan for the Upper Campus may be redeveloped in order to functionally respond to the needs of the Hospital and conform to the requirements of State agencies.

Access to the Lower Campus will be from West Coast Highway and from Hospital Road, via the Upper Campus. Exhibit 2, *Vehicular Access*, shows the internal circulation for Hoag Hospital.

The Development Plan does not specify building locations or specific hospital-related uses. Instead, a developable area is identified based on the regulations established for this Planned Community District. Because of the dynamic nature of the health care industry which leads to rapid technological changes that effect how health care services are delivered, the Development Plan for Hoag Hospital sets development caps as a function of allowable densities established by the Newport Beach General Plan.

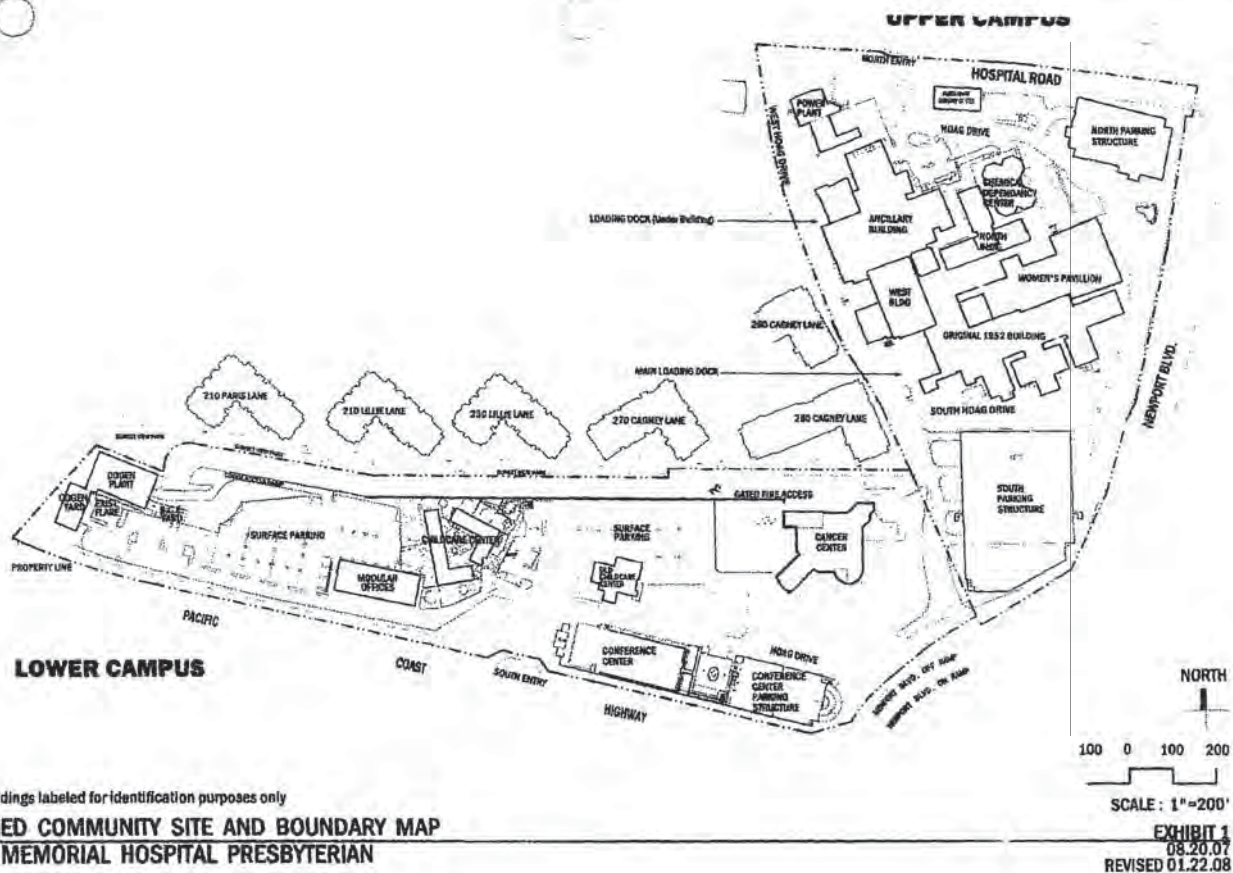
The maximum allowable building area for Hoag Hospital, which encompasses both the Lower Campus and the Upper Campus, is 1,343,238 square feet. Each Campus is also subject to a maximum allowable building area limit: the maximum allowable building area for the Upper Campus is 990,349 square feet; the maximum allowable building area for the Lower Campus is 577,889 square feet. Table 1, *Building Area Statistical Analysis*, provides a summary of allowable square footage for both the Upper and Lower Campuses.

Implementation, Program EIR and Subsequent Project Specific Approvals

Hoag has acknowledged that the Environmental Impact Report prepared for the development and implementation of the Hoag Master Plan pursuant to this Planned Community Development Plan is a "Program EIR." The City has prepared and certified two program Environmental Impact Reports - Hoag Hospital Master Plan Final Program EIR (Final EIR No. 142) and a Supplemental EIR for the Master Plan Update (SCH#1991071003). The EIRs analyze the impacts of construction phased over time and, pursuant to CEQA, the City is under a continuing

Hoag Memorial Hospital Presbyterian Planned Community Development Criteria and District Regulations

obligation to analyze Hoag's requests for Project Specific Approvals to ensure the environmental impacts associated with the requests were fully addressed in the EIRs. Subsequent environmental documentation is required if this analysis reveals environmental impacts not fully addressed in the program EIRs, identifies new impacts, or concludes the specific request is not consistent with the project described in the EIRs. Hoag acknowledges the right and obligation of the City and the Coastal Commission or its successor agency to impose additional conditions as the result of the subsequent environmental analysis required by CEQA.



LEGEND



PRIMARY ACCESS (SIGNALIZED)



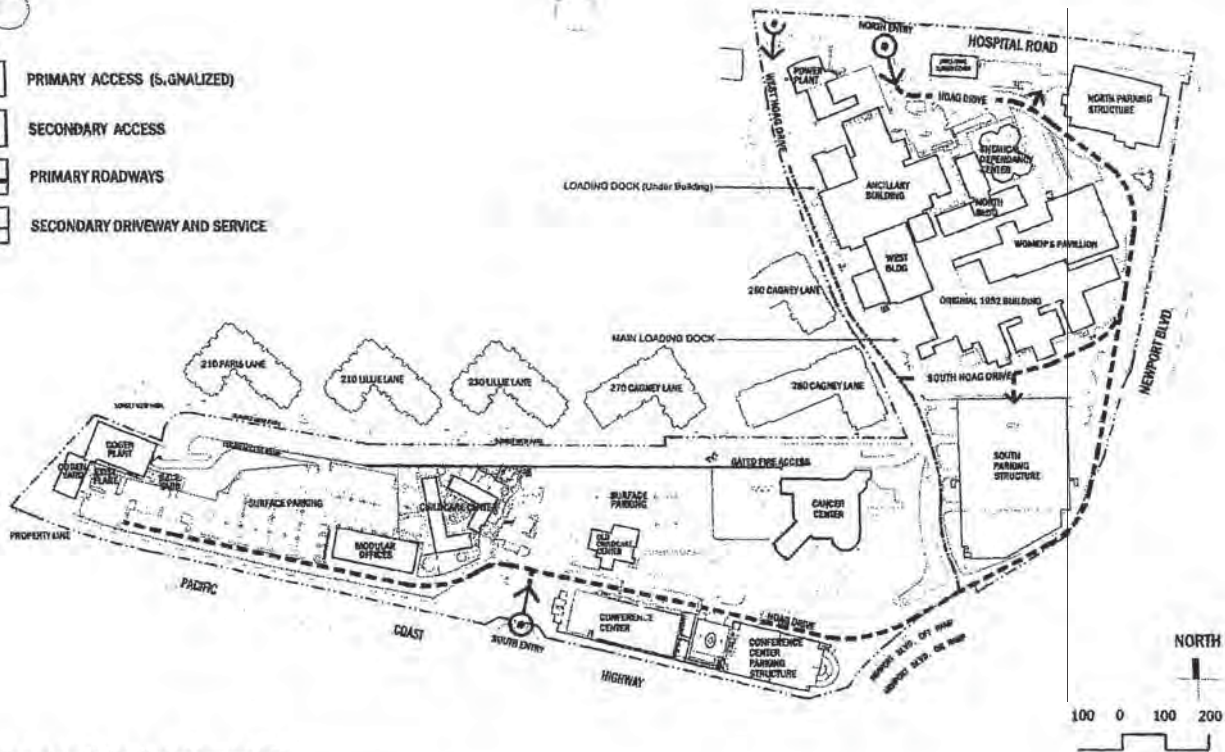
SECONDARY ACCESS



PRIMARY ROADWAYS



SECONDARY DRIVEWAY AND SERVICE



Note: Buildings labeled for identification purposes only

VEHICULAR ACCESS

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

EXHIBIT 2
08.20.07
REVISED 01.22.08

TABLE 1

BUILDING AREA STATISTICAL ANALYSIS

**TOTAL OF LOWER CAMPUS & UPPER CAMPUS BUILDING AREAS -
MAXIMUM ALLOWABLE: 1,343,238 SQUARE-FEET**

	Site Area	Allowable Building Area	Existing ¹	Net Remaining	Maximum Allowable
UPPER CAMPUS	765,349 sq. ft.	765,349 sq. ft.	698,121 sq. ft.	67,228 sq. ft.	990,349 sq. ft. ²
LOWER CAMPUS	862,815 sq. ft.	577,889 sq. ft.	188,149 sq. ft.	389,740 sq. ft.	577,889 sq. ft.
TOTALS	1,618,164 sq. ft.	1,343,238 sq. ft.	886,270 sq. ft.	456,968 sq. ft.	1,343,238 sq. ft. ³

¹ As of the date of adoption.

² Up to 225,000 square-feet can be transferred from the Lower to the Upper Campus

³ Demolition of some existing structures on the Upper Campus will occur to ensure maximum square-feet will not exceed 1,343,238 square-feet

V. DISTRICT REGULATIONS

The following regulations apply to all development within the Hoag Hospital Planned Community. The individual uses listed under the five permitted use categories are not an exhaustive list. Other hospital-related uses which fit into the five (5) permitted use categories are allowed. Prior to the issuance of a building permit, plot plans, elevations and any other such documents deemed necessary by the Planning, Building, Public Works, and Fire Departments shall be submitted for the review and approval of the Planning, Building, Public Works, and Fire Departments.

A. Permitted Uses

1. Lower Campus

a. Hospital facilities, including, but not limited to:

(1) Outpatient services:

- (a) Antepartum Testing
- (b) Cancer Center
- (c) Skilled Nursing
- (d) Rehabilitation
- (e) Surgery Center
- (f) Clinical Center
- (g) Day Hospital
- (h) Back and Neck Center
- (i) Biofeedback
- (j) Breast Imaging Center
- (k) Dialysis
- (l) EEG/EMG/NICE Laboratory
- (m) First Aid Center
- (n) Fertility Services
- (o) G.I. Laboratory
- (p) Magnetic Resonance Imaging
- (q) Neurology
- (r) Nuclear Medicine
- (s) Occupational Therapy
- (t) Pediatrics
- (u) Pharmacy
- (v) Physical Therapy
- (w) Pulmonary Services
- (x) Radiation Therapy
- (y) Respiratory Therapy
- (z) Sleep Disorder Center
- (aa) Speech Therapy
- (bb) Ultrasound
- (cc) Urgent Care

- (2) Administration:
 - (a) Admitting
 - (b) Auxiliary Office
 - (c) Business Offices
 - (d) Information Desk
 - (e) Registration
 - (f) Patient Relations
 - (g) Social Services
- (3) Support Services:
 - (a) Employee Child Care
 - (b) Health Education
 - (c) Power/Mechanical/Auxiliary Support and Storage
 - (d) Food Services
 - (e) Cashier
 - (f) Chapel/Chaplaincy Service
 - (g) Conference Center
 - (h) Dietitian
 - (i) Gift Shop
 - (j) Laboratory
 - (k) Medical Library
 - (l) Medical Records
 - (m) Pharmacy
 - (n) Parking Facilities⁴
 - (o) Engineering/Maintenance
 - (p) Shipping/Receiving
 - (q) Microwave, Satellite, and Other Communication Facilities
- (4) Residential Care:
 - (a) Substance Abuse
 - (b) Mental Health Services
 - (c) Extended Care
 - (d) Hospice Care
 - (e) Self or Minimal Care
 - (f) Congregate Care
- (5) Medical/Support Offices

⁴ Parking structures or decks do not count toward square-footage

Hoag Memorial Hospital Presbyterian Planned Community Development Criteria and District Regulations

- b. Methane gas flare burner, collection wells and associated system components.
- c. Accessory uses normally incidental to hospital development.
- d. Temporary structures and uses, including modular buildings.

2. Upper Campus

- a. Hospital facilities, including, but not limited to:
 - (1) Inpatient uses including, but not limited to:
 - (a) Critical Care
 - (b) Emergency Department
 - (c) Birthing Suites
 - (d) Cardiology
 - (e) Cardiac Care Unit
 - (f) Intensive Care Unit
 - (g) Mother/Baby Unit
 - (h) Surgery
 - (i) Laboratory
 - (j) Pharmacy
 - (k) Patient Beds
 - (2) Outpatient services as allowed on the Lower Campus
 - (3) Administrative uses as allowed on the Lower Campus
 - (4) Support services as allowed on the Lower Campus
 - (5) Residential care as allowed on the Lower Campus
 - (6) Heliport (subject to Conditional Use Permit)⁵
- b. Accessory uses normally incidental to hospital development.
- c. Temporary structures and uses, including modular buildings.

⁵ Does not count toward square-footage

B. Prohibited Uses

1. Lower Campus
 - a. Emergency Room
 - b. Heliport
 - c. Conversion of mechanical or structural spaces to uses that allow general or routine occupancy
2. Upper Campus
 - a. Conversion of mechanical or structural spaces to uses that allow general or routine occupancy

C. Maximum Building Height

The maximum building height of all buildings shall be in accordance with Exhibit 3, *Development Criteria Plan*, which establishes the following height zones:

1. Upper Campus Tower Zone - maximum building height not to exceed the existing tower which is two-hundred thirty-five (235) feet above mean sea level.
2. Upper Campus Mid-rise Zone - maximum building height not to exceed one-hundred forty (140) feet above mean sea level.
3. Upper Campus Parking Zone - maximum building height not to exceed eighty (80) feet above mean sea level, exclusive of elevator towers.
4. Lower Campus Zone, Sub-Areas A, B, C, F and G - within each sub-area no building shall exceed the height of the existing slope and conform to the range of maximum building heights indicated by the development criteria shown on Exhibit 3.
5. Lower Campus Zone, Sub-Areas D and E - maximum building height shall not exceed the height of the existing Hoag Cancer Center which is fifty-seven and one-half (57.5) feet above mean sea level.



REVISÉ 01.22.08

D. Building Setbacks

Setbacks for the Hoag Hospital Planned Community are shown on Exhibit 3.

1. Setbacks will be provided along property boundaries adjacent to the Villa Balboa condominiums, as defined below:
 - a. Upper Campus western boundary setback shall be the prolongation of the westerly edge of the existing cafeteria/laboratory building to the points of intersection with the easterly curb line of the existing service drive, then continuing along said line of the existing service drive.
 - b. Lower Campus northern boundary, all of which will have a 20-foot minimum building setback.

2. The setback on West Coast Highway easterly of the hospital entry signal shall be fifteen (15) feet.

In addition, vertical articulation shall be required for buildings easterly of the signal within one-hundred fifty (150) feet of the West Coast Highway frontage, as follows:

1st Floor: Up to eighteen (18) feet in height no additional articulation is required. If the 1st floor exceeds eighteen (18) feet in height, it shall be subject to the articulation requirements of the 2nd Floor.

2nd Floor, up to thirty-two (32) feet in height: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 2nd floor setback of twenty (20) feet.

3rd Floor and above: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 3rd floor and above setback of twenty-five (25) feet.

The setback on West Coast Highway westerly of the hospital entry signal shall be forty-five (45) feet.

In addition, vertical articulation shall be required for buildings westerly of the signal for buildings within one-hundred fifty (150) feet of the West Coast Highway frontage, as follows:

1st Floor: Up to eighteen (18) feet in height no additional articulation is required. If the 1st floor exceeds eighteen (18) feet in height, it shall be subject to the articulation requirements of the 2nd Floor.

2nd Floor, up to thirty-two (32) feet in height: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 2nd floor setback of fifty-five (55) feet.

3rd Floor and above: A minimum of 20% of the building frontage shall be articulated in such a manner as to result in an average 3rd floor and above setback of sixty-five (65) feet.

In order to avoid any future structures in this area (within 150 feet of West Coast Highway) from presenting an unacceptable linear mass, no single structure shall be greater than two-hundred fifty (250) linear feet in width. Additionally, 20% of the linear frontage within one-hundred fifty (150) feet of West Coast Highway shall be open and unoccupied by buildings.

10% of the linear length of Height Zones A and B as viewed from the existing bicycle/pedestrian trail, exclusive of that area adjacent to the consolidated portion of the view park, shall be maintained as view corridors between buildings.

These requirements may be altered for individual buildings, if requested by the hospital, through the site plan review process defined in Section IX.

3. There will be no building setbacks along the westerly boundary of the Lower Campus (adjacent to the municipal parking lot at Superior and West Coast Highway).
4. A twenty (20) foot setback from property line shall be provided along Newport Boulevard from Hospital Road to a point six-hundred (600) feet south; a twenty-five (25) foot setback from property line shall be provided along the remainder of Newport Boulevard and along the Newport Boulevard/West Coast Highway Interchange.
5. A ten (10) foot building setback from the property line shall be provided along Hospital Road.

E. Lighting

The lighting systems shall be designed and maintained in such a manner as to shield the light source and to minimize light spillage and glare to the adjacent residential uses. The plans shall be prepared and signed by a licensed Electrical Engineer.

F. Roof Treatment

Prior to the issuance of building permits, the project sponsor shall submit plans which illustrate that major mechanical equipment will not be located on the roof of any structure on the Lower Campus. Minor rooftop equipment, necessary for operating purposes, will comply with all building height criteria, and shall be designed and screened to blend into the building roof using materials compatible with roofing materials.

G. Signs

All signs shall be as specified under the Hoag Hospital Sign Program, Part VI.

H. Parking

All parking shall be as specified in Part VII, Hoag Hospital Parking Regulations.

I. Landscape

All landscaping shall be as specified in the Hoag Hospital Landscape Regulations, Part VIII.

J. Mechanical and Trash Areas

Prior to issuance of a building permit, the project sponsor shall submit plans to the City Planning Department which illustrate that all mechanical equipment and trash areas will be screened from public streets and immediately adjacent residential properties.

K. West Hoag Drive Circulation Limitations

The project sponsor shall continue to limit the use of that portion of West Hoag Drive adjacent to residential uses located on the Upper Campus. Deliveries to loading areas shall not occur after 8:00 PM or before 7:00 AM daily. The project sponsor shall physically restrict access to the roadway between these hours and appropriate signage indicating permitted delivery hours and access limitations shall be installed and maintained at all times. Night time deliveries and vehicular access to the loading area located along West Hoag Drive are allowed where critical supplies, services or materials are necessary for the continued operation of the hospital.

L. Loading Dock

The project sponsor shall provide a sound wall along West Hoag Drive as shown in the approximate location on Exhibit 4. Said wall shall be installed within 12 months of project approval, subject to issuance of required permits. To the maximum degree feasible, the sound wall shall be constructed to retain existing vegetation, which serves as a visual screen. Please refer to Section VIII, D. for additional landscaping requirements related to the sound wall. Mitigation measures to reduce the noise levels in the Loading Dock Area shall be incorporated into the design and operations of the hospital; such mitigation shall include relocation of the trash compactor and baler, limiting the hours of truck deliveries to the loading dock area, and enclosure of the trash compactor.

M. Noise Standards

Noise generated at the Hoag Hospital property shall be governed by the City of Newport Beach Noise Ordinance, except as noted below for the Loading Dock Area. Refer to Exhibit 5, *Loading Dock Area Location*, for the location.

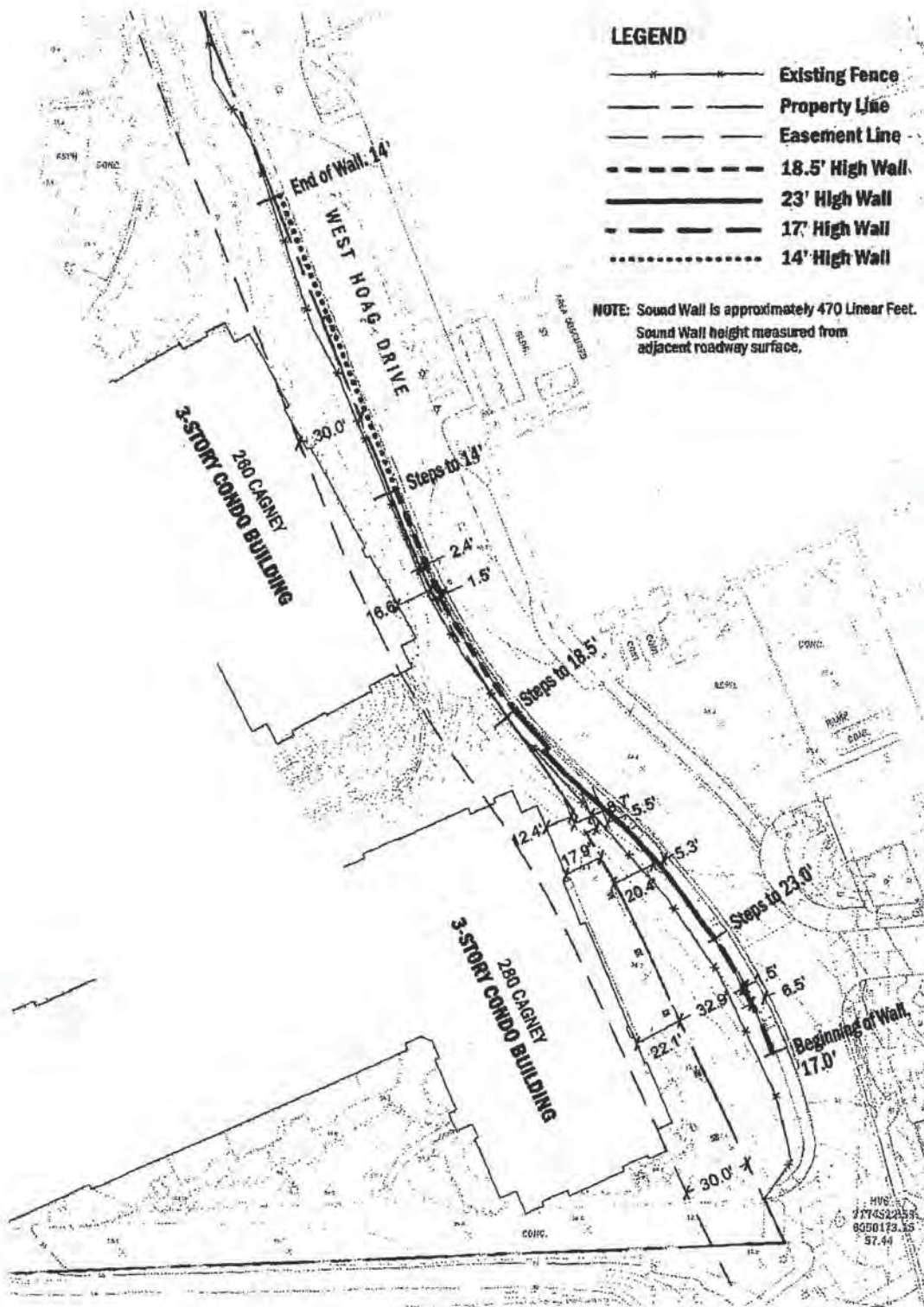
1. The applicable noise standard at the Hoag Hospital property line adjacent to the Loading Dock Area shall be as follows:

	<u>7 AM – 10 PM</u>	<u>10 PM – 7 AM</u>
	Daytime	Nighttime
Leq (15 min)	65 dBA	55 dBA

2. Within the Loading Dock Area during daytime hours, vehicles shall be exempt from applicable noise standards as listed above.

Vehicle idling shall be prohibited on West Hoag Drive and within the loading dock areas, except that refrigerated vehicles may idle while at the loading docks when refrigeration is necessary.

In addition, the grease pit cleaning which is exempt from the City Noise Ordinance as a maintenance activity shall occur on a Saturday between the hours of 11:00 AM and 3:00 PM.



LEGEND

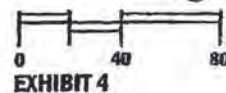
- Existing Fence
- - - Property Line
- - - Easement Line
- - - 18.5' High Wall
- 23' High Wall
- - - 17' High Wall
- 14' High Wall

NOTE: Sound Wall is approximately 470 Linear Feet.
Sound Wall height measured from adjacent roadway surface.

SOUND WALL LOCATION PLAN

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

April 3, 2008



VI. HOAG HOSPITAL SIGN PROGRAM

A. Purpose and Intent

1. The purpose of this Sign Program is to provide adequate, consistent and aesthetically pleasing on-building wall and ground-mounted signage based upon the provisions set forth by the City of Newport Beach Sign Ordinance and the information signage requirements of Hoag Hospital.
2. The intent of this Sign Program is to produce uniform standards for Hoag Hospital.

B. General Sign Standards

1. All signs visible at the exterior of any building or facility of the Hospital, ground-mounted or on-building, may be illuminated or non-illuminated, depending upon need. Illumination method may be by external or internal source. No sign shall be constructed or installed to rotate, gyrate, blink or move, or create the illusion of motion, in any fashion.
2. All signs attached to building or facility exteriors shall be mounted as is appropriate to the architectural design features of said building or facility.
3. All signs together with the entirety of their supports, braces, guys, anchors, attachments and decor shall be properly maintained, legible, functional and safe with regard to appearance, structural integrity and electrical service.
4. All street signs shall be subject to review and approval of the City Traffic Engineer, and shall be in compliance with Ordinance 110-L.
5. For purposes of this section, a building shall be defined as any occupied structure or any occupied portion of a structure that is constructed as an addition to an existing structure and identified as a separate building for way finding purposes. Individual building numbers uniquely define the buildings on the Hoag campus.

C. Number of Signs Allowed

1. One (1) double-faced primary identification ground-mounted sign or two (2) single-faced gateway entry signs shall be allowed per street frontage. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Total maximum signage area shall not exceed two hundred (200) square feet and shall not exceed ten (10) feet in height per sign and street frontage. This sign may occur as a wall sign, to be located upon a project

boundary perimeter wall, subject to the same number and area maximums described above. This sign may also occur as part of an entry gateway system.

2. Primary entrance identification shall be allowed at the main entrance to the facility and at the main entrance to the Emergency Department. If freestanding, this sign type shall not exceed a maximum height of eight (8) feet average height above finished grade. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Maximum sign area shall not exceed seventy (70) square feet.
3. Secondary building and entrance identification signs shall be allowed. If freestanding, this sign type shall not exceed a maximum height of nine (9) feet average height above finished grade. In the case of a sign occurring upon a slope, the average height shall be established by measuring the sign height at the mid-point of the sign length perpendicular to the slope direction. Maximum sign area shall not exceed fifty (50) square feet whether freestanding or wall-mounted.
4. Vehicular and pedestrian directional signs shall be allowed. This sign type may occur as a single-faced, double-faced, or triple-faced sign. The sign shall be sized to allow for proper readability given the number of lines of copy, speed of traffic, setback off the road and viewing distance. This sign type shall not exceed a maximum height of eleven (11) feet average height above finished grade.
5. Donor recognition signage shall be allowed, one (1) at each building elevation. Maximum sign area shall not exceed one hundred seventy-five (175) square feet for donor recognition signage.
6. Hospital identification signs shall be allowed upon hospital towers, one (1) at each elevation. The maximum sign area shall not exceed two hundred seventy-five (275) square feet. Any hospital identification signage on the elevation facing west (Villa Balboa property line) may not be illuminated.
7. On the Lower Campus, two (2) building-mounted identification signs will be allowed per structure and shall not be placed so as to directly face the Villa Balboa property. Such signs shall adhere to the requirements above for secondary building and entrance identification signage and shall be no higher than the roof line of the building upon which they are mounted.
8. Each public parking structure shall be allowed one (1) identification sign above each entrance and exit of the structure. The maximum sign area of each identification sign shall not exceed thirty (30) square feet. Adjacent regulatory parking signage does not count toward the maximum sign area.

VII. HOAG HOSPITAL PARKING REGULATIONS

A. General

1. Off-street parking for Hoag Hospital shall be provided on-site. Parking may be on surface lots, subterranean or in parking structures.
2. The design and layout of all parking areas shall be subject to the review and approval of the City Traffic Engineer and the Public Works Department.
3. Parking lot lighting shall be developed in accordance with City standards and shall be designed in a manner which minimizes impacts on adjacent land uses. Nighttime lighting shall be limited to that necessary for security and shielded down from any adjacent residential area. The plans shall be prepared and signed by a licensed electrical engineer, with a letter from the engineer stating that the requirements have been met. The lighting plan shall be subject to review and approval of the City Planning Department.

B. Requirements for Off-Street Parking

Parking requirements for specific sites shall be based upon the parking criteria established in Table 2.

2. All parking shall be determined based upon the area allocated to the use categories.

TABLE 2

PARKING REQUIREMENTS

<u>Use Category</u>	<u>Parking Requirements</u>
Outpatient Services	2.31 spaces/1,000 square feet (1)
Support	0.0 spaces/1,000 square feet (1)(2)
Administrative	5.3 spaces/1,000 square feet (1)
Residential Care	1.0 spaces/1,000 square feet (3)
Medical Offices	4.0 spaces/1,000 square feet (3)
Inpatient	2.35 spaces/1,000 square feet (1)

- (1) Parking factor based on parking analysis prepared by Linscott, Law & Greenspan dated October 15, 2001 for Traffic Study 2001-002 approved by Planning Commission Resolution No. 1542.
- (2) Support Services generates parking demand that is accounted for in one of the other categories.
- (3) Parking requirements based upon a study prepared by LSA Associates dated September 27, 1991.

VIII. HOAG HOSPITAL LANDSCAPE REGULATIONS

A. General

1. Detailed landscape and irrigation plans, prepared by a registered Architect or under the direction of a Landscape Architect, shall be reviewed by the City prior to issuance of a Certificate of Use and Occupancy. The Landscape Plan shall include a concept for rooftop parking and parking structures if proposed for the Lower Campus. Trees shall not be used, however planter boxes, green roof treatments or trellis systems shall be designed to provide added visual relief of rooftop parking or parking structures. All rooftop or top of parking structure landscaping proposals shall conform to the building height limits established in this text.
2. Parking lot trees shall be no less than twenty-four (24) inch box size.
3. Shrubs to be planted in containers shall not be less than five (5) gallon size. Ground covers will be planted from one (1) gallon containers or from rooted cuttings.
4. Every effort should be made to avoid using plants with invasive and shallow root systems.
5. Earth berms shall be rounded and natural in character, designed to obscure automobiles and to add interest to the site. Wheel stops shall be so placed as necessary to avoid damage to trees, irrigation systems, shrubs and other planting materials.
6. Trees in parking lots should be limited in variety. Selection should be repeated to give continuity. Regular spacing or the introduction of irregular groupings may also be considered to add interest and variety. Care should be exercised to allow plants to grow and maintain their mature size without restriction.
7. Emphasis shall be placed on the use of native, drought-tolerant, non-invasive plants on the Lower Campus. On the Upper Campus, naturalized vegetation selections, as well as those plants allowed on the Lower Campus, will be emphasized. Automatically controlled irrigation systems shall be designed to avoid surface runoff and over-watering.
8. Installation and maintenance of landscape, screening and irrigation systems per Exhibit #6, Exhibit #7 and Exhibit #8. All improvements shall be shown on landscape and irrigation plans to be reviewed and approved by the Planning Department and which shall be in substantial compliance with the Exhibits #6, #7 and #8. Hoag shall complete all of the improvements within the timelines set forth in Exhibit #6.

B. Maintenance

1. All planting areas are to be kept free of weeds and debris and cultivated as necessary to maintain.
2. Lawn and ground cover areas are to be kept trimmed and/or mowed regularly.
3. All plantings are to be kept in a healthy and growing condition. Fertilization, cultivation and tree pruning are to be carried out as part of a regularly scheduled annual maintenance program.
4. Irrigation systems are to be kept in good working condition at all times. On-going monitoring, adjustments and cleaning of systems are to be part of regular maintenance procedures.
5. Stakes, guys and tree ties on trees should be checked regularly for correct function; ties shall be adjusted to avoid creating abrasions or girdling of branches or central leaders.
6. Damage to plantings created by vandalism, automobile or acts of nature shall be corrected within thirty (30) days.
7. Plantings and irrigation are to be maintained in accordance with the approved plans.

C. Special Landscaped Street

West Coast Highway is designated in the Hoag Hospital Planned Community as a special landscaped street. A fifteen (15) foot building setback from right-of-way/property line is required along West Coast Highway. Only driveways, parking and signage structures are allowed in the setback areas. Parking areas shall be screened from view of West Coast Highway with landscaped berms.

Landscaping along West Coast Highway shall consist of trees, ground cover and shrubbery. All unpaved areas not utilized for parking or circulation shall be landscaped in a similar manner. Installed trees are to be no smaller than twenty-four (24) inch box.

D. Villa Balboa Landscape Zone

The area between the Hoag property line and the sound wall will be referred to as the Villa Balboa Landscape Zone. This portion of the Hoag Hospital property will have a specific landscape process to ensure consultation with Villa Balboa on the planting and maintenance of the area. Existing landscaping on Villa Balboa's side of the wall shall be preserved to the extent feasible or replaced with specimen plant material as designated on a plan to be approved by the Planning Director after consultation with the Villa Balboa Community Association. The plan

shall also include sufficient additional landscaping to screen or soften the soundwall required pursuant to Section V.L. Hoag shall maintain all landscaping on Hoag's property and to the extent new plant material is installed as a result of wall construction by Hoag on the Villa Balboa property adjacent to the Villa Balboa Landscape Zone (with their permission), Hoag shall maintain such new plant material on Villa Balboa's property for a period of two years after installation to ensure healthy growth. All landscape installation shall occur within 45 days of the completion of the wall or earlier. Any future modifications made to said wall and landscaping shall be reviewed and approved by the Planning Director.

E. Parking Areas

A minimum of 5% of the surface parking areas shall be devoted to planting areas. Planting areas around building shall not be included in parking area landscape calculations. Planting of trees may be in groups and need not be regularly spaced. Alternative landscape programs may be developed, including perimeter parking area landscaping, berming and depressing of parking areas to provide additional screening. Alternative landscape programs shall be subject to the review of the Newport Beach Planning Department.

A rooftop landscaping program shall be developed for parking structures and rooftop parking proposed for the Lower Campus and shall be subject to the review and the approval of the Newport Beach Planning Department.

IX. SITE PLAN REVIEW

A. Purpose

The Council finds that development on the Lower Campus of Hoag Hospital may have the potential to affect the aesthetics of the community. The effect of this section is to establish a Site Plan Review requirement for certain individual projects - to insure that these projects conform with the goals and policies of the General Plan, provisions of this Planned Community Development Plan, the Development Agreement and the standards set forth below in sub-section F. The following classifications of projects are subject to the Site Plan Review:

Planning Commission review:

1. Any project that differs from setback, horizontal and vertical articulation requirements as set forth in Section V.D.2.

Planning Director's review:

1. Any project that could have the potential to generate emissions that could have an impact to visual resources.
2. Any project that could have the potential to generate emissions creating objectionable odors or other impacts to air quality.
3. Replacement of existing cooling towers, ~~except for casualty.~~

B. Findings

The City finds, determines and declares that the establishment of Site Plan Review procedures contained in this section promotes the health, safety, and general welfare of the community by ensuring that the development of Hoag Hospital proceeds in a manner which will not result in inadequate and poorly planned landscape areas, excessive building bulk on arterial roadways, inappropriate placement of structures and impairment of the benefits of occupancy and use of existing properties in the area.

C. Application

Site Plan Review approval shall be obtained for any new structure or the addition to an existing structure, as outlined in Section IX.A above, prior to the issuance of a grading or building permit or issuance of an approval in concept for Coastal Commission or Office of Statewide Health Planning and Development review.

D. Plans and Diagrams to be Submitted

The following plans and diagrams shall be submitted to the Planning Commission for approval:

1. A plot plan, drawn to scale, showing the arrangement of buildings, driveways, pedestrian ways, off-street parking and off-street loading areas, landscaped areas, signs, fences and walks. The plot plan shall show the location of entrances and exits, and the direction of traffic flow into and out of off-street parking and loading areas, the location of each parking space and loading space, and areas for turning and maneuvering vehicles. The plot plan shall indicate how utility and drainage are to be provided.
2. A landscape plan, drawn to scale, showing the locations of existing trees (proposed to be removed and proposed to be retained); and indicating the amount, type, and location of any landscaped areas, planting beds and plant materials with adequate provisions for automatic irrigation.
3. Grading plans when necessary to ensure development properly related to the site and to surrounding properties and structures.
4. Scale drawings of exterior lighting showing size, location, materials, intensity and relationship to adjacent streets and properties.
5. Architectural drawings, renderings or sketches, drawn to scale, showing all elevations of the proposed buildings and structures as they will appear upon completion.
6. Any other plans, diagrams, drawings or additional information necessary to adequately consider the proposed development and to determine compliance with the purposes of this chapter.

E. Fee

The applicant shall pay a fee as established by Resolution of the City Council to the City with each application for Site Plan Review under this chapter.

F. Standards

In addition to the general purposes set forth in sub-section A, in order to carry out the purposes of this chapter as established by said section, the Site Plan Review procedures established by this Section shall be applied according to and in compliance with the following standards, when applicable:

1. The development is in compliance with all other provisions of the Planned Community Development Criteria and District Regulations (P-C Text);
2. Development shall be compatible with the character of the neighborhood and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;
3. Development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special

consideration given to the mass and bulk of buildings and the streetscape on West Coast Highway;

4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.
5. Potential impacts shall be mitigated to less than significant levels.

G. Public Hearing - Required Notice

A public hearing shall be held on all Site Plan Review applications. Notice of such hearing shall be mailed not less than ten (10) days before the hearing date, postage prepaid, using addresses from the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses, to owners of property within a radius of three hundred (300) feet of the exterior boundaries of the subject property. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this Section. In addition to the mailed notice, such hearing shall be posted in not less than two (2) conspicuous places on or close to the property at least ten (10) days prior to the hearing.

H. Action by the Planning Director

If all applicable standards established by this Section are met, the Planning Director shall approve the development. Conditions may be applied when the proposed development does not comply with applicable standards and shall be such as to bring said development into conformity.

If the development is disapproved, the Director shall specify the standard or standards that are not met.

A Site Plan Review decision of the Planning Director shall be subject to review by the Planning Commission either by appeal, or upon its own motion, or upon the request of the Planning Director. The action of the Planning Director on any Site Plan Review shall be final and effective twenty-one (21) days following the Director's action thereon unless, within the twenty-one (21) day appeal period an appeal in writing has been filed by the applicant, or any other person, the Planning Director has requested a review of its decision, or unless the Planning Commission, not more than twenty-one (21) days after the Director's action, on its own motion, elects to review and act on the action of the Director, unless the applicant consents to an extension of time. The Planning Commission may affirm, reverse or modify the decision. Such action by the Planning Commission shall be final, unless subsequently appealed or reviewed.

I. Action by the Planning Commission

If all applicable standards established by this Section are met, the Planning Commission shall approve the development. Conditions may be applied when the proposed development does not comply with applicable standards and shall be such as to bring said development into conformity.

If the development is disapproved, the Commission shall specify the standard or standards that are not met.

A Site Plan Review decision of the Planning Commission shall be subject to review by the City Council either by appeal, or upon its own motion, or upon the request of the Commission. The action of the Commission on any Site Plan Review shall be final and effective twenty-one (21) days following the Commission action thereon unless, within the twenty-one (21) day appeal period an appeal in writing has been filed by the applicant, or any other person, the Commission has requested a review of its decision, or unless the City Council, not more than twenty-one (21) days after the Commission action, on its own motion, elects to review and act on the action of the Commission, unless the applicant consents to an extension of time. The City Council may affirm, reverse or modify the decision. Such action by the City Council shall be final.

J. Appeal to the City Council

Any Site Plan Review decision of the Commission may be appealed to the City Council by the applicant or any other person, at any time within twenty-one (21) days after the date of the Commission decision. An appeal to the City Council shall be taken by filing a letter of appeal in duplicate, with the Planning Department. Such letter shall set forth the grounds upon which the appeal is based and shall be accompanied by a fee as established by Resolution of the City Council.

K. Action by the City Council

An appeal shall be heard and acted on by the City Council within sixty (60) days of filing a letter of appeal, and the City Council may affirm, reverse or modify the decision of the Commission. The decision of the City Council is final.

L. Expiration and Revocation of Site Plan Review Approvals

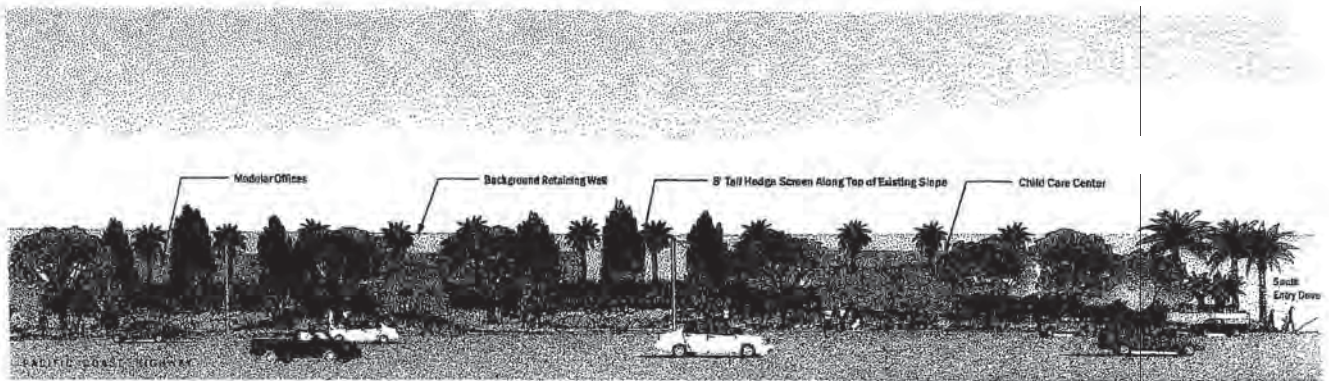
1. Expiration. Any Site Plan Review granted in accordance with the terms of this Title shall expire within twenty-four (24) months from the date of approval if a building permit has not been issued prior to the expiration date and subsequently construction is diligently pursued until completion, unless at the time of approval the Planning Commission has specified a different period of time.
2. Violation of Terms. Any Site Plan Review granted in accordance with the terms of this Title may be revoked if any of the conditions or terms of such Site Plan Review are violated or if any law or ordinance is violated in connection therewith.
3. Hearing. The Planning Commission shall hold a hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within sixty (60) days after receipt of the recommendation of the Planning Commission.

LANDSCAPE MATERIALS

HOAG HOSPITAL LOWER CAMPUS

Location	Area	Description	Landscape Element	Schedule	Government/Agency Status	Anticipated Outcome / Effect
Hoag Lower Campus	Area 1 - Co Gen	Additional tree planting per community request	Add 5, 40" box evergreen screen trees and new irrigation	Nov 2007 installed	Project completed	Screen/soften view of west end of Co Gen Building From FCH
	Area 2 - Co Gen	Additional tree planting per community request	Add 3, 40" box evergreen screen trees and new irrigation	To commence May 2008 Install completion July 2008	Coastal Comm. Approved 2008	Added screening of Co Gen Plaza
	Area 3 - Co Gen	Add green screen lattice per community request	Attach metal green screen lattice structure to cover east building elevation	To commence May 2008 Install completion July 2008	Coastal Comm. Approved 2008	Screen/soften specific view of Co Gen Building
	Area 4 - Co Gen	Plant flowering vines to cover green screen	Plant flowering vines to cover green screen	To commence May 2008 Install completion July 2008	Coastal Comm. Approved 2008	Screen/soften specific view of Co Gen Building
	Area 5 - Co Gen	Clean up and regrade area with added shrub and groundcover planting	Additional shrub, groundcover and new irrigation system added upon completion of wall project.	Nov 2007 installed	Project completed	Added visual quality and erosion control
	Area 6 - Co Gen	Tree shrub and groundcover planting	24 trees, shrub and groundcover plantings and new water conserving irrigation system	Nov 2007 installed	Project completed	Added campus visual quality screening and erosion control
	Area 7 - Co Gen	Tree shrub and groundcover planting	6, 24" box evergreen screen trees	Nov 2007 installed	Project completed	Screen and soften views of retaining wall
	Area 8 - Co Gen	Tree shrub and groundcover planting	12, 36" box flowering trees and 4 ft. palm trees and irrigation system at end islands	Nov 2007 installed	Project completed	Soften views of open parking lot areas increased shade and visual separation to parking area
Hoag Lower Campus	Area 9 - Co Gen	Tree shrub and groundcover planting	Install 22, 36" box flowering trees and 3 ft. palm trees	Installed no later than Dec 2009	Installation shall commence no later than 90 days of COP issuance by the Coastal Comm.	Soften views of open parking lot areas and increase shade and visual enhancement to parking area.
	Area 10 - Co Gen	Flowering bougainvillea shrub planting	550, bougainvillea shrubs planted as part of Lower Campus Wall Project	Nov 2007 installed	Project completed	Colorful edge definition and softening of views along top of retaining wall
	Area 11 - Co Gen	Regrade area and tree shrub and groundcover planting	Shrub, groundcover, fencing and new irrigation system	Installed no later than Dec 2009	Installation shall commence no later than 120 days of COP issuance by the Coastal Comm.	Enhanced overall campus visual quality, safety and erosion control
	Area 12 - Co Gen	Additional tree shrub & groundcover planting	17 trees, shrub and groundcover and new irrigation system	Dec 2007 installed	Project completed	Added Visual Quality, Parking area screening and building drop off and entry area definition
Hoag Lower Campus	Area 13 - Co Gen	Replace tree, shrub and groundcover and enhance planting area	Trees, shrub & groundcover and new irrigation system	Installation schedule Dec 2009	Pending city approval in concept and Coastal Comm. Approval	Improve & unify campus planting character along FCH frontage after utilities installed
	Area 14 - Co Gen	Additional palm screen and tree/shrub planting	Install approx. 670 linear feet of palm screen along FCH frontage	Installed no later than Dec 2009	Immediately upon issuance of an Approval in Concept (AIC) by the City of Newport Beach an application shall be submitted for said improvements to the Coastal Comm. Construction of said improvements shall be completed no later than 18 months after COP issuance by the Coastal Comm.	Screen view of west parking lot from FCH
	Area 15 - Co Gen	Temporary native hydroseeded groundcover planting	Add coastal wild flower and grass Hydroseeded planting until permanent parking lot with landscape improvements added.	Hydroseeded and irrigated (installed Dec 2007)	Hydroseeded and irrigation completed	Erosion/silt control and enhanced visual quality pending future parking area installation
	Area 16 - Co Gen	Additional tree shrub & groundcover planting	17 trees, shrub and groundcover and new irrigation system	Dec 2007 installed	Project completed	Added Visual Quality, Parking area screening and building drop off and entry area definition
Color Code Indicating Current Project Status						
Green		Indicates current improvements that have been installed per previous approvals				
Yellow		Indicates improvements installed but not part of required permits				
Orange		Indicates improvements in design phase yet to be submitted for city or agency approvals				
Blue		Indicates improvements proposed but not approved for installation				

APHS Ltd. 1/15/08
Revised 4/15/08 for City Council Meeting



PARTIAL ELEVATION - PCH LANDSCAPE SCREEN (DRAFT)

Rabberly-Hayman
ARCHITECTS
P.C.

Hoag Memorial Hospital Presbyterian
Newport Beach, CA

Exhibit 98

33

04/14/2008

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF NEWPORT BEACH) ss.

I, LaVonne M. Harkless, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Ordinance No. 2008-10 as duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 13th day of May 2008, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Henn, Rosansky, Curry, Daigle, Gardner, Mayor Selich

Noes: None

Absent: Webb

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 14th day of May 2008.

(Seal)



LaVonne M. Harkless
City Clerk
City of Newport Beach, California

CERTIFICATE OF PUBLICATION

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF NEWPORT BEACH) ss.

I, LAVONNE M. HARKLESS, City Clerk of the City of Newport Beach, California, do hereby certify that Ordinance No. 2008-10 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in The Daily Pilot, a daily newspaper of general circulation on the following date, to wit: May 17, 2008.

In witness whereof, I have hereunto subscribed my name this _____ day of _____ 2008.

City Clerk
City of Newport Beach, California

EXHIBIT C

LEGAL DESCRIPTION OF PROPERTY

Parcel 1:

That portion of Lots 169 and 170 in Block 2 and a portion of Lot 172 in Block 1 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

Parcel 2:

That portion of Lot 172 of Irvine Subdivision, as shown on a map recorded in Book 1, Page 88 of Miscellaneous Maps, Records of Orange County, California.

EXHIBIT D

LEGAL DEPICTION OF PROPERTY

EXHIBIT F

MELINDA HOAG SMITH CENTER FOR HEALTHY LIVING AGENCY PARTNERS

Melinda Hoag Smith Center for Healthy Living



hoag

Melinda Hoag Smith
Center for Healthy Living

The Melinda Hoag Smith Center for Healthy Living (MHSCHL) is a robust one-stop-shop of interconnected and supportive services that promote health and well-being. The Center houses a wide variety of non-profit partner agencies and the programs that address key issues affecting the health of our community. The Center provides culturally sensitive services and resources that enable prevention, address the root causes of disease and improve health outcomes. Services are offered in English and/or Spanish depending on the program.

There is no fee to become a member of the Center. The membership provides access to a majority of agencies and services, at no cost, however there may be health insurance prerequisites.

For more information or to set an appointment, please call us at 949-764-6551 or stop by for an in person visit.

Hours of Operation:

Monday-Friday 8 a.m. – 7 p.m. | Saturday 8 a.m. – 4 p.m.

Vision

Inspire and empower our community to take control of their own health and wellbeing. Provide culturally sensitive services and resources that enable prevention, address the root causes of disease and improve health outcomes. Offer services that meet the needs of the whole person: mind, body and spirit.

Mission

To work synergistically in a shared location with our partner agencies and community residents to bridge the gaps in services, build capacity and maximize impact in our under-resourced communities.



Partner agencies and programs offered include:

AGENCY	SERVICES PROVIDED
Academy of International Dance	Ballet and hip-hop classes
Art and Creativity 4 Healing	Art workshops designed to aid with stress reduction and to increase coping skills
Be the Change Yoga	Yoga classes for all levels
Big Brothers Big Sisters of OC	Youth mentoring for those 6 -16 years of age
Cancer Kinship	Mentorship, education and support programming for cancer patients in any stage of diagnosis, treatment or remission
Children's Bureau	General needs assessment, case management and linkage to resources Healthy Habits educational series
Children's Health Connection	Provides connections to health services, health screenings and health education along with safety equipment
CHOC PODER (Prevention of Obesity and Diabetes through Education and Resources)	Health and wellness education including nutrition and physical fitness
CIELO - (Community for Innovation, Entrepreneurship, Leadership & Opportunities)	Support and educational workshops related to business and entrepreneurial skills, resume writing, financial and computer literacy
Community Action Partnership	Healthy Couples/Families workshops which focus on enhancing interpersonal skills and problem solving skills
Costa Mesa Family Resource Center	Social, educational and support services for children and families. Services offered in English/Spanish. Collaborative partners: Human Options, Children's Bureau, Girls Inc., Raise Foundation, Help Me Grow, and Strong Families Strong Children.
Council on Aging	English as a Second Language (ESL) classes for adults; Balance and Mobility classes; computer skills classes; HICAP - support & education regarding MediCare benefits
CPR, First Aid Certification	CPR and First Aid Certification for adults
Crime Survivors	Support groups, self-defense classes and resources for victims of crimes
Drumming Circles	Stress reduction drumming circles for adults
Girls Inc.	Afterschool programming for boys & girls: homework support; spring and summer camps; dance classes; Science Technology, Engineering, Arts and Math (STEAM) classes
Help Me Grow OC	Developmental screenings for young children; resources for enhancing child development
Hoag - ASPIRE (After School Program: Intervention and Resiliency Education)	Intensive Outpatient Program (IOP) for 13-17 year olds experiencing mental health difficulties; program guides teens and their families through skills-based training. (Need private health insurance)
Hoag - Case Management	Case management and linkage to resources
Hoag - Health Coaching	Health and wellness coaching
Hoag - Health Ministries	Faith community nursing outreach, seasonal flu clinic and blood pressure clinics
Hoag - Mental Health Center	Short term outpatient counseling services for individuals, couples and/or families Support groups and educational classes English, Spanish and Farsi speaking therapist (Sliding-scale fee)
Hoag - OC Vital Brain Aging Program	Complimentary memory screening for adults over age 45
Hoag - Promotora/Community Health Worker	Support and resources for adults experiencing stress and mental health challenges
Human Options	Domestic violence prevention and intervention services, counseling, parenting classes, PEP (Personal Empowerment Program), support groups
MOMS OC	Preparation for childbirth classes, Mommy & Me classes
NAMI - National Alliance for the Mentally Ill	Support groups and educational classes for family members and caregivers who have a loved one (child or adult) living with mental illness
Olive Crest	Parenting classes
Orange County Department of Child Support Services	Assistance for parents with obtaining, modifying and collecting child support
Orange County Public Health Nursing	Nursing case management, nursing assessment, health education

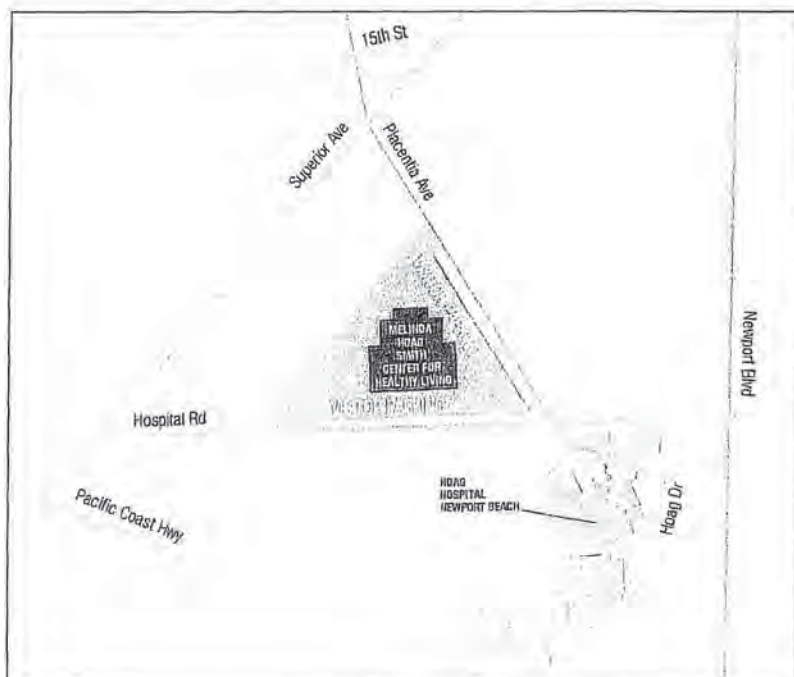
Partner agencies and programs offered include:

AGENCY	SERVICES PROVIDED
Pilates	Pilates classes for adults
Project Youth, OC Bar Foundation	Youth diversion programs – "SHORTSTOP" and "Stop Short of Addiction"; Health and wellness programming for women – "Madres Unidas"
Project Self Sufficiency	Support, mentoring and linkage to resources for single parents enrolled in college
Public Law Center	Civil legal services and individual counseling focusing on family law related matters for low income adults and families
Raise Foundation	Linkage to resources, assistance with applications for government programs: MediCal, CalFresh (food stamps); CalWorks (Cash aid); Volunteer opportunities through: Youth Advisory Council (YAC); Community Engagement Advisory Committee (CEAC)
Second Harvest	Food distribution for families in need (must be an adult to participate)
SOS Children & Family Health Center	Full scope primary care including preventive health care, urgent medical care and chronic disease management (health insurance requirements and/or sliding scale available)
SOS Dr. Robert & Dorothy Beauchamp Child and Family Dental Center	General and specialty dental services for infants to adults
SPIN – Serving People in Need	Housing assistance for families in need, GAPP –guided assistance to permanent placement
Strong Families Strong Children	Team of peer navigators and clinical case managers help provide support, resources, and counseling for active duty or veteran family members
Susan G. Komen OC	Breast health and cancer prevention education, mammogram screenings, survivor support groups
United Way	Tax preparation assistance for low income families
Youth Employment Services	Securing and maintaining employment assistance for 16-24 year olds
Zumba	Zumba classes for adults and Zumbini classes for adult caregivers and young children

Melinda Hoag Smith Center for Healthy Living

307 Placentia Avenue
Newport Beach, CA 92663

On the corner of Placentia and Hospital Road
(across the street from Hoag Hospital).
Entrance to parking lot is off Placentia.



HOAG
Melinda Hoag Smith
Center for Healthy Living

307 Placentia Avenue
Newport Beach, CA 92663
949-764-6551
hoag.org/MHSCHL



NEWPORT BEACH

City Council Staff Report

August 25, 2020
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: Jaime Murillo, Principal Planner, jmurillo@newportbeachca.gov
PHONE: 949-644-3209

TITLE: Ordinance No. 2020-19: Adoption of an Ordinance Amending the Planning & Zoning Code (PA2019-055)

ABSTRACT:

For the City Council's consideration is the adoption of Ordinance No. 2020-19, which amends Title 20 (Planning and Zoning Code) of the Newport Beach Municipal Code (NBMC) to provide code corrections and clarifications related to overlay zoning districts, public hearing notification requirements, and code amendment processing. The attached ordinance was introduced and considered at the July 28, 2020, City Council meeting.

RECOMMENDATION:

- a) Find this project statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 21065 of CEQA and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3) and 15378. The proposed action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment; and
- b) Conduct second reading and adopt Ordinance No. 2020-19, *An Ordinance of the City Council of the City Newport Beach, California, Adopting Code Amendment No. CA2019-001 to Amend Title 20 (Planning and Zoning) of the City of Newport Beach Municipal Code Correcting and Clarifying Provisions Related to Overlays and Public Hearing Notice Requirements (PA2019-055).*

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

On July 28, 2020, the City Council conducted a public hearing and introduced Ordinance No. 2020-17 (Attachment A) amending the Planning and Zoning Code. The proposed amendments are considered minor clean-up items and affect different sections of the City's Planning and Zoning Code. The table on the next page provides an overview of the proposed amendments.

Component of Amendment	Purpose
Overlay districts	Clarify overlay districts that may be less restrictive than base zone
Notice of public hearing	Clarify noticing requirements when large number of properties affected is consistent with State law
Code amendment processing	Clarify procedural requirements for processing Zoning Code amendments

ENVIRONMENTAL REVIEW:

The action proposed herein is not a project subject to CEQA in accordance with Section 21065 of CEQA and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3) and 15378. The proposed action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment. Lastly, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program. The Amendments themselves do not authorize development that would directly result in physical change to 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 – Ordinance No. 2020-19

ATTACHMENT A

ORDINANCE NO. 2020-19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADOPTING CODE AMENDMENT NO. CA2019-001 TO AMEND TITLE 20 (PLANNING AND ZONING) OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE CORRECTING AND CLARIFYING PROVISIONS RELATED TO OVERLAYS AND PUBLIC HEARING NOTICE REQUIREMENTS (PA2019-055)

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

WHEREAS, an amendment to Title 20 (Planning and Zoning) of the Newport Beach Municipal Code ("NBMC") is necessary to provide clarification and corrections related to overlays and public hearing notice requirements ("Code Amendment");

WHEREAS, on April 23, 2019, the City Council adopted Resolution No. 2019-41 initiating the Code Amendment;

WHEREAS, Section 20.28.10 (Purposes of Overlay Zoning Districts) of the NBMC inadvertently states that the more restrictive standard of the underlying zoning district or applicable overlay apply, however, overlays are often a land use tool used to specify a different standard that might be less restrictive than the underlying zone;

WHEREAS, for instance, the Height Overlay District allows a greater building height that is less restrictive if certain conditions are met;

WHEREAS, additionally, the Parking Management Overlay authorizes the establishment of a Parking Management District that allows reduced parking requirements than that of the base zoning standards;

WHEREAS, the Code Amendment will clarify that in cases where standards conflict in an overlay district and the underlying coastal zoning district, the overlay district will control;

WHEREAS, Section 20.62.020 (Notice of Public Hearing) of the NBMC provides noticing requirements for project applications requiring a public hearing including: publication in a newspaper of general circulation, mailing to affected property owners, local agencies, nearby property owners and residents, and persons requesting notice, and posting of notice on or near the subject property;

WHEREAS, in lieu of mailed notice, Subsection 20.62.020(B)(4) (Alternative to Mailing) of the NBMC authorizes the Community Development Director to choose alternative notice specified by State law;

WHEREAS, to eliminate ambiguity and provide clarification of the alternative afforded by State law, the Code Amendment will specify that the alternative to mailing over 1,000 notices, is to publish a larger one-eighth page display advertisement in a newspaper of general circulation within the City;

WHEREAS, in addition, the Code Amendment will specify that the Community Development Director may choose to provide additional notice of a hearing in any other manner deemed necessary;

WHEREAS, Section 20.66 (Amendments) of the NBMC establishes the procedures for amendments to Title 20 (Planning and Zoning);

WHEREAS, the notice procedure for amendments initiated by property owners, refers to Chapter 20.62 (Public Hearings), however, the notice procedure for amendments initiated by the Planning Commission or City Council, are unclear;

WHEREAS, an amendment to Section 20.66.030 (Processing, Notice, and Hearing) is needed to provide clear standards for public hearing noticing related to City-initiated amendments not affiliated with a specific project site;

WHEREAS, a telephonic public hearing was held by the Planning Commission on June 18, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* the ("Ralph M. Brown Act") and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

WHEREAS, at the hearing, the Planning Commission adopted Resolution No. PC2020-024 by a majority vote (6 ayes, 0 nays) recommending to the City Council to adopt Zoning Code Amendment No. CA 2019-001;

WHEREAS, a telephonic public hearing was held by the City Council on July 28, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* the ("Ralph M. Brown Act") and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

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

Section 1: Section 20.28.010 (Purposes of Overlay Zoning Districts) of Chapter 20.28 (Overlay Zoning Districts (MHP, PM, B, H)) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code shall be amended to read as follows:

20.28.010 Purposes of Overlay Zoning Districts.

The purposes of the individual overlay zoning districts and the manner in which they are applied are outlined below. An overlay district may be initiated as a Zoning Map amendment in compliance with Chapter 20.66 (Amendments). All development shall comply with the applicable development standards (e.g., setbacks, height) of the underlying zoning district in addition to the standards provided in this chapter, if any. In situations where an inconsistency occurs between the development standards of the underlying zoning district and the standards in this chapter, the standards of the overlay district shall prevail.

A. MHP (Mobile Home Park) Overlay Zoning District. The MHP Overlay Zoning District is intended to establish a mobile home district on parcels of land developed with mobile home parks. The regulations of this district are designed to maintain and protect mobile home parks in a stable environment with a desirable residential character.

B. PM (Parking Management) Overlay Zoning District. The PM Overlay Zoning District is intended to provide for areas where parking management plans are appropriate to ensure adequate parking.

C. B (Bluff) Overlay Zoning District. The B Overlay District is intended to establish special development standards for areas of the City where projects are proposed on identified bluff areas. The specific areas are identified in Part 8 of this title (Maps).

D. H (Height) Overlay District. The H Overlay District is intended to establish standards for review of increased building height in conjunction with the provision of enhanced project design features and amenities.

Section 2: Subsection 20.62.020(B)(2)(c) (Nearby Property Owners) of Chapter 20.62 (Public Hearings) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code shall be amended to read as follows:

c. Nearby Property Owners. All owners of property located within a three hundred (300) foot radius, excluding intervening rights-of-way and waterways, of the exterior boundaries of the subject lot, as shown on the last equalized assessment roll or, alternatively, from other records that contain more recent addresses. It shall be the responsibility of the applicant to obtain and provide to the Department the names and addresses of all owners required by this section. If the number of property owners to whom notice would be mailed in compliance with this section is more than one thousand (1,000), in lieu of mailed notice, the Director may choose to publish a one-eighth page display advertisement in a newspaper of general circulation within the City;

Section 3: Subsection 20.62.020(B)(4) (Alternative to Mailing) of Chapter 20.62 (Public Hearings) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code shall be amended to read as follows:

4. Additional Notice. The Director may provide additional notice of the hearing in any other manner deemed necessary.

Section 4: Section 20.66.030 (Processing, Notice, and Hearing) of Chapter 20.66 (Amendments) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code shall be amended to read as follows:

20.66.030 Processing, Notice, and Hearing.

A. If initiated by property owner(s) with the filing of an amendment application:

1. Process. The application shall be processed in compliance with Chapter 20.50 (Permit Application Filing and Processing).

2. Notice. Notice of the public hearings shall be provided in compliance with Chapter 20.62 (Public Hearings).

B. If initiated by the City Council or Commission, notice of the public hearings shall be given as specified below:

1. Publication. Notice for all matters shall be published at least once in a newspaper of general circulation in the City at least ten (10) days before the scheduled hearing.

2. Mailing. Notice shall be mailed or delivered at least ten (10) days before the scheduled hearing to all of the following:

a. Property Owners. All owners of property located within a three hundred (300) foot radius, of the amendment excluding intervening rights-of-way and waterways, of the exterior boundaries of the affected property, as shown on the last equalized assessment roll or, alternatively, from other records that contain more recent addresses. If the number of property owners to whom notice would be mailed in compliance with this subsection is more than one thousand (1,000), in lieu of mailed notice, the Director may choose to publish a one-eighth page display advertisement in a newspaper of general circulation within the City;

b. Local Agencies. Each local agency expected to provide schools, water, or other essential facilities or services as a result of the amendment, whose ability to provide the facilities and services may be significantly affected; and

c. Persons Requesting Notice. A person who has filed a written request for notice with the Director and has paid the required fee for the notice.

3. Additional Notice. The Director may choose to provide additional notice of the hearing in any other manner deemed necessary.

4. Failure to Receive Notice. The failure of any person or entity to receive notice given in compliance with this section shall not invalidate the actions of the applicable review authority.

C. Hearing.

1. The applicable review authority shall conduct one or more public hearings regarding the amendment.

2. The public hearings shall be conducted in compliance with Chapter 20.62 (Public Hearings).

Section 5: An amendment to Title 21 (Local Coastal Program Implementation Plan) is also underway pursuant to Resolution 2020-72 to approve LCP Amendment No. LC2019-001. Zoning Code Amendment CA2019-001 shall not apply to projects located in the coastal zone for which Title 21 is applicable until approval of the LCP Amendment No. LC2019-001 by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution and/or ordinance of the City Council.

Section 6: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 7: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 8: The City Council finds the introduction and adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 21065 of the California Public Resources Code and Sections 15060(c)(2), 15060(c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). The Code Amendment is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The Code Amendment itself does not authorize development that would directly result in physical change to the environment.

Section 9: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 10: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall become effective thirty (30) days after the adoption of this ordinance.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 28th day of July, 2020, and adopted on the 25th day of August, 2020, by the following vote, to-wit:

AYES: _____

NAYES: _____

ABSENT: _____

WILL O'NEILL, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY



CITY OF

NEWPORT BEACH

City Council Staff Report

August 25, 2020
Agenda Item No. 5

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Peter Carpentieri, Sergeant, pcarpentieri@nbpd.org

PHONE: 949-644-3708

TITLE: Resolution No. 2020-74: Resolution in Support of the Newport Beach Police Department

ABSTRACT:

This staff report is to consider adoption of a resolution in support of the Newport Beach Police Department.

RECOMMENDATION:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2020-74, *A Resolution of the City Council of the City of Newport Beach, California, Supporting the Newport Beach Police Department.*

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

The existence of law and order most often results from a collaboration between the residents of a community and its law enforcement officers. When protests occur, a law enforcement agency must uphold the rights of free speech and lawful assembly while maintaining order and ensuring public safety. Throughout the nation, some protests have resulted in an abandonment of community values and collaboration and have given way to violence and the destruction of property.

On June 3rd, 2020, the Newport Beach Police Department was faced with five separate protests at five separate locations in the City of Newport Beach totaling approximately 2,500 protestors. The day concluded without any major incidents, property damage, or injuries to officers or protestors.

This outcome was achieved in large part due to the professionalism of the Newport Beach Police Department and its commitment to the needs, desires and values of the community. The Newport Beach Police Department is dedicated to working with the community to support the mission of public safety and continues to be an extension and reflection of those they so proudly serve.

A resolution adopted by the City Council of the City of Newport Beach highlighting the above will not just acknowledge the existence of this collaborative relationship between the community and the Newport Beach Police Department but reinforce the importance of this relationship moving forward.

ENVIRONMENTAL REVIEW:

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

NOTICING:

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

ATTACHMENT:

Attachment A – Resolution No. 2020-74

ATTACHMENT A

RESOLUTION NO. 2020-74

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, SUPPORTING THE NEWPORT BEACH POLICE DEPARTMENT

WHEREAS, the existence of law and order in any community most often results from a collaboration between the residents of that community and its law enforcement officers;

WHEREAS, recent national events have brought attention to the profession of law enforcement and the men and women who dedicate themselves – and their families – to said profession;

WHEREAS, the right to freedom of speech and peaceful protest must be protected and, we as a community, have witnessed how some national events have given way to violence, destruction of property, and an abandonment of community values and collaboration;

WHEREAS, the Newport Beach Police Department employs a work force comprised of highly trained and educated individuals who are committed to excellence and have the highest standard of ethics;

WHEREAS, on June 3, 2020, the Newport Beach Police Department was faced with five separate protests at five separate locations in the City of Newport Beach totaling approximately 2,500 protestors;

WHEREAS, to conclude the 12-hour day without any major incidents, property damage, or injuries to officers or protestors is a demonstration of the Newport Beach Police Department's exceptional professionalism, preparation, and planning; and

WHEREAS, the fashion in which the Newport Beach Police Department maintained order and provided a safe environment for all participants is a testament to their commitment to community needs, desires, and values, and further embodies how the Newport Beach Police Department continues to be an extension and reflection of those they so proudly serve.

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

Section 1: The City Council does hereby express support for the members of the Newport Beach Police Department, in their efforts to connect with the community and create a safe environment for all people who reside, work, or play in the City of Newport Beach.

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

Section 3: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4: The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

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


ADOPTED this 25th day of August, 2020.

Will O'Neill
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney



CITY OF

NEWPORT BEACH

City Council Staff Report

August 25, 2020
Agenda Item No. 6

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Trevor Power, Senior Accountant,
tpower@newportbeachca.gov

PHONE: 949-644-3125

TITLE: Resolution No. 2020-75: Approval of Release of Certain Assets
Securing the City's 2010 Certificates of Participation

ABSTRACT:

Pursuant to the Lease/Purchase Agreement securing the City's 2010 Certificates of Participation, the City upon completion of the Civic Center has the option to release all of the assets securing the 2010 Certificates of Participation with the exception of the Civic Center Site and the Central Library Site.

RECOMMENDATION:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2020-75, *A Resolution of the City Council of the City of Newport Beach, California, Approving Supplement No. 1 to Lease/Purchase Agreement dated November 1, 2010 and First Amendment to the Site Lease and Authorizing Certain Actions in Connection Therewith.*

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

The City and the Newport Beach Public Facilities Corporation ("Corporation"), have previously entered into a Lease/Purchase Agreement dated as of November 1, 2010 ("Lease/Purchase Agreement") relating to \$20,085,000 City of Newport Beach Certificates of Participation 2010A (Civic Center Project/Central Library Refunding) and \$106,757,000 2010B (Federally Taxable Direct Pay Build America Bonds) (Civic Center Project) (collectively, "Certificates"), the proceeds of which (i) refunded certain certificates of participation that were delivered to refinance the acquisition and construction of the City's Central Library and (ii) financed the acquisition, improvement and equipping of the City's Civic Center.

In connection with execution and delivery of the Certificates, the Corporation and the City also entered into a Site Lease, dated as of November 1, 2010 ("Site Lease").

In order to avoid paying capitalized interest during the construction period of the new Civic Center, the City leased the following sites and the improvements located thereon to the Corporation which in turn leased them back to the City: the Central Library, Civic Center (1100 Avocado and 1300 Avocado), Civic Center (1450 Avocado), Mariners Library, Newport Coast Community Center, Fire Station No. 7 (Santa Ana Heights), Oasis Senior Center, Fire Station No. 3/Police Station (Newport Center) and Fire Station No. 4 (Balboa Island).

At the time the Certificates were sold, the City reserved the right upon completion of the Civic Center to release all of the assets from the Lease/Purchase Agreement and the Site Lease with the exception of the two Civic Center parcels and the Central Library parcel. Staff is recommending that Council approve the Resolution authorizing the execution of a First Amendment to the Site Lease and the Supplement No. 1 to Lease/Purchase Agreement to effectuate the release of such assets.

ENVIRONMENTAL REVIEW:

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

NOTICING:

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

ATTACHMENT:

Attachment A - Resolution No. 2020-75

ATTACHMENT A

RESOLUTION NO. 2020-75

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING SUPPLEMENT NO. 1 TO LEASE/PURCHASE AGREEMENT DATED NOVEMBER 1, 2010 AND FIRST AMENDMENT TO THE SITE LEASE AND AUTHORIZING CERTAIN ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Newport Beach ("City") and the Newport Beach Public Facilities Corporation ("Corporation"), have previously entered into a Lease/Purchase Agreement dated as of November 1, 2010 ("Lease/Purchase Agreement") relating to \$20,085,000 City of Newport Beach Certificates of Participation 2010A (Civic Center Project/Central Library Refunding) and \$106,757,000 2010B (Federally Taxable Direct Pay Build America Bonds) ("Civic Center Project") (collectively, the "Certificates"), the proceeds of which (i) refunded certain certificates of participation that were delivered to refinance the acquisition and construction of the City's Central Library and (ii) financed the acquisition, improvement and equipping of the City's Civic Center;

WHEREAS, the Corporation and the City have previously entered into that certain Site Lease, dated as of November 1, 2010 (the "Site Lease" and, together with the Lease/Purchase Agreement, the "Prior Lease Documents"), in connection with the execution and delivery of the Certificates;

WHEREAS, pursuant to Section 7.12 of the Lease/Purchase Agreement, the City has the right from time to time to release a portion of the real property or improvements constituting the Leased Premises (as such term is defined in the Lease/Purchase Agreement), if they have: (i) provided the Trustee with a supplement to the Lease/Purchase Agreement; and (ii) satisfied certain conditions precedent set forth in Section 7.12 of the Lease/Purchase Agreement;

WHEREAS, the City has determined that it is necessary and desirable to release a portion of the Leased Premises from the lien created by the Lease/Purchase Agreement, such that following the release, the Leased Premises will be comprised only of the Civic Center Site (as such term is defined in the Lease/Purchase Agreement) and the Central Library Site (as such term is defined in the Lease/Purchase Agreement); and

WHEREAS, to effectuate the release of a portion of the Leased Premises, the City desires to amend the Prior Lease Documents by entering into a First Amendment to the Site Lease (the "First Amendment to the Site Lease") and a Supplement No. 1 to Lease/Purchase Agreement (the "Lease Supplement No. 1").

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

Section 1: The City Council does hereby approve the forms of the First Amendment to the Site Lease and Lease Supplement No. 1, attached hereto as Exhibits A and B, and incorporated herein by this reference. Each of the Mayor, the City Manager, the Finance Director and the City Clerk (the "Authorized Officers") is hereby authorized for and in the name of the City to execute the First Amendment to the Site Lease and Lease Supplement No. 1, in substantially the forms hereby approved, with such additions thereto and changes therein as are recommended or approved by the City Attorney. Approval of such changes shall be conclusively evidenced by the execution and delivery of the foregoing documents by such officers. Each of the Authorized Officers is hereby authorized to execute, acknowledge and deliver any and all documents required to consummate the transactions contemplated by the First Amendment to the Site Lease and Lease Supplement No. 1 in order to release a portion of the Leased Premises or any other property from the lien of Prior Lease Documents.

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

Section 3: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4: The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 5: Each of the Authorized Officers is hereby authorized, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary and advisable in order to consummate the entry into of the First Amendment to the Site Lease and Lease Supplement No. 1, and otherwise effectuate the purposes of this Resolution, including without limitation the substitution and release from time to time of real property and improvements constituting the Leased Premises for purposes of the Lease/Purchase Agreement, and such actions previously taken by such officers are hereby ratified and confirmed.

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


ADOPTED this 25th day of August, 2020.

Will O'Neill
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachments: Exhibit A - First Amendment to the Site Lease
 Exhibit B - Lease Supplement No. 1

EXHIBIT A

FIRST AMENDMENT TO THE SITE LEASE

[Document follows]

NOW, THEREFORE, the Corporation and the City agree as follows:

1. **Release.** The Leased Premises listed on Exhibit A of the Site Lease is hereby replaced in its entirety with the Leased Premises listed on Exhibit A attached hereto. By the recording of this First Amendment, the real property listed on Exhibit B attached hereto (the "Released Leased Premises") is hereby released from the encumbrance of the Site Lease, and all interests previously granted in the Released Leased Premises pursuant to the terms of the Site Lease are hereby terminated.

2. **No Other Changes.** Except as expressly provided to the contrary in this First Amendment, the terms of the Site Lease shall remain in full force and effect as written. All terms used herein and not defined herein but defined in the Site Lease shall have the meaning given to such terms in the Site Lease.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Site Lease as of the date first set forth above,

CITY OF NEWPORT BEACH

[SEAL]

By: _____
Grace K. Leung, City Manager

ATTEST:

By: _____
Leilani I. Brown, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: Aaron C. Harp
Aaron C. Harp, City Attorney

NEWPORT BEACH PUBLIC FACILITIES
CORPORATION

By: _____
Its: Chief Financial Officer

ATTEST:

Secretary

S-1

EXHIBIT A

LEGAL DESCRIPTION OF THE LEASED PREMISES

Central Library:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1: (APN: 442-014-26)

THE SOUTHWESTERLY ONE-HALF OF PARCEL 2, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 90-361, FILED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND, AS RESERVED BY THE IRVINE-COMPANY IN THE DEED RECORDED MAY 8, 1992, AS INSTRUMENT NO. 92-304758, OF OFFICIAL RECORDS.

PARCEL 1A:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "PRINCIPAL ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER

Exhibit A-1

ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH PRINCIPAL ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE PRINCIPAL ACCESS EASEMENT AREA AND TO MAINTAIN THE PRINCIPAL ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 1 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 1") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 1. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 1, THE OWNER OF THE BURDENED PARCEL 1 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE PRINCIPAL ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 1 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 1; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 1 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 1 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

PARCEL 1B:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "SERVICE ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH SERVICE ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE SERVICE ACCESS EASEMENT AREA AND TO MAINTAIN THE SERVICE ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 3 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 3") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 3. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 3, THE OWNER OF THE BURDENED PARCEL 3 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF

Exhibit A-2

MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE SERVICE ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 3 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE SERVICE ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 3; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 3 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 3 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

PARCEL 2: (APN: 442-014-25)

THE NORTHWESTERLY ONE-HALF OF PARCEL 2, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 90-361, FILED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND, AS RESERVED BY THE IRVINE-COMPANY IN THE DEED RECORDED MAY 8, 1992, AS INSTRUMENT NO. 92-304759, OF OFFICIAL RECORDS.

PARCEL 2A:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "PRINCIPAL ACCESS EASEMENT AREA") FOR THE

Exhibit A-3

PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH PRINCIPAL ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE PRINCIPAL ACCESS EASEMENT AREA AND TO MAINTAIN THE PRINCIPAL ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 1 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 1") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 1. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 1, THE OWNER OF THE BURDENED PARCEL 1 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE PRINCIPAL ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 1 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 1; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 1 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 1 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

PARCEL 2B:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "SERVICE ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH SERVICE ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE SERVICE ACCESS EASEMENT AREA AND TO MAINTAIN THE SERVICE ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 3 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 3") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH

Exhibit A-4

BURDENED PARCEL 3. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 3, THE OWNER OF THE BURDENED PARCEL 3 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE SERVICE ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 3 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE SERVICE ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 3; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 3 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 3 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

Civic Center (1100 and 1300 Avocado):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 3 OF PARCEL MAP 90-361, IN THE CITY OF NEWPORT BEACH, AS PER MAP RECORDED IN BOOK 270, PAGE(S) 15 THROUGH 18, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

APN: 442-014-27

Civic Center (1450 Avocado):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF PARCEL MAP NO. 88-163, AS SHOWN ON A MAP FILED IN BOOK 253, PAGES 34 AND 35 OF PARCEL MAPS, IN THE OFFICE OF THE COUNT RECORDER OF ORANGE COUNTY, CALIFORNIA, SHOWN AS "REMAINING PARCEL".

EXCEPTING THEREFROM, ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOW, GEOTHERMAL STEAM, ANY OTHER MATERIAL RESOURCES AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PROPERTY, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING

Exhibit A-5

THE SAME FROM THE PROPERTY OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OUTSIDE THE PROPERTY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE PROPERTY AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; BUT WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE OR OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE PROPERTY.

ALSO EXCEPTING THEREFROM, ANY AND ALL WATER, WATER RIGHTS, OR INTEREST THEREIN APPURTENANT TO, UNDERLYING OR RELATING TO THE PROPERTY, OR OWNED OR USED BY GRANTOR IN CONNECTION WITH THE PROPERTY OR FOR ANY BENEFICIAL USE, NO MATTER HOW ACQUIRED BY GRANTOR, AND INCLUDING BUT NOT LIMITED TO THE RIGHTS THAT ARE RIPARIAN, OVERLYING, APPROPRIATIVE, PRESCRIPTIVE, PERCOLATING, LITTORAL, ADJUDICATED, STATUTORY OR CONTRACTUAL, BUT WITHOUT, HOWEVER, ANY RIGHT TO ENTER UPON THE SURFACE OF THE PROPERTY IN THE EXERCISE OF SUCH RESERVED RIGHTS, AS RESERVED IN GRANT DEED RECORDED OCTOBER 17, 2008, AS INSTRUMENT NO. 2008000480500, OF OFFICIAL RECORDS.

APN: 442-014-24

[END]

Exhibit A-6

EXHIBIT B

LEGAL DESCRIPTION OF THE RELEASED LEASED PREMISES

Newport Coast Community Center:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

A PORTION OF PARCEL 1 OF LOT LINE ADJUSTMENT 94-006, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED MARCH 22, 1994, AS INSTRUMENT NUMBER 94-0202108 OF OFFICIAL RECORDS, ORANGE COUNTY RECORDERS OFFICE, STATE OF CALIFORNIA, BEING MORE PRACTICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF NEWPORT COAST DRIVE AND SAN JOAQUIN HILLS ROAD AS SHOWN ON SAID TRACT MAP; THENCE NORTH 84° 27' 16" WEST ALONG SAID CENTERLINE OF SAN JOAQUIN HILLS ROAD A DISTANCE OF 441.70 FEET; THENCE LEAVING SAID CENTERLINE NORTH 05° 32' 44" EAST A DISTANCE OF 61.49 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF LAST SAID ROAD, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 05° 32' 44" EAST A DISTANCE OF 345.01 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 142.54 FEET TO WHICH A RADIAL LINE BEARS SOUTH 48° 54' 51" WEST; THENCE CONTINUING ALONG THE NORTHERLY LINE OF SAID LOT LINE ADJUSTMENT THE FOLLOWING MULTIPLE COURSES; THENCE SOUTHEASTERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 37° 02' 25" AN ARC LENGTH OF 92.15 FEET; THENCE SOUTH 78° 07' 34" EAST A DISTANCE OF 36.87 FEET; THENCE NORTH 74° 03' 52" EAST A DISTANCE OF 79.69 FEET; THENCE NORTH 64° 42' 53" EAST A DISTANCE OF 58.38 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 50.00 FEET; THENCE EASTERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 25° 58' 33" AN ARC LENGTH OF 22.67 FEET; THENCE SOUTH 89° 18' 34" EAST A DISTANCE OF 123.01 FEET; THENCE NORTH 77° 16' 30" EAST A DISTANCE OF 18.90 FEET TO WESTERLY RIGHT OF WAY LINE OF SAID NEWPORT COAST DRIVE AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2291.00 FEET TO WHICH A RADIAL LINE BEARS SOUTH 85° 40' 34" EAST; THENCE CONTINUING ALONG LAST SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING MULTIPLE COURSES; THENCE SOUTHERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 03° 11' 42" AN ARC LENGTH OF 127.75 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE WESTERLY HAVING A RADIUS OF 201.00 FEET; THENCE SOUTHERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 8° 19' 02" AN ARC LENGTH OF 29.18 FEET; THENCE SOUTH 15° 50' 10" WEST A DISTANCE OF 30.62 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 219.00 FEET; THENCE SOUTHERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 07° 34' 07" AN ARC LENGTH OF 28.93 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2929.50 FEET TO WHICH A RADIAL LINE BEARS SOUTH 81° 23' 57" EAST; THENCE SOUTHERLY ALONG SAID REVERSE CURVE THROUGH A CENTRAL

Exhibit B-1

ANGLE OF 2° 09' 07" AND ARC LENGTH OF 110.03 FEET; THENCE SOUTH 79° 14' 50" EAST A DISTANCE OF 4.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2925.50 FEET TO WHICH A RADIAL LINE BEARS SOUTH 79° 14' 50" EAST; THENCE SOUTHERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 0° 34' 09" AN ARC LENGTH OF 29.06 FEET TO AN ANGLE POINT ON SAID WESTERLY RIGHT OF WAY LINE; THENCE LEAVING SAID RIGHT OF WAY LINE SOUTH 48° 11' 54" WEST A DISTANCE OF 29.57 FEET TO A POINT ON SAID NORTHERLY RIGHT OF WAY LINE OF SAN JOAQUIN HILLS ROAD; THENCE CONTINUING ALONG LAST SAID RIGHT OF WAY LINE SOUTH 89° 52' 33" WEST A DISTANCE OF 51.85 FEET; THENCE CONTINUING ALONG LAST SAID RIGHT OF WAY LINE NORTH 85° 17' 57" WEST A DISTANCE OF 305.86 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM, ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PROPERTY, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING, AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE PROPERTY OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM OTHER LANDS OTHER THAN THE PROPERTY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE PROPERTY AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; BUT WITHOUT THE RIGHT TO ENTER UPON OR USE THE SURFACE OF THE PROPERTY TO DRILL, MINE, STORE, EXPLORE, OR OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE PROPERTY.

ALSO EXCEPTING THEREFROM, FOR USE OF SURFACE OR SUBSURFACE WATER BY THE COUNTY FOR LOCAL PARK PURPOSES ON THE PROPERTY, ANY AND ALL WATER, SOLAR-HEATED WATER, RECLAIMED RIGHTS, WHETHER SURFACE OR SUBSURFACE, APPURTENANT OR RELATING TO THE PROPERTY, OR OWNED OR USED BY OFFEROR IN CONNECTION WITH THE PROPERTY TOGETHER WITH THE RIGHT TO EXPLORE, DRILL, REDRILL AND REMOVE SUCH WATER FROM THE PROPERTY, TO STORE SUCH WATER IN THE GROUND-WATER BASIN UNDERLYING THE PROPERTY BY PERCOLATING, SPREADING, OR INJECTING WATER INTO SUCH BASIN FROM LOCATIONS ON LANDS LYING OUTSIDE OF THE PROPERTY, AND TO DIVERT OR OTHERWISE UTILIZE SUCH WATER, RIGHTS, OR INTERESTS ON ANY OTHER PROPERTY OWNED OR LEASED BY OFFEROR, BUT WITHOUT THE RIGHT TO ENTER UPON OR USE THE SURFACE OF THE PROPERTY IN THE EXERCISE OF SUCH RIGHT, AS RESERVED BY THE IRVINE COMPANY, A MICHIGAN CORPORATION, IN IRREVOCABLE OFFER OF DEDICATION, RECORDED APRIL 8, 1993, AS INSTRUMENT NO. 93-0234810, AND IN GRANT DEED RECORDED JANUARY 2, 1997, AS INSTRUMENT NO. 19970000564, BOTH OF OFFICIAL RECORDS.

Mariner's Library:

Exhibit B-2

DOCSOC/1527383/022025-0040
NG-U9ZQVMF2/4824-7593-8755v2/022459-0014

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

A PARCEL OF LAND CONTAINING 9.019 ACRES AND BEING A PORTION OF BLOOK 53, AS SHOWN UPON A MAP OF IRVINE'S SUBDIVISION RECORDED IN MISCELLANEOUS MAPS, BOOK 1, PAGE 88, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

BEGINNING AT THE INTERSECTION OF A LINE LYING SOUTHWESTERLY OF, PARALLEL TO, AND DISTANT 17 FEET FROM THE SOUTHEASTERLY PROLONGATION OF THE CENTER LINE OF 19TH STREET AS SHOWN UPON A MAP OF NEWPORT HEIGHTS, RECORDED IN MISCELLANEOUS MAP BOOK 4, PAGE 83, RECORDS OF ORANGE COUNTY, SAID LINE ALSO BEING THE NORTHWESTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF THE ORANGE COUNTY FLOOD CONTROL CHANNEL, AS CONVEYED TO THE COUNTY OF ORANGE BY DEED RECORDED APRIL 7, 1954, IN BOOK 2705, PAGE 539, OFFICIAL RECORDS OF SAID ORANGE COUNTY, AND A LINE LYING SOUTHEASTERLY OF, PARALLEL TO, AND DISTANT 30 FEET FROM THE NORTHWESTERLY LINE OF SAID BLOCK 53; THENCE SOUTH 50° 11' 30" EAST ALONG SAID NORTHWESTERLY PROLONGATION AND ALONG SAID SOUTHWESTERLY LINE OF SAID FLOOD CONTROL CHANNEL A DISTANCE OF 277 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 868 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AND SAID SOUTHWESTERLY LINE OF THE FLOOD CONTROL CHANNEL A DISTANCE OF 713.99 FEET; THENCE SOUTH 3° 03' 42" EAST, TANGENT TO LAST MENTIONED CURVE, AND ALONG SAID SOUTHWESTERLY LINE OF THE FLOOD CONTROL CHANNEL A DISTANCE OF 58 FEET; THENCE SOUTH 16° 55' 29" EAST ALONG SAID SOUTHWESTERLY LINE OF THE FLOOD CONTROL CHANNEL A DISTANCE OF 10.46 FEET; THENCE SOUTH 86° 56' 18" WEST A DISTANCE OF 106.72 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 710 FEET; SAID LINE ALSO BEING THE SOUTHWESTERLY PROLONGATION OF THE CENTER LINE OF MARINERS DRIVE, 60 FEET IN WIDTH, AS SHOWN UPON A MAP OF TRACT NO. 3004, RECORDED IN MISCELLANEOUS MAP BOOK 92, PAGES 1 AND 2, RECORDS OF SAID ORANGE COUNTY; THENCE WESTERLY ALONG SAID CURVE A DISTANCE OF 152.14 FEET; THENCE NORTH 15° 20' 20" WEST, RADIAL TO LAST MENTIONED CURVE, A DISTANCE OF 30 FEET; THENCE NORTH 50° 11' 05" WEST A DISTANCE OF 758.99 FEET TO A POINT OF INTERSECTION WITH THE AFOREMENTIONED PARALLEL LINE LYING SOUTHEASTERLY OF, PARALLEL TO, AND DISTANT 30 FEET FROM THE NORTHWESTERLY LINE OF SAID BLOCK 53; THENCE NORTH 39° 48' 55" EAST ALONG SAID PARALLEL LINE A DISTANCE OF 495.70 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THAT PORTION OF THE LAND CONVEYED TO NEWPORT-MESA UNIFIED SCHOOL DISTRICT IN QUITCLAIM DEED RECORDED JANUARY 14, 2003 AS INSTRUMENT NO. 2003000045873, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE DESCRIBED IN DEED TO THE CITY OF NEWPORT BEACH HAVING A BEARING AND

Exhibit B-3

DISTANCE OF N 15°20'20" W 30.00 FEET, SAID NORTHWESTERLY TERMINUS BEING THE INTERSECTION OF THE SOUTHWESTERLY LINE OF SAID CERTAIN PARCEL OF LAND DEEDED TO THE CITY OF NEWPORT BEACH AND THE NORTHERLY LINE OF MARINERS DRIVE, 60.00 FEET WIDE, AS SHOWN ON MAP OF TRACT NO. 1896 FILED IN BOOK 114, PAGE 43 THROUGH 45 INCLUSIVE OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE N 50°11'06" W 498.00 FEET; THENCE N 39°48'55" E 38.00 FEET; THENCE S 50°11'05" E 526.60 FEET TO A POINT IN SAID NORTHERLY LINE OF MARINERS DRIVE, SAID NORTHERLY LINE BEING A CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 740.00 FEET, A RADIAL TO SAID POINT BEING N 11°49'06" W; THENCE WESTERLY ALONG SAID NORTHERLY LINE AND CURVE, THROUGH A CENTRAL ANGLE OF 03°41'14", AN ARC LENGTH OF 47.62 FEET TO THE POINT OF BEGINNING.

PARCEL B:

A PORTION OF THAT CERTAIN PARCEL OF LAND IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED IN DEED TO THE NEWPORT BEACH ELEMENTARY SCHOOL DISTRICT, FILED IN BOOK 3970, PAGE 3 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND SHOWN AS ASSESSOR'S PARCEL NO. 425-071-01 FILED IN BOOK 425, PAGE 7 OF ASSESSOR'S MAPS IN THE OFFICE OF THE COUNTY ASSESSOR OF SAID COUNTY, SAID PORTION MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE DESCRIBED IN SAID DEED TO THE NEWPORT BEACH ELEMENTARY SCHOOL DISTRICT HAVING A BEARING AND DISTANCE OF N 50°11'05" W 758.99 FEET, SAID CERTAIN COURSE BEING THE NORTHEASTERLY LINE OF SAID CERTAIN PARCEL DEEDED TO THE NEWPORT BEACH ELEMENTARY SCHOOL DISTRICT; THENCE ALONG SAID NORTHEASTERLY LINE S 50°11'05" E 50.00 FEET TO ITS INTERSECTION WITH THE SOUTHEASTERLY LINE OF IRVINE AVENUE AS DESCRIBED IN DEED TO THE CITY OF NEWPORT BEACH FILED IN BOOK 3978, PAGE 542 OF SAID OFFICIAL RECORDS, SAID INTERSECTION BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE S 50°11'05" E 210.99 FEET; THENCE S 39°48'55" W 92.00 FEET; THENCE N 50°11'05" W 120.99 FEET; THENCE S 39°48'55" W 10.00 FEET; THENCE N 50°11'05" W 90.00 FEET TO SAID SOUTHEASTERLY LINE OF IRVINE AVENUE; THENCE ALONG SAID SOUTHEASTERLY LINE N 39°48'55" E 102.00 FEET TO THE TRUE POINT OF BEGINNING.

APN: 425-071-03

Fire Station 7 (Santa Ana Heights):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 57 THROUGH 60 AND THE SOUTHWESTERLY 66 FEET OF LOT 56, TRACT NO. 706, PER MAP RECORDED IN BOOK 21, PAGES 25 OF MAPS, IN THE OFFICE OF THE COUNTY

Exhibit B-4

RECORDER, COUNTY OF ORANGE, CALIFORNIA.

APN: 439-391-29

Oasis Senior Center:

PARCEL 1 OF PARCEL MAP NO. 2008-161, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 367, PAGES 26, 27 AND 28 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS, AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER THE ABOVE DESCRIBED PROPERTY, TOGETHER WITH THE RIGHT TO EXPLORE FOR, DEVELOP, EXTRACT AND REMOVE THE SAME THEREFROM BY SLANT DRILLING OR OTHER LIKE METHODS, WITH DERRICKS OR DRILL RIGS LOCATED OUTSIDE OF THE BOUNDARIES OF SAID PROPERTY, AS RESERVED BY THE IRVINE COMPANY IN THE DEED RECORDED MAY 5, 1959, IN BOOK 4698, PAGE 478, OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING, AND OPERATING THEREFOR, AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE, AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AS RESERVED BY THE IRVINE COMPANY, IN THE DEED RECORDED APRIL 29, 1986, AS INSTRUMENT NO. 86-170658, OF OFFICIAL RECORDS.

APN: 458-651-02, 458-651-11, 458-651-13

Fire Station 3/Police Station (Newport Center):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 55, PAGE 31 OF PARCEL MAPS, IN

Exhibit B-5

THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND CONVENIENT RIGHT TO EXPLORE AND EXTRACT AND TAKE ON AND AT LEVELS BELOW THE DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND BY MEANS OF WELLS, DERRICK OF OTHER EQUIPMENT FROM THE SURFACE LOCATIONS AS RESERVED BY THE IRVINE COMPANY, IN DEED RECORDED JULY 28, 1970 IN BOOK 9357, PAGE 805 AND FEBRUARY 1, 1973, IN BOOK 10538, PAGE 27 OF OFFICIAL RECORDS.

APN: 442-261-07, 08 AND 09

Fire Station 4 (Balboa Island):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP 92-139, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 314, PAGES 36 AND 37 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 050-173-01

[END]

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 ORANGE

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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 signature(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 OF NOTARY PUBLIC

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 ORANGE

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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 signature(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 OF NOTARY PUBLIC

EXHIBIT B

LEASE SUPPLEMENT NO. 1

[Document follows]

LEASE SUPPLEMENT NO. 1 TO LEASE/PURCHASE AGREEMENT

THIS LEASE SUPPLEMENT NO. 1 TO LEASE/PURCHASE AGREEMENT (this "Lease Supplement") is made and entered into as of August 1, 2020, by and between the NEWPORT BEACH PUBLIC FACILITIES CORPORATION, a 501(c)(4) nonprofit public benefit corporation duly organized and existing under the laws of the State of California, as lessor (the "Corporation"), and the CITY OF NEWPORT BEACH, a chartered city duly organized and existing under the Constitution and laws of said State, as lessee (the "City").

RECITALS

A. The Corporation and the City have entered into that certain Lease/Purchase Agreement, dated as of November 1, 2010 (the "Lease"), a memorandum of which was recorded on November 29, 2010 as instrument number 2010000635817 in the Official Records of Orange County, securing \$20,085,000 Certificates of Participation 2010A (Tax Exempt) (Civic Center Project/Central Library Refunding) and \$106,575,000 Certificates of Participation 2010B (Federally Taxable Build America Bonds) (Civic Center Project).

B. As of the date of this Lease Supplement, the City and Corporation hereby desire to supplement the Lease as set forth below.

NOW, THEREFORE, the Corporation and the City agree as follows:

1. **Release.** The Leased Premises listed on Exhibit B of the Lease are hereby replaced in their entirety with the Leased Premises listed on Exhibit 1 attached hereto (the "Remaining Leased Premises"). The real property listed on Exhibit 2 attached hereto (the "Released Leased Premises") is hereby released from the encumbrance of the Lease, and all interests previously granted in the Released Leased Premises pursuant to the terms of the Lease are hereby terminated.

2. **Certifications of the City.** The City hereby certifies that:

(i) the Remaining Leased Premises will be used by the City for authorized public purposes and can be leased under the provisions of the Lease and the Government Code;

(ii) the Remaining Leased Premises are currently owned by the City;

(iii) the Remaining Leased Premises are essential to the City; and

(iv) the Remaining Leased Premises are free and clear of all liens or claims of others, except for the lien of the Permitted Encumbrances referred to in the Lease.

3. **No Other Changes.** Except as expressly provided to the contrary in this Lease Supplement, the terms of the Lease shall remain in full force and effect as written. All terms used herein and not defined herein but defined in the Lease shall have the meaning given to such terms in the Lease.

IN WITNESS WHEREOF, the parties have executed this Lease Supplement No. 1 to Lease/Purchase Agreement as of the date first set forth above.

NEWPORT BEACH PUBLIC FACILITIES
CORPORATION, as Lessor

By: _____
Its: Chief Financial Officer

Attest:

Secretary

CITY OF NEWPORT BEACH,
as Lessee

By: _____
Grace K. Leung, City Manager

Attest:

By: _____
Leilani I. Brown, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: 
Aaron C. Harp, City Attorney

EXHIBIT 1

DESCRIPTION OF REMAINING LEASED PREMISES

Central Library:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1: (APN: 442-014-26)

THE SOUTHWESTERLY ONE-HALF OF PARCEL 2, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 90-361, FILED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND, AS RESERVED BY THE IRVINE-COMPANY IN THE DEED RECORDED MAY 8, 1992, AS INSTRUMENT NO. 92-304758, OF OFFICIAL RECORDS.

PARCEL 1A:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "PRINCIPAL ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH PRINCIPAL ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE PRINCIPAL ACCESS EASEMENT AREA AND TO MAINTAIN THE

PRINCIPAL ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 1 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 1") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 1. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 1, THE OWNER OF THE BURDENED PARCEL 1 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE PRINCIPAL ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 1 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 1; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 1 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 1 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

PARCEL 1B:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "SERVICE ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH SERVICE ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE SERVICE ACCESS EASEMENT AREA AND TO MAINTAIN THE SERVICE ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 3 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 3") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 3. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 3, THE OWNER OF THE BURDENED PARCEL 3 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE SERVICE ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES

THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 3 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE SERVICE ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 3; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 3 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 3 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

PARCEL 2: (APN: 442-014-25)

THE NORTHWESTERLY ONE-HALF OF PARCEL 2, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 90-361, FILED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND, AS RESERVED BY THE IRVINE-COMPANY IN THE DEED RECORDED MAY 8, 1992, AS INSTRUMENT NO. 92-304759, OF OFFICIAL RECORDS.

PARCEL 2A:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "PRINCIPAL ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS,

LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH PRINCIPAL ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE PRINCIPAL ACCESS EASEMENT AREA AND TO MAINTAIN THE PRINCIPAL ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 1 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 1") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 1. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 1, THE OWNER OF THE BURDENED PARCEL 1 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE PRINCIPAL ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 1 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 1; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 1 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 1 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

PARCEL 2B:

A PERMANENT NONEXCLUSIVE EASEMENT IN GROSS AND APPURTENANT TO PARCEL 1, DESCRIBED ABOVE, (THE "BENEFITTED PARCEL") OVER THAT PORTION OF PARCEL 1 IDENTIFIED IN EASEMENT NOTE 3, SET FORTH AND SHOWN ON PARCEL MAP NO. 90-361, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED IN BOOK 270, PAGES 15 TO 18 INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAID COUNTY (THE "SERVICE ACCESS EASEMENT AREA") FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AND CONSTRUCTION, REPLACEMENT AND MAINTENANCE OF DRIVEWAYS, CURBS, CURB CUTS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, LANDSCAPING, IRRIGATION, MONUMENTATION, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS WITHIN SUCH SERVICE ACCESS EASEMENT AREA. GRANTEE SHALL PAY FOR ALL COSTS AND EXPENSES TO IMPROVE THE SERVICE ACCESS EASEMENT AREA AND TO MAINTAIN THE SERVICE ACCESS EASEMENT AREA PRIOR TO THE TIME THE OWNER OF PARCEL 3 OF PARCEL MAP NO. 90-361 ("BURDENED PARCEL 3") OBTAINS A CERTIFICATE OF OCCUPANCY FOR PERMANENT BUILDING IMPROVEMENTS TO BE CONSTRUCTED ON SUCH BURDENED PARCEL 3. UPON OBTAINING A CERTIFICATE OF OCCUPANCY FOR IMPROVEMENTS CONSTRUCTED ON THE BURDENED PARCEL 3, THE OWNER OF THE BURDENED PARCEL 3 AND THE OWNER OF THE BENEFITTED PARCEL SHALL EACH

CONTRIBUTE TO FIFTY PERCENT (50%) OF THE COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND RESTORATION OF ALL IMPROVEMENTS LOCATED ON THE SERVICE ACCESS EASEMENT AREA WHICH ARISE SUBSEQUENT TO THE ISSUANCE OF SUCH CERTIFICATE OF OCCUPANCY. GRANTOR HEREBY RESERVES THE RIGHT, FOR THE BENEFIT OF THE OWNER OF THE BURDENED PARCEL 3 TO REDESIGN, REMOVE, RECONSTRUCT AND IMPROVE THE DRIVEWAYS, CURB CUTS, CURBS, ENTRYWAYS, LIGHT STANDARDS, TRAFFIC SIGNS, SIDEWALKS, PERMANENT WALLS AND FENCES, LANDSCAPING, IRRIGATION, MONUMENT, DIRECTIONAL AND OTHER ROADWAY SIGNS AND LIKE IMPROVEMENTS LOCATED WITHIN THE SERVICE ACCESS EASEMENT AREA IN CONNECTION WITH IMPROVEMENT OR RECONSTRUCTION OF PERMANENT BUILDINGS LOCATED ON THE BURDENED PARCEL 3; PROVIDED, HOWEVER, THAT THE OWNER OF THE BURDENED PARCEL 3 SHALL PROVIDE REASONABLE ALTERNATIVE ACCESS TO THE BENEFITTED PARCEL AT ALL TIMES DURING CONSTRUCTION OF SUCH REDESIGNED OR UPGRADED IMPROVEMENTS. THE OWNER OF THE BURDENED PARCEL 3 SHALL REPAIR ALL DAMAGE CAUSED TO IMPROVEMENTS LOCATED WITHIN THE PRINCIPAL EASEMENT AREA BY CONSTRUCTION ACTIVITIES.

Civic Center (1100 and 1300 Avocado):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 3 OF PARCEL MAP 90-361, IN THE CITY OF NEWPORT BEACH, AS PER MAP RECORDED IN BOOK 270, PAGE(S) 15 THROUGH 18, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

APN: 442-014-27

Civic Center (1450 Avocado):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF PARCEL MAP NO. 88-163, AS SHOWN ON A MAP FILED IN BOOK 253, PAGES 34 AND 35 OF PARCEL MAPS, IN THE OFFICE OF THE COUNT RECORDER OF ORANGE COUNTY, CALIFORNIA, SHOWN AS "REMAINING PARCEL".

EXCEPTING THEREFROM, ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOW, GEOTHERMAL STEAM, ANY OTHER MATERIAL RESOURCES AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PROPERTY, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE PROPERTY OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OUTSIDE THE PROPERTY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS

THE SUBSURFACE OF THE PROPERTY AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; BUT WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE OR OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE PROPERTY.

ALSO EXCEPTING THEREFROM, ANY AND ALL WATER, WATER RIGHTS, OR INTEREST THEREIN APPURTENANT TO, UNDERLYING OR RELATING TO THE PROPERTY, OR OWNED OR USED BY GRANTOR IN CONNECTION WITH THE PROPERTY OR FOR ANY BENEFICIAL USE, NO MATTER HOW ACQUIRED BY GRANTOR, AND INCLUDING BUT NOT LIMITED TO THE RIGHTS THAT ARE RIPARIAN, OVERLYING, APPROPRIATIVE, PRESCRIPTIVE, PERCOLATING, LITTORAL, ADJUDICATED, STATUTORY OR CONTRACTUAL, BUT WITHOUT, HOWEVER, ANY RIGHT TO ENTER UPON THE SURFACE OF THE PROPERTY IN THE EXERCISE OF SUCH RESERVED RIGHTS, AS RESERVED IN GRANT DEED RECORDED OCTOBER 17, 2008, AS INSTRUMENT NO. 2008000480500, OF OFFICIAL RECORDS.

APN: 442-014-24

[END]

EXHIBIT 2

DESCRIPTION OF RELEASED LEASED PREMISES

Newport Coast Community Center:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

A PORTION OF PARCEL 1 OF LOT LINE ADJUSTMENT 94-006, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED MARCH 22, 1994, AS INSTRUMENT NUMBER 94-0202108 OF OFFICIAL RECORDS, ORANGE COUNTY RECORDERS OFFICE, STATE OF CALIFORNIA, BEING MORE PRACTICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF NEWPORT COAST DRIVE AND SAN JOAQUIN HILLS ROAD AS SHOWN ON SAID TRACT MAP; THENCE NORTH 84° 27' 16" WEST ALONG SAID CENTERLINE OF SAN JOAQUIN HILLS ROAD A DISTANCE OF 441.70 FEET; THENCE LEAVING SAID CENTERLINE NORTH 05° 32' 44" EAST A DISTANCE OF 61.49 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF LAST SAID ROAD, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 05° 32' 44" EAST A DISTANCE OF 345.01 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 142.54 FEET TO WHICH A RADIAL LINE BEARS SOUTH 48° 54' 51" WEST; THENCE CONTINUING ALONG THE NORTHERLY LINE OF SAID LOT LINE ADJUSTMENT THE FOLLOWING MULTIPLE COURSES; THENCE SOUTHEASTERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 37° 02' 25" AN ARC LENGTH OF 92.15 FEET; THENCE SOUTH 78° 07' 34" EAST A DISTANCE OF 36.87 FEET; THENCE NORTH 74° 03' 52" EAST A DISTANCE OF 79.69 FEET; THENCE NORTH 64° 42' 53" EAST A DISTANCE OF 58.38 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 50.00 FEET; THENCE EASTERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 25° 58' 33" AN ARC LENGTH OF 22.67 FEET; THENCE SOUTH 89° 18' 34" EAST A DISTANCE OF 123.01 FEET; THENCE NORTH 77° 16' 30" EAST A DISTANCE OF 18.90 FEET TO WESTERLY RIGHT OF WAY LINE OF SAID NEWPORT COAST DRIVE AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2291.00 FEET TO WHICH A RADIAL LINE BEARS SOUTH 85° 40' 34" EAST; THENCE CONTINUING ALONG LAST SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING MULTIPLE COURSES; THENCE SOUTHERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 03° 11' 42" AN ARC LENGTH OF 127.75 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE WESTERLY HAVING A RADIUS OF 201.00 FEET; THENCE SOUTHERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 8° 19' 02" AN ARC LENGTH OF 29.18 FEET; THENCE SOUTH 15° 50' 10" WEST A DISTANCE OF 30.62 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 219.00 FEET; THENCE SOUTHERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 07° 34' 07" AN ARC LENGTH OF 28.93 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2929.50 FEET TO WHICH A RADIAL LINE BEARS SOUTH 81° 23' 57" EAST; THENCE SOUTHERLY ALONG

SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 2° 09' 07" AND ARC LENGTH OF 110.03 FEET; THENCE SOUTH 79° 14' 50" EAST A DISTANCE OF 4.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2925.50 FEET TO WHICH A RADIAL LINE BEARS SOUTH 79° 14' 50" EAST; THENCE SOUTHERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 0° 34' 09" AN ARC LENGTH OF 29.06 FEET TO AN ANGLE POINT ON SAID WESTERLY RIGHT OF WAY LINE; THENCE LEAVING SAID RIGHT OF WAY LINE SOUTH 48° 11' 54" WEST A DISTANCE OF 29.57 FEET TO A POINT ON SAID NORTHERLY RIGHT OF WAY LINE OF SAN JOAQUIN HILLS ROAD; THENCE CONTINUING ALONG LAST SAID RIGHT OF WAY LINE SOUTH 89° 52' 33" WEST A DISTANCE OF 51.85 FEET; THENCE CONTINUING ALONG LAST SAID RIGHT OF WAY LINE NORTH 85° 17' 57" WEST A DISTANCE OF 305.86 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM, ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PROPERTY, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING, AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE PROPERTY OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM OTHER LANDS OTHER THAN THE PROPERTY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE PROPERTY AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; BUT WITHOUT THE RIGHT TO ENTER UPON OR USE THE SURFACE OF THE PROPERTY TO DRILL, MINE, STORE, EXPLORE, OR OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE PROPERTY.

ALSO EXCEPTING THEREFROM, FOR USE OF SURFACE OR SUBSURFACE WATER BY THE COUNTY FOR LOCAL PARK PURPOSES ON THE PROPERTY, ANY AND ALL WATER, SOLAR-HEATED WATER, RECLAIMED RIGHTS, WHETHER SURFACE OR SUBSURFACE, APPURTENANT OR RELATING TO THE PROPERTY, OR OWNED OR USED BY OFFEROR IN CONNECTION WITH THE PROPERTY TOGETHER WITH THE RIGHT TO EXPLORE, DRILL, REDRILL AND REMOVE SUCH WATER FROM THE PROPERTY, TO STORE SUCH WATER IN THE GROUND-WATER BASIN UNDERLYING THE PROPERTY BY PERCOLATING, SPREADING, OR INJECTING WATER INTO SUCH BASIN FROM LOCATIONS ON LANDS LYING OUTSIDE OF THE PROPERTY, AND TO DIVERT OR OTHERWISE UTILIZE SUCH WATER, RIGHTS, OR INTERESTS ON ANY OTHER PROPERTY OWNED OR LEASED BY OFFEROR, BUT WITHOUT THE RIGHT TO ENTER UPON OR USE THE SURFACE OF THE PROPERTY IN THE EXERCISE OF SUCH RIGHT, AS RESERVED BY THE IRVINE COMPANY, A MICHIGAN CORPORATION, IN IRREVOCABLE OFFER OF DEDICATION, RECORDED APRIL 8, 1993, AS INSTRUMENT NO. 93-0234810, AND IN GRANT DEED RECORDED JANUARY 2, 1997, AS INSTRUMENT NO. 19970000564, BOTH OF OFFICIAL RECORDS.

Mariner's Library:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

A PARCEL OF LAND CONTAINING 9.019 ACRES AND BEING A PORTION OF BLOOK 53, AS SHOWN UPON A MAP OF IRVINE'S SUBDIVISION RECORDED IN MISCELLANEOUS MAPS, BOOK 1, PAGE 88, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

BEGINNING AT THE INTERSECTION OF A LINE LYING SOUTHWESTERLY OF, PARALLEL TO, AND DISTANT 17 FEET FROM THE SOUTHEASTERLY PROLONGATION OF THE CENTER LINE OF 19TH STREET AS SHOWN UPON A MAP OF NEWPORT HEIGHTS, RECORDED IN MISCELLANEOUS MAP BOOK 4, PAGE 83, RECORDS OF ORANGE COUNTY, SAID LINE ALSO BEING THE NORTHWESTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF THE ORANGE COUNTY FLOOD CONTROL CHANNEL, AS CONVEYED TO THE COUNTY OF ORANGE BY DEED RECORDED APRIL 7, 1954, IN BOOK 2705, PAGE 539, OFFICIAL RECORDS OF SAID ORANGE COUNTY, AND A LINE LYING SOUTHEASTERLY OF, PARALLEL TO, AND DISTANT 30 FEET FROM THE NORTHWESTERLY LINE OF SAID BLOCK 53; THENCE SOUTH 50° 11' 30" EAST ALONG SAID NORTHWESTERLY PROLONGATION AND ALONG SAID SOUTHWESTERLY LINE OF SAID FLOOD CONTROL CHANNEL A DISTANCE OF 277 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 868 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AND SAID SOUTHWESTERLY LINE OF THE FLOOD CONTROL CHANNEL A DISTANCE OF 713.99 FEET; THENCE SOUTH 3° 03' 42" EAST, TANGENT TO LAST MENTIONED CURVE, AND ALONG SAID SOUTHWESTERLY LINE OF THE FLOOD CONTROL CHANNEL A DISTANCE OF 58 FEET; THENCE SOUTH 16° 55' 29" EAST ALONG SAID SOUTHWESTERLY LINE OF THE FLOOD CONTROL CHANNEL A DISTANCE OF 10.46 FEET; THENCE SOUTH 86° 56' 18" WEST A DISTANCE OF 106.72 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 710 FEET; SAID LINE ALSO BEING THE SOUTHWESTERLY PROLONGATION OF THE CENTER LINE OF MARINERS DRIVE, 60 FEET IN WIDTH, AS SHOWN UPON A MAP OF TRACT NO. 3004, RECORDED IN MISCELLANEOUS MAP BOOK 92, PAGES 1 AND 2, RECORDS OF SAID ORANGE COUNTY; THENCE WESTERLY ALONG SAID CURVE A DISTANCE OF 152.14 FEET; THENCE NORTH 15° 20' 20" WEST, RADIAL TO LAST MENTIONED CURVE, A DISTANCE OF 30 FEET; THENCE NORTH 50° 11' 05" WEST A DISTANCE OF 758.99 FEET TO A POINT OF INTERSECTION WITH THE AFOREMENTIONED PARALLEL LINE LYING SOUTHEASTERLY OF, PARALLEL TO, AND DISTANT 30 FEET FROM THE NORTHWESTERLY LINE OF SAID BLOCK 53; THENCE NORTH 39° 48' 55" EAST ALONG SAID PARALLEL LINE A DISTANCE OF 495.70 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THAT PORTION OF THE LAND CONVEYED TO NEWPORT-MESA UNIFIED SCHOOL DISTRICT IN QUITCLAIM DEED RECORDED JANUARY 14, 2003 AS INSTRUMENT NO. 2003000045873, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE DESCRIBED IN DEED TO THE CITY OF NEWPORT BEACH HAVING A BEARING AND DISTANCE OF N 15°20'20" W 30.00 FEET, SAID NORTHWESTERLY TERMINUS BEING THE INTERSECTION OF THE SOUTHWESTERLY LINE OF SAID CERTAIN PARCEL OF LAND DEEDED TO THE CITY OF NEWPORT BEACH AND THE NORTHERLY LINE OF MARINERS DRIVE, 60.00 FEET WIDE, AS SHOWN ON MAP OF TRACT NO. 1896 FILED IN BOOK 114, PAGE 43 THROUGH 45 INCLUSIVE OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE N 50°11'06" W 498.00 FEET; THENCE N 39°48'55" E 38.00 FEET; THENCE S 50°11'05" E 526.60 FEET TO A POINT IN SAID NORTHERLY LINE OF MARINERS DRIVE, SAID NORTHERLY LINE BEING A CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 740.00 FEET, A RADIAL TO SAID POINT BEING N 11°49'06" W; THENCE WESTERLY ALONG SAID NORTHERLY LINE AND CURVE, THROUGH A CENTRAL ANGLE OF 03°41'14", AN ARC LENGTH OF 47.62 FEET TO THE POINT OF BEGINNING.

PARCEL B:

A PORTION OF THAT CERTAIN PARCEL OF LAND IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED IN DEED TO THE NEWPORT BEACH ELEMENTARY SCHOOL DISTRICT, FILED IN BOOK 3970, PAGE 3 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND SHOWN AS ASSESSOR'S PARCEL NO. 425-071-01 FILED IN BOOK 425, PAGE 7 OF ASSESSOR'S MAPS IN THE OFFICE OF THE COUNTY ASSESSOR OF SAID COUNTY, SAID PORTION MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE DESCRIBED IN SAID DEED TO THE NEWPORT BEACH ELEMENTARY SCHOOL DISTRICT HAVING A BEARING AND DISTANCE OF N 50°11'05" W 758.99 FEET, SAID CERTAIN COURSE BEING THE NORTHEASTERLY LINE OF SAID CERTAIN PARCEL DEEDED TO THE NEWPORT BEACH ELEMENTARY SCHOOL DISTRICT; THENCE ALONG SAID NORTHEASTERLY LINE S 50°11'05" E 50.00 FEET TO ITS INTERSECTION WITH THE SOUTHEASTERLY LINE OF IRVINE AVENUE AS DESCRIBED IN DEED TO THE CITY OF NEWPORT BEACH FILED IN BOOK 3978, PAGE 542 OF SAID OFFICIAL RECORDS, SAID INTERSECTION BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE S 50°11'05" E 210.99 FEET; THENCE S 39°48'55" W 92.00 FEET; THENCE N 50°11'05" W 120.99 FEET; THENCE S 39°48'55" W 10.00 FEET; THENCE N 50°11'05" W 90.00 FEET TO SAID SOUTHEASTERLY LINE OF IRVINE AVENUE; THENCE ALONG SAID SOUTHEASTERLY LINE N 39°48'55" E 102.00 FEET TO THE TRUE POINT OF BEGINNING.

APN: 425-071-03

Fire Station 7 (Santa Ana Heights):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 57 THROUGH 60 AND THE SOUTHWESTERLY 66 FEET OF LOT 56, TRACT NO. 706, PER MAP RECORDED IN BOOK 21, PAGES 25 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF ORANGE, CALIFORNIA.

APN: 439-391-29

Oasis Senior Center:

PARCEL 1 OF PARCEL MAP NO. 2008-161, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 367, PAGES 26, 27 AND 28 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS, AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER THE ABOVE DESCRIBED PROPERTY, TOGETHER WITH THE RIGHT TO EXPLORE FOR, DEVELOP, EXTRACT AND REMOVE THE SAME THEREFROM BY SLANT DRILLING OR OTHER LIKE METHODS, WITH DERRICKS OR DRILL RIGS LOCATED OUTSIDE OF THE BOUNDARIES OF SAID PROPERTY, AS RESERVED BY THE IRVINE COMPANY IN THE DEED RECORDED MAY 5, 1959, IN BOOK 4698, PAGE 478, OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING, AND OPERATING THEREFOR, AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE, AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AS RESERVED BY THE IRVINE COMPANY, IN THE DEED RECORDED APRIL 29, 1986, AS INSTRUMENT NO. 86-170658, OF OFFICIAL

RECORDS.

APN: 458-651-02, 458-651-11, 458-651-13

Fire Station 3/Police Station (Newport Center):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 55, PAGE 31 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND CONVENIENT RIGHT TO EXPLORE AND EXTRACT AND TAKE ON AND AT LEVELS BELOW THE DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND BY MEANS OF WELLS, DERRICK OF OTHER EQUIPMENT FROM THE SURFACE LOCATIONS AS RESERVED BY THE IRVINE COMPANY, IN DEED RECORDED JULY 28, 1970 IN BOOK 9357, PAGE 805 AND FEBRUARY 1, 1973, IN BOOK 10538, PAGE 27 OF OFFICIAL RECORDS.

APN: 442-261-07, 08 AND 09

Fire Station 4 (Balboa Island):

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP 92-139, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 314, PAGES 36 AND 37 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 050-173-01

[END]



CITY OF

NEWPORT BEACH

City Council Staff Report

August 25, 2020
Agenda Item No. 7

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

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

PHONE: 949-644-3321

TITLE: City Corporation Yard Re-Roofing Project – Notice of Completion
for Contract No. 7719-1 (20F02)

ABSTRACT:

On February 25, 2020, the City Council awarded Contract No. 7719-1, City Corporation Yard Re-Roofing Project, to San Marino Roofing, Co. Inc. (San Marino) of Orange, California. The work is now complete and staff requests City Council acceptance and closeout of the contract.

RECOMMENDATION:

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

FUNDING REQUIREMENTS:

The adopted budget included sufficient funding for this contract. The construction contract was expensed from the following account within the budget:

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
Facilities Maintenance Master	57101-980000-20F02	\$ 553,791.98
Plan Program		<u>\$ 553,791.98</u>

DISCUSSION:

Overall Contract Cost/Time Summary

Award Contract Amount	Final Cost at Completion	Contingency Allowance	Actual Contract Change	% Due to Directed Change	% Due to Unforeseen Change
\$ 551,000.00	\$ 553,791.98	10% or less	0.5%	-2.9%	3.4%
Allowed Contract Time (days)		69	Actual Time Under (-) or Over (+)		-11

The work necessary for the completion of this contract consisted of removing and replacing roofing systems; installing vents, scuppers and skylights; and all other work as specified in the contract documents for Buildings C and D at the Corporation Yard located at 592 Superior Avenue.

The City Corporation Yard Re-Roofing Project was awarded to San Marino on February 25, 2020 with a Notice to Proceed date of April 20, 2020. The contract has been completed to the satisfaction of the Public Works Department and Community Development Department Building Division.

A summary of the contract cost is as follows:

Original Bid Amount:	\$ 551,000.00
Actual Cost of Bid Items Constructed:	\$ 535,000.00
Total Change Orders:	\$ 18,791.98
Final Contract Cost:	\$ 553,791.98

The final construction cost was less than one percent over the original contract amount. Two change orders were issued to increase the capacity of the existing scuppers on Building D and install four new sump drains to promote positive drainage on Building C. The bid included an allowance for possible roof repair that was not needed as the underlying roof base material was in satisfactory condition. This allowance was removed from the contract via a contract quantity reconciliation change order.

A summary of the project schedule milestones is as follows:

Estimated Completion Date per 2020 Baseline Schedule:	July 13, 2020
Project Award for Construction:	February 25, 2020
Contract Completion Date with Approved Extensions:	July 28, 2020
Actual Substantial Construction Completion Date:	July 10, 2020

ENVIRONMENTAL REVIEW:

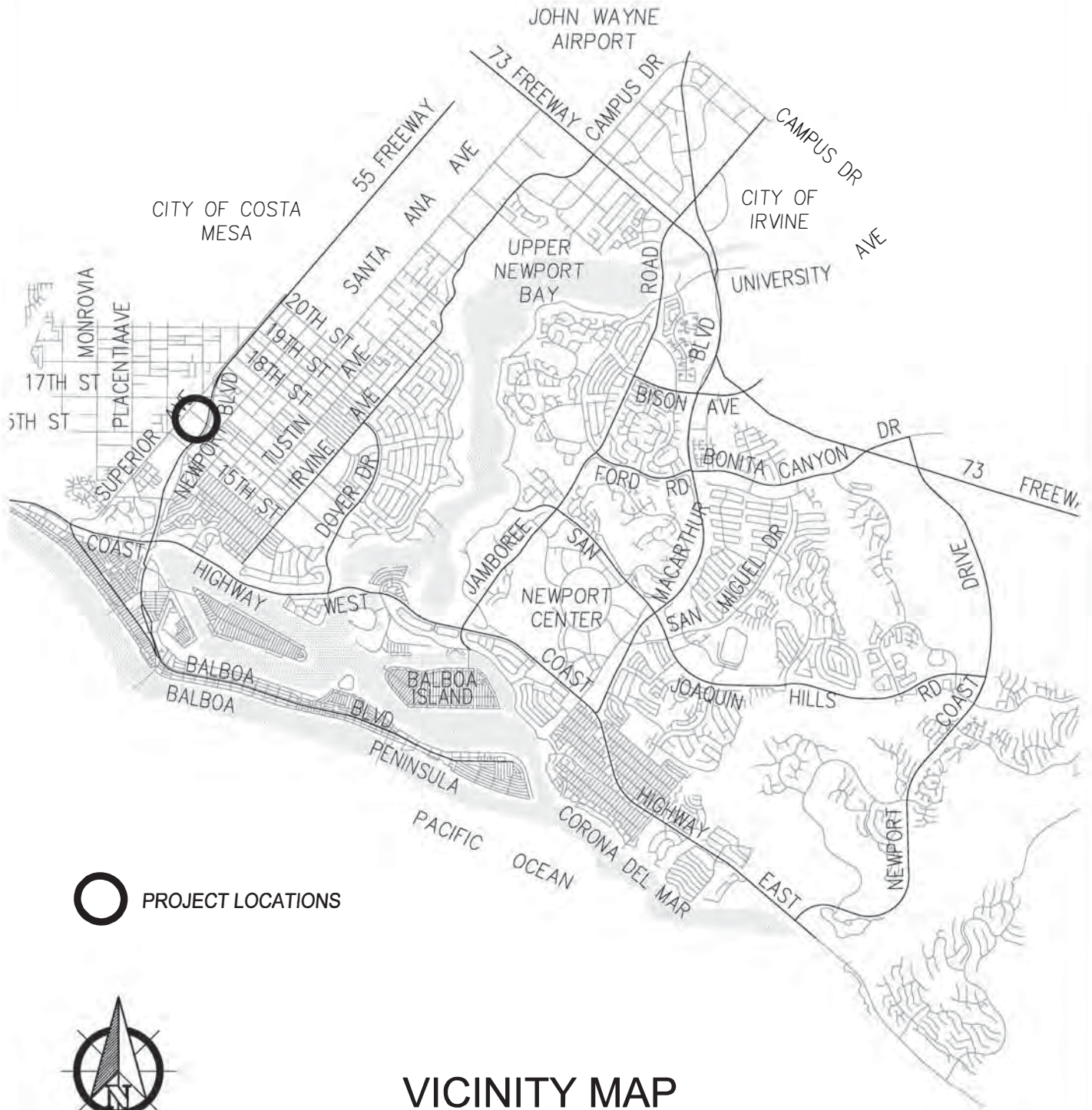
On February 25, 2020, the City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301_Class 1 (rehabilitation of deteriorated facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it results in no expansion of an existing use.

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 – Building Roofs Replaced



CITY YARD RE-ROOFING PROJECT
LOCATION MAP

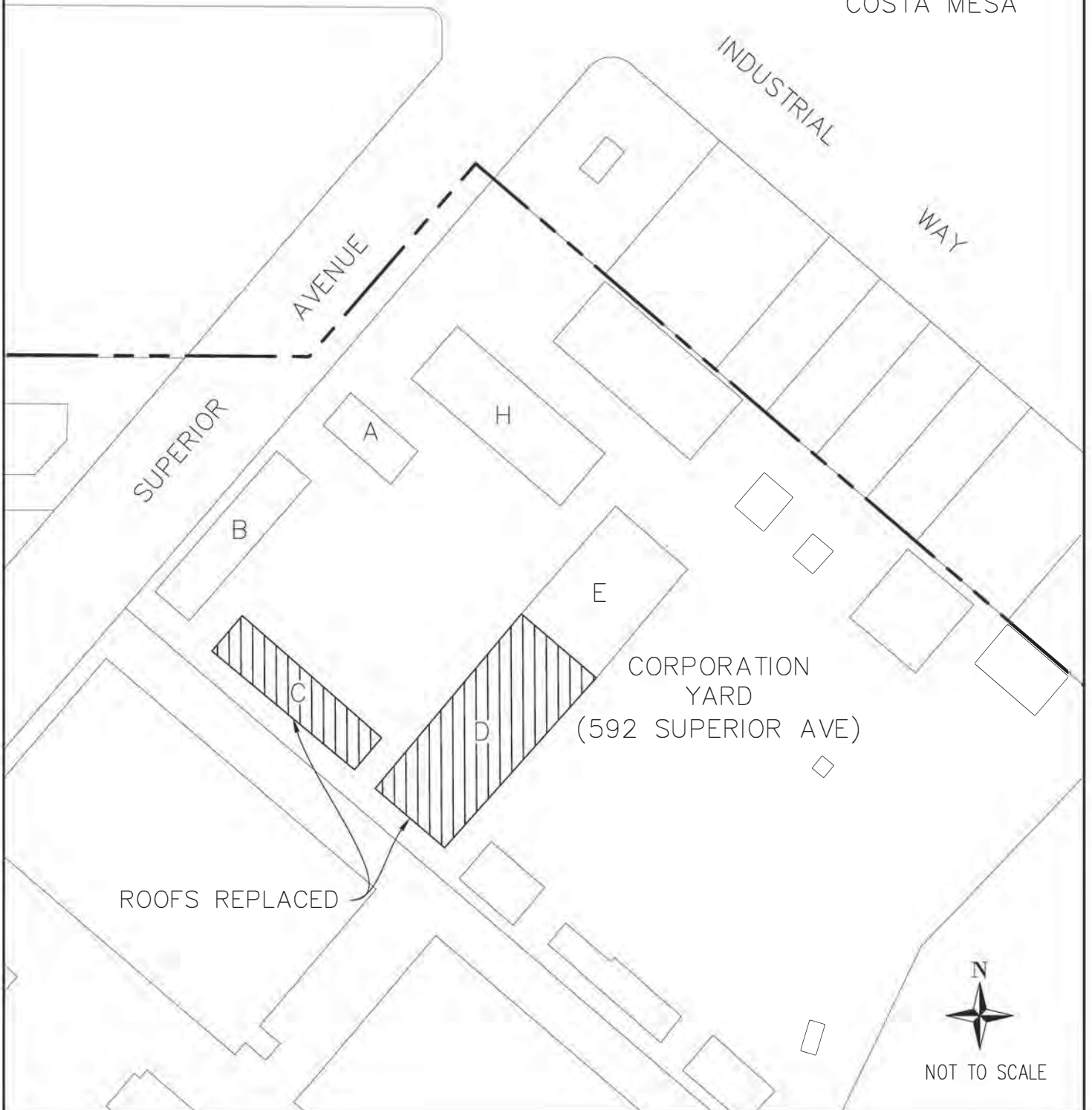
CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

C-7719-1

08/25/20

16TH ST WEST

CITY OF
COSTA MESA



CITY YARD RE-ROOFING PROJECT

BUILDING 'C' AND 'D'

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

C-7719-1

08/25/20



CITY OF

NEWPORT BEACH

City Council Staff Report

August 25, 2020
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: Andy Tran, Senior Civil Engineer, atran@newportbeachca.gov
PHONE: 949-644-3315

TITLE: Water Well Rehabilitation (Tamura Deep Well) – Notice of
Completion for Contract No. 7427-2 (19W04)

ABSTRACT:

On July 9, 2019, City Council awarded Contract No. 7427-2 for the Water Well Rehabilitation (Tamura Deep Well) project to General Pump Company, Inc. The work is now complete and staff requests City Council acceptance and close out of the contract.

RECOMMENDATION:

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

FUNDING REQUIREMENTS:

The adopted budget included sufficient funding for this contract. The construction contract was expensed from the following account within the budget:

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
Water Capital Pumping and Ops	70201933-980000-19W04	\$ 366,799.80
	Total:	\$ 366,799.80

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
\$473,660.00	\$366,799.80	10% or less	-22.6%	-27.3%	+4.7%
Allowed Contract Time + Approved Extensions (days) =		170	Actual Time Under (-) or Over (+)		+1

This project included removal and reinstallation of a water well pump and motor, chemical treatment and brushing, video surveys, caliper and gyroscopic surveys, replacement of the existing pump, replacement of an exhaust fan at the Dolphin Deep well site, and installation of a new ventilation system at both Dolphin and Tamura well sites.

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

Original Bid Amount:	\$	473,660.00
Actual Cost of Bid Items Constructed:	\$	242,694.00
Total Change Orders:	\$	124,105.80
Final Contract Cost:	\$	366,799.80

The final contract cost was \$366,799.80, which was approximately 22.6 percent lower than the original bid amount. This cost decrease was primarily due to not needing the optional well casing liner, which was included in the bid. Upon removal of the existing pump and motor, the well was inspected and determined to be in good condition. As a result, some of the well rehabilitation procedures were not necessary, which lead to additional cost savings.

The contract change orders for the project involved installing a new ventilation system at both well sites and replacing an exhaust fan at the Dolphin well site that failed during construction. This change order was necessary to lower the temperature in the pump control room produced by the variable frequency drives (VFDs) that run the vertical turbine motors at each well site. The VFDs produce a constant level of high heat and require a ventilation system to maintain cooler temperatures in order to properly function. The exhaust fan at the Dolphin Deep well site coincidentally failed during the construction phase. Since we had a professional design and construction team working on this project, the replacement of the exhaust fan was added to this contract to expedite replacement of this critical component.

A summary of the project schedule milestones is as follows:

Estimated Start of Construction per Annual Baseline Schedule	10/28/2019
Actual Start of Construction Per Notice to Proceed	11/4/2019
Extended Contract Completion Date Inclusive of Extra Work	7/16/2020
Actual Substantial Construction Completion Date	7/17/2020

The ventilation upgrades at Dolphin and Tamura well sites consisted of mechanical fans and motors with long lead times of eight weeks from the factory. Once the parts were delivered, construction was completed in a timely and expeditious manner.

ENVIRONMENTAL REVIEW:

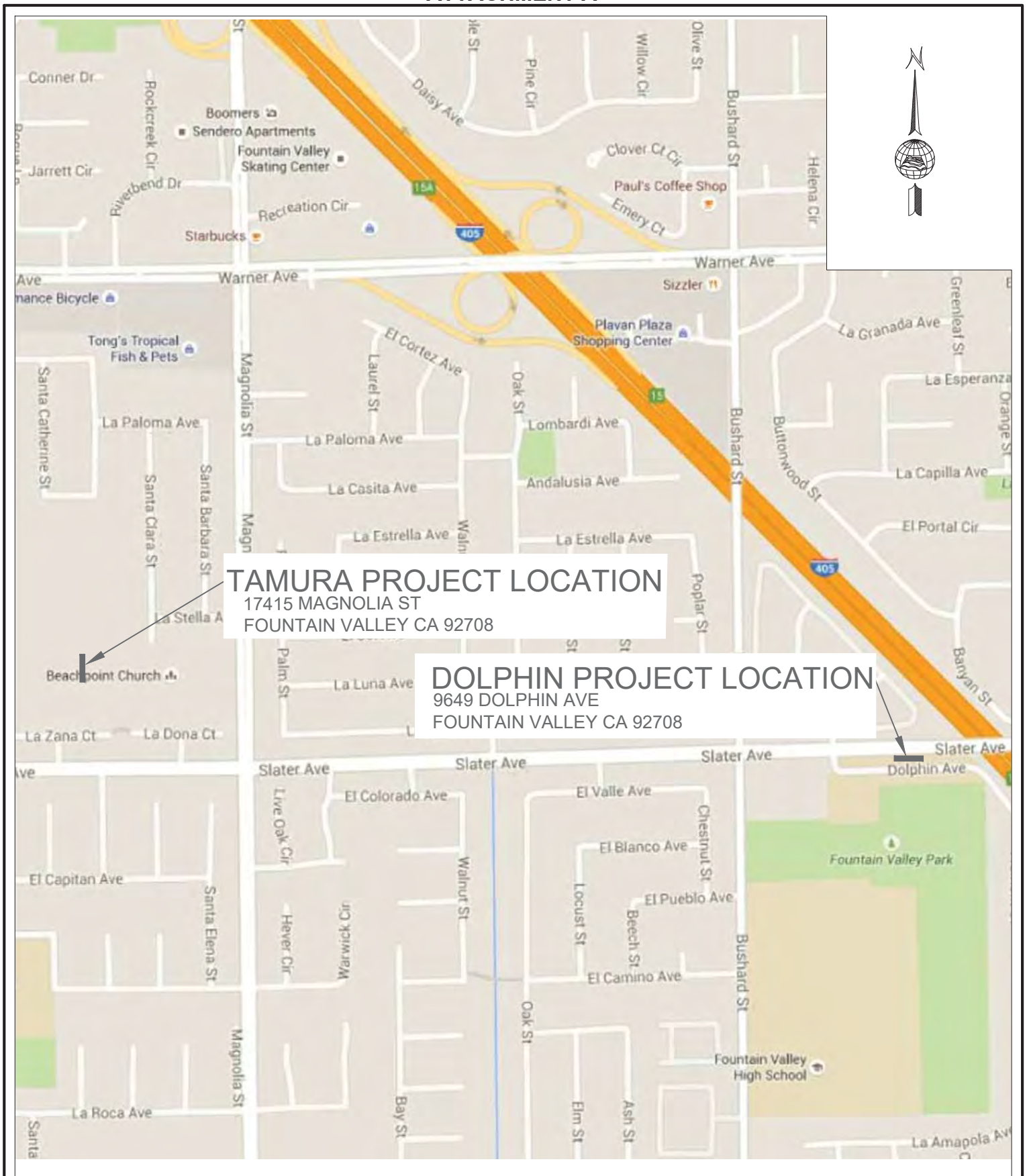
On July 9, 2019, the City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(c) Class 2, (reconstruction of existing facility involving negligible or no expansion of capacity) of the CEQA Guidelines, California Code of Regulations, Title 14, 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



WATER WELL REHABILITATION
TAMURA DEEP
LOCATION MAP

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

C-7427-2

8/25/2020



CITY OF

NEWPORT BEACH

City Council Staff Report

August 25, 2020
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: Andy Tran, Senior Civil Engineer, atran@newportbeachca.gov
PHONE: 949-644-3315

TITLE: Bison Avenue, San Joaquin Hills Road and San Nicolas Drive
Pavement Rehabilitation – Notice of Completion for Contract No.
7433-2 (19R21)

ABSTRACT:

On November 19, 2019, City Council awarded Contract No. 7433-2 for the Bison Avenue, San Joaquin Hills Road and San Nicolas Drive Pavement Rehabilitation project to R.J. Noble Company, Inc. The work is now complete and staff requests City Council acceptance and close out of the contract.

RECOMMENDATION:

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

FUNDING REQUIREMENTS:

The adopted budget included sufficient funding for this contract. The construction contract was expensed from the following accounts within the budget:

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
Measure M Fair Share	12201-980000-19R21	\$ 1,112,317.66
SB 1 RMRA	12601-980000-19R21	\$ 1,414,600.00
CalRecycle Grant	13501-980000-19R02	\$ 71,690.00
	Total:	\$ 2,598,607.66

The City was also successful in obtaining grant funding to pay for a portion of the paving material under the CalRecycle Rubberized Pavement Grant Program (Program). This Program promotes the use of rubberized asphalt concrete made from recycled waste tires generated in California. The Program aims to decrease the adverse environmental impacts created by disposing and stockpiling waste tires. Through the Program, the City will be reimbursed \$10/ton of rubberized asphalt concrete used on this project. The total amount of grant funding from this Program is \$71,690.00 for this contract.

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
\$2,681,325.00	\$2,598,607.66	10% or less	-3.1%	-3.8%	+0.7%
Allowed Contract Time + Approved Extensions (days) =		120	Actual Time Under (-) or Over (+)		+7

This project included mobilization, traffic control, survey monument restoration, utility coordination and verification, clearing and grubbing, removal of existing areas of failed roadway pavement, subgrade preparation, cold milling, grinding of existing asphalt pavement, construction of asphalt concrete pavement, asphalt rubberized hot mix pavement, concrete driveway approaches, concrete cross gutter, concrete curb ramps, concrete curb and gutters, concrete median curbs, minor landscaping and irrigation repairs, utility adjustments, traffic signage improvements, pavement striping and minor traffic signal improvements.

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:	\$ 2,681,325.00
Actual Cost of Bid Items Constructed:	\$ 2,493,381.57
Total Change Orders:	\$ 105,226.09
Final Contract Cost:	\$ 2,598,607.66

The final contract cost was \$2,598,607.66, which was approximately 3.1 percent lower than the original bid amount. The project savings was primarily attributed to the field measured asphalt concrete quantities being lower than estimated.

The change orders for the project included reconstruction of additional concrete sidewalk and curb and gutter to address damaged concrete along Bison Avenue and San Joaquin Hills Road. Additionally, staff identified traffic signal infrastructure within the project limits that needed to be replaced prior to completing the final pavement restoration.

A summary of the project schedule milestones is as follows:

Estimated Start of Construction per Annual Baseline Schedule	1/6/2020
Actual Start of Construction Per Notice to Proceed	1/13/2020
Extended Contract Completion Date Inclusive of Extra Work	7/10/2020
Actual Substantial Construction Completion Date	7/17/2020

The concrete improvements and asphalt paving operation was completed on April 8, 2020. However, the contract time was extended to account for manufacturing delays for signal equipment caused by the COVID 19 pandemic. Upon receiving the parts in July, traffic signal modifications were completed in a timely and expeditious manner.

ENVIRONMENTAL REVIEW:

On November 19, 2019, the City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301(c), Class 1, (maintenance of existing public facilities involving negligible or no expansion of use), of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

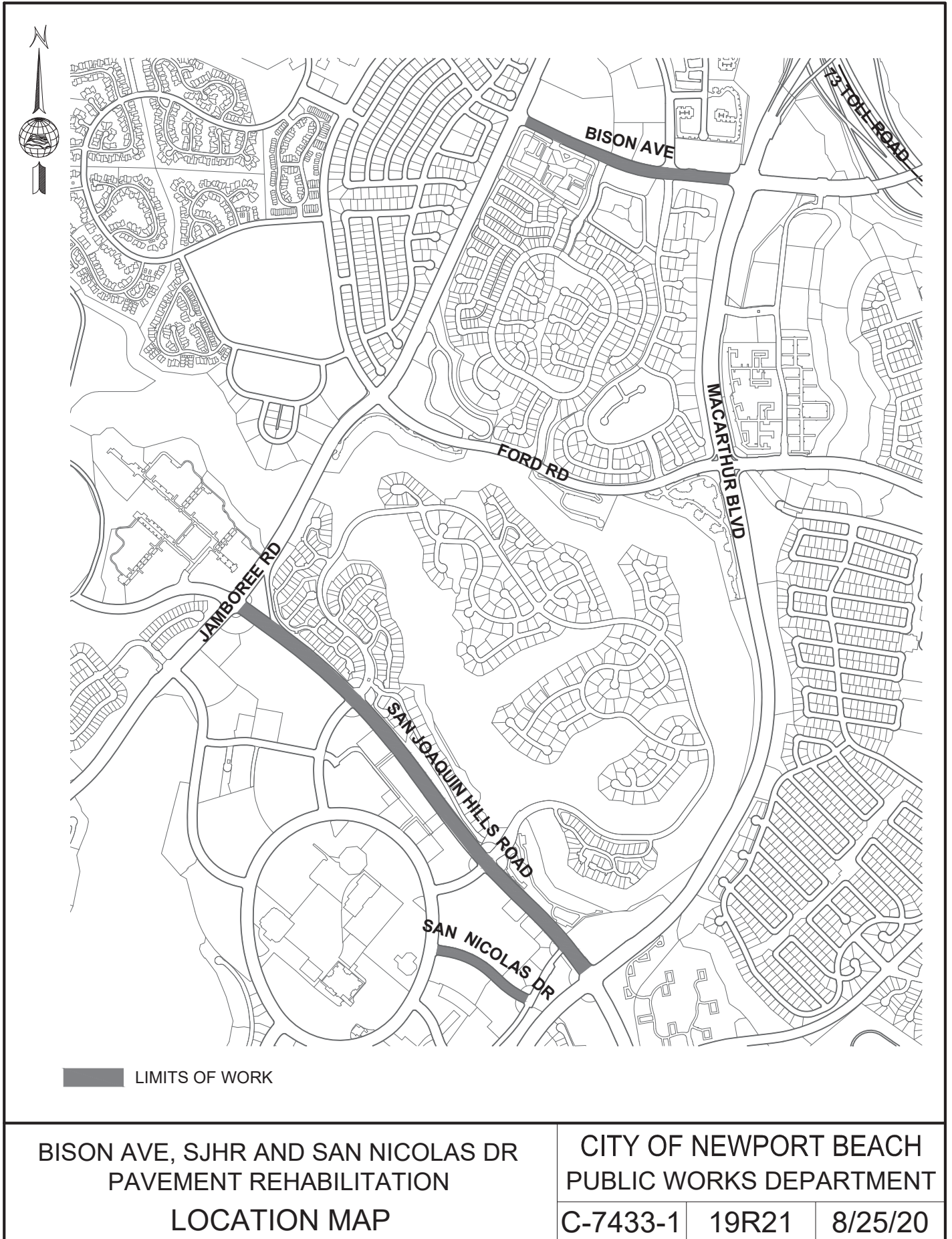
NOTICING:

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

ATTACHMENT:

Attachment A – Location Map

ATTACHMENT A



I:\Users\PBW\Shared\Contracts\FY19-20\CURRENT\200 - STREETS AND DRAINAGE\Bison Ave and SJHR Pymt Rehab C-7433-2_19R21\PLANS AND EXHIBITS\PW.08 PLocation Map.dwg 06/29/20 - 11:00am bdavis



NEWPORT BEACH

City Council Staff Report

August 25, 2020
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: Michael J. Sinacori, Assistant City Engineer
msinacori@newportbeachca.gov

PHONE: 949-644-3342

TITLE: Assessment District No. 111 and Underground Utilities District No. 22 Phases 2 & 3 – Award of Contract No. 7833-1 (21A11)

ABSTRACT:

Construction bids have been received for the Underground Utilities Assessment District No. 111 and Underground Utilities District No. 22 - Phase 2 & 3 project. Staff requests City Council's approval to award the construction contract to Asplundh Construction Corporation.

RECOMMENDATION:

- a) Approve the project plans and specifications;
- b) Declare the bid packages submitted by Teichert Energy & Utilities Group, Inc of Sacramento as non-responsive;
- c) Award Contract No. 7833-1 to Asplundh Construction Corp. for the bid amount of \$6,969,777.79 for Underground Utility Assessment District No. 111 and Underground Utility District No. 22 – Phase 2 and optional Phase 3, and authorize the Mayor and City Clerk to execute the contract;
- d) Establish a \$700,000 (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 2 & optional Phase 3 portion of the project on an agreement approved as to form by the City Attorney;
- f) Approve Amendment to Professional Services Agreement No. 7572-3 with NV5 of Irvine, CA for an additional not-to-exceed fee of \$236,807 for Construction Administration and Residential Permit Support Services;
- g) Approve Memorandums of Understanding (MOU) with the Cities of Monrovia, Mission Viejo and Laguna Woods documenting details of the transaction for the Rule 20A credit acquisition and authorize the City Manager and City Clerk to execute the MOUs;
- h) Authorize staff to process Rule 20A credit transfers between the City of Newport Beach and the Cities of Monrovia, Mission Viejo and Laguna Woods with SCE; and

- i) Approve Budget Amendment No. 21-007 recognizing \$5,195,419.59 in contribution revenue funding from multiple utility companies in Account No. 13501-561007-21A11; appropriating \$5,195,419.59 in increased expenditures in Account No. 13501-980000-21A11; and appropriating \$204,512.35 in increased expenditures from the Neighborhood Enhancement unappropriated fund balance to SCE Rule 20A Credit Purchase Account No. 53601-980000-20M03.

FUNDING REQUIREMENTS:

Upon approval of the proposed budget amendment, sufficient funding is available within the adopted FY 2020-21 Capital Improvement Program budget. The construction contract will be funded from the following sources:

Resident Self-Assessments via AD 111	\$2,693,200.00
Contributions from Utility Companies	\$5,195,419.59
Public Works Department Operating Budget	<u>\$17,965.20</u>
Total	\$7,906,584.79

The resident self-assessments funds were previously appropriated when AD 111 was approved by the residents and City Council on January 12, 2016 and included in the adopted FY 2020-21 CIP budget. Residents had until April 30, 2020 to pay any portion or all of their assessments. The balance of the assessments was funded by a bond sale approved by Council on June 23, 2020, closed on June 26, 2020, and paid for solely by the residents.

The contributions from utility companies is included in the proposed budget amendment and recognizes a total of \$5,195,419.59 in increased contribution revenue from various utility companies and appropriates \$5,195,419.59 in increases expenditures for the utility companies' share of the project. This includes a five percent administration charge.

The final \$17,965.20 is included in the Public Works Department operating budget and will cover the City's share of the cost to install a small section of fiber optics communication conduit for the City's IT network.

The following funds will be expensed:

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
AD 111 Utility Construction (1)	66002-941032	\$ 2,693,200.00
UUD-22 Phase 2 & 3 (2)	13501-980000-21A11	\$ 5,195,419.59
General Fund	0108012-851010	<u>\$ 17,965.20</u>
Total:		\$ 7,906,584.79

Notes:

- (1) Resident Funded (Assessment District)
- (2) Utility Companies Funded

Staff recommends establishing approximately a ten (10) percent contingency for unforeseen conditions associated with construction.

Proposed fund uses are as follows:

<u>Vendor</u>	<u>Purpose</u>		<u>Amount</u>
Asplundh Construction Corp.	Construction Contract	\$	6,969,777.79
Asplundh Construction Corp.	Construction Contingency	\$	700,000.00
NV5	Construction Administration	\$	<u>236,807.00</u>
Total:		\$	7,906,584.79

The utility companies have agreed to a 5% administration fee above their construction cost to cover most of the consultant construction administration expenses (NV5). AD-111 funds will be used for the remaining NV5 contract covered by the utility companies.

The budget amendment also includes the appropriation of \$204,512.35 from project savings in the Neighborhood Enhancement fund to purchase additional Rule 20A credits from the Cities of Monrovia, Mission Viejo and Laguna Woods. The adopted FY2020-21 CIP budget includes \$93,168.00 in available funding for Rule 20A credit purchases. The available credits from the three cities require the additional budget authorization to purchase 100% of their credits. By purchasing these additional credits, the entire project can be completed, which includes the optional Court Street and McFadden alley areas.

DISCUSSION:

Underground Utility Assessment District No. 111 is the area between 31st and 23rd Streets on the east and west side of Balboa Boulevard and was approved by the property owners on January 12, 2016 in anticipation of the Balboa Boulevard Underground Utility District No. 22 (UUD22) approved by the City Council in November 2013.

The City expected construction for this district to start in the fall of 2017. However, the construction bids received by Southern California Edison (SCE) in January 2018 were much higher than expected, higher than the property owners had approved funding for and higher than the 20A funding SCE had available for the City to complete the Balboa Boulevard project. Negotiations with SCE and their contractor failed, as costs were still over the available funding. The City reviewed options with the City Council at their June 12, 2018 Council Meeting; either the City could have provided more funding to complete the project as bid or request that SCE re-design the work to get closer to within budget.

The City Council directed a re-design and during the re-design process, SCE recommended splitting the Balboa Boulevard project into three phases to expedite the work. The City Council also requested that we manage the construction of the Balboa Boulevard 20A project along with the adjacent AD-116, AD-116b and AD-111 projects similar to how the City completed AD-117 in Corona del Mar.

UUD22 Phase 1 of the Balboa Boulevard 20A project between River Avenue and 36th Street was just recently completed along with AD-116 and AD-116b. System equipping by the utility companies has begun along with resident conversion efforts.

The UUD22 Phase 2 portion of this project extends from 36th to 23rd Street. Phase 3 includes the Court Street area and the McFadden Alleys between 23rd and 22nd and was bid as an optional add area. SCE has confirmed 20A funding is available to complete the Phase 2 portion of this project. However, until final accounting is done for the Phase 1, they are hesitant to fully commit to the Phase 3 area. Staff continues to work with SCE on their accounting and will know more in the next few months when final costs on Phase 1 are determined. This will become clearer after SCE installs the system equipment and residents' complete conversions to the new underground system. At this time, it does appear we will need additional Rule 20A funds to complete the Phase 3.

To address the anticipated and potential funding gap, staff recommends purchasing the additional Rule 20A credits offered by the Cities of Monrovia, Mission Viejo and Laguna Woods, which will provide \$541,237 in additional 20A funding at a rate of \$0.55 on the dollar, for a total cost of \$297,680.35. The City Council has authorized Rule 20A credit purchases eight times in the past, with the largest being a purchase of \$2,722,215 from the City of Lynwood in 2019. Purchase prices have ranged between \$0.45 and \$0.58 per Rule 20A credit dollar. Staff will bring additional purchases in the future if needed for this project or for City Council's consideration for the next priority project on Superior Avenue, assuming the Rule 20A program continues in its current format.

At 10 a.m. on May 19, 2020, the City Clerk opened and read the following bids for this project:

	<u>BIDDER</u>	<u>TOTAL BID AMOUNT</u>
Low*	Teichert Energy & Utilities Group	\$ 6,883,775.00
2nd	Asplundh Construction Corporation	\$ 6,969,372.79
3rd	Doty Bros. Equipment Company	\$ 9,394,612.00
4th	A.M. Ortega Construction	\$ 9,968,706.31
5th	Arizona Pipeline Company	\$ 9,974,900.00

***Non-Responsive Bid**

A review of the bid package submitted by Teichert Energy & Utilities Group, the apparent low bidder, revealed that the bidder failed to meet the bidding requirements by not attending the mandatory pre-bid meeting with the appropriate team members nor did they submit all required documents properly, therefore Teichert Energy & Utilities Group is non-responsive. On August 10, 2020, a letter was sent to Teichert Energy & Utilities Group informing them of staff's determination (Attachment B) and staff now recommends award of this construction contract to the second lowest bidder - Asplundh Construction Corporation.

The bid submitted by Asplundh Construction Corporation (Asplundh) is 0.4% below the Engineer's Estimate of \$7,000,000.

Asplundh submitted all the necessary forms and possesses a Classification “A” California State Contractors License as required by the project specifications. A check of the contractor’s references indicates satisfactory completion of similar projects for the City of Newport Beach and other public agencies. Asplundh completed undergrounding utilities for Underground Utility Assessment District No. 117 in Corona del Mar in June 2019 where poles were recently removed. They also recently completed the Underground Utility Assessment Districts Nos. 116 and 116b and Phase 1 of the Utility Assessment District No. 22.

Work necessary to complete this contract consists of trenching, installing conduit, vaults, handholes and pull boxes, removing existing overhead wiring, transformers and poles, repaving and all other incidental items of work to complete work in place. The contractor will have 220 working days to complete the work once given the notice to proceed. Construction will be scheduled in phases to minimize impacts to residents and visitors. For example, the contractor will be allowed to close alternating alleys to complete the work in a timely manner. In addition, minimal lane closures will only be allowed on Balboa Boulevard between Memorial Day and Labor Day to maintain summer traffic flow in the area. The anticipated construction start date is mid-September and anticipated to take 10 months to complete. The project bid package includes work for SCE, AT&T, Spectrum, Verizon, MCI, Crown Castle and for the City’s IT network for the Balboa Peninsula. With seven different entities involved in this project, construction cost per company has been reduced greatly as well as impacts to the community.

In an effort to support continuity and the successful implementation of this project, NV5 will provide Construction Administration Support Services. NV5 worked with Asplundh on the AD 116, 116b and UUD22 Phase 1 undergrounding project and has committed the same team members for this new project. NV5 and Asplundh are both experienced and understand the complex nature of utility undergrounding construction work.

Work is anticipated to begin on the UUD22 Phase 2 area beginning near 36th Street heading southbound on Balboa Boulevard. Within a month or so, and when the short-term rental use slows down, a second crew will begin in the Assessment District No. 111 alleys. No work will begin on the optional UUD22 Phase 3 portions of the project until confirmation of the necessary 20A funding is available.

ENVIRONMENTAL REVIEW:

On November 10, 2015 the City Council deemed 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. The exemption was posted and recorded at the County of Orange on November 20, 2015.

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:

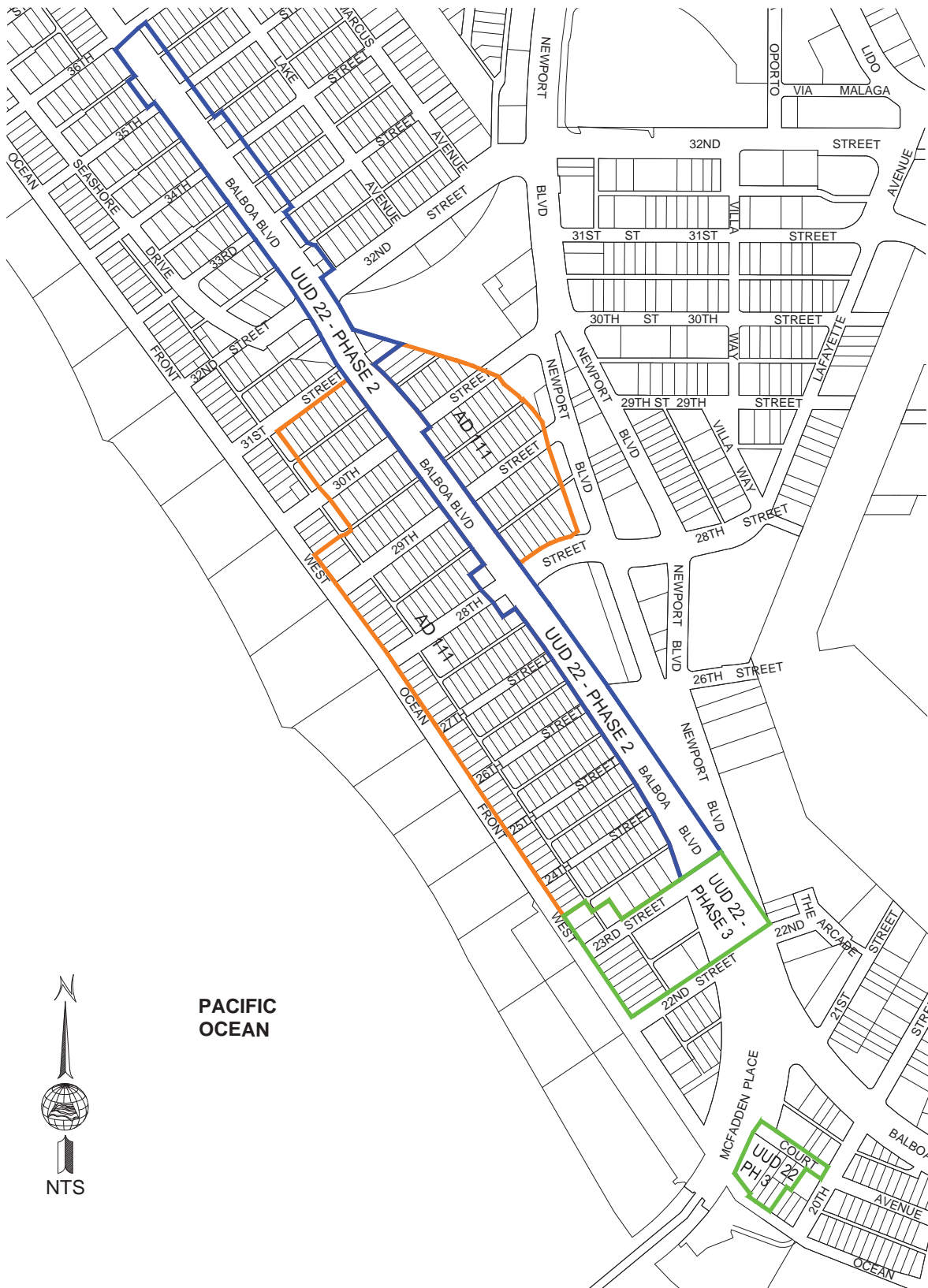
Attachment A – Location Map

Attachment B – Teichert Energy Non-responsive bid letter

Attachment C – Amendment to Professional Services Agreement with NV5

Attachment D – MOUs with the Cities of Monrovia, Mission Viejo and Laguna Woods

Attachment E – Budget Amendment 21-007



ASSESSMENT DISTRICT 111, UNDERGROUND
UTILITY DISTRICT 22 - PHASES 2 (BALBOA) & 3
LOCATION MAP

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

C-7833-1

8/25/20

ATTACHMENT B



CITY OF NEWPORT BEACH

100 Civic Center Drive
Newport Beach, California 92660
949 644-3311 | 949 644-3308 FAX
newportbeachca.gov/publicworks

August 10, 2020

Sent via Certified Mail (Return Receipt Requested) and via E-Mail to:
JSolis@teichert.com

Teichert Energy & Utilities Group, Inc.
Attn: John Solis, Regional Manager Southern California
3780 Kilroy Airport Way, Suite 700
Long Beach, CA 90806

Subject: Determination of Non-Responsiveness of Contractor's Bid C-7833-1
AD-111, UUD22 (Balboa Blvd.) Phase 2 & Court St. /McFadden Alleys Project

Dear Mr. Solis:

The City of Newport Beach ("City") received the bid submittal of Teichert Energy & Utilities Group, Inc. ("Contractor") on May 19, 2020 in response to the City's *Notice Inviting Bids* ("Bid Package") (Attachment 1) for the Assessment District No. 111, Underground Utility District 22 (Balboa Boulevard) Phase 2 and Court Street/McFadden Alley ("Project").

The City's *Instructions to Bidders* (Attachment 1, PDF page 3 of 35)) requires the successful Contractor to fill out and submit a number of forms, including, but not limited to:

- a) All Addenda to Plans and Specifications as issued by the Agency prior to Bid Opening Date;
- b) Non-Collusion Affidavit; and
- c) Designation of Sureties.

In submitting its bid response, Contractor failed to fulfill the City's requirements for the following reasons:

1. Contractor failed to be represented by its CEO/Owner who would be signing the contract documents, or Superintendent who would be managing the Project at the MANDATORY video conference Pre-Bid Meeting on April 16, 2020, as set forth on pages 1 and 5 of the Bid Package.
2. Contractor failed to sign the Non-Collusion Affidavit, as set forth on page 15 of the Bid Package (Attachment 1, page 19 of 35).

For these reasons, the City has determined that Contractor's bid for the Project is nonresponsive.

As you are aware, pursuant to Section 7 of the *Instructions to Bidders* the City reserves the right to reject any bid and to waive any minor, immaterial irregularity or informality in such bids. If a bid defect is material, the City must reject the bid. (See, e.g. *MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359, 373-77.) The City has determined that the defects in Contractor's bid are material. As such, the City has determined not to waive these defects in Contractor's bid. The bid defects could have affected the amount of the bid or given Contractor an advantage or benefit not allowed to other bidders. (See *Konica Business Machs. U.S.A., Inc. v. Regents of Univ. of Cal.* (1988) 206 Cal. App. 3d 449, 456-57.)

If you have any questions or comments, please contact me at 949-644-3342 or Msinacori@newportbeachca.gov.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Sinacori". The signature is written in a cursive, flowing style.

Michael J. Sinacori, P.E.
Assistant City Engineer & Project Manager

Cc: Jim Houlihan, Deputy Public Works Director/City Engineer
Alfred Castanon, Project Engineer

Attachments: 1) Bid Package (as submitted by Teichart Energy & Utilities Group, Inc.)

CITY OF NEWPORT BEACH
NOTICE INVITING BIDS

Sealed bids shall be submitted to the office of the City Clerk,
100 Civic Center Drive, Newport Beach, CA 92660
By 10:00 AM on the 5th day of May, 2020,
at which time such bids shall be opened and read for

UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111
(Area Bounded by Newport Boulevard, 23rd Street, Ocean Front W and 31st Street)

UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2
(Balboa Boulevard between 36th Street and 23rd Street)

UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT STREET
(Area Bounded by 23rd Street, 20th Street, Balboa Boulevard and Ocean Front W)

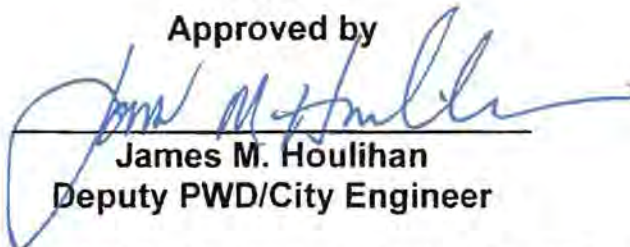
Contract No. 7833-1

\$7,000,000.00

Engineer's Estimate



Approved by


James M. Houlihan
Deputy PWD/City Engineer

Prospective bidders may obtain Bid Documents, Project Specifications and Plans via
PlanetBids:

<http://www.planetbids.com/portal/portal.cfm?CompanyID=22078>

MANDATORY PRE-BID

A mandatory video conference pre-bid MEETING will be conducted for this project on
APRIL 16, 2020 at 10:30 am. Information regarding video conferencing will be noticed to
registered bidder. *Bidders who do not participate may be considered non-responsive.*

Hard copy bid documents will be available by SHIPPING ONLY on March 27, 2020 from:
Mouse Graphics, 659 W. 19th Street, Costa Mesa, CA 92627

Email INFO@SENDMOUSE.COM or call (949) 548-5571 for shipping information
ALL GENERAL CONTRACTORS ARE REQUIRED TO ORDER ONE SET TO BID PROJECT

Contractor License Classification(s) required for this project: "A"
For further information, call Michael J. Sinacori P.E., Project Manager at (949) 644-3342

City of Newport Beach

UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111

UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111

UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2

UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT STREET

Contract No. 7833-1

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City of Newport Beach

UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111

UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2

UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT STREET

Contract No. 7833-1

INSTRUCTIONS TO BIDDERS

1. The following documents shall be completed, executed and received by the City Clerk in accordance with NOTICE INVITING BIDS:
INSTRUCTIONS TO BIDDERS
BIDDER'S BOND
DESIGNATION OF SUBCONTRACTORS
CONTRACTOR'S INDUSTRIAL SAFETY RECORD
INFORMATION REQUIRED OF BIDDER
ALL ADDENDA TO PLANS AND SPECIFICATIONS AS ISSUED BY AGENCY PRIOR TO BID
OPENING DATE
TECHNICAL ABILITY AND EXPERIENCE REFERENCES
NON-COLLUSION AFFIDAVIT
DESIGNATION OF SURETIES
PROPOSAL
2. Cash, certified check or cashier's check (sum not less than 10 percent of the total bid price) may be received in lieu of the BIDDER'S BOND. The title of the project and the words "Sealed Bid" shall be clearly marked on the outside of the envelope containing the documents. Original copies must be submitted to the City Clerk's Office.
3. The City of Newport Beach will not permit a substitute format for the Contract Documents listed above. Bidders are advised to review their content with bonding and legal agents prior to submission of bid.
4. BIDDER'S 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, and (2) listed as an acceptable surety in the latest revision of the Federal Register Circular 570. The successful bidder's security shall be held until the Contract is executed.
5. The estimated quantities indicated in the PROPOSAL are approximate, and are given solely to allow the comparison of total bid prices.
6. Bids are to be computed upon the estimated quantities indicated in the PROPOSAL multiplied by unit price submitted by the bidder. In the event of discrepancy between wording and figures, bid wording shall prevail over bid figures. In the event of error in the multiplication of estimated quantity by unit price, the correct multiplication will be computed and the bids will be compared with correctly multiplied totals. The City shall not be held responsible for bidder errors and omissions in the PROPOSAL.

7. The City of Newport Beach reserves the right to reject any or all bids and to waive any minor irregularity or informality in such bids. Pursuant to Public Contract Code Section 22300, at the request and expense of the Contractor, securities shall be permitted in substitution of money withheld by the City to ensure performance under the contract. The securities shall be deposited in a state or federal chartered bank in California, as the escrow agent.
8. 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 contract. 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. All parties to the contract shall be governed by all provisions of the California Labor Code – including, but not limited to, the requirement to pay prevailing wage rates (Sections 1770-1798.1 inclusive). A copy of the prevailing wage rates shall be posted by the Contractor at the job site.
9. The Contractor shall be responsible for insuring compliance with provisions of Section 1777.5 of the Labor Code Apprenticeship requirements and Section 4100 *et seq.* of the Public Contracts Code, "Subletting and Subcontracting Fair Practices Act".
10. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
11. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
12. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
13. All documents shall bear signatures and titles of persons authorized to sign on behalf of the bidder. For corporations, the signatures shall be of a corporate officer or an individual authorized by the corporation. For partnerships, the signatures shall be of a general partner. For sole ownership, the signature shall be of the owner.
14. Pursuant to Public Contract Code section 9204, for any demand by contractor, whether on behalf of itself or a subcontractor that lacks privity of contract with the City but has requested that contractor proceed on its behalf, sent by registered mail or certified mail return receipt requested for a time extension, payment by the City for money or damages arising from work done by, or on behalf of, the contractor and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled, or for payment of an amount that is disputed by the City, the following is a summary of the claims resolution process to be applied:
 - A. The City shall review the claim and, within 45 days, shall provide a written statement identifying the portions of the claim that are disputed and undisputed. This time period may be extended by mutual agreement. The claimant shall furnish all reasonable documentation to support the claim. If the City needs approval from its City Council to provide the written statement and the City Council does not meet within the prescribed time period, the City shall have up to 3 days following the next regular meeting of the City Council to provide the written statement. Payment of the undisputed portion of the claim shall be made within 60 days after the City issues its written statement.


- B. If the claimant disputes the City's written statement or if the City does not issue a written statement in the prescribed time period, the claimant may demand in writing an informal meet and confer conference, which shall be scheduled within 30 days of receipt of claimant's demand.
- C. Within 10 business days of the meet and confer conference, if a dispute remains, the City shall provide a written statement identifying the portion of the claim that remains in dispute and the undisputed portion. The City shall pay any remaining amount of the undisputed portion within 60 days. Any disputed portion of the claim shall be submitted to nonbinding mediation or similar nonbinding process, with the City and claimant sharing the costs equally and agreeing to a mediator within 10 business days. If the parties cannot timely agree on a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate the remaining disputed portion. If mediation is unsuccessful, any remaining disputed portion shall be addressed using procedures outside of Public Contract Code section 9204.
- D. Failure by the City to meet the time requirements herein shall result in the claim being rejected in its entirety and shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.
- E. MANDATORY video conference Pre-Bid Meeting attendance is required for this Project. The meeting will be conducted on APRIL 16, 2020 at 10:30 am. Information regarding video conferencing will be noticed to registered bidder. All contractors wishing to bid on this project shall be represented by its CEO/Owner who will be signing the contract documents, or Superintendent who will be managing the Project, at this mandatory meeting. Bidders who do not participate may be considered non-responsive.

The signature below represents that the above has been reviewed.

1051426 - A
Contractor's License No. & Classification

1000064848 - 6/30/21
DIR Registration Number & Expiration Date

Teichert Energy & Utilities Group, Inc.
Bidder


Authorized Signature/Title John Solis - Regional Manager,
Southern California

5/19/2020
Date

City of Newport Beach

UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111

UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2

UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT STREET

Contract No. 7833-1

BIDDER'S BOND

We, the undersigned Principal and Surety, our successors and assigns, executors, heirs and administrators, agree to be jointly and severally held and firmly bound to the City of Newport Beach, a charter city, in the principal sum of Ten Percent (10%) of the Total Amount Bid Dollars (\$), to be paid and forfeited to the City of Newport Beach if the bid proposal of the undersigned Principal for the construction of **UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111, UUD 22 - PHASE 2 and UTILITY UNDERGROUNDING FOR MCFADDEN ALLEYS AND COURT STREET, Contract No. 7833-1** in the City of Newport Beach, is accepted by the City Council of the City of Newport Beach and the proposed contract is awarded to the Principal, and the Principal fails to execute the Contract Documents in the form(s) prescribed, including the required bonds, and original insurance certificates and endorsements for the construction of the project within thirty (30) calendar days after the date of the mailing of "Notification of Award", otherwise this obligation shall become null and void.

If the undersigned Principal executing this Bond is executing 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.

Witness our hands this 29th day of April, 2020.

Teichert Energy & Utilities Group, Inc.

Name of Contractor (Principal)

Authorized Signature/Title

Liberty Mutual Insurance Company

Name of Surety

Authorized Agent Signature

HOME OFFICE: 175 Berkeley Street, Boston, MA 02116

AIF: 525 Market Street, #3400

San Francisco, CA 94105

Address of Surety

Bradley N. Wright, Attorney in Fact

Print Name and Title

AIF: 415-955-0120

Telephone

(Notary acknowledgment of **Principal & Surety** must be attached)

ACKNOWLEDGMENT

State of California
County of _____ } ss.

On _____ 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

Please see attached for
CA. Civil Code
Section 1189 compliant
Acknowledgement

OPTIONAL INFORMATION

Date of Document _____ Thumbprint of Signer

Type or Title of Document _____

Number of Pages in Document _____

Document in a Foreign Language _____

Type of Satisfactory Evidence:

_____ Personally Known with Paper Identification

_____ Paper Identification

_____ Credible Witness(es)

Capacity of Signer:

_____ Trustee

_____ Power of Attorney

_____ CEO / CFO / COO

_____ President / Vice-President / Secretary / Treasurer

_____ Other: _____

Other Information: _____



☐ Check here if
no thumbprint
or fingerprint
is available.

ACKNOWLEDGMENT

State of California
County of _____ } ss.

On _____ 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

OPTIONAL INFORMATION

Date of Document _____ Thumbprint of Signer

Type or Title of Document _____

Number of Pages in Document _____

Document in a Foreign Language _____

Type of Satisfactory Evidence:

_____ Personally Known with Paper Identification

_____ Paper Identification

_____ Credible Witness(es)

Capacity of Signer:

_____ Trustee

_____ Power of Attorney

_____ CEO / CFO / COO

_____ President / Vice-President / Secretary / Treasurer

_____ Other: _____

☐ Check here if
no thumbprint
or fingerprint
is available.

Other Information: _____

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 Contra Costa)

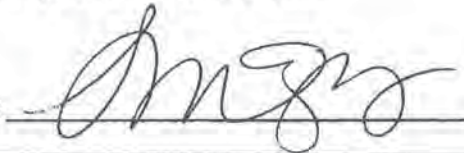
On APRIL 29, 2020 before me, S. Nicole Evans, Notary Public
(insert name and title of the officer)

personally appeared BRADLEY N. WRIGHT,
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~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

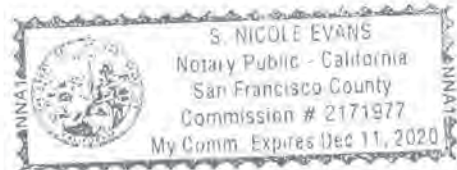
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)





This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8196953 - 395022**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Carolyn Emery, S. Nicole Evans, Frances M. Murphy, Bradley N. Wright

all of the city of San Francisco state of California each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 5th day of October, 2018.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 5th day of October, 2018 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 29 day of APRIL, 2020.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

CALIFORNIA ALL-PURPOSE CERTIFICATE OF 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 Los Angeles

On May 14, 2020 before me, Lisa Mendoza, Notary Public,
(Here insert name and title of the officer)

personally appeared John Solis

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 signature(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 of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Contract No. 7833-1

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date 04/29/2020

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

☐ Individual (s)

☒ Corporate Officer

Regional Manager
(Title)

☐ Partner(s)

☐ Attorney-in-Fact

☐ Trustee(s)

☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

City of Newport Beach

UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111

UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2

UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT STREET

Contract No. 7833-1

COMPLIANCE WITH CIVIL RIGHTS ACT
AND
AFFIRMATIVE ACTION REQUIREMENTS

- 1) During the performance of the construction contract, contractor shall agree to and be bound by the following:

a) Equal Employment Opportunity


In connection with the execution of the contract, contractor shall not discriminate against any employee, or applicant for employment because of race, religion, color, gender, age, marital status, sexual orientation, AIDS or AIDS-related symptoms (including HIV positive findings), or national origin. Actions encompassed by this prohibition shall include, but not be limited to, the following employment, upgrading, demotion or transfer, recruitment, or recruitment advertising; layoff or termination; rate of pay, or other forms of compensation; and selection for training, including apprenticeship.

b) Sanctions for Noncompliance

In the event of the contractor's noncompliance with the non-discrimination provisions of the contract, City shall impose such contract sanctions as City may determine to be appropriate, including, but not limited to:

- (1) withholding of payments to contractor under the contract until contractor complies, and/or
- (2) cancellation, termination, or suspension of the contract, in whole or in part.

Teichert Energy & Utilities Group, Inc.
Bidder

 John Solis - Regional Manager,
Authorized Signature/Title Southern California

UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT STREETContract No. 7833-1DESIGNATION OF SUBCONTRACTOR(S)

State law requires the listing of all subcontractors who will perform work in an amount in excess of one-half of one percent of the Contractor's total bid. If a subcontractor is not listed, the Contractor represents that he/she is fully qualified to and will be responsible for performing that portion of the work. Substitution of subcontractors shall be made only in accordance with State law and/or the Standard Specifications for Public Works Construction, as applicable.

Pursuant to Public Contract Code Section 22300 appropriate securities may be substituted for any monies to be withheld to ensure performance under the Contract.

The Bidder, by signing this designation, certifies that bids from the following subcontractors have been used in formulating the bid for the project and that these subcontractors will be used subject to the approval of the Engineer and in accordance with State law. No changes may be made in these subcontractors except with prior approval of the City of Newport Beach. (Use additional sheets if needed.)

Subcontractor's Information	Bid Item Number	Description of Work	% of Total Bid
Name: Strive Concrete Cutting, Inc. Address: P.O. Box 1970 Tustin, CA 92781 Phone: 714-630-9881 State License Number: 900346 DIR Reference: 1000008864 Email Address: schavez@striveconcrete.com	1, 2, & 3	Sawcut existing Asphalt and Concrete pavement	0.90%
Name: Address: Phone: State License Number: DIR Reference: Email Address:			
Name: Address: Phone: State License Number: DIR Reference: Email Address:			

Teichert Energy & Utilities Group, Inc.
Bidder

 John Solis - Regional Manager,
Authorized Signature/Title Southern California

City of Newport BeachUNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT STREETContract No. 7833-1**TECHNICAL ABILITY AND EXPERIENCE REFERENCES****Contractor must use this form!!! Please print or type.**Bidder's Name Teichert Energy & Utilities Group, Inc.

FAILURE OF THE BIDDER TO PROVIDE ALL REQUIRED INFORMATION IN A COMPLETE AND ACCURATE MANNER MAY BE CONSIDERED NON-RESPONSIVE.

For all public agency projects you have worked on (or are currently working on) in the past 2 years in excess of \$120,000, provide the following information:

No. 1Project Name/Number Block 4Y UUPProject Description Converting Overhead Utilities to UndergroundApproximate Construction Dates: From March 2020 To: March 2024Agency Name City of San DiegoContact Person Taylor Cox Telephone (619) 533-3033Original Contract Amount \$14,842,975.00 Final Contract Amount \$ TBDIf final amount is different from original, please explain (change orders, extra work, etc.)
N/A

Did you file any claims against the Agency? Did the Agency file any claims against you/Contractor? If yes, briefly explain and indicate outcome of claims.

No

No. 2Project Name/Number Naval Base Coronado Coastal Campus Force Main ProjectProject Description Modify Sewer Pump Station and install 14,300 LF of 8" HDPE SS Force MainApproximate Construction Dates: From October 7, 2019 To: March 6, 2020Agency Name City of CoronadoContact Person Ed Walton Telephone (619) 522-7383Original Contract Amount \$3,642,000.00 Final Contract Amount \$ TBDIf final amount is different from original, please explain (change orders, extra work, etc.)
The project is in closing out process.Did you file any claims against the Agency? Did the Agency file any claims
against you/Contractor? If yes, briefly explain and indicate outcome of claims.
NO**No. 3**Project Name/Number Caltrans Project 07-312004Project Description Modify Traffic Comm and Electrical Systems - Routes 2, 5, 101, 105, and 110Approximate Construction Dates: From March 6, 2020 To: March 2022Agency Name Caltrans District 07Contact Person Adelia Fonseca Telephone (916) 227-1995Original Contract Amount \$28,250,000.00 Final Contract Amount \$ TBDIf final amount is different from original, please explain (change orders, extra work, etc.)
N/ADid you file any claims against the Agency? Did the Agency file any claims
against you/Contractor? If yes, briefly explain and indicate outcome of claims.
NO

No. 4Project Name/Number Westminster Boulevard Force Main Replacement ProjectProject Description Construct Two (2) 36-Inch HDPE Force Mains - Approximately 14,500 LFApproximate Construction Dates: From January 27, 2020 To: October 2022Agency Name Orange County Sanitation DistrictContact Person Charles Dalton Telephone (714) 962-2411Original Contract Amount \$27,743,000.00 Final Contract Amount \$ TBDIf final amount is different from original, please explain (change orders, extra work, etc.)
N/ADid you file any claims against the Agency? Did the Agency file any claims
against you/Contractor? If yes, briefly explain and indicate outcome of claims.
NO**No. 5**Project Name/Number OCW BR-01-04 W. Wagstaff ParadiseProject Description Convert Overhead Utilities to Underground and Install New Gas Main and ServicesApproximate Construction Dates: From November 4, 2019 To: March 2020Agency Name Pacific Gas & ElectricContact Person Matthew D'Luzansky Telephone (757) 846-0772Original Contract Amount \$661,000.00 Final Contract Amount \$ 999,946.19If final amount is different from original, please explain (change orders, extra work, etc.)
Extra work in the form of a Change Order. additional footage was installed than originally planned perthe bid set.Did you file any claims against the Agency? Did the Agency file any claims
against you/Contractor? If yes, briefly explain and indicate outcome of claims.
NO

No. 6Project Name/Number OCW BR-04-07 Crestmoor ParadiseProject Description Convert Overhead Utilities to Underground and Install New Gas Main and ServicesApproximate Construction Dates: From October 21, 2019 To: March 2020Agency Name Pacific Gas & ElectricContact Person Matthew D'Luzansky Telephone (757) 846-0772Original Contract Amount \$ 960,000.00 Final Contract Amount \$ 2,229,900.49

If final amount is different from original, please explain (change orders, extra work, etc.)

Extra work in the form of a Change Order, additional footage was installed than originally planned perthe bid set.Did you file any claims against the Agency? Did the Agency file any claims
against you/Contractor? If yes, briefly explain and indicate outcome of claims.NO

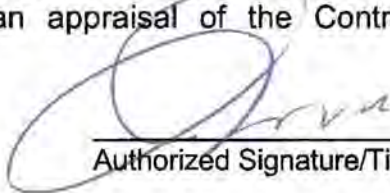
Attach additional sheets if necessary.

Attach to this Bid the experience resume of the person who will be designated as General Construction Superintendent or on-site Construction Manager for the Contractor.

Upon request, the Contractor shall attach a financial statement and other information sufficiently comprehensive to permit an appraisal of the Contractor's current financial conditions.

Teichert Energy & Utilities Group, Inc.

Bidder



Authorized Signature/Title

John Solis, Regional Manager
Southern California



TEICHERT ENERGY & UTILITIES GROUP, INC.

Mike Luna
General Superintendent
(213) 369-0346
mluna@teichert.com

Experience in all aspects of underground wet side utilities including; sanitary sewer, storm drain, SUSMP devices, hydronic piping, water mains and appurtenances, this includes both private and public works projects ranging in size from 1" to 96". Supervised many large-scale dry side conduit installation projects. Extensive experience utilizing three dimensions models in the field and implementing the BIM process during installation.

Oriented team leader providing direction to multiple crews on multiple projects and performing the associated duties including not only supervision of manpower, but also purchasing, detailing, coordination, scheduling, problem solving, submittals, RFI's and estimating.

Employment History:

Teichert Utilities; 2019 – Present – General Superintendent
Murray Company; 2013 – 2019 – Superintendent
Murray Company; 2011 – 2013 - Operator Foreman
Atkinson Construction; 2010 – 2011 - Operator Foreman
Flatiron Construction; 2009 – 2010 - Operator Foreman
SRD Engineering; 2007 – 2009 - Operator Foreman
SRD Engineering; 2003 – 2007 - Labor Foreman
SRD Engineering; 2001 – 2003 - Laborer

Notable Projects:

Providence Tarzana Medical Center, Tarzana, CA
LAX Midfield, Los Angeles, CA
LAX Terminal 1.5, Los Angeles, CA
Disney Advanced Work, Anaheim, CA
Disney Frontierland Expansion, Anaheim, CA
Spruce Goose Hangar Repurposed Office Space, Los Angeles, CA
LAX TBIT Renovations, Los Angeles, CA
USC McClintock, Los Angeles, CA
USC Childs Way, Los Angeles, CA
Kaiser Permanente, Irwindale, CA developers throughout Southern California.
Kaiser Permanente, Sunset LACMA, Los Angeles, CA
Universal Studios P-384 Make Ready, Universal City, CA
Universal Studios P-384, Universal City, CA
Rancho Los Amigos Make Ready, Los Angeles, CA
Rancho Los Amigos (Wellness & OPB Site Work), Los Angeles, CA
Expo Light Rail, Los Angeles, CA

Certifications: OSHA 30 Hour
Competent Person
Confined Space Certified

City of Newport Beach

UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111

UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2

UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT STREET

Contract No. 7833-1

NON-COLLUSION AFFIDAVIT

State of California)
) ss.
County of Los Angeles)

John Solis, being first duly sworn, deposes and says that he or she is
Regional Manager, Southern California of Teichert Energy & Utilities Group, Inc., the party making the foregoing
bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company,
association, organization, or corporation; that the bid is genuine and not collusive or sham; that party making the
foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company,
association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not
directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly
colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall
refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication,
or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost
element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding
the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and,
further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the
contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation,
partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a
collusive or sham bid.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Teichert Energy & Utilities Group, Inc.
Bidder

Authorized Signature/Title

John Solis - Regional Manager,
Southern California

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 2020

by _____, proved to me on the basis of satisfactory
evidence to be the person(s) who appeared before me.

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

Notary Public

[SEAL]

My Commission Expires: _____

*SEE ATTACHED JURAT

City of Newport Beach

UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111

UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2

UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT STREET

Contract No. 7833-1

DESIGNATION OF SURETIES

Bidder's name Teichert Energy & Utilities Group, Inc.

Provide the names, addresses, and phone numbers for all brokers and sureties from whom Bidder intends to procure insurance and bonds (list by insurance/bond type):

Bonds -

Surety Co. - Liberty Mutual - 1340 Treat Blvd., Ste. 550; Walnut Creek, CA 94597

Bonding Co. - Willis Insurance Services of CA - 525 Market Street, #3400; San Francisco, CA 94105

Insurance -

EPIC - 10877 White Rock Road, Ste. 300; Rancho Cordova, CA 95670

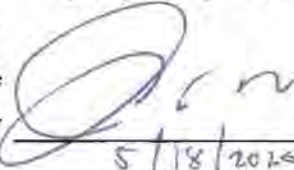
City of Newport Beach**UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111****UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2****UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT STREET****Contract No. 7833-1****CONTRACTOR'S INDUSTRIAL SAFETY RECORD
TO ACCOMPANY PROPOSAL**Bidder's Name Teichert Energy & Utilities Group, Inc.Record Last Five (5) Full Years
Current Year of Record

	Current Year of Record 2020	Record for 2019	Record for 2018	Record for 2017	Record for 2016	Record for 2015	Total
No. of contracts	85	318	399	430	521	176	1,929
Total dollar Amount of Contracts (in Thousands of \$)	\$255,707,899	\$819,835,280	\$699,633,697	\$720,203,941	\$608,585,771	\$864,611,110	\$3,968,577,698
No. of fatalities	0	0	0	0	0	0	0
No. of lost Workday Cases	0	5	8	5	4	6	28
No. of lost workday cases involving permanent transfer to another job or termination of employment	0	4	1	2	7	12	26

The information required for these items is the same as required for columns 3 to 6, Code 10, Occupational Injuries, Summary--Occupational Injuries and Illnesses, OSHA No. 102.

Legal Business Name of Bidder Teichert Energy & Utilities Group, Inc.
 Business Address: 3780 Kilroy Airport Wy #700; Long Beach, CA
 Business Tel. No.: 916-484-3372
 State Contractor's License No. and
 Classification: 1051426 - A
 Title Regional Manager, Southern California

The above information was compiled from the records that are available to me at this time and I declare under penalty of perjury that the information is true and accurate within the limitations of those records.

Signature of bidder 
 Date 5/18/2024
 Title John Solis - Regional Manager, Southern California
 Signature of bidder _____
 Date _____
 Title *SEE ATTACHED CORPORATE RESOLUTION
 Signature of bidder _____
 Date _____
 Title _____
 Signature of bidder _____
 Date _____
 Title _____

Signature Requirements: If bidder is an individual, name and signature of individual must be provided, if doing business under a fictitious name, the fictitious name must be set forth along with the County. If bidder is a partnership or joint venture, legal name of partnership/joint venture must be provided, followed by signatures of all of the partners/joint ventures or if fewer than all of the partners/joint ventures submit with evidence of authority to act on behalf of the partnership/joint venture. If bidder is a corporation, legal name of corporation must be provided, followed by signatures of the corporation President or Vice President or President and Secretary or Assistant Secretary, and the corporate seal, or submit with evidence of authority to act on behalf of the corporation. All must be acknowledged before a Notary Public, who must certify that such individuals, partners/joint ventures, or officers were proven on the basis of satisfactory evidence to be the persons whose name are subscribed to and acknowledged that they executed the same in their authorized capacities.

[NOTARY ACKNOWLEDGMENT and CORPORATE SEAL MUST BE ATTACHED]

TEICHERT ENERGY & UTILITIES GROUP, INC.,
3500 American River Drive, Sacramento, California 95864

I, PAULA D. JAMES, Secretary of TEICHERT ENERGY & UTILITIES GROUP, INC., a California Corporation, certify that the following is a true and correct copy of a resolution unanimously passed and adopted by the Board of Directors of this corporation at a meeting held on August 7, 2019:

RESOLVED, That

	THOMAS J. GRIFFITH	President
and	RONALD L. GATTO	Executive Vice President, Chief Financial Officer & Assistant Secretary
and	ERIC STREICH	Vice President & General Manager
and	PAULA D. JAMES	Secretary

acting in combination, are authorized on behalf of this corporation and in its name or in any of the fictitious names under which this corporation does business, to sign, seal, acknowledge, verify and deliver deeds, deeds of trust, mortgages, pledges, transfers, promissory notes, and any other documents and instruments relating to the business and properties, real and personal, of this corporation;

RESOLVED FURTHER, That the following employees of this corporation:

John Solis	Regional Manager, Southern California
Curt Brown	Director of Business Development
Ken Schardt	General Manager, Solar
Jake Creger	Regional Manager, Northern California

are designated as attorneys in fact of this corporation with full authority to execute proposals, bids, bonds, contracts, and agreements for construction work.

DATED: 5/19/2020



Paula D. James
Secretary

City of Newport Beach**UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111****UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2****UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT STREET****Contract No. 7833-1****ACKNOWLEDGEMENT OF ADDENDA**Bidder's name Teichert Energy & Utilities Group, Inc.

The bidder shall signify receipt of all Addenda here, if any, and attach executed copy of addenda to bid documents:

Addendum No.	Date Received	Signature
1	04/30/2020	
2	05/15/2020	

City of Newport Beach**UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111****UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2****UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT STREET****Contract No. 7833-1****INFORMATION REQUIRED OF BIDDER**

Bidder certifies under penalty of perjury under the laws of the State of California that the following information is true and correct:

Name of individual Contractor, Company or Corporation: Teichert Energy & Utilities Group, Inc.

Business Address: 3780 Kilroy Airport Wy #700; Long Beach, CA

Telephone and Fax Number: 916-484-3372

California State Contractor's License No. and Class: 1051426 - a
(REQUIRED AT TIME OF AWARD)

Original Date Issued: 3/19/19 Expiration Date: 3/31/21

List the name and title/position of the person(s) who inspected for your firm the site of the work proposed in these contract documents:

JOHN SOLIS, Regional Manager

The following are the names, titles, addresses, and phone numbers of all individuals, firm members, partners, joint ventures, and company or corporate officers having a principal interest in this proposal:

Name	Title	Address	Telephone
------	-------	---------	-----------

*SEE ATTACHED CORPORATE RESOLUTION

Corporation organized under the laws of the State of California

The dates of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this proposal are as follows:

N/A

All company, corporate, or fictitious business names used by any principal having interest in this proposal are as follows:

N/A

For all arbitrations, lawsuits, settlements or the like (in or out of court) you have been involved in with public agencies in the past five years (Attach additional Sheets if necessary) provide:

Provide the names, addresses and telephone numbers of the parties;

N/A

Briefly summarize the parties' claims and defenses;

N/A

Have you ever had a contract terminated by the owner/agency? If so, explain.

N/A

Have you ever failed to complete a project? If so, explain.

For any projects you have been involved with in the last 5 years, did you have any claims or actions by any outside agency or individual for labor compliance (i.e. failure to pay prevailing wage, falsifying certified payrolls, etc.)? Yes / No - x

Are any claims or actions unresolved or outstanding? Yes / No - x

If yes to any of the above, explain. (Attach additional sheets, if necessary)

N/A

Failure of the bidder to provide ALL requested information in a complete and accurate manner may be considered non-responsive.

***SEE ATTACHED CORPORATE RESOLUTION**
(Print name of Owner or President
of Corporation/Company)

Teichert Energy & Utilities Group, Inc.

Bidder

John Solis

Authorized Signature/Title

Regional Manager, Southern California

Title

Date _____

On _____ 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 signature(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.

***SEE ATTACHED ACKNOWLEDGEMENT**

(SEAL)

Notary Public in and for said State

My Commission Expires: _____

TEICHERT ENERGY & UTILITIES GROUP, INC.,
3500 American River Drive, Sacramento, California 95864

I, PAULA D. JAMES, Secretary of TEICHERT ENERGY & UTILITIES GROUP, INC., a California Corporation, certify that the following is a true and correct copy of a resolution unanimously passed and adopted by the Board of Directors of this corporation at a meeting held on August 7, 2019:

RESOLVED, That

	THOMAS J. GRIFFITH	President
and	RONALD L. GATTO	Executive Vice President, Chief Financial Officer & Assistant Secretary
and	ERIC STREICH	Vice President & General Manager
and	PAULA D. JAMES	Secretary

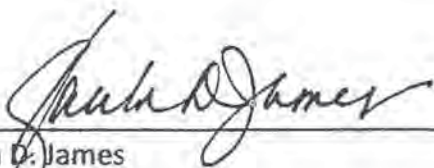
acting in combination, are authorized on behalf of this corporation and in its name or in any of the fictitious names under which this corporation does business, to sign, seal, acknowledge, verify and deliver deeds, deeds of trust, mortgages, pledges, transfers, promissory notes, and any other documents and instruments relating to the business and properties, real and personal, of this corporation;

RESOLVED FURTHER, That the following employees of this corporation:

John Solis	Regional Manager, Southern California
Curt Brown	Director of Business Development
Ken Schardt	General Manager, Solar
Jake Creger	Regional Manager, Northern California

are designated as attorneys in fact of this corporation with full authority to execute proposals, bids, bonds, contracts, and agreements for construction work.

DATED: 5/19/2020



Paula D. James
Secretary

City of Newport Beach

UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111

UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2

UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT STREET

Contract No. 7833-1

NOTICE TO SUCCESSFUL BIDDER

The following Contract Documents shall be executed and delivered to the Engineer within ten (10) days (not including Saturday, Sunday and Federal holidays) after the date shown on the "Notification of Award" to the successful bidder:

- CONTRACT WITH REQUIRED INSURANCE CERTIFICATES AND ENDORSEMENTS
- LABOR AND MATERIALS PAYMENT BOND
- FAITHFUL PERFORMANCE BOND

The City of Newport Beach will not permit a substitute format for these Contract Documents. Bidders are advised to review their content with bonding, insuring and legal agents prior to submission of bid. **Original Certificate(s) of Insurance, General Liability Insurance Endorsement, and Automobile Liability Insurance Endorsement shall be provided as required by the Contract documents and delivered to the Public Works Department within ten (10) working days after the date shown on the Notification of Award to the successful bidder.**

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, and (2) listed as an acceptable surety in the latest revision of the Federal Register Circular 570.

Pursuant to Public Contract Code Section 22300, appropriate securities may be substituted for any monies to be withheld to ensure performance under the Contract.

Insurance companies affording coverage shall be (1) currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, and (2) assigned 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. Coverages shall be provided as specified in the Standard Specifications for Public Works Construction, except as modified by the Special Provisions. Certificates of Insurance and additional insured endorsements shall be on the insurance company's forms, fully executed and delivered with the Contract. The Notice to Proceed will not be issued until all contract documents have been received and approved by the City.

City of Newport Beach

UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111

UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2

UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT STREET

Contract No. 7833-1

SAMPLE CITY CONTRACT

City of Newport Beach

UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111
UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2
UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT
STREET

Contract No. 7833-1

PROPOSAL

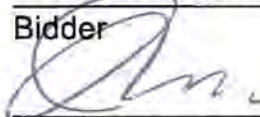
*(Contractor shall submit proposals via the PROPOSAL (Bid Line Items) contained in PlanetBids.
Contractor shall sign the below acknowledgement)*

To the Honorable City Council
City of Newport Beach
100 Civic Center Drive
Newport Beach, California 92660

Gentlemen:

The undersigned declares that he has carefully examined the location of the work, has read the Instructions to the Bidders, has examined the Plans and Special Provisions, and hereby proposes to furnish all materials except that material supplied by the City and shall perform all work required to complete Contract No. **7833-1** in accordance with the Plans and Special Provisions, and will take in full payment therefore the following unit prices for the work, complete in place, to wit:

5/19/2020
Date
916-484-3372
Bidder's Telephone and Fax Numbers
1051426 - A
Bidder's License No(s).
and Classification(s)
1000064848
DIR Registration Number

Teichert Energy & Utilities Group, Inc.
Bidder

John Solis - Regional Manager,
Southern California
Bidder's Authorized Signature and Title
3780 Kilroy Airport Wy #700; Long Beach, CA
Bidder's Address 90806

Bidder's email address: JSolis@teichert.com

**CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT**



ADDENDUM NO. 1

UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111

UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2

UTILITY UNDERGROUNDING - MCFADDEN ALLEYS & COURT STREET

CONTRACT NO 7833-1

DATE: April 30, 2020

BY:


City Engineer

TO: ALL PLANHOLDERS

The following changes, additions, deletions, or clarifications shall be made to the Contract Documents – all other conditions shall remain the same.

NOTICE INVITING BIDS

Change bid opening to 10:00 AM on May 19, 2020.

Attached, please find the list of qualified bidders who attended the mandatory pre-bid meeting.

SPECIAL PROVISIONS

314-4.1 General

Add the following after the first paragraph:

The contractor will replace all striping and markings including permanent thermoplastic striping affected by construction and shall be considered included in the Lump Sum price and no additional compensation will be allowed thereof.

Appendix D: Channel Vault 2020 pricing has been updated. Please refer to Appendix D attached here and on PlanetBids.

Appendix G Sample Schedule of Values: Appendix G attached here and uploaded to PlanetBids has been added that provides a sample format for schedule of values.

PLANS

Replace plans with revised plan set that includes Spectrum plans and revisions to Extenet plans. Revised plan set can be downloaded from PlanetBids. For Spectrum mainline and service trenching assume all are joint trench, regardless where service drops are on private property. All handholes on Balboa Boulevard shall be placed in the sidewalks.


For Plan Sheet 8 of 9 on the Traffic Control Plans: Replace note that reads "PUT TRAFFIC SIGNAL ON ALL WAY FLASH..." with "COORDINATE WITH CITY TO PLACE SIGNAL ON ALL-WAY FLASH DURING INTERSECTION WORK".

Bidders must sign this Addendum No. 1 and attach it to the bid proposal. Bid may not be considered unless this signed Addendum No. 1 is attached.

I have carefully examined this Addendum and have included full payment in my Proposal.

Teichert Energy & Utilities Group, Inc.
Bidder's Name (Please Print)

5/19/2020
Date


Authorized Signature & Title
John Solis - Regional Manager
Southern California

**CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT**



ADDENDUM NO. 2

**UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 111
UNDERGROUND UTILITY DISTRICT NO. 22 - PHASE 2
UTILITY UNDERGROUNDING - MCFADDEN ALLEYS & COURT STREET**

CONTRACT NO 7833-1

DATE: May 15, 2020

BY:


City Engineer

TO: ALL PLANHOLDERS

The following changes, additions, deletions, or clarifications shall be made to the Contract Documents – all other conditions shall remain the same.

SPECIAL PROVISIONS

9-3.1 General

Add the following after the first paragraph:

All costs associated with ExteNet plans shall be included in the lump sum for Underground Utility District No. 22 – Phase 2. The conduit shown on sheet 3 of 4 in alley between 28th and 29th should not be included in the bid. All materials related to ExteNet plans will be provided by others.

Examples of the various hand holes for the ExteNet portions of the project can be seen on the Southbound Balboa Boulevard sidewalk between River Avenue and 36th Street. All bidders should review that installation prior to bid opening to understand what will be required for installation and restoration. The provided MCI hand holes will be single depth polymer type with bottoms. ExteNet Handholes provided will be as shown on the attached from Newbasis and CrownCastle provided as shown on the attached from Amorcast.

Add the following paragraph at the end of this section:

A breakdown for the Underground Utility Assessment District 111 in the Schedule of Values to be provided by the Contractor after bidding does NOT need to be provided. The breakdown for the other two lump sums shall be by SCE, AT&T, Spectrum and ExteNet.

The contractor shall also include the following allowances in their bid and reflected in the Schedule of Values to allow for unknown underground obstructions:

- Underground Utility Assessment District No. 111 \$100,000.00
- Underground Utility District No. 22- Phase 2 \$75,000.00
- Utility Undergrounding – McFadden & Court Street \$25,000.00

The Contractor shall be paid on a time and material basis if the City determines the unknown obstruction exists and significantly impacts their productivity.

Bidders must sign this Addendum No. 2 and attach it to the bid proposal. Bid may not be considered unless this signed Addendum No. 2 is attached.

I have carefully examined this Addendum and have included full payment in my Proposal.

Teichert Energy & Utilities Group, Inc.

Bidder's Name (Please Print)

Date

Authorized Signature & Title

John Solis - Regional Manager,
Southern California

ATTACHMENT C

AMENDMENT NO. ONE TO PROFESSIONAL SERVICES AGREEMENT WITH NV5, INC. FOR CONSTRUCTION AND RESIDENTIAL SUPPORT SERVICES FOR UNDERGROUND UTILITY ASSESSMENT DISTRICTS AND UTILITY UNDERGROUNDING

THIS AMENDMENT NO. ONE TO PROFESSIONAL SERVICES AGREEMENT ("Amendment No. One") is made and entered into as of this 25th day of August, 2020 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and NV5, INC., a California corporation ("Consultant"), whose address is 163 Technology, Suite 100, Irvine, California 92618, and is made with reference to the following:

RECITALS

- A. On April 9, 2019, City and Consultant entered into a Professional Services Agreement ("Agreement") to provide professional construction administration and residential support services for a utility undergrounding project in Assessment Districts No. 116 and 116b, and Utility District No. 22a - Phase 1 ("Project").
- B. The parties desire to enter into this Amendment No. One to reflect additional Services for Assessment District No. 111, Underground Utility District No. 22a – Phase 2, and Utility Undergrounding at Mcfadden Alleys and Court Street, not included in the Agreement, to increase the total compensation, and to amend the Insurance section of the Agreement.

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

1. 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.

2. COMPENSATION TO CONSULTANT

Exhibit B to the Agreement shall be supplemented to include the Schedule of Billing Rates, attached hereto as Exhibit B and incorporated herein by reference ("Services" or "Work"). Exhibit B to the Agreement and Exhibit B to this 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 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 Thirty Four Thousand Sixty Two Dollars and 00/100 (\$434,062.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City."

The total amended compensation reflects Consultant's additional compensation for additional Services to be performed in accordance with this Amendment No. One, including all reimbursable items and subconsultant fees, in an amount not to exceed **Two Hundred Thirty Six Thousand Eight Hundred Seven Dollars and 00/100 (\$236,807.00)**.

3. INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

Section 5(A) of Exhibit C of the Agreement is amended in its entirety and replaced with the following: "Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time."

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: 8/11/2020

By: 
Aaron C. Harp MM 7.20.20
City Attorney

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Will O'Neill
Mayor

CONSULTANT: NV5, Inc., a California corporation

Date: _____

By: _____
Jeffrey M. Cooper
Director of Infrastructure

Date: _____

By: _____
Scott Kvandal
Chief Synergy Officer

[END OF SIGNATURES]

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

**EXHIBIT A
SCOPE OF SERVICES**

**CONSTRUCTION AND RESIDENTIAL PERMIT SUPPORT SERVICES FOR
UTILITY ASSESSMENT DISTRICT NO. 111, UNDERGROUND UTILITY DISTRICT
NO. 22a – PHASE 2 AND
UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT STREET**

Consultant shall perform the following Services:

9. Coordinate and oversee all activities related to the construction of the Project including residential permit support services, and maintain close liaison with the City Project Administrator.
10. Serve as contact point for coordination with the Contractor designated by City to perform the construction of the Project ("Contractor"), other agencies and utility companies.
11. Provide Project status updates to City Project Administrator.
12. Review and monitor the Contractor's schedule through weekly construction progress meetings.
13. Prepare daily inspection records and bi-weekly status reports.
14. Maintain an awareness of safety and health requirements and enforce applicable contract provisions for the protection of the public and project personnel.
15. Maintain binders of job records, including photos.
16. Evaluate cost reduction incentive proposals and provide recommendations to City Project Administrator.

**EXHIBIT B
SCHEDULE OF BILLING RATES**

**CONSTRUCTION AND RESIDENTIAL PERMIT SUPPORT SERVICES FOR
UTILITY ASSESSMENT DISTRICT NO. 111, UNDERGROUND UTILITY DISTRICT
NO. 22a – PHASE 2 AND
UTILITY UNDERGROUNDING - MCFADDEN ALLEYS AND COURT STREET**

TASK NO.	WORK DESCRIPTION	Project Manager \$225		Senior Inspector \$150		Admin \$95		TOTAL FEE
		HOURS	\$	HOURS	\$	HOURS	\$	
9.0	Oversight of all Construction Related Activities including Residential Permit Support	60	\$13,500	264	\$39,600	120	\$11,400	\$64,500
10.0	Point of Contact for Contractor, City, Utility Companies, etc.	24	\$5,400	149	\$22,350	0	\$0	\$27,750
11.0	Project Status Updates	0	\$0	120	\$18,000	19	\$1,805	\$19,805
12.0	Schedule Review	0	\$0	120	\$18,000	19	\$1,805	\$19,805
13.0	Project Inspection (documented through daily reports and bi-weekly status reports)	36	\$8,100	144	\$21,600	0	\$0	\$29,700
14.0	Enforce Contract Provisions/Manage health and safety requirements	12	\$2,700	120	\$18,000	0	\$0	\$20,700
15.0	Detailed project records, including photos	12	\$2,700	149	\$22,350	20	\$1,900	\$26,950
16.0	Evaluate cost reduction incentives	12	\$2,700	120	\$18,000	0	\$0	\$20,700
	Subtotal	156	\$35,100	1186	\$177,900	178	\$16,910	\$229,910
	Miscellaneous Expenses at 3%							\$6,897
TOTAL FEE								\$236,807

Attachment D

MOUs with the Cities of Monrovia, Mission Viejo and Laguna Woods
for Rule 20A Credit Purchases

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of August 25, 2020 ("Effective Date"), by and between the **City of Newport Beach**, a California municipal corporation and charter city, with its principal place of business at 100 Civic Center Drive, Newport Beach, California 92660 ("Newport Beach"), and the **City of Monrovia**, a California municipal corporation with its principal place of business at 415 S. Ivy Avenue, Monrovia, California 91016 ("Monrovia"). Newport Beach and Monrovia are sometimes individually referred to herein as "Party" and collectively as "Parties".

RECITALS

A. Electric Utilities collect and annually allocate funds to communities to convert overhead electric facilities to underground electric facilities ("Rule 20A Funds").

B. Newport Beach is actively planning one or more projects to underground overhead electric facilities that qualify for the application of California Public Utilities Commission ("CPUC") Rule 20A Funds ("Projects"). Newport Beach desires to obtain additional Rule 20A Funds allocation to finance such Projects.

C. Southern California Edison ("SCE") currently has designated and dedicated a balance of Four Hundred Thirty Seven Thousand Five Hundred Sixty Eight Dollars and 00/100 (\$437,568.00) in Rule 20A Funds for the benefit of Monrovia ("Monrovia Allocation"), and Monrovia currently has no active projects which can make use of the Monrovia Allocation.

D. Newport Beach desires to acquire, for consideration, the Monrovia Allocation to use in connection with the Projects, and Monrovia desires to transfer the Monrovia Allocation to Newport Beach to enable the Rule 20A Funds, which have been allocated to Monrovia, to be used for their intended purpose of undergrounding electric facilities and to derive economic benefit from the Monrovia Allocation.

AGREEMENT

NOW, THEREFORE, the Parties hereto agree as follows:

1. Monrovia agrees to assign, for use by Newport Beach, its rights and interests in the Monrovia Allocation to Newport Beach, and Newport Beach agrees to acquire, for consideration, the Monrovia Allocation in accordance with the terms of this MOU. This MOU shall be subject to the approval of each the City Council of Newport Beach and the City Council of Monrovia and shall become effective on the date when both such approvals have been obtained (Effective Date). Notwithstanding the foregoing, if this MOU has not become effective as of September 30, 2020, then either Party may terminate this MOU on five (5) business days' written notice to the other Party without incurring any liability, costs or further obligations to the other party or any third party.

2. Within fifteen (15) business days of the Effective Date, Newport Beach shall make a payment to Monrovia in the amount of **Two Hundred Forty Thousand Six Hundred Sixty-two Dollars and 40/100 (\$240,662.40)** ("Acquisition Price"). The Acquisition Price shall be made in immediately available funds via check or wire transfer to an account designated by Monrovia. The Acquisition Price shall constitute full consideration for the transfer and assignment of the Monrovia Allocation.

3. Monrovia agrees to sell the Monrovia Allocation to Newport Beach at a purchase rate of Fifty-Five Cents (\$0.55) for every One Dollar (\$1.00) of Rule 20A Funds. Within ten (10) business days of Monrovia's receipt of the Acquisition Price funds, Monrovia shall deliver a written request to SCE, with a copy to Newport Beach, making a formal request to transfer and assign the entire balance of the Rule 20A Funds contained in the Monrovia Allocation to and for the benefit of Newport Beach. Monrovia shall cooperate in good faith with Newport Beach to provide any additional documentation or information that is reasonably requested by SCE to complete the transfer. In the event that SCE is unable to complete the transfer, or only complete a partial transfer, Monrovia shall return the unused Acquisition Price funds to Newport Beach within ten (10) business days of Newport Beach's notification to Monrovia.

4. Newport Beach acknowledges and agrees that it has conducted its own investigation as to the applicability and transferability of the Monrovia Allocation for use in the Projects and that Monrovia has not made any representation or warranty to Newport Beach with respect to same. The actual use of the Monrovia Allocation by Newport Beach shall be subject to the rules and procedures adopted by SCE, CPUC, and such other conditions or requirements as are set forth in the Public Utilities Code.

5. Newport Beach shall indemnify, defend, and hold harmless Monrovia, its elected officials, officers, employees, and agents, from any claim, damage or liability arising in connection with the use of Rule 20A Funds from the Monrovia Allocation in connection with the construction of the Projects, including legal challenges of all types or natures, including but not limited to administrative, judicial, or legislative actions.

6. In the event that either Party is in breach of its obligations as set forth in this MOU, then the non-defaulting Party shall have the right to terminate this Agreement on ten (10) business days' written notice to the defaulting Party unless the default is cured, or cure has commenced, within the notice period. Upon termination for breach, the non-defaulting Party may exercise any right or remedy which it may have under applicable law. Within ten (10) business days of termination pursuant to this Section 7, Monrovia shall return to Newport Beach that portion of the Acquisition Price funds applicable to that portion of the Monrovia Allocation not yet transferred by SCE to Newport Beach.

7. All notices to be given pursuant to this MOU shall be delivered in person or by commercial overnight delivery to the address of the Party set forth above, and addressed to the City Manager of such Party and shall be effective upon receipt.

8. This MOU shall be governed and construed in accordance with the laws of the State of California, and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

9. Each Party 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.

10. 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.

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

12. 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.

13. In the event of any dispute or legal action arising under this Agreement, the prevailing Party shall not be entitled to attorney's fees.

14. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

15. Each Party signing this Agreement explicitly affirms and provides they have the power and authority to bind their respective Party.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the dates indicated below.

CITY OF MONROVIA,
A California municipal corporation

Date: _____

Dylan Feik
City Manager

ATTEST:
Date: _____

Alice Atkins, MMC
City Clerk

APPROVED AS TO FORM:
Date: _____

Craig A. Steele
City Attorney

CITY OF NEWPORT BEACH,
A California municipal corporation


Date: _____

Grace K. Leung
City Manager

ATTEST:
Date: _____

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
Date: 7/8/2020

 for:

Aaron C. Harp
City Attorney
11/17/20

[END OF SIGNATURES]

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of August 25, 2020 ("Effective Date"), by and between the **City of Newport Beach**, a California municipal corporation and charter city, with its principal place of business at 100 Civic Center Drive, Newport Beach, California 92660 ("Newport Beach"), and the **City of Mission Viejo**, a California municipal corporation with its principal place of business at 200 Civic Center, Mission Viejo, California 92691 ("Mission Viejo"). Newport Beach and Mission Viejo are sometimes individually referred to herein as "Party" and collectively as "Parties".

RECITALS

A. Electric Utilities collect and annually allocate funds to communities to convert overhead electric facilities to underground electric facilities ("Rule 20A Funds").

B. Newport Beach is actively planning one or more projects to underground overhead electric facilities that qualify for the application of California Public Utilities Commission ("CPUC") Rule 20A Funds ("Projects"). Newport Beach desires to obtain additional Rule 20A Funds allocation to finance such Projects.

C. Southern California Edison ("SCE") currently has designated and dedicated a balance of **Forty Seven Thousand Seven Hundred Sixty Six Dollars and 00/100 (\$47,766.00)** in Rule 20A Funds for the benefit of Mission Viejo (Mission Viejo Allocation), and Mission Viejo currently has no active projects which can make use of the Mission Viejo Allocation.

D. Mission Viejo has granted Newport Beach first right of refusal to purchase Rule 20A allocations between the Effective Date and July 1, 2021.

E. Newport Beach desires to acquire, for consideration, the Mission Viejo Allocation to use in connection with the Projects, and Mission Viejo desires to transfer the Mission Viejo Allocation to Newport Beach to enable the Rule 20A Funds, which have been allocated to Mission Viejo, to be used for their intended purpose of undergrounding electric facilities and to derive economic benefit from the Mission Viejo Allocation.

AGREEMENT

NOW, THEREFORE, the Parties hereto agree as follows:

1. Mission Viejo agrees to assign, for use by Newport Beach, its rights and interests in the Mission Viejo Allocation to Newport Beach, and Newport Beach agrees to acquire, for consideration, the Mission Viejo Allocation in accordance with the terms of this MOU. This MOU shall be subject to the approval of each the City Council of Newport Beach and the City Council of Mission Viejo and shall become effective on the date when

both such approvals have been obtained, as mentioned above as the Effective Date. Notwithstanding the foregoing, if this MOU has not become effective as of October 30, 2020, then either Party may terminate this MOU on five (5) business days' written notice to the other Party without incurring any liability, costs or further obligations to the other party or any third party.

2. Within fifteen (15) business days of the Effective Date, Newport Beach shall make a payment to Mission Viejo in the amount of **Twenty Six Thousand, Two Hundred and Seventy One and 30/100 (\$26,271.30)** ("Acquisition Price"). The Acquisition Price shall be made in immediately available funds via check or wire transfer to an account designated by Mission Viejo. The Acquisition Price shall constitute full consideration for the transfer and assignment of the Mission Viejo Allocation.

3. Mission Viejo agrees to sell the Mission Viejo Allocation to Newport Beach at a purchase rate of **Fifty-Five Cents (\$0.55) for every One Dollar (\$1.00)** of Rule 20A Funds. Within ten (10) business days of Mission Viejo's receipt of the Acquisition Price funds, Mission Viejo shall deliver a written request to SCE, with a copy to Newport Beach, making a formal request to transfer and assign the entire balance of the Rule 20A Funds contained in the Mission Viejo Allocation to and for the benefit of Newport Beach. Mission Viejo shall cooperate in good faith with Newport Beach to provide any additional documentation or information that is reasonably requested by SCE to complete the transfer. In the event that SCE is unable to complete the transfer, or only complete a partial transfer, Mission Viejo shall return the unused Acquisition Price funds to Newport Beach within ten (10) business days of Newport Beach's notification to Mission Viejo.

4. Newport Beach acknowledges and agrees that it has conducted its own investigation as to the applicability and transferability of the Mission Viejo Allocation for use in the Projects and that Mission Viejo has not made any representation or warranty to Newport Beach with respect to same. The actual use of the Mission Viejo Allocation by Newport Beach shall be subject to the rules and procedures adopted by SCE, CPUC, and such other conditions or requirements as are set forth in the Public Utilities Code.

5. Newport Beach shall indemnify, defend, and hold harmless Mission Viejo, its elected officials, officers, employees, and agents, from any claim, damage or liability arising in connection with the use of Rule 20A Funds from the Mission Viejo Allocation in connection with the construction of the Projects, including legal challenges of all types or natures, including but not limited to administrative, judicial, or legislative actions.

6. In the event that either Party is in breach of its obligations as set forth in this MOU, then the non-defaulting Party shall have the right to terminate this Agreement on ten (10) business days' written notice to the defaulting Party unless the default is cured, or cure has commenced, within the notice period. Upon termination for breach, the non-defaulting Party may exercise any right or remedy which it may have under applicable law. Within ten (10) business days of termination pursuant to this Section 7, Mission Viejo shall return to Newport Beach that portion of the Acquisition Price funds applicable to that portion of the Mission Viejo Allocation not yet transferred by SCE to Newport Beach.

7. All notices to be given pursuant to this MOU shall be delivered in person or by commercial overnight delivery to the address of the Party set forth above, and addressed to the City Manager of such Party and shall be effective upon receipt.

8. This MOU shall be governed and construed in accordance with the laws of the State of California, and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

9. Each Party 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.

10. 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.

11. Mission Viejo agrees to provide Newport Beach first right of refusal to purchase future Rule 20A allocations between July 1, 2020 and July 1, 2022. If Mission Viejo intends to transfer its Rule 20A allocation within said dates it shall notify Newport Beach of fund availability and the proposed purchase price by another city if another city is proposing a purchase price higher than the purchase rate of Fifty-Five Cents (\$0.55) for every One Dollar (\$1.00) of Rule 20A Funds. If Newport Beach desires to acquire said allocations by matching the price proposed by another city, it shall respond within fifteen (15) business days of Mission Viejo's notification stating intent to purchase said allocations at the proposed purchase price. Newport Beach agrees to enter into an MOU with Mission Viejo to complete the transfer within 90 days of said notification to Mission Viejo.

12. 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.

13. 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.

14. In the event of any dispute or legal action arising under this Agreement, the prevailing Party shall not be entitled to attorney's fees.

15. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

16. Each Party signing this Agreement explicitly affirms and provides they have the power and authority to bind their respective Party.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the dates indicated below.

CITY OF MISSION VIEJO,
A California municipal corporation

Date: _____

Dennis Wilberg
City Manager

ATTEST:
Date: _____

Kimberly Schmitt
City Clerk

APPROVED AS TO FORM:
Date: _____

William P. Curley III
City Attorney

CITY OF NEWPORT BEACH,
A California municipal corporation


Date: _____

Grace K. Leung
City Manager

ATTEST:
Date: _____

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
Date: 8/11/2020



Aaron C. Harp
City Attorney

[END OF SIGNATURES]

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of August 25, 2020 ("Effective Date"), by and between the City of Newport Beach, a California municipal corporation and charter city, with its principal place of business at 100 Civic Center Drive, Newport Beach, CA 92660 ("Newport Beach") and the City of Laguna Woods, a California municipal corporation with its principal place of business at 24264 El Toro Road, Laguna Woods, CA 92637 ("Laguna Woods"). Newport Beach and Laguna Woods are sometimes individually referred to herein as "Party" and collectively as "Parties."

RECITALS

A. Electric utilities collect and annually allocate funds to communities to convert overhead electric facilities to underground electric facilities ("Rule 20A Funds").

B. Newport Beach is actively planning one or more projects to underground overhead electric facilities that qualify for the application of California Public Utilities Commission ("CPUC") Rule 20A Funds ("Projects"). Newport Beach desires to obtain an additional allocation of Rule 20A Funds to finance such Projects.

C. Southern California Edison ("SCE") currently has designated and dedicated a balance of **Fifty Five Thousand Nine Hundred and Three Dollars and 00/100 (\$55,903.00)** in Rule 20A Funds for the benefit of Laguna Woods ("Laguna Woods Allocation") and Laguna Woods currently has no active projects which can make use of the Laguna Woods Allocation.

D. Newport Beach desires to acquire, for consideration, the Laguna Woods Allocation to use in connection with the Projects, and Laguna Woods desires to transfer the Laguna Woods Allocation to Newport Beach to enable the Rule 20A Funds, which have been allocated to Laguna Woods, to be used for their intended purpose of undergrounding electric facilities and to derive economic benefit from the Laguna Woods Allocation.

AGREEMENT

NOW THEREFORE, the Parties hereto agree as follows:

1. Laguna Woods agrees to transfer and assign for use by Newport Beach, its rights and interest in the Laguna Woods Allocation to Newport Beach and Newport Beach agrees to acquire, for consideration, the Laguna Woods Allocation in accordance with the terms of this MOU. This MOU shall be subject to the approval of the City Council of Newport Beach and the City Council of Laguna Woods and shall become effective on the date when both such approvals have been obtained, as mentioned above as the Effective Date. Notwithstanding the foregoing, if this MOU has not become effective as of October 30, 2020, then either Party may terminate this MOU upon five (5) business day's written notice to the other Party without incurring any liability, costs or further obligations to the other Party or any third party.

2. Within fifteen (15) business days of the Effective Date, Newport Beach shall make a payment to Laguna Woods in the amount of **Thirty Thousand Seven Hundred Forty Six Dollars and 65/100 (\$30,746.65)** ("Acquisition Price"), which is equivalent to **Fifty-Five Cents (\$0.55) for every One Dollar (\$1.00)** of allocation. The Acquisition Price shall be made in immediately available funds via check or wire transfer to an account designated by Laguna Woods. The Acquisition Price shall constitute full consideration for the transfer and assignment of the Laguna Woods Allocation.

3. Within ten (10) business days of Laguna Woods' receipt of the Acquisition Price, Laguna Woods shall deliver a written request to SCE, with a copy to Newport Beach, making a formal request to transfer and assign the above-referenced balance of the Rule 20A Funds contained in the Laguna Woods Allocation to and for the benefit of Newport Beach. Laguna Woods shall cooperate in good faith with Newport Beach to provide any additional documentation or information that is reasonably requested by SCE to complete the transfer. Newport Beach acknowledges and agrees that it has conducted its own investigation as to the applicability and transferability of the Laguna Woods Allocation for use in the Projects and that Laguna Woods has not made any representation or warranty to Newport Beach with respect to same. The actual use of the Laguna Woods Allocation by Newport Beach shall be subject to the rules and procedures adopted by SCE, CPUC and such other conditions or requirements as are set forth in the Public Utilities Code. Newport Beach may rescind the transaction before SCE approves the proposed Rule 20A transfer, for a period of one (1) year after the Effective Date of this MOU, and in the event of such rescission, Laguna Woods will return the Acquisition Price in full to Newport Beach within ten (10) business days of Newport Beach's written notification of rescission to Laguna Woods.

4. Laguna Woods agrees to provide Newport Beach first right of refusal to purchase future Rule 20A allocations between the Effective Date and July 1, 2022. If Laguna Woods intends to transfer its Rule 20A allocation within said dates it shall notify Newport Beach of fund availability and the proposed purchase price by another city if another city is proposing a purchase price higher than the purchase rate of **Fifty-Five Cents (\$0.55) for every One Dollar (\$1.00)** of Rule 20A Funds. If Newport Beach desires to acquire said allocations by matching the price proposed by another city, it shall respond within fifteen (15) business days of Laguna Woods's notification stating intent to purchase said allocations at the proposed purchase price. Newport Beach agrees to enter into an MOU with Laguna Woods to complete the transfer within 90 days of said notification to Laguna Woods.

5. Newport Beach shall indemnify, defend and hold harmless Laguna Woods, its elected officials, officers, employees and agents, from any claim, damage or liability arising in connection with the use of Rule 20A Funds from the Laguna Woods Allocation in connection with the construction of the Projects, including legal challenges of all types of natures, including but not limited to, administrative, judicial or legislative.

6. In the event that either Party is in breach of its obligations as set forth in this MOU, then the non-defaulting Party shall have the right to terminate this MOU on ten (10) business day's written notice to the defaulting Party unless the default is cured within the notice period. Upon termination for breach, the non-defaulting Party may exercise any right or remedy which it may have under applicable law. Within ten (10) business days of

termination pursuant to this Section, Laguna Woods shall return to Newport Beach that portion of the Acquisition Price applicable to that portion of the Laguna Woods allocation not yet transferred by SCE to Newport Beach.

7. All notices to be given pursuant to this MOU shall be delivered in person or by commercial overnight delivery to the address of the Party set forth above and addressed to the City Manager of such Party and shall be effective upon receipt. Notice may further be given by electronic means, provided, however, that such notice shall not be deemed effective unless it is acknowledged in writing by the recipient of such notice.

8. This MOU shall be governed and construed in accordance with the laws of the State of California, and any action brought relating to this MOU shall be adjudicated in a court of competent jurisdiction in County of Orange.

9. Each Party shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all government entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

10. 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.

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

12. 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.

13. If any legal proceeding, including an action for declaratory relief, is brought to enforce or interpret provisions of this MOU, the prevailing party will be entitled to reasonable attorney's fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the party may be entitled.

14. This MOU shall become effective when executed by all parties and may be executed in counterparts, any one of which shall be deemed to be an original instrument. Any proof of the MOU shall require production of only one such counterpart duly executed by the party to be charged therewith. PDF copy or facsimile copy of signatures shall be deemed original signatures.

15. Each Party signing this Agreement explicitly affirms and provides they have the power and authority to bind their respective Party.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the Effective Date.

CITY OF LAGUNA WOODS

By: _____
Noel Hatch, Mayor

Dated: _____

Attest:

By: _____
Yolie Trippy, City Clerk

Dated: _____

Approved as to form:

By: _____
David B. Cosgrove, City Attorney

Dated: _____

CITY OF NEWPORT BEACH

By: _____
Grace K. Leung, City Manager

Dated: _____

Attest:

By: _____
Leilani I. Brown, City Clerk

Dated: _____

Approved as to form:

By: *Aaron C. Harp* for
Aaron C. Harp, City Attorney

Dated: 8/11/2020

ATTACHMENT E



City of Newport Beach BUDGET AMENDMENT 2020-21

BA#: 21-007

Department: <u>Public Works</u> Requestor: <u>Angela Crespi</u>	ONE TIME: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <div style="border: 1px solid black; padding: 5px;"> <div style="text-align: center; background-color: #f2f2f2; margin-bottom: 5px;"><i>Approvals</i></div> <div>Prepared by: <u>Amy Lewis</u></div> <div>Finance Director: <u>Steve Montano</u> Date <u>8-13-2020</u></div> <div>City Clerk: _____ Date _____</div> </div>
<input type="checkbox"/> CITY MANAGER'S APPROVAL ONLY <input type="checkbox"/> COUNCIL APPROVAL REQUIRED	

EXPLANATION FOR REQUEST:

To appropriate from Neighborhood Enhancement unappropriated fund balance funds to use towards SCE Rule 20A Credit Purchase. This budget amendment also recognizes increased revenue contribution from multiple utility companies and appropriation of these funds towards construction.

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

REVENUES

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
135	13501	561007	21A11	CONTRIBUTIONS FUND CIP - 20A CONTRIBUTIONS	5,195,419.59
				-	
				-	
				-	
				-	
				-	
Subtotal					\$ 5,195,419.59

EXPENDITURES

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
135	13501	980000	21A11	CONTRIBUTIONS FUND CIP - CIP EXPENDITURES FOR GL	5,195,419.59
536	53601	980000	20M03	NEIGHBORHOOD ENHANCEMENT - CIP EXPENDITURES FC	204,512.35
				-	
				-	
				-	
				-	
Subtotal					\$ 5,399,931.94

FUND BALANCE

Fund #	Object	Description	Increase or (Decrease) \$
135	300000	Contributions Fund - FUND BALANCE CONTROL	-
536	300000	Neighborhood Enhancement - FUND BALANCE CONTROL	(204,512.35)
		-	-
		-	-
		-	-
Subtotal			\$ (204,512.35)

Fund Balance Change Required



CITY OF

NEWPORT BEACH

City Council Staff Report

August 25, 2020
Agenda Item No. 11

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Michael J. Sinacori, Assistant City Engineer
Msinacori@newportbeachca.gov

PHONE: 949-644-3342

TITLE: Approval of Amendments to Maintenance Repair Service
Agreements with GCI Construction and Tight Quarters for On-Call
Beach Maintenance Services

ABSTRACT:

On June 13, 2017, following a competitive Request for Proposal (RFP) procurement process, the City Council approved two (2) on-call contracts for beach maintenance services for three-year terms. The City uses service agreements to perform maintenance and repairs throughout Newport Harbor and along City beaches. With the update to the Council F-14 policy in 2018, these contracts were extended two years and are now set to expire in June 2022. The not-to-exceed (NTE) contract amount has been reached for one of the contracts and the other will be reached shortly. Staff is seeking additional NTE amounts to maintain \$150,000 yearly service capacity with each firm through June 2022.

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 Amendment No. 2 to the Maintenance Repair Services Agreement with GCI Construction to add \$350,000 to the current contract for a total not-to-exceed amount of \$725,000;
- c) Approve Amendment No. 2 to the Maintenance Repair Services Agreement with Tight Quarters, Inc. to add \$155,000 to the current contract for a total not-to-exceed amount of \$530,000; and
- d) Authorize the Mayor and City Clerk to execute the amendments.

FUNDING REQUIREMENTS:

The current adopted CIP budget includes sufficient funding for the services planned for Fall 2020 and covered by this Amendment. It will be expensed to Account No. 10101-980000-20H04 (Tidelands Capital) for Beach and Bay Sand Management. If additional funding is necessary in FY2020-21, staff will return to City Council with a request for budget amendment.

DISCUSSION:

The City uses private sector contractors and consultants to fulfill various operational and maintenance needs of Newport Harbor, Upper Bay and Newport Beaches. Contracted work includes mooring and marina management, dock and marina repairs/maintenance, beach cleanup and algae removal, engineering services and other services as needs arise. Beach maintenance is handled by a combination of City staff and contractors.

Public Works oversees the sand management projects and maintenance for the Ocean and Bay beaches within Newport Harbor, and assists with capital needs and emergency work. Normal day-to-day ocean beach maintenance services are performed by the Public Works staff. Contract services are used supplement staff and address large projects, occasional peak needs and special work efforts such as bulk sand hauling, deploying equipment over seawalls to replenish and maintain beaches such as on Balboa Island where sand is moved up from the low tide line and/or imported from a donor beach and groomed to achieve a desirable slope appropriate for public access to the beach.

On March 28, 2017, a Request for Proposals for on-call beach maintenance services was released to the public. Seventeen vendors were notified of the opportunity. Only two (2) firms submitted proposals and on June 13, 2017, both firms, GCI Construction, Inc. and Tight Quarters, Inc., were given contracts as they each have specialized equipment and staff that the City requires for different types of beach maintenance activities.

Each contractor has performed well over the past three years. At times, both contractors have been utilized at the same time to expedite efforts prior to peak summer beach use. For instance, this past May GCI focused on preparing the Balboa Pier area for the summer crowds while Tight Quarters addressed bay beaches around Balboa Island. In addition, the County of Orange began an annual maintenance effort clearing the mouth of the Santa Ana River and moved most of the sand to the Newport jetties. While that operation was taking place, GCI and Tight Quarters worked in concert and moved additional sand to Balboa Pier and adjacent areas. This same operation is required by the County this fall as the Santa Ana River Mouth sand has built up again. The two-month effort will begin in mid-September as noted on the attached outreach notice.

GCI and Tight Quarters were also used for the recent flooding event on July 3, 2020, and the associated cleanup the following days.

Though the flood experienced was unusual, as we had higher than anticipated waves during a king high tide event, it could happen again. If it does, the services of GCI and Tight Quarters will most certainly be needed, and the contract capacity requested in these amendments will allow for those services.

GCI has reached their contract NTE and without an amendment they will no longer be able to provide their critical services to the City and will not be able to assist in the upcoming County project. Tight Quarters is expected to reach their NTE later this fiscal year. To be prepared for potential storm and flooding events and to coordinate with the County sand removal operations, staff recommends approval of the two amendments.

On-call agreements do not guarantee any specific amount of business for the contracted company. When a beach maintenance or repair service need arises, staff will contact one or both of the contracted firms to determine if availability and pricing meets the needs of a specific request.

ENVIRONMENTAL REVIEW:

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

NOTICING:

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

ATTACHMENTS:

Attachment A – Amendment No. 2 to Maintenance and Repair Agreement with GCI

Attachment B – Amendment No. 2 to Maintenance and Repair Agreement with Tight Quarters

Attachment C – OCPW Notification, Santa Ana River Outlet Maintenance 2020 (8-17-2020)

ATTACHMENT A

AMENDMENT NO. TWO TO ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH GCI CONSTRUCTION, INC. FOR BEACH MAINTENANCE SERVICES

THIS AMENDMENT NO. TWO TO ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Amendment No. Two") is made and entered into as of this 25th day of August, 2020 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and GCI CONSTRUCTION, INC., a California corporation ("Contractor"), whose address is 1031 Calle Recodo, Suite D, San Clemente, CA 92673, and is made with reference to the following:

RECITALS

- A. On June 13, 2017, City and Contractor entered into an On-Call Maintenance/Repair Services Agreement ("Agreement") for Contractor to perform on-call maintenance and/or repair service for City ("Project").
- B. On October 15, 2019, City and Contractor entered into Amendment No. One to the Agreement ("Amendment No. One") to extend the term of the Agreement to May 31, 2022, to increase the total compensation, update the Schedule of Billing Rates, the terms of responsibility for damages or injury, prevailing wages, conflicts of interest, and Insurance requirements.
- C. Since entering into Amendment No. One, Contractor was asked to perform a higher volume of Work than was originally anticipated.
- D. The parties desire to enter into this Amendment No. Two to reflect additional Services not included in the Agreement, as amended, to increase the total compensation, and update Insurance requirements.

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

1. COMPENSATION TO CONTRACTOR

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 **Seven Hundred Twenty Five Thousand Dollars and 00/100 (\$725,000.00)**, 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. Two, including all reimbursable items and subconsultant fees, in an amount not to exceed **Three Hundred Fifty Thousand Dollars and 00/100 (\$350,000.00)**.

2. INSURANCE

Exhibit C of the Agreement shall be deleted in its entirety and replaced with Exhibit C, attached hereto and incorporated herein by reference. Any reference to Exhibit C in the Agreement shall hereafter refer to Exhibit C attached hereto.

3. INTEGRATED CONTRACT

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

[SIGNATURES ON NEXT PAGE]

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

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

Date: 8/7/2020

By: Aaron C. Harp for
Aaron C. Harp
City Attorney

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Will O'Neill
Mayor

**CONTRACTOR: GCI CONSTRUCTION,
INC.,** a California corporation

Date: _____

By: _____
Terry D. Gillespie
Chief Executive Officer

Date: _____

By: _____
Richard D. Kay
Secretary

[END OF SIGNATURES]

Attachments: Exhibit C – Insurance Requirements

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, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement.
 - 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, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement 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, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor 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. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration

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

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

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

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

ATTACHMENT B

AMENDMENT NO. TWO TO ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH TIGHT QUARTERS, INC. FOR BEACH MAINTENANCE SERVICES

THIS AMENDMENT NO. TWO TO ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Amendment No. Two") is made and entered into as of this 25th day of August, 2020 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and TIGHT QUARTERS, INC., a California corporation ("Contractor"), whose address is 2031 S. Anne Street, Santa Ana, California 92704, and is made with reference to the following:

RECITALS

- A. On June 13, 2017, City and Contractor entered into an On-Call Maintenance/Repair Services Agreement ("Agreement") for Contractor to perform on-call maintenance and/or repair services for City ("Project").
- B. On September 25, 2019, City and Contractor entered into Amendment No. One to the Agreement ("Amendment No. One") to extend the term of the Agreement to May 30, 2022, to increase the total compensation, amend the responsibility for damages or injury, prevailing wage, conflicts of interest and claims sections, and amend the insurance requirements.
- C. Since entering into Amendment No. One, Contractor was asked to perform a higher volume of Work than was originally anticipated.
- D. The parties desire to enter into this Amendment No. Two to reflect additional Services or Work not included in the Agreement, as amended, to increase the total compensation, and update Insurance requirements.

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

1. COMPENSATION TO CONTRACTOR

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 **Five Hundred Thirty Thousand Dollars and 00/100 (\$530,000.00)**, 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. Two, including all reimbursable items and subconsultant fees, in an amount not to exceed **One Hundred Fifty Five Thousand Dollars and 00/100 (\$155,000.00)**.

2. INSURANCE

Exhibit C-1 of the Agreement shall be deleted in its entirety and replaced with Exhibit C, attached hereto and incorporated herein by reference. Any reference to Exhibit C, and Exhibit C-1 in the Agreement shall hereafter refer to Exhibit C attached hereto.

3. INTEGRATED CONTRACT

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

[SIGNATURES ON NEXT PAGE]

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

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

Date: 8/7/2020

By: Aaron C. Harp for
Aaron C. Harp
City Attorney

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Will O'Neill
Mayor

**CONTRACTOR: TIGHT QUARTERS,
INC., a California corporation**

Date: _____

By: _____
Telford T. Cottam
Chief Executive Officer/
Chief Financial Officer

[END OF SIGNATURES]

Attachments: Exhibit C – Insurance Requirements

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, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement.
 - 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, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement 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, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor 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. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of

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

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

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

Project Alert

Santa Ana River Flood Control Channel: Maintenance/Excess Sand Removal from Channel Outlet

Removal of naturally accumulated sand in the flood channel outlet area is routine maintenance performed annually before storm season (starting in October), to prevent potential water flow blockages.



WHERE

At the Santa Ana River flood control channel outlet between the cities of Huntington Beach and Newport Beach, west of Pacific Coast Highway.

* See other side for sand placement locations



WHAT

1. Approximately 30,000 cubic yards of accumulated sand will be removed from the channel outlet, as allowed through regulatory permits for flood control maintenance. Removing the excess sand minimizes potential flood risks during rain events and also maintains the natural tidal flow with the adjacent Newport Shores marsh area.
2. Additionally, in coordination with the City of Newport Beach, crews will transport the removed sand to City beach areas that will benefit most from sand replenishment.

Your safety is the top priority! Large equipment will be used. Please observe all caution signs / barriers and stay a safe distance from the work area.



WHEN

Anticipated Project Duration:

As early as September 14 — late November 2020

Equipment Operation:

Weekdays, 7:00 am — 5:30 pm

Crew members may be working on site 6:00 am—6:30 pm. Work schedule is tentative and subject to change.

CONTACT INFORMATION



Shannon Widor, OCPW | 714.667.9759



www.ocpublicworks.com



ProjectInfo@ocpw.ocgov.com



[Facebook.com/ocpublicworks](https://www.facebook.com/ocpublicworks)



[Twitter.com/ocpublicworks](https://twitter.com/ocpublicworks)

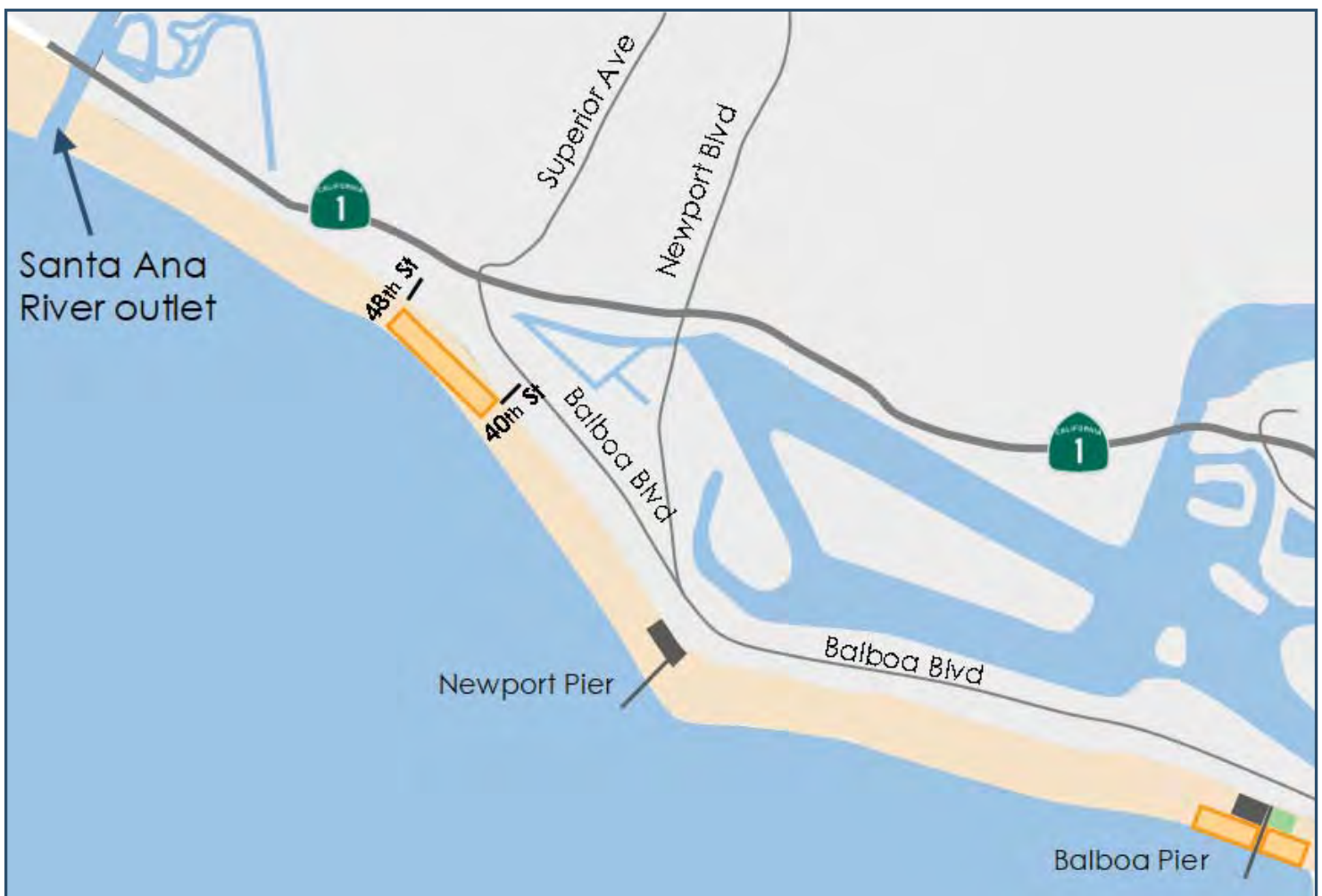
Santa Ana River

Flood Control Channel Maintenance/Excess Sand Removal

Sand Placement Locations

 Potential sand replenishment areas:

- (1) between 48th Street and 40th Street, and;
- (2) east and west of the Balboa Pier





CITY OF

NEWPORT BEACH

City Council Staff Report

August 25, 2020
Agenda Item No. 12

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Andy Tran, Senior Civil Engineer, atran@newportbeachca.gov
PHONE: 949-644-3315

TITLE: Superior Avenue and West Coast Highway Intersection Improvements – Approval of Amendment No. 2 with Chambers Group, Inc. and Amendment No. 1 with Dokken Engineering and Updated Pedestrian Bridge Conceptual Design (15T09)

ABSTRACT:

As part of the Capital Improvement Program, final design efforts for the Superior Avenue Pedestrian Bridge and Parking Lot ("Superior Avenue Bridge") project are currently underway. The City recently received grant funding for environmental review and design services for the West Coast Highway Widening and Pedestrian Bridge ("WCH Bridge") project. Amendments to Professional Services Agreements (PSA) with both Chambers Groups, Inc. and Dokken Engineering are needed to complete the environmental review and design services, respectively, for the WCH Bridge project. Staff is also recommending a revision to the approved conceptual design related to the Superior Avenue pedestrian bridge structure.

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 Amendment No. 2 in the amount of \$227,821.00 to the Professional Services Agreement with Chambers Group, Inc. for environmental review services at a new not-to-exceed total price of \$389,038.00 and authorize the Mayor and City Clerk to execute the Amendment;
- c) Approve Amendment No. 1 in the amount of \$970,000.00 to the Professional Services Agreement with Dokken Engineering for professional engineering design services at a new not-to-exceed total price of \$1,889,890.00 and authorize the Mayor and City Clerk to execute the Amendment; and
- d) Approve a revision to the Conceptual Design related to the Superior Avenue pedestrian bridge structure.

FUNDING REQUIREMENTS:

The adopted FY 2020-21 Capital Improvement Program budget includes sufficient funding for the environmental and design services. The services will be expensed to the FFP Parks/Community Centers Account No. 56201-980000-15T09 and Measure M Competitive Account No. 1230050-980000-15T09 in the Superior Avenue and West Coast Highway Intersection Improvements project (15T09).

Chambers Group's proposed not-to-exceed fee for Amendment No. 2 is \$227,821.00. Dokken Engineering's proposed not-to-exceed fee for Amendment No. 1 is \$970,000.00

DISCUSSION:

The Superior Avenue and West Coast Highway Intersection Improvements project (Project No. 15T09) as identified in the FY 2020-21 Capital Improvement Program budget is comprised of two separate projects:

- 1) Superior Avenue Pedestrian Bridge and Parking Lot ("Superior Avenue Bridge")
- 2) West Coast Highway Widening and Pedestrian Bridge ("WCH Bridge")

These two projects are being administered separately. The Superior Avenue Bridge project is in the final design stage while the WCH Bridge project will commence with environmental review and conceptual design upon approval of the recommended PSA amendments.

Amendments to Professional Services Agreements

On May 1, 2019, the City entered into a PSA with Chambers Group, Inc. in the amount of \$116,975.00, to complete the environmental services for the Superior Avenue Bridge project. The PSA scope of work included preparation of environmental documents to satisfy both California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) requirements. Amendment No. 1 in the amount of \$44,242.00 was approved by City Council on September 10, 2019, for additional technical studies as required by regulatory agencies. The CEQA Mitigated Negative Declaration (MND) was adopted by City Council on November 19, 2019, and the NEPA Categorical Exclusion was approved by Caltrans on January 13, 2020.

During the November 19, 2019, City Council meeting, a PSA with Dokken Engineering for professional engineering services for the Superior Avenue Bridge project was also approved by City Council. The PSA scope of work involved preparation of construction documents for a new pedestrian bridge across Superior Avenue and a new larger parking lot. Design services are currently 30 percent complete and are scheduled to be completed in the Summer of 2021. Construction will start shortly after, as originally planned.

With City Council adoption of Resolution 2020-4 on January 14, 2020, staff submitted a funding application to the Orange County Transportation Authority (OCTA) under the Comprehensive Transportation Funding Program (CTFP) for the WCH Bridge project. The CTFP is funded with Orange County Measure M2 funds. On May 11, 2020, OCTA Board approved the City's application. The City will receive a grant up to \$780,000 to complete the environmental review and design services for the WCH Bridge project. As part of this grant program, a minimum of 35 percent local agency funding match is required. Staff estimated \$1.2 million to complete the environmental review and design services. As described in Resolution 2020-4, the City is required to contribute \$420,000 (35 percent of \$1.2 million) towards these services. The FY 2020-21 adopted CIP budget recognized the grant award and includes the required matching funds for this project.

The proposed improvements for both projects involve improving the intersection of Superior Avenue and West Coast Highway. Although these two projects are separate, they are immediately adjacent to one another. The Superior Avenue Bridge project involves constructing a new pedestrian bridge across Superior Avenue and a new larger parking lot. The new pedestrian bridge will improve access to Sunset Ridge Park and the new larger parking lot will provide additional parking for visitors to Sunset Ridge Park and the beach. The WCH Bridge project involves widening West Coast Highway to increase vehicular capacity and constructing a pedestrian bridge across West Coast Highway. With the completion of both projects, sidewalks and two crosswalks at this intersection can be eliminated as pedestrians will be able to use the two new bridges and ramps. Eliminating two crosswalks and moving the pedestrians from the street level to the bridges and ramps will significantly improve pedestrian access and safety. This will also greatly improve traffic signal operation and vehicular circulation by allowing more traffic signal green time for vehicles traveling through the intersection. The design of the Superior Avenue Bridge project will account for the proposed improvements of the WCH Bridge project. Because of the proximity of these two projects, they will need to be closely coordinated.

These two projects are in different stages of development; however, they will be administered simultaneously. Construction of the Superior Avenue Bridge project is scheduled to start in the fall of 2021, at which time the environmental review and conceptual design for the WCH Bridge project will be underway. During the construction of the first project, the contractor may discover unforeseen field conditions that may affect the design of the second project. The simultaneous timing of these two projects will need to be coordinated to avoid potential design and construction conflicts.

The WCH Bridge project is more complex than Superior Avenue Bridge project as it will require real property acquisition from adjacent property owners on the north side of West Coast Highway in order to realign and widen the major arterial. This segment of West Coast Highway is under Caltrans' jurisdiction. Modifications to this state highway will require their approval. The City entered into several PSAs with various consultants to complete the Superior Avenue Bridge project. The total professional services cost for the Superior Avenue Bridge project is approximately \$1,263,000.

The recommended PSA amendments to complete similar services for the more complex WCH Bridge project is just under \$1.2 million. Staff believes that the lower costs may be attributed to the consultants' familiarity with the first project.

The approval of these two PSA amendments will allow staff to proceed with environmental review, conceptual design, permitting, and final design efforts for the WCH Bridge project. The two current consultants for the Superior Avenue Bridge project, which are Chambers Group, Inc. and Dokken Engineering, are both performing very well and have met all deliverables as outlined in their respective scope of work. Staff recommends continuing with the same design team for the WCH Bridge project to maintain continuity and close coordination of both projects.

Revisions to Phase 1 Conceptual Design

During the conceptual design development of Superior Avenue Bridge project, several bridge structures were considered. City Council ultimately selected the 3-span concrete bridge. The primary reasons for selecting the 3-span concrete bridge were for its common construction methods, minimal maintenance and cost effectiveness. The one major drawback with this design is the need for two mid-span concrete supports due to the length of the bridge structure. These two concrete supports would need to be constructed within the Superior Avenue median and behind the sidewalk on the Sunset Ridge Park side. Although this design would meet all current design standards, it does introduce two large physical obstructions on Superior Avenue.

While preparing the final design construction documents, Dokken Engineering proposed an alternate concrete bridge that does not require any mid-span supports. The proposed bridge structure is a single-span concrete arch bridge. The two mid-span concrete supports are replaced with a structural and aesthetic concrete arch. This design has all the advantages associated with the previously approved 3-span concrete bridge. In addition, it eliminates the primary drawback of needing two mid-span concrete supports. The height of the proposed concrete arch bridge is within the visual analysis limitations that was completed as part of the project environmental review. The cost of the single-span concrete arch bridge is similar to the 3-span concrete bridge. Staff believes that there is a lot of merit with this alternate design and recommends proceeding with the single-span concrete arch bridge.

At the time that the conceptual design for the Superior Avenue Bridge project was approved, staff was not actively working on the WCH Bridge project. A staircase from the West Coast Highway sidewalk to the top of the Superior Avenue bridge was proposed as part of the approved conceptual design. This staircase would eventually need to be removed to accommodate the widening and realignment of West Coast Highway. Since funding for the design of the WCH Bridge project is now available, staff recommends eliminating the temporary staircase from the Superior Avenue Bridge project. In the interim, the general public will be able to access the parking lot and Superior Avenue bridge via the existing sidewalks.

ENVIRONMENTAL REVIEW:

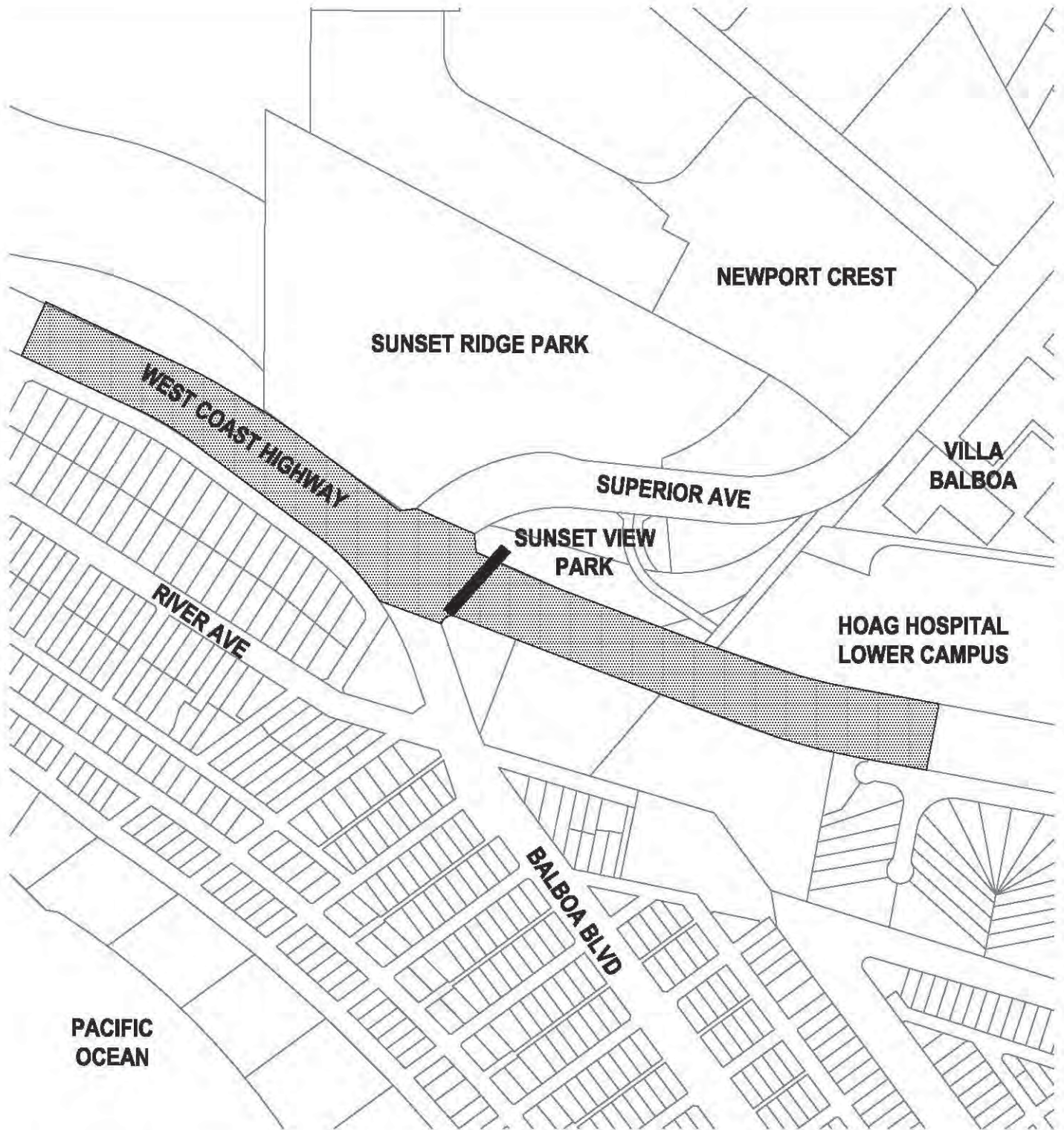
Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a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

NOTICING:

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

ATTACHMENTS:

- Attachment A – Location Map
- Attachment B – Amendment No. 2 with Chambers Group, Inc.
- Attachment C – Amendment No. 1 with Dokken Engineering
- Attachment D – Concrete Arch Bridge Conceptual Design



PROPOSED WEST COAST HIGHWAY PEDESTRIAN BRIDGE

PROPOSED WEST COAST HIGHWAY WIDENING



**WEST COAST HIGHWAY WIDENING
AND PEDESTRIAN BRIDGE
LOCATION MAP**

**CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT**

C-8020

15T09

8/25/20

ATTACHMENT B

AMENDMENT NO. TWO TO PROFESSIONAL SERVICES AGREEMENT WITH CHAMBERS GROUP, INC. FOR ENVIRONMENTAL SERVICES FOR THE SUPERIOR AVENUE PEDESTRIAN AND BICYCLE BRIDGE AND PARKING LOT AND WEST COAST HIGHWAY WIDENING AND PEDESTRIAN BRIDGE PROJECT

THIS AMENDMENT NO. TWO TO PROFESSIONAL SERVICES AGREEMENT ("Amendment No. Two") is made and entered into as of this 25th day of August, 2020 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and CHAMBERS GROUP, INC., a California corporation ("Consultant"), whose address is 5 Hutton Centre Drive, Suite 750, Santa Ana, CA 92707, and is made with reference to the following:

RECITALS

- A. On May 1, 2019, City and Consultant entered into a Professional Services Agreement ("Agreement") for Consultant to provide professional environmental services and support for the Superior Avenue Pedestrian and Bicycle Bridge and Parking Lot Project ("Project").
- B. On September 10, 2019, City and Consultant entered into Amendment No. One to the Agreement ("Amendment No. One") to reflect additional services not previously included in the Agreement, and to increase the total compensation.
- C. On January 14, 2020, the City adopted Resolution 2020-04 authorizing and approving the submittal of a funding application ("Application") for an intersection capacity enhancement project to the Orange County Transportation Authority ("OCTA") for funding under the Comprehensive Transportation Funding Program.
- D. On May 11, 2020, OCTA approved the City's Application, in which the City will receive funds to conduct environmental review and design services for the West Coast Highway Widening and Pedestrian Bridge Project.
- E. The parties desire to enter into this Amendment No. Two to reflect additional Services to include the West Coast Highway Widening and Pedestrian Bridge Project (hereinafter collectively referred to as the "Project") not included in the Agreement, as amended, to increase the total compensation, update the Claims section, include Prevailing Wage language, and update Insurance requirements.

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

1. SERVICES TO BE PERFORMED

Exhibit A to the Agreement shall be supplemented to include the Scope of Services, attached hereto as Exhibit A-2 and incorporated herein by reference ("Services" or "Work"). Exhibit A to the Agreement, Exhibit A to Amendment No. One, and Exhibit A-

2 to this Amendment No. Two shall collectively be known as "Exhibit A." The City may elect to delete certain Services within the Scope of Services at its sole discretion.

2. COMPENSATION TO CONSULTANT

Exhibit B to the Agreement shall be supplemented to include the Schedule of Billing Rates, attached hereto as Exhibit B-2 and incorporated herein by reference ("Services" or "Work"). Exhibit B to the Agreement, as amended by Amendment No. One, and Exhibit B-2 to this Amendment No. Two 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 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 **Three Hundred Eighty Nine Thousand Thirty Eight Dollars and 00/100 (\$389,038.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City."

The total amended compensation reflects Consultant's additional compensation for additional Services to be performed in accordance with this Amendment No. Two, including all reimbursable items and subconsultant fees, in an amount not to exceed **Two Hundred Twenty Seven Thousand Eight Hundred Twenty One Dollars and 00/100 (\$227,821.00)**.

3. CLAIMS

Section 26 of the Agreement shall be amended in its entirety and replaced with the following: "26.1 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.).

26.2 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.).”

4. PREVAILING WAGES

Section 30 shall be added to the Agreement as follows: “30.1 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.

30.1 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.”

5. INSURANCE

Exhibit C of the Agreement shall be deleted in its entirety and replaced with Exhibit C, attached hereto and incorporated herein by reference. Any reference to Exhibit C in the Agreement shall hereafter refer to Exhibit C attached hereto.

6. INTEGRATED CONTRACT

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

[SIGNATURES ON NEXT PAGE]

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

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

Date: 8/13/2020

By: Aaron C. Harp for
Aaron C. Harp
City Attorney

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Will O'Neill
Mayor

CONSULTANT: Chambers Group, Inc., a
California corporation

Date: _____

By: _____
Mike McEntree
Vice President / Chief Operating Officer

Date: _____

By: _____
Alex Gurrola
Chief Financial Officer / Chief Executive
Officer

[END OF SIGNATURES]

Attachments: Exhibit A-2 – Scope of Services
 Exhibit B-2 – Schedule of Billing Rates
 Exhibit C – Insurance Requirements

EXHIBIT A-2

SCOPE OF SERVICES

EXHIBIT A-2 SCOPE OF SERVICES

Amendment No. 2 ENVIRONMENTAL SERVICES FOR THE SUPERIOR AVENUE PEDESTRIAN AND BICYCLE BRIDGE AND PARKING LOT AND WEST COAST HIGHWAY WIDENING AND PEDESTRIAN BRIDGE PROJECT

Consultant has prepared a scope of work and cost estimate to prepare the CEQA documentation according to all applicable State and local requirements that will be applied to the West Coast Highway Widening and Pedestrian Bridge Project. Consultant assumes the appropriate CEQA documentation for the project will be an Environmental Impact Report (EIR); however, if a different document is determined to be more appropriate, a separate scope and cost can be provided via formal amendment to the contract.

Consultant shall provide:

- Preparation of all CEQA documentation according to all applicable State and Local requirements
- Preparation of technical studies related to biological resources, cultural resources, air quality, noise, aesthetics, and traffic, among others
- Preparation of CDP and/or CDP amendments
- Coordination and supervision of any sub-consultant specialists as required
- Coordination and collaboration with the City of Newport Beach staff, various consultants and any state/local agencies (such as the United State Fish and Wildlife Service [USFWS]), as required
- Attendance at various City of Newport Beach public meetings as needed

Consultant shall accomplish the scope of work as described below.

TASK PH2 -1: PROJECT INITIATION

Task Ph2 -1.1: Initial Meeting and Data Acquisition

After receiving formal Notice to Proceed (NTP), the Consultant Project Manager shall meet with representatives from the City at a Project Initiation/Kick-Off Meeting to discuss the project description, specific project issues, upcoming construction schedules and CEQA schedule; as well as receive any pertinent project information reports in addition to the City's most up-to-date project plans and other background documentation. The Consultant Project Manager shall also survey the Project site and the immediate surrounding area and make a photographic record to document the existing conditions.

Consultant shall review all available project-related data and reports provided by the City including revisiting the Initial Study/Mitigated Negative Declaration (IS/MND) we previously prepared for the Superior Avenue Pedestrian and Bicycle Bridge Project. Following the review of existing data, any gaps in the data and recommendation for correcting the gaps shall be discussed with the City of Newport Beach. Consultant shall work closely with the City to

determine what additional data must be collected in support of the CEQA document being prepared. It is assumed that Consultant can use these documents in the analysis of the Project.

Task Ph2 -1.2: Project Description

Consultant shall develop a comprehensive description for the Proposed Project that shall form the basis for the analysis of the potential impacts on the environment, based on the information provided by the City. The project description shall include a narrative and graphical presentation of the Proposed Project, including components, location and boundaries, regional and vicinity maps, and a statement of the Project goals and objectives. Deliverable: One electronic PDF copy of the project description for City review.

TASK PH2 -2: TECHNICAL STUDIES

Based on the Proposed Project improvements, the technical studies below are suggested to supplement the analysis in the appropriate CEQA document.

Task Ph2 -2.1: Visual Simulations (Subconsultant: Fuscoe Engineering)

The purpose of this task is to create a visual 3D model of the proposed pedestrian bridge crossing at West Coast Highway. Subconsultant (Fuscoe Engineering) shall complete the following tasks associated with the visual simulations for the Proposed Project:

Task Ph2 -2.1.1. UAV Aerial Scan

Conduct an aerial Unmanned Aerial Vehicle (UAV) scan of the Project Site including an area within 500' adjacent, and from the Newport Crest apartments to the ocean. Includes field scan aerial photos, 3D "point cloud" LAS file and 3D OBJ mesh model.

Task Ph2 -2.1.2. Existing Conditions Model

Prepare a 3D model of the site as-is from the UAV scanning files.

Task Ph2 -2.1.3. Proposed Bridge & PCH Widening

Using electronic files to "schematic" level, insert the proposed Bridge into the existing conditions model for a "before vs. after" simulation. Add in 4-6 view simulations from client/team designated "points of view". Assumes 3D Concept level grading plan and bridge model shall be provided by client at project commencement. Includes 3D concept level grading plan and bridges modeled from AutoCAD plans provided by client.

Task Ph2 -2.1.4. Video Animation

Prepare a rendered 30 second video of the 3D model illustrating the proposed conditions as a virtual drive on Pacific Coast Highway (PCH) and Superior Avenue as directed by client.

Task Ph2-2.1.5. General Consultation

Coordinate files and deliverables with the team and ensure all work is proper, useable. Attend meetings, coordinate files with Consultant and provide special modeling services as requested.

Task Ph2 -2.2: Coastal Development Permitting

Consultant shall work with the City to provide permitting efforts for the Project.

Task Ph2 -2.2.1: Coastal Development Permit Under Local Coastal Program (LCP)

Consultant shall assist the City in preparing applications and obtaining a Coastal Development Permit (CDP) from the City for the Proposed bridge across West Coast Highway, under the City's Local Coastal Plan (LCP). Consultant shall prepare the permit application and required appendices with the information identified and shall work with the City to include pertinent information such as the project information to prepare the project description (including construction methods and equipment), assessor's parcel numbers for surrounding landowners, names of neighboring property owners and occupants, and wet signatures on the CDP. Consultant shall provide an electronic copy of the draft CDP for review by the project City staff and shall incorporate one round of comments into a final CDP for submittal. The CDP for submittal shall be provided within two weeks of receiving complete project description information. This proposal assumes the Coastal Development Permit (CDP) would be subject to the City LCP and not the California Coastal Commission (CCC).

The coordination with the City after permit application submittal shall include requests for additional information that is readily available at the time of the request and would not require substantial modification to the existing project description, which would require preparation of a new permit application, and would not require new additional work not included in the Scope of Work.

This task does not include new technical studies or reports not specifically identified in this proposal. City shall provide the application fees directly, as applicable, for each permit application.

Task Ph2 -2.2.2: Coastal Development Permit and/or Amendment

Consultant shall assist the City in preparing applications for a new CDP and/or an amendment to existing Coastal Development Permit(s) involving the lane expansion portion of the Project adjacent to both Sunset Ridge Park and Banning Ranch, *as well as the switchback ramps at Sunset Ridge Park*. The type of CDP(s) that shall be prepared for this task shall be dependent upon how the design of the Proposed Project lines up against the existing CDP alignment. Consultant shall prepare the permit application and required appendices with the information identified and shall work with the City to include pertinent information such as the project information to prepare the project description (including construction methods and equipment), assessor's parcel numbers for surrounding landowners, names of neighboring property owners and occupants, and wet signatures on the CDP. Consultant shall provide an electronic copy of the draft CDP(s), as applicable, for review by the project City staff and shall

incorporate one round of comments into a final CDP for submittal. The CDP for submittal shall be provided within two weeks of receiving complete project description information.

The coordination with the City after permit application submittal shall include requests for additional information that is readily available at the time of the request and would not require substantial modification to the existing project description, which would require preparation of a new permit application, and would not require new additional work not included in the Scope of Work.

This task does not include new technical studies or reports not specifically identified in this proposal. City shall provide the application fees directly, as applicable, for each permit application.

Assumptions: *Based on our understanding of the current Project, Consultant assumes no Section 404 permit from the US Army Corps of Engineers, Section 401 and/or Waste Discharge requirement from the Regional Water Quality Control Board, nor Section 1600-1602 Lake and Streambed Alteration Agreement would be required. In addition, based on the current understanding, no Section 7 and/or Section 10 consultation or permit shall be required from resources agencies, specifically the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFW) as no threatened or endangered species is expected to occur within the Project footprint. If waters and/or wetlands are identified within the Project area and are determined to be jurisdictional under either the Clean Water Act or California Fish and Game Code, additional permitting effort shall be required under separate scope of work and fee.*

Task Ph2 -2.3 Biological Resources

Consultant shall work with the City to provide biological resources analysis efforts for the Project.

Task Ph2 -2.3.1: Biological Resource Literature Review, Field Survey, and Biological Technical Report

Prior to commencing the general biological survey, Consultant shall conduct a literature and database review of the project area. The database review shall include the United States Geological Survey (USGS) 7.5-minute topographic quadrangle containing the site, California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDB), the United States Fish and Wildlife Services (USFWS) sensitive species occurrence database and critical habitat areas, and the California Native Plant Society's Electronic Inventory (CNPSEI), National Wetland Inventory (NWI), U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) general soils map, previous vegetation maps and biological surveys prepared for the site (if available), and aerial photographs of the area prior to surveying the site for current relevant information. In addition, biological information included in reports previously prepared for closely related projects shall be reviewed and referenced.

After conducting the literature search and database review, biologists shall conduct a reconnaissance-level survey of the Project area which includes a bridge that shall span West Coast Highway (within 150 feet of the proposed parking lot and pedestrian bridge), and the

realignment and lane expansion area along West Coast Highway). Vegetation communities on the Project site and the immediate vicinity shall be surveyed, mapped, and qualitatively described. The field survey shall focus primarily on determining the presence or potential presence of federal- or state-listed or otherwise sensitive plant and wildlife species and sensitive habitats. In addition, the survey shall focus on identifying the presence of any sensitive habitats that may be protected under the California Coastal Commission. The survey shall include a waters assessment to confirm the presence of jurisdictional waters in the area. Photographs shall be taken to document the current conditions of the Project site and vicinity. Plants and wildlife observed during the survey shall be recorded and provided as appendices to the report.

After completing the biological survey, Consultant shall prepare a Biological Technical Report that shall include an introduction, methods used to conduct the surveys, results of the existing conditions of biological resources within the survey area, a discussion of sensitive species and plant and wildlife communities, and references cited. The report shall include a discussion of the potential for sensitive species to occur within the survey area and the adjacent habitat and recommended mitigation measures. The report shall summarize the results of the habitat assessment survey and shall include current photographs and maps documenting existing site conditions and the locations of any sensitive and listed species occurring, or potentially occurring, at the site.

The report shall include up to five graphics including a vicinity map, biological resources map, and photographs of the site. The report shall contain up to 25 pages of text and tables and up to 10 pages of appendices. Plant and wildlife species lists observed during the survey shall be included as appendices to the report. One electronic copy of the Biological Technical Report shall be provided for review. Consultant shall incorporate one round of comments into the final report within one week of receiving comments on the draft report. Electronic copies of the final report shall be submitted to the City.

Schedule: The field survey shall commence upon receipt of NTP. Within three weeks of conducting the biological resource survey, Consultant shall provide a draft Biological Technical Report to the City for review. The final report shall incorporate comments from the City within one week of receipt of one consensus round comments.

Assumptions

- Cost for Task 2.3.1 assumes two biologists surveying the proposed work areas over a one-day period. If additional areas are added that require a field survey, Consultant shall provide a change order.
- The cost for Task 2.3.1 includes the field survey, Other Direct Cost (ODC's) including travel and equipment, and reporting services.
- Cost for Task 2.3.1 assumes a phone meeting with the City of Newport to discuss the results of the survey. If additional meetings are required, Consultant shall provide a change order.

Task Ph2 -2.3.2: Coastal California Gnatcatcher Focused Surveys and Report

Consultant's team of qualified and USFWS permitted biologists shall conduct focused surveys for coastal California Gnatcatcher according to the Coastal California Gnatcatcher (*Poliophtila californica californica*) Presence/Absence Survey Guidelines (USFWS 1997), and include a

500-foot buffer, throughout the Project site in suitable habitat (i.e., coastal sage scrub habitat near Sunset Ridge Park). The appropriate USFWS field office shall be notified prior to surveys. The surveys shall be conducted during nesting season (February 15 to August 31). Within this timeframe, 3 surveys shall be conducted at least one week apart from each other. Complete bird lists shall be maintained for each survey day. The locations of the target species and other sensitive species and/or their nests shall be documented in field notes and/or approved data sheets, recorded with a handheld Global Positioning System (GPS), mapped onto high-resolution aerial photographs, and photographed clearly showing the location of the species in reference to work areas. Observed territories shall be drawn directly onto high-resolution aerial photographs on each survey, resulting in a comprehensive territory map at the close of the season. These territory maps shall then be transcribed using GIS software.

Following the completion of the CAGN survey effort, Consultant shall complete a 45-day report of results in accordance with the 1997 USFWS protocol. The draft report shall be issued for comment and review within three weeks of the completion of the surveys. Consultant shall incorporate one round of comments into a Final Report within 10 business days of receipt of comments on the Draft Report. One electronic copy and up to three hardcopies (upon request) of the final report shall be provided. The final report shall then be submitted to the USFWS and CDFW as appropriate.

Assumptions

- The cost for Task 2.3.2 includes approximately three full days for one permitted CAGN biologist, ODC's including travel and equipment, agency notification, and reporting.
- This scope of work does not include agency consultation, or CAGN permitting services. Informal agency consultation is included in Task 2.3.4, below.

Task Ph2 -2.3.3: Wetland Delineation

Consultant shall conduct a desktop analysis prior to field survey. The desktop analysis shall include U.S. Geological Survey quadrangle maps and blue-line drainages, Natural Resources Conservation Service soil survey maps, National Wetland Inventory data, and data obtained from the City for the proposed work area.

Potential wetland habitats on the site shall be evaluated using the methodology set forth in the USACE Wetland Delineation Manual (USACE 1987) and shall utilize the Arid West Regional Delineation Supplement. Surveyors shall walk the project area identifying and mapping limits of jurisdiction with GPS. Suspected USACE/RWQCB/CDFW jurisdictional areas shall be field checked for the presence of definable wetlands within the survey area. Hydrologic indicators include evidence of inundation, saturation, watermarks, drift lines, and sediment deposits. The boundaries of the hydrological feature shall be mapped in a shape file that can be distinguished by respective Agencies' jurisdiction, based on current Agency guidance documents. Photographs of hydrological features shall be recorded for reference and scale. Upon completion of field survey, all GIS data collected shall be reviewed. Data gathered from the survey and analysis effort shall be included in the wetland delineation report.

Consultant shall prepare a wetland delineation report that summarizes the field survey, mapping and impact analysis findings. The report shall include up to 25 pages of text and graphics including a vicinity map, limits of jurisdiction on current aerial photographs, photographs of the site and appendices. Consultant shall submit an electronic copy of the draft report to the City for review. Consultant shall incorporate one round of comments into a final report and provide an electronic file to the City.

Note: The field portion of this task shall be completed during the Biological Reconnaissance Survey.

Task Ph2 -2.3.4: Informal Agency Coordination

Consultant understands that if sensitive resources are present (i.e., coastal California gnatcatcher, wetlands), preparation of additional avoidance and protection measures may be required to address potential direct and indirect impacts. Consultant biologists shall coordinate with wildlife and resource agencies and assist with the preparation of protection measures to allow the project to move forward while protecting the sensitive resources. Our team shall assist the City during negotiations with the agencies to develop appropriate mitigation measures. This task includes one site visit with agencies and two additional phone conference meetings. This task does not include a formal consultation for a USFWS Section 7 and Section 10 Habitat Conservation Plan and CDFW Incidental Take Permit.

Task Ph2 -2.4: Air Quality, Greenhouse Gas, and Noise Analysis (Vista Environmental)

Task Ph2 -2.4.1: Air Quality Analysis

Vista Environmental shall provide the following tasks to support the Project analysis:

- Identify the existing air quality setting in the area.
- Identify applicable federal, state, and South Coast Air Quality Management District (SCAQMD's) rules and regulations and identify current attainment status of federal and state standards, and current SCAQMD attainment plans.
- Obtain existing air quality data from air quality monitoring stations within the study area utilizing California Air Resources Board (CARB) data sources. Data shall be obtained for air pollutants, including; ozone, nitrogen dioxide (NO₂), and particulate matter (PM₁₀ and PM_{2.5}).
- Identify SCAQMD's thresholds of significance for the criteria pollutants.
- Provide a Project consistency analysis with SCAQMD's Air Quality Management Plans (AQMP). The consistency analysis shall determine if the Project shall contribute to air quality violations and if it shall comply with AQMP control measures.
- Evaluate and quantify regional criteria pollutant emissions associated with each phase of construction activities utilizing the CalEEMod Model and construction assumptions obtained from the client. If significant regional pollutant emission levels are found to be created from construction activities, feasible mitigation shall be developed and quantified.
- Evaluate local NO_x, CO, PM₁₀, and PM_{2.5} emissions at the nearby homes from each phase of construction activities for the Proposed Project utilizing SCAQMD's Lookup Tables and the methodology described in Localized Significance Threshold Methodology, prepared by

SCAQMD, July 2008. If significant local pollutant emission levels are found to be created from construction activities, feasible mitigation shall be developed and quantified.

- Provide a qualitative analysis of the construction-related toxic air contaminant (TAC) impacts from the Proposed Project and detail how due to the limited duration of construction activities that the cancer and non-cancer risks would be less than significant.
- Provide a qualitative odor analysis from construction of the Proposed Project. The odor analysis shall identify the potential sources of odors and the number of variables that can influence the potential for an odor impact as well as providing detail of what constitutes a significant odor impact.
- Provide a qualitative operational analysis that details how the expansion of West Coast Highway at Superior Avenue would not generate additional vehicle trips as the trips would occur with or without the Project and how the operation of the pedestrian bridge would generate only nominal vehicle emissions associated with maintenance activities that would result in less than significant criteria pollutant and odor emissions.
- Prepare an air quality section for the CEQA document summarizing the results of the previous work tasks. Prepare an appendix that contains the CalEEMod printouts and any other calculations printouts used in preparation of the air quality section.

Task Ph2 -2.4.2: Energy Analysis

Vista Environmental shall provide the following tasks to support the Project analysis:

- Identify applicable federal, state, and SCAQMD's rules and regulations that apply to energy usage.
- Calculate construction energy usage through utilization of the CalEEMod model run developed for the air quality analysis to quantify the total hours off-road equipment shall operate, the total worker miles traveled, and total haul and vendor truck miles traveled during construction of the Proposed Project. Utilize the fuel usage factors from OFFROAD2011 and off-road equipment operating hours to calculate the fuel usage from the off-road equipment. Utilize the vehicle fleet average miles per gallon rates from EMFAC2014 and the worker and truck vehicle miles traveled to calculate the fuel usage from on-road construction trips.
- Provide a qualitative operational energy usage analysis that details how the expansion of West Coast Highway at Superior Avenue would not generate additional vehicle trips as the trips would occur with or without the Project and how the operation of the pedestrian bridge would utilized only nominal energy associated with lighting and maintenance activities that would result in less than significant energy usage. Also detail how all lights would be high efficiency lighting.
- Provide an assessment of how the applicable renewable energy and energy efficiency rules and regulations shall be implemented by the Proposed Project and where possible, quantify the energy savings achieved through implementing each rule and regulation. If the Proposed Project is found to be inconsistent with any rule or regulation, provide mitigation to ensure the Project meets the requirements.
- Prepare an energy section for a CEQA document summarizing the results of the previous work tasks. Prepare an appendix that contains the calculations printouts used in preparation of the energy section.

Task Ph2 -2.4.3: Greenhouse Gas Emissions Analysis

Vista Environmental shall provide the following tasks to support the Project analysis:

- Identify greenhouse gases (GHGs) and their associated impacts to global climate change.
- Identify applicable international, federal, state, SCAQMD rules and regulations.
- Identify SCAQMD's draft thresholds of significance for greenhouse gases.
- Evaluate and quantify GHG emissions associated with construction activities for the Proposed Project through utilization of the CalEEMod Model run used in the Air Quality Analysis.
- Provide a qualitative operational GHG emissions analysis that details how the expansion of West Coast Highway at Superior Avenue would not generate additional vehicle trips as the trips would occur with or without the Project and how the operation of the pedestrian bridge would generate only nominal vehicle GHG emissions associated with maintenance activities that would result in less than significant GHG emissions.
- Compare the operational GHG emissions to all applicable GHG emissions thresholds including AB 32, AB 197, SB 32, SB 375, and SCAQMD's draft GHG emissions thresholds. If the GHG emissions exceed any applicable thresholds, provide mitigation to reduce the GHG emissions to less than significant.
- Determine if the Proposed Project would conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases.
- Prepare a greenhouse emissions section for a CEQA document summarizing the results of the previous work tasks. Prepare an appendix that contains the CalEEMod printouts and any other calculations printouts used in preparation of the greenhouse gas emissions section.

Task Ph2 -2.4.4: Noise Analysis

Vista Environmental shall provide the following tasks to support the Project analysis:

- Provide a project description that details the Project components, the Project location and nearby sensitive receptors.
- Identify applicable City of Newport Beach noise and vibration regulations and thresholds of significance.
- Due to COVID-19, which has disrupted the typical traffic volumes and commercial activity in the Project vicinity, the noise measurements taken for the Superior Avenue Pedestrian and Bicycle Bridge Project shall be utilized. However, Optional Task 2.4.5 is provided if the stay at home orders are lifted and the City would like new measurements taken.
- Utilize the Federal Highway Administration's Roadway Construction Noise Model (RCNM) Version 1.1 to analyze potential noise impacts to the nearby homes from each phase of construction activities for the Proposed Project. Compare the results to the applicable City noise standards. If necessary, develop mitigation to minimize the noise impacts from construction activities at the nearby sensitive receptors.
- Analyze potential vibration impacts associated with the use of heavy off-road equipment during construction activities through application of the methodology used in the *Transportation- and Construction-Induced Vibration Guidance Manual* (Vibration Guidance Manual), prepared for Caltrans.
- Analyze the roadway noise impacts created from widening West Coast Highway through utilization of the FHWA Traffic Noise Model (FHWA TNM) Version 2.5 and the traffic volumes and LOS provided in the Traffic Study for existing and future scenarios to calculate the noise impacts to the nearby homes for without Project and with project scenarios from the widening/moving of West Coast Highway. Compare the results to City noise standards. If necessary, provide mitigation to reduce roadway noise impacts to within the City noise standards.

- Obtain reference noise measurements of the typical noise producing activities at similar pedestrian bridges. Utilize a version of the FHWA noise prediction model and the reference noise measurements to calculate the operational onsite noise source impacts to the nearby homes and compare the results to the City's stationary noise standards. If an exceedance is found provide feasible mitigation to reduce the noise impacts to less than significant levels.
- Provide a qualitative operational vibration analysis that details how the operation of the Proposed Project would not include any known sources of vibration and would result in less than significant vibration impact.
- Prepare a noise section for an Initial Study documenting the results of the previous work tasks. Prepare an appendix that contains the RCNM printouts, TNM model printouts and any other calculations printouts used in preparation of the noise section.

Optional Task Ph2 -2.4.5: Noise Measurements

As noted above, if stay at home order are lifted and the City would prefer new noise measurements to be taken, the following noise measurements shall be conducted:

- Obtain three long-term (approximately 24-hour) noise measurements in the vicinity of the Project site in order to determine the existing ambient noise conditions at the nearby homes to the Project site.

Deliverables: Analysis shall be incorporated into the CEQA document, with appendices provided to support the analysis.

Task Ph2 -2.5: Cultural Resources Assessment

The following tasks are provided to address the cultural resources sensitivity of the Project area and satisfy information required to address the CEQA checklist items.

Task Ph2- 2.5.1: Literature Review and Field Survey

Consultant shall conduct a literature review, including a review of the findings of a records search through the California Historical Resources Information System (CHRIS) database at the South Central Coastal Information Center housed at California State University, Fullerton. The records search shall be conducted by SCCIC staff and review relevant previously recorded cultural resources and previous investigations completed for the one-mile search radius surrounding the Project site. Information to be reviewed shall include location maps for all previously recorded cultural resources, previously conducted investigation boundaries, National Archaeological Database (NADB) citations and copies for associated reports, historic maps, and historic addresses. Consultant shall also review properties listed on/as the California Points of Historical Interest (CPHI), California Historical Landmarks (CHL), Caltrans Historic Highway Bridge Inventory, California Historical Resources Inventory, local city and county registries of historic properties, the California Register of Historic Resources (CRHR), and the National Register of Historic Places (NRHP). Additional sources of information that may be reviewed include but are not limited to Certified Local Government annual reports and other data, HABS/HAER records, the National Register Information System, the on-line database for National Register sites, Calisphere Digital Resources, Online Archive of California, Government Land Office Plat Maps, Sanborn Fire Insurance Maps, local historical societies and libraries, as well as inventory files and data on-file with other agencies that control property near the area. The task shall also include a search for potential prehistoric and/or historic burials (human remains) evident in previous site records and/or historical maps

(i.e., Sanborn Fire Insurance Maps, Government Land Office Plat Maps). A review of the geological formations and a records search at the Natural History Museum of Los Angeles County Department of Vertebrate Paleontology (LACM) shall also be conducted. The City shall be the lead under AB 52 Tribal Consultation (if necessary). Please note that this research alone does not satisfy the lead agency's requirements under AB 52.

Fees incurred by the LACM are estimated to be \$250 for the paleontological records search and are included in our cost. Fees incurred by the SCCIC to conduct the record search have been estimated at \$1,000 and are included as part of this estimated cost.

Note: *The South Central Coastal Information Center (SCCIC) is currently closed due to COVID-19 and conducting record searches is not possible. When the facility shut its doors, they were running on an 8-week delay in turn-around time. Consultant can conduct the field survey without the record search data and provide an interim report; however, if record search results do not agree with the results of our field survey, we may need to conduct an additional field check before finalizing the report and a contract augment shall be required. The benefit of this approach is to allow for draft CEQA documents and permit applications to be completed while awaiting the record search data; however, Consultant shall employ the direction of the City.*

Consultant shall complete a field survey of the Proposed Project area. The cultural resources survey shall be conducted in accordance with the professional standards as described by the National Parks Service, Secretary of Interior's Standards and Guidelines, as amended for Archaeology and Historic Preservation. Consultant cultural resources specialist shall survey the Project area for the presence of:

- Prehistoric artifacts (e.g., flaked stone tools),
- Tool-making debris, stone milling tools,
- Historic artifacts (e.g., metal, glass, ceramics),
- Sediment discoloration (ex. midden, hearth features),
- Depressions and other features indicative of the former presence of structures or buildings (e.g., post holes, foundations),
- Historic ruins, buildings, structures, and/or objects.

This cost estimate assumes one archaeologist and one paleontologist from Consultant shall complete the survey within one 8-hour day. This cost estimate assumes no cultural resources shall be encountered during this survey. If cultural resources are identified, a revised scope of work and cost may be necessary.

Letter Report

The results of the cultural resources study shall be summarized in a letter report which shall include; the results of the literature review and field survey, proposed mitigation measures (if any), and site photos and references. The letter report is assumed to contain up to 15 pages of text, graphics, and appendices. A draft copy of the letter report shall be provided to the City for review. This cost estimate assumes no more than four hours to address comments and to finalize the letter report. If additional comments are received, a revised scope of work and cost for additional review may be necessary.

Deliverables: One Draft and one Final electronic copy of the Archaeology Survey Report

Task Ph2- 2.5.2: Assembly Bill (AB 52) Tribal Consultation Support

The following task has been provided to support the City with AB 52 services, including but not limited to; preparation of notification letters; tribal consultation and tracking; assessment of information related to TCRs provided by the Tribe(s); and drafting appropriate mitigation measures (as warranted). Up 16 hours have been included to provide support with this task, as needed. If additional hours are needed to conclude AB 52 consultation an augmented cost and scope may be required.

***Note:** Per the Governor's Executive Order (EO) N-54-20, the timeframes set forth for which the tribe must request consultation and the lead agency must begin consultation are suspended for 60 days (until June 22nd). Therefore, the entire tribal consultation process may take longer than usually anticipated. The Draft EIR should not be circulated for public review until the AB 52 consultation process has been concluded.*

Task Ph2- 2.6: Transportation Services (Linscott, Law, and Greenspan)

Task Ph2 -2.6.1: Project Mobilization

Linscott, Law, and Greenspan (LLG) shall be available to discuss the Project and analysis criteria, confirm the study approach, identify pertinent traffic issues and concerns, and formalize the Scope of Work for the VMT analysis and intersection analysis for the proposed transportation improvement project. Coordination with Caltrans staff shall be completed, if necessary, to confirm proposed work program meets the State's criteria/requirements, especially as it relates to VMT assessments of transportation improvement projects.

In consultation with City of Newport Beach staff and Caltrans staff, LLG shall prepare a scope of work agreement detailing the assumptions and overall requirements including the significance thresholds for the VMT analysis and intersection analysis, and submit to City staff for review and approval.

Task Ph2 -2.6.2: Data Collection and Research

Visit the Project study area to confirm existing conditions with respect to existing site development, local area development, site access, parking use, and areas of congestion in order to verify our overall understanding of traffic conditions in the area that might affect this Project.

In conjunction with the site visit, document the existing roadway striping, traffic control measures, curbside parking restrictions, intersection lane configurations, and other pertinent roadway features.

Given the changes in travel patterns and lower activity due to COVID-19, conducting traffic counts is not recommended. Therefore, this proposal assumes traffic data for the intersection of West Balboa Boulevard/Superior Avenue at West Coast Highway shall be obtained from readily available historical traffic count data from either City of Newport Beach staff and/or traffic count companies.

If historical traffic count data is not available, conduct AM peak period (7:00 AM to 9:00 AM) and PM peak period (4:00 PM to 6:00 PM) traffic counts at the intersection of West Balboa Boulevard/Superior Avenue at West Coast Highway. The collected peak hour traffic counts shall then be adjusted using a growth factor approved by City staff to develop existing Year 2020 baseline traffic conditions.

Task Ph2 -2.6.3: Formulation of Existing and Buildout Traffic Volumes

LLG shall confirm AM peak hour and PM peak hour existing traffic volumes for the intersection of West Balboa Boulevard/Superior Avenue at West Coast Highway. Utilizing the Orange County Transportation Analysis Model 5.0 (OCTAM 5.0), LLG shall develop AM peak hour and PM peak hour buildout traffic volumes for the intersection of West Balboa Boulevard/Superior Avenue at West Coast Highway.

Task Ph2 -2.6.4: Traffic Evaluation – Intersection Operations Analyses

LLG shall prepare AM peak hour and PM peak hour LOS operations analyses at the intersection of West Balboa Boulevard/Superior Avenue at West Coast Highway for existing conditions and buildout traffic conditions without and with the proposed improvements.

The evaluation shall be prepared using both the ICU methodology as required by the City and the HCM method of analysis as required by Caltrans. The HCM analysis shall consider all appropriate input parameters to accurately model the West Balboa Boulevard/Superior Avenue at West Coast Highway intersection characteristics for the AM and PM peak commute hours, including pedestrian crossing, vehicle queuing, roadway and lane storage geometrics, and signal operational conditions.

LLG shall assess the potential benefits of the proposed improvements based on the results of the peak hour intersection analyses (including reduced intersection delay, intersection queuing and increased pedestrian safety), the City's General Plan LOS goals, and Caltrans requirements.

Task Ph2 -2.6.5: VMT Analysis

LLG shall coordinate with City of Newport Beach staff *and* Caltrans staff to define the study area as the size and shape of the study area can affect the analysis. LLG shall also determine the analysis scenarios and confirm the approach for the VMT analysis.

Assuming the use of the Orange County Transportation Analysis Model 5.0 (OCTAM 5.0), LLG shall conduct without and with Project VMT model runs. The without Project scenario shall be prepared for the base year and the buildout year (Year 2035), assuming existing or community plan/general plan land uses. The "with Project" scenario shall also be prepared for the base year and the buildout year (Year 2035), assuming the Project network changes. LLG shall compare the VMT for the Project against the Regional VMT. Compare the cumulative VMT for the Project against the Regional VMT. LLG shall determine the Project impact based on City of Newport Beach guidelines (if available), *Caltrans guidelines*, or based on the Technical Advisory for Evaluating Transportation Impacts In CEQA, published by the Governor's Office of Planning and Research (OPR), December 2018.

If necessary, LLG shall recommend appropriate mitigation measures to reduce the impact. LLG shall also provide the Project team a toolbox of potential mitigation or Project alternatives for consideration in the analysis.

LLG shall utilize the California Air Pollution Control Officers Association (CAPCOA) standards or other applicable documents and determine if the selected mitigation measures reduce the Project's VMT impacts to less than significant.

Task Ph2 -2.6.6: Preparation of Report

LLG shall prepare a Draft Report that details all of the above-mentioned items including their analysis, findings and conclusions. The Draft Report shall be suitably documented with tabular, graphic and appendix material. The report shall be submitted for screencheck review by the appropriate members of the Project team, City staff and Caltrans staff.

If necessary, LLG shall revise the Draft Report to address project team/City staff *and Caltrans staff* comments and provide a Final Report for inclusion into the Project's EIR. The Final Report shall be suitably documented with all tabular, graphic and appendix materials.

Task Ph2- 2.6.7: Response to Comments

LLG shall coordinate with the Project team and/or City staff *and Caltrans staff* regarding traffic-related comments received during the circulation of the Draft EIR.

LLG shall prepare and submit draft written responses to traffic-related comments received on the Traffic Section of the EIR during the public review process. LLG shall update the responses, if necessary, based on City and/or Project team comments and submit final draft for inclusion in the Final EIR (8 hours of Senior Transportation Engineer support and 4 hours of Principal Engineer support is allocated for this task).

Task Ph2 -2.6.8: Attendance at Meetings

LLG shall prepare for and participate in up to four conference calls with the project team and/or City staff. For budgeting purposes, the average length of each conference call is assumed to be one hour and shall be attended by the LLG Project Manager.

LLG shall prepare for and attend one EIR Scoping Meeting, if conducted. This component includes preparation of specific presentation materials on traffic issues. For budgeting purposes, the length of the EIR Scoping Meeting is assumed to be five hours and shall be attended by the LLG Project Manager.

LLG shall prepare for and attend one City of Newport Beach City Council Meeting. This component includes preparation of specific presentation materials on traffic issues. For budgeting purposes, the length of the City Council Meeting is assumed to be five hours and shall be attended by the LLG Project Manager.

Optional Task Ph2 -7: Hazardous Materials Assessment

The objective of the HMA shall be to evaluate whether hazardous materials or other adverse environmental conditions are present due to past or present use of the site and/or properties in the Project site vicinity. The services proposed by Ninyo & Moore for the HMA shall be generally consistent with applicable sections of the ASTM International (ASTM) 2013 guidance (Designation Number E-1527-13) and the United States Environmental Protection Agency Standards and Practices for All Appropriate Inquiries (AAI). Because the ASTM and AAI standards were established to provide innocent landowner liability protection under Comprehensive Environmental Response, Compensation, and Liability Act for the purchaser of a property, the applicability of the ASTM/AAI standards shall be limited.

The HMA shall include the following tasks:

- A site visit to visually evaluate site characteristics for possible contaminated surface soil or surface water, improperly stored hazardous materials, and possible sources and indications of site contamination from activities at the Project site.
- A site and vicinity reconnaissance to evaluate characteristics of properties within and adjacent to the Project area for possible hazardous materials influences on the project. Properties adjoining the site shall be observed from public rights-of-way.
- Review of previous environmental reports conducted for the site, if provided by the City.
- If provided by City, review chain-of-title and environmental lien reports to evaluate probable past site uses and their possible impact on the current environmental status of the site.
- A review of a computerized database search provided by Environmental Database Resources (EDR) of readily available government and regulatory agency environmental lists for the site and for properties located within approximately ¼ mile of the Project site. The objective of the database search shall be to evaluate locations where hazardous materials may have been used or stored and their possible effects on the site. On-site listings of possible concern shall be further evaluated by reviewing readily available on-line environmental documents for the site from regulatory agencies, or by interviewing regulatory agency personnel. Ninyo & Moore's scope of services includes review of up to two agency files for the site and an online review of agency files for the adjoining closed leaking underground storage tank (LUST) case at 4625 West Coast Highway (Tosco Oil). Locations of properties of concern shall be shown on maps of the site vicinity.
- Review State of California, California Geologic Energy Management Division's oil-field maps and review of information, if any, provided by the California State Fire Marshal regarding oil and natural gas pipelines in the site vicinity.
- Review of site and adjoining historical land use to provide an overview of past uses that likely involved the use or storage of hazardous materials. Information that shall be used to review the site history shall include readily available historical aerial photographs and historic United States Geological Survey Topographic Maps. Ninyo & Moore shall attempt to note historical site uses involving the use or storage of hazardous materials from the time when the site was undeveloped or agricultural.

- Prepare an HMA report. The report shall provide a site location map, site visit notes, an EDR database search report, site photographs, and a discussion of findings and conclusions regarding the current environmental condition(s) of the site including the presence of hazardous materials in the Project area and possible impacts to the Project.

Please note that Ninyo & Moore's proposed scope of services for environmental evaluation does not include subsurface exploration, soil or water sampling, chemical analysis, or evaluation of methane, lead, radon, or asbestos. Properties adjoining the site shall be observed from public rights-of-way.

Assumptions

The following assumptions have been made in the preparation of Ninyo & Moore's scope of services:

The visual observations made by Ninyo & Moore shall be limited to the surface area of the site and contiguous properties. Subsurface explorations, soil sampling, surface and groundwater sampling, and chemical analyses are not included as part of this scope.

- It is Ninyo & Moore's understanding that Caltrans may be reviewing the HMA, and have included one round of comments in the estimated fee.
- Up to eight hours have been estimated to review agency records for the site. Up to four hours have been estimated to review online agency records for the adjoining closed LUST case at 4625 West Coast Highway (Tosco Oil). If during the course of the assessment, additional adjoining facilities applicable to the site impact evaluation are discovered, additional budget shall be requested in order to conduct agency research for those addresses.
- Ninyo & Moore's fee and scope of services includes preparation of one written response to review comments for our report. Subsequent consulting services, including preparing additional written responses to subsequent review comments of our report, attendance at meetings, or additional requested services, shall be provided on a time-and-materials basis.

TASK PH2 -3: ENVIRONMENTAL IMPACT REPORT DOCUMENTATION

Based on coordination with the City and results of the analysis within the technical studies, Consultant shall prepare the appropriate CEQA Documentation for the City. Due to agency involvement, potential permitting requirements, and location of the Project, we anticipate an EIR to be the appropriate document, and this scope is outlined below.

Task Ph2 -3.1: Notice of Preparation

Draft Notice of Preparation. Consultant shall prepare the Notice of Preparation (NOP) for the Project. The NOP shall contain a description of the Project, a map showing the location of the Project, and a summary of the probable environmental impacts.

Deliverables: One electronic PDF copy of the Draft NOP for City review.

Final Notice of Preparation. Upon receipt of the City's Comments, Consultant shall prepare a Final NOP for public review. Consultant shall distribute copies of the NOP to the appropriate responsible and trustee agencies, interested parties, and to the mailing list provided by the City and shall file the NOP with the OPR and the County Clerk. The NOP shall be circulated for a 30 day public review period. The comments that are received on the NOP shall be used to further refine the project description or scope of EIR, if needed. The NOP, comments received, and all correspondence shall be included in the EIR appendices.

Deliverables: Up to five hard copies and one CD containing an electronic PDF copy of the NOP shall be provided to the City if requested. Up to 30 hard copies of the NOP for public agency distribution. The NOP shall be submitted to the State Clearinghouse electronically for filing.

Task Ph2 -3.2: Prepare Administrative Draft EIR

Conduct Environmental Impact Analysis. The document shall contain a section for each environmental issue area. Discussion of each issue shall begin with a description of the environmental setting. Impact evaluations for each environmental issue area shall contain the following elements: (1) a statement identifying the impact and its significance; (2) a discussion of the impact and methodology used to evaluate the Proposed Project; (3) cumulative impacts evaluation; (4) applicable city policies and requirements; (5) recommended measures to mitigate the impact; and (6) a statement identifying the level of significance after measures are implemented.

The environmental factors that shall be outlined in the EIR include:

- | | |
|---------------------------------------|-------------------------------------|
| • Aesthetics | •Mandatory Findings of Significance |
| • Agricultural and Forestry Resources | • Mineral Resources |
| • Air Quality | • Noise |
| • Biological Resources | • Population and Housing |
| • Cultural Resources | • Public Services |
| • Energy | • Recreation |
| • Geology and Soils | • Transportation |
| • Greenhouse Gas Emissions | • Tribal Cultural Resources |
| • Hazards and Hazardous Materials | • Utilities and Service Systems |
| • Hydrology and Water Quality | • Wildfire |
| • Land Use and Planning | |

Assess Cumulative Impacts. In concert with City staff, Consultant shall develop a list of ongoing or future projects in the area within a reasonable radius around the Project site to develop the cumulative impact analysis. The Proposed Project's contribution to the overall cumulative impact shall also be evaluated and discussed.

Analyze Alternatives. Consultant, in concert with City staff, shall develop a range of reasonable alternatives to be evaluated in the EIR. Alternatives shall be assessed for their ability to reduce or eliminate significant impacts of the project, while resolving public, as well

as agency concerns. As required by CEQA, the No Project Alternative shall also be examined. For the purposes of this Project, we anticipate that up to three alternatives including the No Project Alternative shall be analyzed in the EIR.

Prepare Other Required Sections. In addition to the sections discussed above, Consultant shall prepare all other required CEQA sections, including: Table of Contents; an executive summary; impacts of the Project found not to be significant; growth-inducing impacts of the Project; any significant irreversible environmental changes that shall be involved with continued operation of the Project; and a list of organizations and persons consulted. Consultant shall also provide a Draft MMRP at the time of submittal of the screencheck Draft EIR.

Deliverables: Up to three hard copies if requested and one electronic PDF copy of the Administrative Draft EIR for City review.

Task Ph2 -3.3: Draft EIR

Draft EIR Preparation and Distribution. Upon Consultant's receipt of the City's review comments, the Administrative Draft EIR shall be modified and the Draft EIR prepared. Consultant shall prepare and distribute copies of the Draft EIR to the City, the OPR, and affected public agencies. The Draft EIR shall be circulated for a 45 day public review period.

Deliverables: Up to 5 hard copies with appendices on CD, and one CD containing an electronic PDF copy of the Draft EIR shall be provided to the City if requested. For the State Clearinghouse submittal, 15 summary forms with the EIR on CD. Up to 15 CDs containing an electronic PDF copy of the Draft EIR for public agency distribution.

Prepare/Distribute Notice of Completion/Notice of Availability. As soon as the Draft EIR is completed, a Notice of Completion (NOC) must be filed with the OPR and a Notice of Availability (NOA) must be filed with the County Clerk, and must be provided to the public, either in a newspaper of general circulation, onsite, or through direct mail to contiguous property owners. Consultant shall provide the Draft NOC/NOA to the City for their review and approval.

Consultant shall distribute copies to the appropriate responsible and trustee agencies, interested parties, and to the mailing list provided by the City and shall file the NOC with the OPR and the NOA with the County Clerk. The NOC/NOA shall be circulated for a 45 day public review period.

Deliverables: Up to five hard copies and one CD containing an electronic PDF copy of the NOC shall be provided to the City if requested. Up to 25 NOC/NOAs to be sent via certified mail.

Note: Per the Governor's Executive Order (EO) N-54-20, the public filing, posting, notice, and public access requirements are suspended for a period of 60 days (until at least June 22). If this EO is extended, the Project shall only be required to post materials on a public website and submit notices electronically.

Task Ph2 -3.4 Prepare Final EIR

Coordinate before Preparation of Final EIR. After the 45 day circulation period on the Draft EIR, Consultant shall evaluate the written comments received and attend a meeting with the City on the approach for preparing response to comments. The approach may include a comment matrix to track similar responses, depending on the volume of comments received. After approach is decided upon, Consultant shall prepare a set of responses to comments.

Response to Comments. The Final EIR shall include each comment letter received, which shall be followed by a response to each comment. Responses to comments received by the City during the public review period shall be prepared. Consultant shall provide City staff with a complete draft copy of the Response to Comments for review and shall modify the Response to Comments in response to City review and comments. The Response to Comments shall be contained within the Final EIR. Consultant shall distribute a complete and final set of Response to Comments to each public and private organization commenting on the Draft EIR.

It is assumed that no more than 25 comment letters, with an average of five comments each (125 comments total), would be received and addressed. If more comments are received, additional costs would be required to address them.

MMRP. Consultant shall prepare a Mitigation Monitoring and Report Plan (MMRP) as required by CEQA. Consultant will work with the technical staff and the City to develop the MMRP. Consultant shall provide a Draft Mitigation Monitoring and Reporting Plan (MMRP) at the time of submittal of the Administrative Final EIR. The MMRP shall be incorporated into the Final EIR.

Administrative Final EIR. After the City's review and comment on the Response to Comments, the responses shall be finalized for inclusion in the Final EIR. Based on comments from the public review and input from the City, some changes to the wording of the Draft EIR may be needed. Any required changes shall be handled by including amended text and/or graphics within the Final EIR. It is assumed that no new field work or substantially new analyses or technical studies shall be required.

Findings of Fact (FOF) and Statement of Overriding Considerations, if necessary. Consultant shall prepare Findings of Fact and if warranted, a Statement of Overriding Considerations.

Deliverables: Up to three hard copies and one electronic PDF copy of the Administrative Final EIR for City review.

Prepare Final EIR. Upon Consultant's receipt of the City's review comments, the Administrative Final EIR shall be modified and the Final EIR prepared.

The Notice of Determination (NOD) is filed following the City Council's decision to carry out or approve the Project for which the EIR has been prepared. Consultant shall prepare the NOD and shall file the NOD with the OPR and the County Clerk. The City shall be responsible for Fish and Game filing fees, if necessary.

Deliverables: Up to three hard copies and one CD containing an electronic PDF copy of the Final EIR if requested. Up to five hard copies and one CD containing an electronic PDF copy of the NOD. Up to 20 NODs to be sent via certified mail.

TASK PH2 -4: PROJECT MANAGEMENT/MEETINGS/PUBLIC HEARINGS

This task includes at least five Project meetings that would occur with City staff, either in person or via conference call, not inclusive of the kickoff meeting (Task 1). This task also includes all time that Consultant would spend managing our subconsultants (Vista Environmental, Fuscoe Engineering, and LLG) as well as time for updating the Project schedule as needed. Consultant has budgeted additional time and resources for up to four public meetings and/or hearings. Group shall coordinate with the City to plan and present the CEQA document at the community meetings/public hearings. It is assumed that internal staff meetings, shall take no more than two hours, and community and public meetings shall take no more than three hours each. Consultant shall attend any other additional meetings requested by the Client on a time and materials basis.

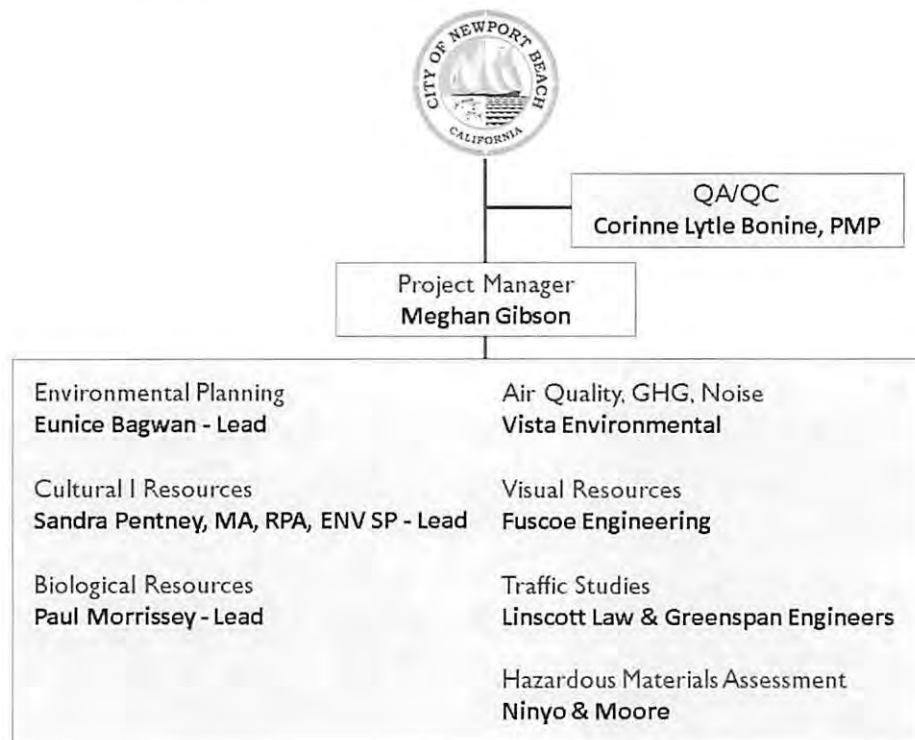


EXHIBIT B-2

SCHEDULE OF BILLING RATES

EXHIBIT B-2 FEE SCHEDULE

Amendment No. 2

Environmental Services for the West Coast Highway Widening and Pedestrian Bridge Project

Task Ph2 – I: Project Initiation

Task Ph2 – 2: Project Description

Task Ph2 – 3: Environmental Impact Report Documentation

Task Ph2 – 4: Project Management/Meetings/Public Hearings

Total Not-To-Exceed Cost for Amend #2: \$227,821.00

Total Not-To Exceed Cost for Entire Agreement: \$389,038.00

Billing Rates

Billing Rates



BILLING RATES

STAFF. Charges for all professional, technical, and administrative personnel directly charging time to the project will be calculated and billed on the basis of the following staff category hourly "Billing Rates." Billing Rates include fringe benefits, burden, and fee.

<u>Staff Title</u>	<u>Rate</u>	<u>Staff Title</u>	<u>Rate</u>
Senior Director	\$225.00	Managing Environ. Planner	\$185.00
Director/Program Manager	\$200.00	Senior Environ. Planner	\$154.00
Sr. Project Manager	\$165.00	Project Environ. Planner	\$134.00
Project Manager	\$140.00	Staff Environ. Planner	\$114.00
		Environ. Planner	\$104.00
		Assistant Environ. Planner	\$93.00
Managing Cultural Resources Specialist	\$165.00	Managing Biologist / Botanist	\$185.00
Senior Cultural Resources Specialist	\$134.00	Senior Biologist / Botanist	\$149.00
Project Cultural Resources Specialist	\$118.00	Project Biologist / Botanist	\$129.00
Staff Cultural Resources Specialist	\$103.00	Staff Biologist / Botanist	\$113.00
Cultural Resources Specialist	\$92.00	Biologist / Botanist	\$103.00
Assistant Cultural Resources Specialist	\$73.00	Assistant Biologist / Botanist	\$93.00
Senior GIS Analyst	\$147.00	Managing Restoration Director	\$133.00
Staff GIS Analyst	\$122.00	Restoration Specialist Foreman (Foreman)	\$78.00
GIS Technician	\$107.00	Restoration Specialist	\$41.00
Project Controls Specialist	\$93.00	Maintenance Labor	
Project Assistant/Tech. Editor	\$82.00		
Word Processor	\$72.00		
Clerical/Technician	\$62.00		

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. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
- C. 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 C

AMENDMENT NO. ONE TO PROFESSIONAL SERVICES AGREEMENT WITH DOKKEN ENGINEERING FOR FINAL DESIGN AND ENGINEERING SERVICES FOR THE SUPERIOR AVENUE OVERCROSSING AND PARKING LOT PROJECT AND WEST COAST HIGHWAY WIDENING AND PEDESTRIAN BRIDGE PROJECT

THIS AMENDMENT NO. ONE TO PROFESSIONAL SERVICES AGREEMENT ("Amendment No. One") is made and entered into as of this 25th day of August, 2020 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and DOKKEN ENGINEERING, a California corporation ("Consultant"), whose address is 1450 Frazee Road, Suite 100, San Diego, and is made with reference to the following:

RECITALS

- A. On November 19, 2019, City and Consultant entered into a Professional Services Agreement ("Agreement") to engage Consultant to provide final design and engineering services for the Superior Avenue Overcrossing and Parking Lot ("Project").
- B. On January 14, 2020, the City adopted Resolution 2020-04 authorizing and approving the submittal of a funding application ("Application") for an intersection capacity enhancement project to the Orange County Transportation Authority ("OCTA") for funding under the Comprehensive Transportation Funding Program.
- C. On May 11, 2020, OCTA approved the City's Application, in which the City will receive funds to conduct environmental review and design services for the West Coast Highway Widening and Pedestrian Bridge Project.
- D. The parties desire to enter into this Amendment No. One to reflect additional Services to include the West Coast Highway Widening and Pedestrian Bridge Project (hereinafter collectively referred to as the "Project") not included in the Agreement, and to increase the total compensation.

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

1. SERVICES TO BE PERFORMED

Exhibit A to the Agreement shall be supplemented to include the Scope of Services, attached hereto as Exhibit A-1 and incorporated herein by reference ("Services" or "Work"). Exhibit A to the Agreement and Exhibit A-1 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.

2. COMPENSATION TO CONSULTANT

Exhibit B to the Agreement shall be supplemented to include the Schedule of Billing Rates, attached hereto as Exhibit B-1 and incorporated herein by reference ("Services" or "Work"). Exhibit B to the Agreement, Exhibit B-1 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 Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **One Million Eight Hundred Eighty Nine Thousand Eight Hundred Ninety Dollars and 00/100 (\$1,889,890.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City."

The total amended compensation reflects Consultant's additional compensation for additional Services to be performed in accordance with this Amendment No. One, including all reimbursable items and subconsultant fees, in an amount not to exceed **Nine Hundred Seventy Dollars and 00/100 (\$970,000.00)**.

3. 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: 8/13/2020

By: 
Aaron C. Harp
City Attorney

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Will O'Neill
Mayor

CONSULTANT: Dokken Engineering, a
California corporation

Date: _____

By: _____
Richard T. Liptak
Chief Executive Officer

Date: _____

By: _____
Bradley B. Dokken
Chief Financial Officer

[END OF SIGNATURES]

Attachments: Exhibit A-1 – Scope of Services
 Exhibit B-1 – Schedule of Billing Rates

EXHIBIT A-1

SCOPE OF SERVICES



EXHIBIT A-1 SCOPE OF WORK

TASK PH2-1 - PROJECT MANAGEMENT & CALTRANS COORDINATION

Task Ph2-1.1 Project Kickoff and Project Team Meetings

Dokken Engineering, referred to as “Dokken” throughout this Scope of Work, will coordinate meetings with the City, the City’s consultants (Chambers Group) and key stakeholders to facilitate decision making. For each meeting, Dokken will provide meeting notices, prepare meeting materials and agenda, facilitate the meeting and prepare meeting minutes. Dokken will consult with the City’s project manager prior to each meeting to review upcoming meeting items. The following meetings are anticipated for this project:

Kickoff Meeting (1): At the start of the project, Dokken will organize a kickoff meeting with all key personnel, design team members and stakeholder representatives on the project. The purpose of this meeting is to review the goals and objectives of the project, discuss each team member’s roles and responsibilities and identify critical project issues.

PDT Meetings (11): The project development team (PDT) meeting, will be scheduled monthly to review project status and discuss items that require City decisions. Attendees are anticipated to include City staff, Dokken Project Manager, as well as consultant task leads and other stakeholders as necessary to facilitate resolutions.

City Council Meetings (2): Dokken will attend and present the proposed improvements at City Council meetings.

Task Ph2-1.2 Project Schedules and Administration

Dokken will monitor and control the effort and progress of the proposed services as follows: 1) Set up an internal project accounting system; 2) Prepare monthly Progress Reports indicating work accomplished the previous month, anticipated work to be completed the next month, issues requiring resolution, milestones achieved, meetings held, actions taken, approval actions required, coordination issues and design schedule impacts to accompany City invoices; and 3) Prepare, monitor and adjust Critical Path Method (CPM) Schedule on a monthly basis.

Task Ph2-1.3 Data Collection, Site Visits, and General Coordination

Dokken will obtain and review all available documents to identify design controls and considerations necessary to support the project. These documents include, but are not limited to, aerial and street view exhibits, concept plan and renderings developed, traffic and pedestrian counts, parking lot, roadway and utility As-Built data and other available data.

Task Ph2-1.4 Caltrans Local Assistance Coordination and Form Preparation

Dokken, on behalf of the City, will coordinate directly with Caltrans to prepare the construction Request for Authorization (RFA) and secure the Federal Form E-76. Dokken will also prepare all required forms to include the utility and right of way certification, PS&E checklist, and support the City’s environmental consultant for the preparation of the EIR/EIS and the revalidation that will be required to request the construction RFA. Throughout the design process, Dokken will coordinate with Caltrans to address any review comments and gain Caltrans and City approval.

Task Ph2-1.5 Public Meetings

Dokken and DMD Architects will participate in the public and stakeholder process, providing input and feedback on the bridge design and the bridge aesthetics including; architectural/aesthetic concepts and criteria, architectural details, color, textures, lighting and renderings to present the proposed bridge design elements at up to two (2) Public Outreach meetings. Dokken and DMD Architects will also attend up to two (2) Parks, Beaches and Recreation (PB&R) Meetings and prepare all necessary exhibits and PowerPoint slides for the presentation.



Deliverable(s): Up to twelve (12) Meeting Notices, Agendas, Meeting Minutes, and Presentation Materials; City Council Presentation Materials including Project Exhibits, Monthly Progress Reports and Monthly Project Schedule Updates, Team Coordination, Existing Documentation Memorandum, Site Visit Summary, Project Design Criteria Memorandum, Caltrans RFAs, Utility and Right of Way Certification, PS&E Checklist. Public Outreach Meetings (2), City Council Meetings (2), PB&R Meetings (2)

TASK PH2-2 – 15% CONCEPT DESIGN (ENVIRONMENTAL PHASE)

Task Ph2-2.1 Conceptual Civil Design

Dokken will develop the conceptual civil design. The preliminary West Coast Highway (WCH) concept will include adding the path from the WCH sidewalk near Hoag Hospital up to the Superior Ave Parking Lot, removal of the existing switchback walkway (5% max) at Sunset Ridge Park and will be replaced with a ramp (8.3 max) from the new Superior Overcrossing to WCH. The concept will also include revised lane configurations along WCH, removal of the sidewalk near the intersections of WCH and Superior, provide a free right turn from Superior to WCH and replace the existing Asphalt Concrete ("AC") sidewalk with a new concrete sidewalk. The existing bus stop will also be relocated. These improvements will include up to two (2) variations.

Task Ph2-2.2 Conceptual Bridge and ADA Ramp Design

DMD Architects (DMD) will assist the team to comply with the historic and visual character requirements of the Superior Ave and West Coast Highway pedestrian bridges under California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). DMD Architects will consult with the Environmental team to review architectural impacts to the bridges design variations and will review the technical studies for compliance with the cultural resources impacts. Renderings and other illustrations and graphics will be provided by Chambers Group to support their environmental document.

Dokken and DMD Architects will review the renderings prepared by Chambers Group of the final approved concepts and prepare an Advance Planning Study (APS) for each bridge. The structure type concept alternatives will be evaluated based on the stakeholder perception of visual impacts, relative comparison of operational performance, construction and environmental impacts, maintenance requirements, and construction cost. As part of the review, DMD Architects will assess the visual context of the design that integrates the aesthetic and environmental values with bridge and architectural elements. The APS will include the proposed structural and foundation type, the length, spans, cross section, staging and profile of the bridge and up to three ramp configurations.

Develop Architectural Features

Dokken and DMD will advance architectural bridge design concepts for an integrated approach to the two bridge designs. The conceptual design will include up to two study models for each bridge concept. Access and connecting to and from the street networks safely and directly will be evaluated. The alternative will address key factors such as safety, connectivity, pedestrian and cyclist accommodations, view shed and sightlines, and related preliminary design elements. Architectural features for the ramp structure, bridge columns, vehicle barriers, walls and abutment structures to tie the project together in consideration with the City's existing architectural themes and will be considered.

Task Ph2-2.3 Conceptual Landscape Design

ADL Planning Associates (ADL) shall prepare conceptual landscape documents of the proposed and impacted landscape areas. These documents shall include a composite Landscape Concept Plan. The new overall Landscape Concept Plan shall be a colored site layout of both Phase 1 and 2 improvements with descriptions of the suggested landscape treatments and a plant palette listing recommended plant varieties that complement both the existing plants within Sunset Ridge park and adjacent landscapes. These graphic images shall serve to exhibit the proposed improvements.



Task Ph2-2.4 Conceptual Cost Estimates

During the development of the civil, bridges and landscape concepts, Dokken will prepare construction cost estimates of these alternatives so that the City will have a better understanding of the costs and what improvements will fit within their programmed budget.

Task Ph2-2.5 Preliminary Geotechnical Recommendations

Earth Mechanics, Inc. (EMI) will provide preliminary geotechnical engineering recommendations for the following design elements:

- (1) A new single-span bridge over West Coast Highway (WCH);
 - (2) Approximately 150-foot long times two ADA ramp (rail on CIDH piles or retaining wall on spread footings);
 - (3) Approximately 650 feet of slope modification (or earthwork) on east of Superior Avenue;
 - (4) Approximately 2,900 feet of sidewalk/pavement widening along WCH (eastbound and westbound); and
- Details of our proposed geotechnical services for the project are presented below.

Preliminary Materials Report

EMI will prepare a Preliminary Materials Report (PMR) to provide pavement structural sections and alternatives, and corrosion potential of on-site soils and culvert materials requirements. The evaluation will be based on a review of available existing subsurface data and will not include field investigations, borings or laboratory testing. EMI will follow Caltrans pavement design procedure using traffic indices and pavement design lives provided by the Civil Designers. Information on existing pavement sections will be based on the Typical Section Sheets provided by the Civil Designers. Recommendations for rehabilitation of existing pavements will not be included in this report. The calculated pavement sections will be used by the Civil Designers to perform a pavement Life Cycle Cost Analysis (LCCA).

Task Ph2-2.6 Identify Existing Utilities

Dokken will prepare a project limits map immediately after the Notice to Proceed and request utility information from the utility owners within the project area. Dokken will prepare draft request for mapping letters to affected utility owners on City letterhead for City review and approval prior to transmitting project base maps to utility owners. Two sets of project base maps will be provided to each utility owner as an attachment to the transmittal request for the mapping letter. A copy of the utility data obtained from utility owners will be provided to the City and the original will be filed in the project files. Information on existing utilities obtained because of the request for mapping submittal will be transferred to base maps in both plan and profile view. Dokken will prepare a utility base map to integrate the information supplied by the utility owners. Information on existing utilities obtained because of this effort will be used to identify utility conflicts.

Deliverable(s): Civil Design (2), Bridge APS Drawings (2), Landscape Concept (1), Conceptual Cost Estimates, One Preliminary Materials Report, Request for Mapping letters; Existing Utility Plans, Utility Base map

TASK PH2-3 - DESIGN SURVEYING & BASE MAPPING

Task Ph2-3.1 – Supplemental Topographic Surveying

Guida Surveying, Inc. (Guida) will support Dokken by supplementing the existing aerial photogrammetric mapping in those areas needed for the Phase 2 design and those areas that are outside the existing aerial topographic mapping provided by the City. Once the aerial topographic mapping is delivered and reviewed by Dokken, a survey request will be made to identify the areas where supplement topographic data is needed. Supplemental survey will include locating any above ground evidence of underground utilities.

Guida will also identify existing right of way lines between the City and Caltrans right of way, roadway centerlines, lot lines, and survey monuments from available record data, and prepare a base map from available record data that will



include right of way lines and centerline of both Pacific Coast Highway and Superior Avenue.

Task Ph2-3.2 Plat and Legal Descriptions

Guida will also prepare four legal descriptions and plats for permanent right of way takes. These legal descriptions and plats will be developed from the land net base mapping and signed and sealed by a California Professional Land Surveyor.

Task Ph2-3.3 Caltrans Appraisal Mapping

Guida will prepare an appraisal map in accordance with Caltrans District 12 Right of Way Engineering standards. This mapping will be prepared for those parcels owned by the State of California or being acquired for state highway purposes.

Task Ph2-3.4 Combine Parking Lot Parcels into One Parcel

As shown in the exhibit below, there are 6 assessor parcels within the proposed park and parking lot area.

Assessor Parcel No.	Owner Name
424-041-009	City of Newport Beach
424-041-011	City of Newport Beach
424-041-012	City of Newport Beach
424-041-013	City of Newport Beach
424-042-002	City of Newport Beach
424-042-003	City of Newport Beach

The City can merge the six parcels into one. To support this process, Guida will prepare a legal description and plat and/or exhibit maps. Legal descriptions and plats will be prepared to support a parcel merger of the 6 parcels shown in the table above.

Deliverable(s): Aerial mapping and supplemental topo in AutoCAD; ASCII text file of the field survey point file information; The AutoCAD files to include, DTM, topography, field survey shots including ground shots and utility appurtenances and descriptors for each point in a text file format, Appraisal Map in AutoCAD and PDF, Legal Descriptions and Plats in hard copy and PDF, Exhibit Map in hard copy and PDF.

TASK PH2-4 - UTILITY COORDINATION

Dokken will update the utility base map that was prepared in the prior task and will coordinate with the utility owners to confirm locations of existing utilities shown. A total of three potholes is proposed based on the utility mapping, any potential utilities relocation needed will be identified. Dokken will coordinate with each utility company and provide each utility company a copy of our 50%, 90%, and 100% plans. During the development of our plans, we will coordinate any future utilities that will be within our project limits and coordinate these improvements into our project. Dokken will maintain on-going record keeping, meeting minutes, correspondence, schedules and status updates between the project team, the City, and each utility company. As part of this task, Dokken will prepare the Notice to Owners, utility agreements for any utility which may require adjustment or relocation.

Deliverable(s): Final Design of Relocations from Each Utility Company; Three (3) Utility Potholes

**TASK PH2-5 – GEOTECHNICAL ENGINEERING FOR PS&E****Preliminary Foundation Report**

EMI will prepare a Preliminary Foundation Report (PFR) for the proposed bridge over WCH to provide preliminary geotechnical information to assist structural designers in the type selection process for the bridge. This PFR will be prepared using the available subsurface data and the format will be in accordance with the current Caltrans Guidelines. Following the AP zone map published by the California Geological Survey and Caltrans guidelines, a fault rupture investigation will not be required.

Geotechnical Investigation

EMI's geotechnical field investigations plan for Phase 2 is presented in Table 2. Data obtained from the borings will be used for multiple design elements. Existing slopes facing WCH located east and west of Superior Avenue are assumed to be stable against deep-seated failures. If additional data collected in the PS&E contradicts this assumption, then additional soil investigation including large-diameter bucket auger borings will need to be added to Table 2.

Table 1. Proposed Soil Boring Information for Phase 2

Design Element	Proposed Number of Borings/CPTs	Approximate Proposed Depth (feet)
Pedestrian Bridge over WCH – Southern Abutment	1	80
ADA Ramp	1	50
Earthwork and Pavement Structural Sections	1	20
	5	5

The boreholes will be excavated using a truck-mounted or track-mounted rotary-wash drill rig or hollow-stem auger rig. CPT soundings will be performed using track-mounted or truck-mounted CPT probes. Soil cuttings from the borings will be temporarily stored onsite in 55-gallon drums, tested for contaminants, then disposed offsite. Asphalt concrete coldpatch will be used to replace asphalt that is removed by excavations, and quick-set cement will be used to replace concrete that is removed by excavations.

EMI will prepare a boring location plan and this plan will be used to secure encroachment permits from Caltrans and City of Newport Beach. No permit fee was assumed in the cost estimate.

EMI field personnel will collect soil samples for laboratory testing, including bulk samples of near-surface soils and small disturbed and relatively undisturbed ring samples of deeper soils. The small disturbed and relatively undisturbed soil samples will be collected using split-spoon samplers at a vertical interval of about 5 feet, alternating between the Standard Penetration Test (SPT) sampler and the Modified California Drive (MCD) sampler. Samples of subsurface soils will be logged during the field investigation, secured in their containers or collected in plastic bags, and transported to the EMI laboratory.

Laboratory Testing

Field logs of the boreholes will be reviewed to select representative soil samples for laboratory testing. Various laboratory tests will be performed on soil samples to determine or derive their physical and engineering characteristics. Anticipated laboratory tests include: in-situ density and moisture content, grain size, Atterberg limits, direct shear, consolidation, UU triaxial, R-value, and soil corrosion tests. Laboratory tests will be conducted in general accordance with ASTM standards or California Test methods.

Geotechnical Engineering Analyses

Results obtained from the field investigation and laboratory testing will be used to characterize subsurface soils and conditions and create idealized soil profiles for design. The following analyses will be performed for Phase 2:

- Evaluation of seismicity and estimation of Peak Ground Acceleration based on the Caltrans design criteria, and



recommendation of ARS curves for bridge structural design.

- Assessment of soil liquefaction potential, seismic settlement, and lateral spreading.
- Foundation analysis for bridge and ADA ramp.
- Assessment of global slope stability for slope modification.
- Evaluation of soil corrosivity conditions and recommendations for mitigation measures.
- Design of pavement structural section in accordance with the Caltrans method.

Report Preparation

In addition to the Preliminary Foundation Report (PFR) for bridge type selection, EMI will prepare a Foundation Report, a Geotechnical Design Report, and a Materials Report. The Foundation Report will be prepared in accordance with the current Caltrans Guidelines to provide geotechnical design and construction recommendations for the bridge foundations. The Geotechnical Design Report (GDR) will be prepared in accordance with the current Caltrans guidelines to provide design and construction recommendations for slope modification and earthwork. The Materials Report for the pavement structural sections will be prepared in accordance with Caltrans Highway Design Manual Topic 114 dated March 2020. EMI will address any comments resulting from Caltrans review and prepare a Final Foundation Report, Final Geotechnical Design Report, and Final Materials Report

Deliverable(s): One Preliminary Foundation Report, One Foundation Report, One Geotechnical Design Report, and Materials Report

TASK PH2-6 – DRAINAGE REPORT

A Drainage Report will be prepared to document the hydrology and hydraulic analysis based on Caltrans and City criteria and will provide a detailed discussion of the existing conditions, post-project drainage patterns and conditions, results of the on-site hydraulic analyses and any issues of special concern or significance. The City will provide or agree to assumed boundary conditions utilized in the hydraulic analysis for connections to existing drainage systems. A draft report will be prepared and submitted to the City of Newport Beach and Caltrans for review with the 50% PS&E milestone submittal. Comments will be addressed, and the final document will be submitted for approval with the Final PS&E milestone submittal.

Deliverable(s): Draft and Final Drainage Report

TASK PH2-7 - STORM WATER QUALITY REPORTS

Task Ph2-7.1 WATER QUALITY MANAGEMENT PLAN (WQMP)

Dokken will prepare a Water Quality Management Plan (WQMP) in accordance with the City of Newport Beach MS4 requirements, Orange County water quality guidance, and Caltrans. The WQMP is anticipated to include the following features:

- A description of the project and the major engineering features
- A description of the feasible Site Design practices and justification of measures considered infeasible or not applicable to the project
- A description of the feasible Low Impact Development (LID) BMPs and justification of measures considered infeasible or not applicable to the project
- A description of the feasible Biotreatment and/or Treatment Control BMPs and justification of measures considered infeasible or not applicable to the project, as well as supporting calculations.
- A description of the feasible Source Control Measures and justification of measures considered infeasible or not applicable to the project
- A design capture volume worksheet for each drainage area
- A Site Plan showing all BMPs, impervious and pervious areas, drainage improvements, and discharge points



- An operation and maintenance program and identification of maintenance responsibility
- Infiltration feasibility documentation

It is assumed that hydromodification control is not required for this project since all downstream conveyances are engineered, hardened, and regularly maintained.

A draft WQMP will be prepared and submitted to the City of Newport Beach for review with the 50% PS&E milestone submittal. Comments will be addressed, and the final document will be submitted for approval with the Final PS&E milestone submittal.

Deliverable(s): Draft and Final Storm Water Quality Management Plan

Task Ph2-7.2 STORM WATER DATA REPORT

For the portion of the project that is within Caltrans right-of-way, compliance with Caltrans Statewide National Pollutant Discharge Elimination System (NPDES) Permit (Order 2012-0011-DWQ) will be documented in the Storm Water Data Report (SWDR).

Dokken Engineering will develop a long-form PS&E-level SWDR in accordance with the latest Caltrans Project Planning and Design Guide. The document will include:

- A description of the project and the major engineering features
- An estimate of the Total Disturbed Soil Area (DSA), New Impervious Surface (NIS) Area, and Post Construction Treatment Area (PCTA)
- A determination of Risk Level and requirement for Treatment BMPs
- A discussion of the stormwater quality issues specific to this project
- A description of the design pollution prevention BMPs
- A description of the maintenance and construction site BMPs
- SWDR Summary Spreadsheet
- Maps and exhibits

This scope assumes that a Rapid Stability Assessment and permanent treatment BMPs are not required for this project. Dokken Engineering will work with the Caltrans District Storm Water Coordinator to circulate the draft document through the Maintenance, Landscape, Construction, and Storm Water units during review of the 50% plans/specifications. All comments will be addressed and the report will be finalized with the Final PS&E milestone submittal.

Deliverable(s): Draft and Final Storm Water Data Report

TASK PH2-8 - CIVIL DESIGN

Task Ph2-8.1 Preparation of Permit Engineering Evaluation Report (PEER)

Dokken will prepare the PEER and coordinate the approval of the document with Caltrans. The PEER will include engineering analysis of the proposed improvements so as to determine drainage, maintenance, operational and environmental impacts. Per guidance in Appendix I, of the Project Development Procedures Manual (PDPM), the Consultant shall develop a PEER to obtain an encroachment permit for construction.

Task Ph2-8.2 50% Civil Plans and Estimate

Based on the approved concept, Dokken will prepare the 50% Civil submittal to include an estimate of the following sheets pending concept approval:

- Title Sheet (1) • Utility Plans (2)
- General Notes, Legend Key, Map (1) • Sign Plan and Details (2)
- Survey Control (1) • Pavement Delineation Plan (2)
- Typical Sections (1) • Electrical Plan and Details (3)
- Plan Sheets (4) • Construction Area Signs (1)



- Contour Grading Sheets (1) • Traffic Handling Plan (6)
- Construction Details (2) • Summary of Quantities (1)
- Drainage/Plans/Profiles Details (4) • Retaining Wall Plans and Details (1)
- Temporary Water Pollution Control (2) • Demolition Sheets (2)
- Erosion Control Plans (2)

Total = 39 Sheets

Dokken shall compile and prepare the Cost Estimate based on all biddable construction items identified throughout the design package and consistent with the City's "Boiler Plate". The estimated quantities shall include, but not be limited to, itemizing all removals, relocations, water pollution control, any required mitigation work, earthwork, subgrade preparation, aggregate base, asphalt concrete (AC) paving, survey monument, painting of pavement legends and signs, traffic control, raised pavement markers, project signs, miscellaneous metal, piling, etc. The estimated quantities shall be arranged consistent with Caltrans' estimating procedures and shall contain all the information needed to prepare the Engineer's Estimate of costs. Contingencies shall be included at the appropriate percentage.

Task Ph2-8.3 90% Civil Plans, Specifications, & Estimate

Once Dokken receives comments from the City and stakeholder agencies, we will prepare and submit responses to comments to the City. All City and outside agency comments will be tabulated in a Review Comment Matrix and responses provided.

Dokken will revise the plans based on comments received from the City. Quantity calculations and independently developed quantity-check calculations will be developed from the checked plans. After quantity calculations are complete, Dokken will prepare in Microsoft Excel an itemized construction cost estimate based upon checked plans and quantity calculations. Dokken will prepare Special Provisions for the project in a format consistent with the standard specifications for Public Works Construction ("Greenbook") and the 2018 Caltrans Standard Specifications and 2018 Standard Plans. Technical Specifications will be developed based on the plan set and cost estimate, completing the 90% PS&E for submittal to the City.

Task Ph2-8.4 100% Civil Plans, Specifications, & Estimate

Upon receipt of comments on the 90% submittal package, Dokken will schedule a review session, if required, with the City to discuss review comments and resolve any outstanding comments.

Task Ph2-8.5 Final Civil Plans, Specifications, & Estimate

Upon receipt of comments on the 100% submittal package, Dokken will update the plans, specifications and estimate and prepare the PS&E for Submittal to Caltrans for the encroachment permit.

Deliverable(s): PEER, 50%, 90%, 100%, Final Civil Plans (PDF, Five half-size, Two full-size and one set of signed Mylars), Specifications (PDF, Word, and five bound hard copies) Estimate (PDF, Excel and five hard copies), Review Comment/Response Matrix

Task PH2-9– BRIDGE DESIGN

Task Ph2-9.1 Type Selection Report and Meeting

After the horizontal and vertical alignment are set, and prior to beginning final structures design work, a structure General Plan will be developed for the proposed bridge. The type selection will be documented in a concise Type Selection Report, generally following the format described in Caltrans Memos to Designers 1-29. The report will include discussion of bridge layout, constraints, alternative types considered, foundations, clearances, utilities, seismic considerations, constructability, aesthetics and cost. The report will document the preferred structure type.



Once approved by the City, the Type Selection Report and General Plans will be submitted to Caltrans Office of Special Funded Projects (OSFP) in accordance with the requirements outlined in the OSFP Information and Procedures Guide Section 4-2.

After submission of the Type Selection Report to Caltrans OSFP, Dokken will schedule and prepare for a Type Selection Meeting at Caltrans headquarters. Dokken will present a summary of the Type Selection Report to gain approval of the recommended structure types from Caltrans.

Deliverable(s): Draft and Final Type Selection Report, Structures General Plan, Type Selection Meeting

Task Ph2-9.2 50% Bridge Plans and Estimate (Caltrans Unchecked Details)

The plans developed in Type Selection will be used as a baseline to develop the 50% submittal. Prior to developing the 50% plans, Dokken will meet with the City to provide an overview of the bridge design and the architectural treatment details. Any revisions will be updated and prepared with the 50% plan submittal. Plans will be prepared in AutoCAD Civil 3D, however, to comply with Caltrans requirements, the bridge plans will be required to follow Caltrans detailing standards, borders and fonts.

Following selection of the structure alignment and type, and approval of the General Plan, structure plans and structural design calculations will be prepared for the preferred alternative. All plans and calculations will conform to Caltrans' requirements, including AASHTO LRFD Bridge Design Specifications with Caltrans Amendments, AASHTO LRFD Guide Specifications for Design of Pedestrian Bridges, Caltrans Highway Design Manual, Caltrans' Memos to Designers, Bridge Design Aids Manual, Bridge Design Details Manual and Caltrans Seismic Design Criteria.

In close coordination with the City, Dokken will assemble the calculations, plans, bid item list and estimate of construction cost into the 50% submittal package. The 50% bridge submittal will include the following:

- General Plan (1)
- General Notes (1)
- Deck Contours (1)
- Foundation Plan (1)
- Abutment Layouts (2)
- Abutment Details (2)
- Bent Details (3)
- Typical Sections (1)
- Superstructure Details (2)
- Architectural Details (2)
- Railing Details (1)
- Miscellaneous Details (1)
- Ramp Layout (2)
- Ramp Details (3)
- Log of Test Borings (LOTB) (2)

Total = 25 Sheets

Once approved by the City, the 50% Bridge PS&E, referred to by Caltrans as the 'Unchecked Details Submittal' will be submitted to Caltrans OSFP in accordance with the requirements outlined in the OSFP Information and Procedures Guide Section 4-3.

Task Ph2-9.3 90% Bridge Plans, Specifications, & Estimate (Caltrans Initial PS&E)

Once Dokken receives comments from the City, Caltrans and stakeholder agencies, we will prepare and submit responses to comments to the City and Caltrans. All City, Caltrans and outside agency comments will be tabulated in a



Review Comment Matrix and responses provided.

An independent bridge design check will be performed for the structure. Checking will include the preparation of an independent set of structural design check-calculations in conformance with Caltrans' policy. Upon completion of the independent design check, the designer and checker will compare their results and resolve any differences. Next, the structure plans will be revised as directed by the designer. Both the designer and checker will review the revised plan set and, if satisfactory, this will become the "checked plans" set.

Quantity calculations and independently developed quantity-check calculations will be prepared from the checked plans. After quantity calculations are complete, Dokken will prepare in Microsoft Excel an itemized construction cost estimate based upon checked plans and quantity calculations. Dokken will prepare Special Provisions for the project in a format consistent with the 2018 Caltrans Standard Specifications and 2018 Standard Plans. Technical Specifications will be developed based on the plan set and cost estimate, completing the 90% PS&E for submittal to the City.

Once approved by the City, the 95% Structure Plans and all supporting reports and calculations, referred to by Caltrans as the 'Initial PS&E Submittal' will be submitted to Caltrans OSFP in accordance with the requirements outlined in the OSFP Information and Procedures Guide Section 4-4.

Task Ph2-9.4 100% Bridge Plans, Specifications, & Estimate (Caltrans Final PS&E)

Upon receipt of comments on the 90% submittal package, Dokken will schedule a review session, if required, with the City to discuss review comments and resolve any outstanding conflicting comments.

Dokken will prepare and submit responses to the City. All City, Caltrans and outside agency comments will be tabulated in a Review Comment Matrix and responses provided.

Dokken will revise the bridge PS&E package as necessary to address all comments and submit the 100% bridge PS&E. Once approved by the City, the 100% Structure Plans and all supporting reports and calculations, referred to by Caltrans as the 'Final PS&E Submittal' will be submitted to Caltrans OSFP in accordance with the requirements outlined in the OSFP Information and Caltrans Procedures Guide Section 4-4. Dokken will attain final approval from Caltrans in the form of the Caltrans OSFP Liaison's signature on the title block.

Deliverable(s): Structure Concept Approval, Type Selection Report and Meeting, sketches of proposed aesthetic elements, project renderings, 50%, 90%, and 100% Plans (PDF, Five half-size, Two full-size and one set of signed Mylars), Specifications (PDF, Word, and five bound hard copies) Estimate (PDF, Excel and five hard copies), Review Comment/Response Matrix

TASK PH2-10 - LANDSCAPE DESIGN

Task Ph2-10.1 Landscape and Irrigation 50%, 90%, 100% PS&E

Upon approval of required environmental permits associated with the Phase 2 improvements, ADL shall merge the 15% phase 2 elements with the previously prepared 30% Phase 1 documents and create a 50% complete set of landscape construction documents, representing the entire project. Consistent with the approved Phase 1 Service Agreement, subsequent refinements and submittals at 90% and 100% completion shall be completed.

Deliverable(s): 50%, 90%, and 100% Plans (PDF, Five half-size, Two full-size and one set of signed Mylars), Specifications (PDF, Word, and five bound hard copies) Estimate (PDF, Excel and five hard copies), Review Comment/Response Matrix



TASK PH2-11 – RIGHT OF WAY ACQUISITION AND APPRAISAL SERVICES

Task Ph2-11.1 Project Tracking Table

Dokken will maintain the project tracking table and ensure that it is sent to the City on the regularly requested schedule.

As a component of effective project management and to keep the project on schedule and the City current with acquisition data, a project tracking table will be created. This table will outline milestones and supply completion dates, comments, and any additional information the City may request.

Deliverable(s): Project Tracking Table

Task Ph2-11.2 Order Title Reports/Title Research

Dokken Engineering will obtain title reports for the 4 affected parcels. The Dokken Engineering right of way team will perform all necessary research for each parcel being acquired. Agents may resolve or oversee resolution of problems relating to unusual circumstances with regard to title or ownership and uncover any flaws, noting any exceptions pertaining to property such as mortgage liens, restrictions, easements, and rights of way. In addition, Dokken Engineering will work with the survey team to assist in the lot line adjustments for the City parcels.

Deliverable(s): Preliminary Title Reports.

Task Ph2-11.3 Appraisal Process

Appraisals will be completed for affected parcels by licensed General Real Estate Appraisers. Notice of intent to appraise letters along with acquisition policy brochures will be provided to all impacted property owners. Appraisals will be arranged so that the property owner may accompany the appraiser during the inspection of the property. This allows the property owner the opportunity to provide additional information to the appraiser.

All appraisals will be prepared by an appraiser licensed with the State of California and will comply with all laws applicable to the specific appraisal and the Uniform Standards of Professional Appraisal Practice 49 CFR 24.2(a)(3).

Appraisals will include a summary and a complete analysis for all valuation conclusions. Documentation obtained during the inspection, such as pictures, will be included in each report. Title information pertaining to ownership, drawings, and information relative to the parcel will be reviewed by the appraiser.

Deliverable(s): Appraisal Reports

Task Ph2-11.4 Appraisal Review Reports

Appraisal Reviews will be completed by a Certified General Real Estate Appraiser. Upon acceptance and approval of the property appraisals, an independent appraisal review will be completed by Dokken Engineering's subconsultant. The review includes inspecting sales to determine comparability, reviewing appraisal for conformance to Uniform Standards of Professional Appraisal Practice, reviewing "highest and best use" conclusions, examining valuation methods, analyzing exhibits, checking mathematical calculations, and preparing a narrative report that describes the review process and sets forth the reasoning behind the review. An appraisal review is recommended to ensure that the appraisal is based on sound appraisal theory, contains appropriate documentation to support the appraisers' conclusions and complies with regulatory codes. A recommendation of just compensation is then made based on the reviewed, collected, assembled, correlated, and analyzed data.

Deliverable(s): Appraisal Review Reports



Task Ph2-11.5 Appraisal Summary Statement

Dokken Engineering will complete a Summary Statement relating to the Purchase of Real Property or an Interest Therein (Caltrans Exhibit 8-EX-16) for each property. This document will be delivered to property owners with the offer package during the initial meeting.

Deliverable(s): Summary Statement Relating to the Purchase of Real Property or an Interest Therein (Caltrans Exhibit 8-EX-16)

Task Ph2-11.6 Negotiations

Acquisitions will be required from 4 parcels (2 City owned parcels, a property owned by Hoag Hospital and a parcel owned by Newport Banning Ranch) that will be transferred to Caltrans at the end of the construction. Each parcel may have its own concerns that will need to be negotiated, therefore the fee estimate is based upon negotiations associated with 2 private properties and coordination with Caltrans on terms of the 2 City parcels to be transferred. All "Good Faith Negotiations" will be completed by Dokken Engineering's Right of Way Team. After completion of the appraisal process and just compensation determination, Dokken Engineering will prepare the offer package and meet with all owners in person to present and explain the offer package details. The offer package will include the offer letter, written summary of just compensation with supporting appraisal information, property owner exhibit showing property map with right of way take locations, Title VI information, "Your Property – Your Transportation Project" booklet. Dokken Engineering will negotiate with the property owner to arrive at a mutually agreeable settlement and prepare necessary purchase agreements such as Grant Deeds, Easement Deeds, and Temporary Construction Easement Deeds. Dokken Engineering will obtain receipt of delivery of offer and/or present and secure tenant information statements, as applicable, during the initial meeting.

Dokken Engineering will work closely with the City to aid in the recommendation of the appropriate course of action regarding the various acquisitions with property owners requesting additional compensation and/or services beyond the initial offer package. Recommended settlement packages with justifications and impasse letters will be provided to the City for review. Working with the property owners to agreeable terms will be Dokken Engineering's focus. There may be situations where condemnation is unavoidable, such as clouds in the title. In the event the City will need to attain property through the condemnation process, Dokken Engineering will assist in the preparation of all necessary condemnation reports, letters, and packages.

Additionally, Dokken Engineering will attend, at the request of the City, any Public Community Meetings regarding the project.

Dokken Engineering's Right of Way Agents hold California Real Estate Salesperson's Licenses and are working under the direct supervision of a California Real Estate Licensed Broker.

Deliverable(s): Right of Way Agreements, Grant and Easement Deeds, Administrative Settlements, Diaries, Written Summary Acquisitions, Impasse Letters

Task Ph2-11.7 Escrow Coordination

Upon reaching an agreement on the terms and conditions of the acquisition with the property owner, Dokken will be available to assist the City in opening escrow. Dokken will supply fully executed agreements along with other supporting information to escrow in order to close each transaction. Dokken will work closely with the City to assist in the timely closing of all transactions. For the convenience of the property owner, Dokken's right of way team has a California

Notary who will be available to notarize any documentation that is required. Fully executed deeds and easements will be delivered to the City for acceptance prior to recording. In the event escrow services are not required, Dokken is available to perform these services and record the required documentation. As the right of way will be transferred to Caltrans all encumbrances will be removed to meet Caltrans requirements for title conditions for transfers of right of way.



Deliverable(s): Escrow Documents and Closing Statements

Task Ph2-11.8 Project Close Out

The original acquisition file for each affected parcel will be provided to the City upon completion of the project. Each acquisition file will contain property information, diary report, written correspondence, just compensation documentation, appraisal(s), offer package, negotiations, title documentation, copies of recorded documents, and all applicable documentation.

Deliverable(s): Original Acquisition Files

TASK PH2-12 – BIDDING AND CONSTRUCTION SUPPORT

Task Ph2-12.1 Advertising/Bidding Support

Dokken shall include all tasks necessary during the advertising/bidding phase of the project, including, but not limited to:

- a) Copies of Drawings and Contracts Documents – The City will have copies of the design drawings and Contract Specifications reproduced for advertising purposes.
- b) Pre-bid Meeting – Dokken shall attend the pre-bid meeting.
- c) Questions and Addenda During Advertising – Dokken shall answer questions regarding the Technical Provisions, the design drawings, or conflicts in the design during the bidding process and pre-construction meeting. Dokken shall assist the City, at no charge, in preparation of Addenda regarding omissions or conflicts in the design.

Deliverable(s): Copies of Drawings and Contract Documents; Pre-bid Meeting; Clarification of Documents and Preparation of Addenda

Task Ph2-12.2 Construction Support

Dokken shall during the construction phase of the project:

- a) Meetings – Dokken shall attend the pre-construction meeting and informational meetings with stakeholders.
- b) Questions during Construction and Requests for Information (RFIs) – Dokken shall answer questions regarding the Technical Provisions, the design drawings or conflicts in the design during construction, and assist the City in issuing Change Orders (COs) regarding omissions or conflicts in the design, at no charge to the City. Dokken shall provide responses to RFIs, as requested by the City.
- c) Contractor Submittals – Dokken shall review Contractor submittals, including shop drawings, as requested by the City.
- d) Plan Revisions – Dokken shall prepare plan revisions requested by the City, to accompany change orders, etc.
- e) Record Drawings – Dokken shall incorporate all redline comments prepared by the Contractor and Project Inspector on the signed design Plans. The Record Drawings shall be provided to the City and approved prior to the release of the final progress payment. Dokken shall also provide electronic Record Drawings in AutoCAD format and Specifications in Microsoft Word to the City.

Deliverable(s): Meetings; Clarification of Documents and Responding to RFI; Review Contractor Submittals, Plan Revisions, Record Drawings



EXHIBIT B-1

SCHEDULE OF BILLING RATES



EXHIBIT B-1

FEE SCHEDULE – AMENDMENT #1- \$970,000

DOKKEN ENGINEERING		
NAME	CATEGORY	RATE (PER HOUR)
John Klemunes, PE, ENV SP	Project Manager	\$278.49
Mark Tarrall, PE	Civil PE	\$234.52
Rob Burns, PE, SE	Structures PE	\$199.34
Pamela Dalcin-Walling, PE, QSD/P	Hydrology/Hydraulics/Water Quality	\$211.07
Michael Greer, PE, TE	Electrical	\$184.68
Tim Osterkamp, PE	Caltrans Liaison	\$234.52
	Senior Engineer	\$196.41
	Associate Engineer 2	\$152.44
	Associate Engineer 1	\$134.85
	Assistant Engineer 2	\$114.33
	Assistant Engineer 1	\$96.74
	Senior CADD	\$172.96
	CADD	\$117.26

GUIDA SURVEYING, INC.	
CATEGORY	RATE (PER HOUR)
Task Lead	\$175.00
2 Man Survey Crew	\$275.00
Survey Analyst	\$135.00
Project Surveyor	\$150.00

ADL PLANNING ASSOCIATES	
CATEGORY	RATE (PER HOUR)
Principal	\$175.00
Landscape Lead	\$140.00
Designer/Planner	\$95.00
Assistant	\$75.00

MACDONALD ARCHITECTS		
NAME	CATEGORY	RATE (PER HOUR)
Donald MacDonald	Principal Architect	\$280.00
Steve Line	PM/Senior Architect	\$244.47
Eric Birkhauser	Senior Designer	\$122.05
	Visualization & CADD Tech	\$116.23
	Clerical	\$84.00



EARTH MECHANICS, INC.	
CATEGORY	RATE (PER HOUR)
Principal Engineer	\$270.42
Task Lead	\$146.93
Project Geologist	\$139.12
Senior Technician	\$125.05
Staff Engineer	\$100.82

Dokken will complete the scope of work for Amendment No. 1 as depicted in Exhibit A-1 shall be completed for a not-to-exceed amount of \$970,000.00.

ATTACHMENT D
ALTERNATE SUPERIOR AVENUE PEDESTRIAN BRIDGE CONCEPTUAL DESIGN



Superior Ave Concrete Arch Pedestrian Bridge – View from Sunset Ridge Park



Superior Avenue Concrete Arch Pedestrian Bridge – View from West Coast Highway



CITY OF

NEWPORT BEACH

City Council Staff Report

August 25, 2020
Agenda Item No. 13

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: Back Bay Landing Development - Reimbursement Agreement with
Bayside Village Marina LLC for Environmental Review, Permitting
and Design Services

ABSTRACT:

Bayside Village Marina LLC desires to redevelop their property located at 100 Bayside Drive. The primary cross-city/bay water transmission main and a City easement traverses across the property and has been in place since 1930. The property owner is requesting to relocate this City water transmission main and easement prior to their planned redevelopment on the property. The City and Bayside Village Marina LLC desire to execute a Reimbursement Agreement to identify roles and responsibilities of each party to pursue the relocation of this water main.

RECOMMENDATION:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning) of the CEQA Guidelines because this action involves executing a Reimbursement Agreement to undertake future environmental review, permitting and design services;
- b) Approve a Reimbursement Agreement with Bayside Village Marina LLC and authorize the Mayor and City Clerk to execute the Agreement; and
- c) Approve Budget Amendment No. 21-005 recognizing \$450,000 in increased contributions in Account No. 13501-561005-16W12; recognizing \$22,500 in increased revenue in account 01080801-521380; and appropriating \$450,000 in increased expenditures in Account No. 13501-980000-16W12 for the Bay/Channel Crossings Water Main Replacement (16W12) project.

FUNDING REQUIREMENTS:

Upon approval of the proposed budget amendment, sufficient funding is available within the Bay/Channel Crossings Water Main Replacement project in the adopted FY 2020-21 Capital Improvement Program budget to complete design of this water main relocation project.

The proposed budget amendment recognizes a total of \$472,500 in increased contributions from Bayside Village Marina LLC, consisting of \$450,000 for professional services in Account No. 13501-561005-16W12 and \$22,500 (five percent) administrative fee in Account No. 01080801-521380 and appropriates \$450,000 in increased contributions expenditures to Account No. 13501-980000-16W12.

Staff will return to City Council with a recommendation to enter into a Professional Services agreement upon completion of the Request for Proposals (RFP) process.

DISCUSSION:

The owner of the real property located at 100 Bayside Drive desires to redevelop the site. City Council previously approved various planning documents, including a Planned Community Development Plan, allowing for a future mixed-use development of the bay front site located at 100 Bayside Drive. The real property is owned by Bayside Village Marina LLC and the redevelopment project is known as Back Bay Landing.

Staff has been coordinating with Bayside Village Marina LLC for the past several years regarding the development of Back Bay Landing. The City owns and operates a 30-inch water transmission main that traverses across 100 Bayside Drive within a utility easement established in 1930. The 30-inch water transmission main is reduced to a 24-inch water transmission main at the bay, which then crosses under the upper Back Bay Channel and connects to the City's water system at Lower Castaways Park. Both the 30-inch and 24-inch transmission mains allow the City to move a significant amount of water from one side of the bay to the other and are critical to the City's water infrastructure system. The replacement of these two water transmission mains are forecast in the City's Water Master Plan and tentatively scheduled for Fiscal Year 2045-46. Bayside Village Marina LLC is requesting the relocation of the water transmission mains and easement to allow better use of their property site. The relocated water main will allow the City to operate and maintain this critical water system infrastructure upon completion of the Back Bay Landing development, though the relocation results in a longer crossing under the Bay, which may prove difficult to maintain.

Staff is currently in the process of requesting for engineering proposals to complete environmental review, permitting and design for four other City pipelines that cross under the Newport Bay. This type of construction activity will require extensive amounts of permitting with various state and federal agencies. Due to the similar type of work effort needed for replacement and relocation of the City water transmission main associated with the Back Bay Landing project, and due to the potential time and cost saving derived by the economies of scale, the property owner is requesting, and will fund, adding the 30-inch and 24-inch water transmission main relocation design and permitting work to the City's pending bay-crossing pipeline replacement project as a fifth bay-crossing pipeline. As described in the attached Reimbursement Agreement, the City is agreeing to initiate the RFP to include all five bay-crossing pipelines. In return, Bayside Village Marina LLC is agreeing to pay for the environmental review, permitting and final design efforts for the 30-inch and 24-inch water transmission mains relocation.

The estimated cost for the scope of work is \$450,000, which will be paid by Bayside Village Marina LLC upon execution of the Reimbursement Agreement. Upon successful design and permitting of these bay-crossing pipelines, the developer is interested in possibly entering into a similar reimbursement arrangement for the construction of the new relocated water line.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is not subject to 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, which exempts projects involving only feasibility or planning studies for possible future actions. This action involves executing a Reimbursement Agreement to undertake a future environmental review, permitting and design services.

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 – Reimbursement Agreement
Attachment B – Budget Amendment

ATTACHMENT A

REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF NEWPORT BEACH AND BAYSIDE VILLAGE MARINA LLC TO CONTRACT FOR ENVIRONMENTAL REVIEW, PERMITTING AND DESIGN COSTS FOR THE BAYSIDE WATER TRANSMISSION MAIN REPLACEMENT PROJECT

This Reimbursement Agreement Between the City of Newport Beach and Bayside Village Marina LLC to Contract for Environmental Review, Permitting and Design Costs for the Bayside Water Transmission Main Replacement Project ("Agreement") is made and entered into as of this 25th day of August, 2020 ("Effective Date"), by and between the City of Newport Beach, a California municipal corporation and charter city ("CITY"), and Bayside Village Marina LLC, a California limited liability company ("BAYSIDE") 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 the CITY.

B. BAYSIDE is a California limited liability company and the fee simple owner of the property located at 300 East Coast Highway ("Property").

C. On April 12, 2016 and April 26, 2016, the City of Newport Beach City Council approved Project No. PA2011-216 which included the following land use entitlements: Addendum to the Bay Back Landing Certified Environmental Impact Report (State Clearing House No. SCH 2012101003) ("FEIR"), Coastal Land Use Plan Amendment No. LC2011-007 including modifications made by the California Coastal Commission, General Plan Amendment No. GP2011-001, Lot Line Adjustment No. LA2013-003, Zoning Code Amendment No. CA2013-009 and Planned Community Development Plan No. PC2011-001 authorizing a mixed-use bay front project ("Bayside Village Project") at the Property.

D. BAYSIDE will be proceeding with Site Development Review and Coastal Development Permit applications for the Bayside Village Project which will require replacement and relocation of the 30-inch water transmission main, replacement of the existing valve vault located at the northwest bayfront edge of the Property's parking lot, and replacement of the existing 24-inch water transmission main beneath Upper Newport Bay Channel ("Bayside Water Transmission Main Replacement Project") which is depicted in Exhibit "A" attached hereto and incorporated by reference.

E. The CITY's 2019 Water Master Plan calls for the replacement of three (3) Newport Harbor water transmission main crossings ("CITY Project") as depicted in Exhibit "B" attached hereto and incorporated by reference. The CITY is issuing a Request for Proposal ("RFP") for completion of plans, obtaining any permits, licenses or regulatory approvals and compliance with CEQA for the CITY Project.

F. It is mutually beneficial to include the environmental review, permitting and design of the Bayside Water Transmission Main Replacement Project with the CITY Project as a fourth water transmission main crossing within the scope of the CITY's RFP (Bayside Water Transmission Main Replacement Project and CITY Project may be collectively referred to herein as "Project"), subject to an appropriate reimbursement agreement whereby BAYSIDE will fund the cost of such environmental review, permitting and design for the Bayside Water Transmission Main Replacement Project.

NOW, THEREFORE, in consideration of the promises and agreements hereinafter made and exchanged, the parties agree as follows:

1. CITY'S OBLIGATIONS AND RIGHTS

CITY agrees to initiate an RFP and contract for environmental review, permitting and final design for the Project.

2. BAYSIDE'S RIGHTS AND OBLIGATIONS

A. Within sixty (60) days following execution of this Agreement by CITY, BAYSIDE will make one full payment to CITY in the amount of Four Hundred Fifty Thousand Dollars and 00/100 (\$450,000) to cover environmental review, permitting and design costs of the Bayside Water Transmission Main Replacement Project. BAYSIDE also agrees to pay the CITY a five percent (5%) administrative fee at the time of the initial payment.

B. BAYSIDE acknowledges that the amount referenced in this Agreement is the CITY's estimate of the costs for the services described herein, and that the actual cost of said services may be higher. In the event that the actual cost of said services is anticipated to exceed the estimated costs, CITY shall provide BAYSIDE notice and a memorandum sixty (60) days in advance of exceeding the estimated costs, summarizing the primary reasons for exceeding the initial estimate and provide an updated, final budget to complete the environmental review, permitting and design costs for the Bayside Water Transmission Main Replacement Project. BAYSIDE agrees to pay the actual cost within ten (10) days after receiving CITY's invoice for same. In the event the actual costs are less than the estimated costs, CITY will refund the difference between the actual and estimated costs.

The parties acknowledge that the cost of constructing the Bayside Water Transmission Main Replacement Project are in addition to the amounts set forth in Sections 3(A) and 3(B) above. In the event the CITY and BAYSIDE agree to joint construction of the Bayside Water Transmission Main Replacement Project and the CITY Project, a future agreement will identify the cost sharing amounts and other terms and conditions between BAYSIDE and the CITY.

3. EXCLUSIVE CONTROL BY CITY

CITY will maintain exclusive control over the work described herein. Nothing in this Agreement:

A. Shall be deemed to require or commit CITY to approve any development project-related CEQA document, Site Development Review, Coastal Development Permit or any other application or request submitted by BAYSIDE.

B. Shall be deemed to limit, in any respect whatsoever, CITY's sole and independent authority to direct and control the professional firm(s) retained by CITY to prepare and process the referenced environmental review, permitting and design services for the Project.

C. Shall be deemed a guarantee by CITY to obtain permits or approvals required for the Project from the California Coastal Commission, Army Corp of Engineers, U.S. Department of Fish and Wildlife or other governmental entity nor impose any liability on CITY for completion of the Project. BAYSIDE acknowledges that CITY would not enter into this Agreement if it were liable for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) under, or relating to this Agreement or any matters related to the Project including without limitation, completion of plans, obtaining any permits, licenses or regulatory approvals and CEQA compliance. Accordingly, BAYSIDE covenants and agrees on behalf of itself and its successors and assigns, not to sue CITY for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use), nor seek monetary relief or equitable relief for any alleged breach of this Agreement by CITY or for any dispute, controversy, or issue between CITY and BAYSIDE arising out of or connected with this Agreement.

4. CITY EMPLOYEES AND OFFICIALS

BAYSIDE shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have any financial interest in the Bayside Water Transmission Main Replacement Project.

5. ADMINISTRATION

This Agreement will be administered by the Public Works Director. 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.

6. TIMING

CITY agrees to provide BAYSIDE, following execution of this Agreement, a schedule for the selection of consultants for professional services, commencement of services, and completion of same.

7. TERMINATION OF AGREEMENT

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 thirty (30) days' prior written notice to BAYSIDE. In the event of termination by CITY, CITY shall return to BAYSIDE any unused proportion of the actual costs advanced by BAYSIDE. On the effective date of termination, CITY shall deliver to BAYSIDE all reports, documents, studies and other information developed or accumulated in the performance of this Agreement related to the Bayside Water Transmission Main Replacement Project, whether in draft or final form.

8. TERM

This Agreement shall commence on the Effective Date, and shall terminate upon completion of the Project unless terminated earlier as set forth herein.

9. STANDARD PROVISIONS

A. NOTICES

Any notices, certificates, or other communications hereunder shall be given by either party by personal delivery or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, to the addresses specified below:

TO CITY:

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

With a copy to:
City of Newport Beach
Attn: City Attorney
100 Civic Center Drive
Newport Beach, CA 92660

TO BAYSIDE:

Bayside Village Marina LLC
Attn: R. Gordon Craig
39 Agia
Laguna Niguel, CA 92677

With copy to:
John P. Erskine, Esq. Nossaman LLP
18101 Von Karman Avenue, Suite 1800
Irvine, CA 92612

B. MODIFICATION

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.

C. SECTION HEADINGS

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

D. INTERPRETATION OF THIS AGREEMENT

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

E. COUNTERPARTS

The Agreement may be signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

F. ATTORNEY'S FEES AND COSTS

Each party shall bear its own attorney's fees and costs with respect to the execution, performance and enforcement with the terms and/or provisions of this Agreement.

G. SEVERABILITY

If any term, provision, covenant or condition of this Agreement is held to be invalid, void or other unenforceable, to any extent, by any court of competent jurisdiction, the

remainder of this Agreement shall not be affected thereby, and each term provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

H. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

I. SIGNATORIES

Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify CITY fully for any injuries or damages to CITY in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

J. ENTIRETY

This Agreement, and the attached exhibits, contains the entire agreement between the parties respecting the subject matter of this Agreement and supersedes all prior understanding and agreements whether oral or in writing between the parties respecting the subject matter hereof.

[Signatures on following page]

IN WITNESS WHEREOF, the parties are signing this Agreement as of the Effective Date.

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

Date: _____

By:  _____
Aaron C. Harp
City Attorney

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Will O'Neill
Mayor

BAYSIDE VILLAGE MARINA LLC, a
California limited liability company

By its Manager Gelfand Properties
Bayside, LLC, a California limited liability
company

By its Manager De Anza Corporation, a
California corporation
Date: _____

By: _____
Herbert Gelfand
Chief Executive Officer

Date: _____

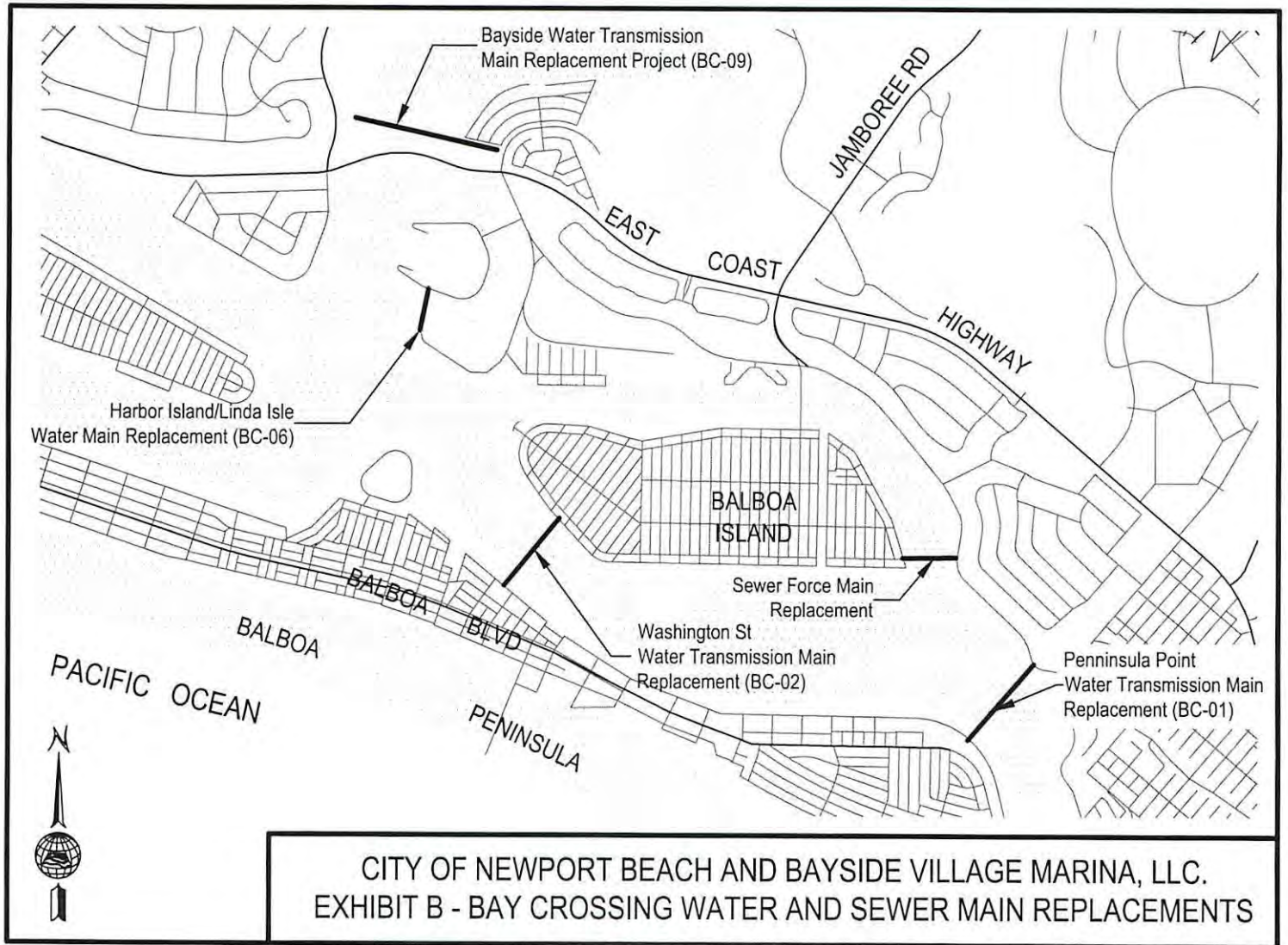
By: _____
Michael Gelfand
Chief Financial Officer

Attachments:

Exhibit A - Bayside Water Transmission Main Replacement Project Depiction
Exhibit B – Bay Crossing Water and Sewer Main Replacements

EXHIBIT A

EXHIBIT B





City of Newport Beach

BUDGET AMENDMENT

2020-21

ATTACHMENT B

BA#: 21-005

Department: Public Works

Requestor: Angela Crespi

ONE TIME: ☒ Yes ☐ No

☐ CITY MANAGER'S APPROVAL ONLY

☒ COUNCIL APPROVAL REQUIRED

Approvals

Prepared by: WALID HARDING

Finance Director: [Signature]

Date 8-5-20

City Clerk: [Signature]

Date

EXPLANATION FOR REQUEST:

To increase revenue estimates and expenditure appropriations for the Bay/Channel Crossings Water Main Replacement project from contributions from Bayside Village Marina LLC.

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

REVENUES

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
135	13501	561005	16W12	CONTRIBUTIONS FUND CIP - PRVT DONATION/CONTRIBUTNS	450,000.00
010	01080801	521380		ENGINEERING SERVICES - CITY STAFF SERVICE FEE	22,500.00
				-	
				-	
				-	
				-	
				-	
Subtotal					\$ 472,500.00

EXPENDITURES

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
135	13501	980000	16W12	CONTRIBUTIONS FUND CIP - CIP EXPENDITURES FOR GL	450,000.00
				-	
				-	
				-	
				-	
				-	
				-	
Subtotal					\$ 450,000.00

FUND BALANCE

Fund #	Object	Description	Increase or (Decrease) \$
010	300000	General Fund - FUND BALANCE CONTROL	22,500.00
		-	
		-	
		-	
		-	
		-	
		-	
Subtotal			\$ 22,500.00

Fund Balance Change Required

NEWPORT BEACH PLANNING COMMISSION AGENDA
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, AUGUST 20, 2020
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.

Please call 949-270-8165 during the meeting to provide public comments on non-agenda items.

V. REQUEST FOR CONTINUANCES

VI. CONSENT ITEMS

ITEM NO. 1 MINUTES OF JULY 23, 2020

To comment on this item during the meeting, please call 949-270-8165.

Recommended Action: Approve and file

VII. PUBLIC HEARING ITEMS

Speakers must limit comments to three (3) minutes on all items. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

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

ITEM NO. 2 CORONA DEL MAR 76 SERVICE STATION REMODEL AND
CONVENIENCE STORE (PA2019-027)

Site Location: 2201 East Coast Highway

To comment on this item during the meeting, please call 949-270-8165.

Summary:

The Applicant proposes a coastal development permit and conditional use permit to allow the demolition of the existing vehicle service building and convenience market and construct a new, two-story, 2,590-square-foot convenience store. The application includes a request for deviations from minimum lot size, setbacks for the retail building and air/water dispenser, and minimum landscaping requirements pursuant to Newport Beach Municipal Code (NBMC) Section 20.48.210 (Service Stations). The application includes the addition of a Type 20 (Off-Sale Beer and Wine) Alcoholic Beverage Control ("ABC") license. The existing pump canopy, eight fuel dispensers, and below grade fuel infrastructure are to remain unchanged. The convenience market would operate from 6:00 a.m. to 12:00 a.m., daily, with alcohol sales from 6:00 a.m. to 11:00 p.m. daily. If approved, this conditional use permit and coastal development permit would supersede Use Permit No. 1580 that authorizes the existing development and use.

Recommended Action:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, because it has no potential to have a significant impact on the environment; and
3. Adopt Resolution No. PC2020-030 approving Coastal Development Permit No. CD2019-005 and Conditional Use Permit NO. UP2019-004 (Attachment No. PC 1).

VIII. NEW BUSINESS

ITEM NO. 3 CIRCULATION ELEMENT UPDATE

Site Location: Citywide

To comment on this item during the meeting, please call **949-270-8165**.

Summary:

The City is presently evaluating and updating its General Plan with a focus on the Housing, Land Use, and Circulation Elements in addition to environmental justice policies. The agenda item will be a discussion of the Planning Commission's role with the update of the Circulation Element.

Recommended Action:

1. Review and provide input to staff; and
2. Determine this activity is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines, Title 14, Division 6, Chapter 3 because this action will not result in a physical change to the environment, directly or indirectly.

IX. STAFF AND COMMISSIONER ITEMS

ITEM NO. 5 MOTION FOR RECONSIDERATION

ITEM NO. 6 REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE PLACED ON A FUTURE AGENDA.

ITEM NO. 7 REQUESTS FOR EXCUSED ABSENCES

X. ADJOURNMENT



CITY OF

NEWPORT BEACH

City Council Staff Report

August 25, 2020
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 Director of Public Works,
mmartin@newportbeachca.gov

PHONE: 949-644-3055

TITLE: Ordinance No. 2020-20: Non-Exclusive Commercial Solid Waste Franchises

ABSTRACT:

On July 28, 2020, the City Council adopted Resolution No. 2020-70, declaring its intention to conduct a public hearing on August 25, 2020 to consider granting Non-Exclusive Commercial Solid Waste Franchises with an effective date of October 8, 2020 and an expiration date of October 7, 2027. Staff received and reviewed franchise applications from all entities listed in Resolution No. 2020-70. Following a public hearing, the City Council will consider an ordinance granting franchises to these entities.

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) Conduct a Public Hearing to consider the award of Non-Exclusive Commercial Solid Waste Franchises pursuant to Resolution No. 2020-70; and
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2020-20, *An Ordinance of the City Council of the City of Newport Beach, California, Granting the 2020 Non-Exclusive Franchise Agreements for Commercial Solid Waste and Divertible Materials Handling Services within the City of Newport Beach* to the 15 so named companies, and pass to second reading on September 8, 2020.

FUNDING REQUIREMENTS:

Companies (Franchisee) that are approved and granted a 2020 Non-Exclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services within the City are required to pay a franchise fee to the City which is equal to a total of sixteen percent (16%) of the gross receipts for all commercial franchise services provided by Franchisee in the City.

DISCUSSION:

The City of Newport Beach ("City") utilizes a non-exclusive franchise system to manage commercial solid waste collection within the City. This system allows the City to meet the solid wastes collections needs of the businesses community in a comprehensive manner while still complying with state law. Over the past several years, the State have been making significant changes to state law as to how solid wastes is to be disposed of, as well as the amount that is required to be diverted away from landfills and recycled or reused (Assembly Bill 939, 341 and 1826). In order to accommodate and enforce these state law changes and requirements, the California Department of Resources Recycling and Recovery (CalRecycle) has required cities to amend and update their solid waste hauler Franchise Agreements. After much work by the Solid Waste and Recycling City Council Working Group and our solid waste consultant, EcoNomics, Inc., the City Council approved a Municipal Code amendment on September 24, 2019 that more clearly describes how franchise haulers, working in cooperation with AB 341 and AB 1826 generators, would comply with new state laws; and then adopted a new model Non-Exclusive Commercial Solid Waste Franchise agreement on October 22, 2019 so as to provide Commercial Solid Waste and Divertible Materials Handling Services by approved Franchise haulers within the City of Newport Beach. There is no limit to the number of franchises City Council may approve.

Newport Beach Municipal Code ("NBMC") Section 12.63.030 provides that no person shall provide commercial solid waste handling services or conduct a solid waste enterprise in the City without having first been awarded a franchise and entered into a franchise agreement with the City. At the July 28, 2020 meeting, the City Council passed a Resolution of Intention, Resolution No. 2020-70 (Attachment A), to conduct a public hearing at the August 25, 2020 meeting to consider granting franchises to the fifteen entities listed therein.

An ordinance is now provided to grant the non-exclusive franchises (Attachment B). NBMC Section 12.63.080 allows the City Council to approve or conditionally approve an application for a franchise if, on the basis of the application, information, materials and testimony submitted, the City Council finds that:

- The application complies with NBMC Chapter 12;
- The applicant or any person responsible for the management of the entity submitting the application has not within the past three years: (1) had a franchise for commercial solid waste handling services terminated by the City; and/or (2) operated a solid waste enterprise within the City without a franchise;
- Awarding the franchise is in accord with the objectives of NBMC Chapter 12;

- Granting of such franchise will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the City or be materially detrimental to the public welfare or injurious to property or public improvements; and
- The applicant has sufficient experience, equipment or recycling plan to safely comply with the requirements of the franchise agreement.

Staff have received and reviewed the franchise applications from all fifteen entities listed in Resolution 2020-70. Based on staff's review, the submitted applications meet all criteria required under NBMC 12.63.080. Additionally, for those haulers that are currently operating under a 2017 Non-Exclusive Commercial Solid Waste Franchise Agreement, during the process of awarding them a 2020 Non-Exclusive Commercial Solid Waste Franchise Agreement their 2017 Agreement will be simultaneously abandoned, resulting in them having only one active Agreement.

As part of the process of developing and processing the attached ordinance, some edits and formatting have been made to the Non-exclusive Franchise Agreement base document for Commercial Solid Waste and Divertible Materials Handling Services. These modifications to the franchise agreement document are included within the approval and adoption of said ordinance and upon approval will be provided to the applicants for their review and execution.

The new Non-Exclusive Commercial Solid Waste Franchises will take effect 30 days after its proposed adoption of the ordinance on September 8, 2020, with an effective date of October 8, 2020 and with the execution of the individual franchise agreements, and approval of each firm's required insurance and bonds.

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.

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

ATTACHMENTS:

Attachment A – Resolution No. 2020-70

Attachment B – Ordinance No. 2020-20

ATTACHMENT A

RESOLUTION NO. 2020-70

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, DECLARING ITS INTENTION TO CONDUCT A PUBLIC HEARING TO CONSIDER GRANTING NON-EXCLUSIVE COMMERCIAL SOLID WASTE AND DIVERTIBLE MATERIALS HANDLING FRANCHISES

WHEREAS, the City Council of the City of Newport Beach ("City") finds and determines that the collection of municipal solid waste and divertible materials, including recyclable materials, food scraps, green waste, wood waste, construction and demolition debris, and all other materials that can be diverted from landfill disposal (collectively "Commercial Solid Waste") generated within the City is a vital public service;

WHEREAS, the City Council further finds and determines that the collection, transportation, storage, and disposal of municipal solid waste and the collection, transportation, processing, and diversion of processable municipal solid waste and divertible materials ("Commercial Franchise Services") is a matter of great public concern because improper control of such matters subjects the City to potential liability, damages and penalties, and may create a public nuisance, air pollution, fire hazard, infestation and other problems affecting the public health, safety and welfare;

WHEREAS, the non-exclusive franchises for the use of public streets to provide Commercial Franchise Services promotes the public health, safety and welfare by providing permanence and stability among those businesses wishing to provide such service and accountability to the City for compliance with current and future state mandates;

WHEREAS, in 2017, the City Council adopted a model non-exclusive commercial solid waste franchise agreement for private solid waste haulers and, thereafter, entered into franchise agreements with a number of commercial solid waste franchise haulers ("2017 Franchise"), effective through November 8, 2024;

WHEREAS, although the 2017 Franchise does not expire until November 8, 2024, on October 22, 2019, the City Council approved a new model franchise agreement in compliance with Assembly Bill 1826 and Assembly Bill 341 ("2020 Franchise"), that expires in the year 2027;

WHEREAS, the City has since received applications from 2017 Franchise holders and new applicants that wish to perform work under the 2020 Franchise;

WHEREAS, pursuant to Article XIII of the City Charter, Chapter 12.63 (Solid Waste Management) of the Newport Beach Municipal Code ("NBMC"), and California Public Resources Code Sections 40059, 49300, and 49500 through 49523, or any successor statutes, the City is authorized to enter into non-exclusive franchise agreements for Commercial Franchise Services with private solid waste haulers;

WHEREAS, pursuant to City Charter Section 1301 (Granting of Franchise), the City Council, prior to granting any franchise, shall pass a resolution declaring its intention to grant same, stating the name of the proposed grantee(s), the character of the franchise, and the terms and conditions upon which it is proposed to be granted; and

WHEREAS, such resolution shall fix and set forth the day, hour and place when and where any persons having any interest therein or any objection to the granting thereof may appear before the City Council and be heard thereon.

NOW, THEREFORE, be it resolved by the City Council of the City of Newport Beach that:

Section 1: The City Council hereby declares its intention to grant non-exclusive franchises, subject to the following general terms and conditions ("Non-exclusive Franchise"):

- a. Effective date. October 8, 2020;
- b. Franchise fees. Sixteen percent (16%) of gross monthly receipts. Five and one-half percent (5.5%), shall be earmarked for the purposes of indemnifying and holding the City harmless from environmental liability associated with the franchisee's operations in the City. This portion of the franchise fee shall be paid into the City's Environmental Liability Fund. One-half percent (0.5%) shall be attributable to the maintenance and implementation of the City's Source Reduction and Recycling Element;
- c. Term. October 8, 2020 to October 7, 2027;
- d. Rates. The City shall not set franchisees' bin rates;
- e. Indemnification. Franchisees shall indemnify and hold City harmless from penalties and damages for failure to meet state recycling requirements with respect to the portion of the Commercial Solid Waste stream collected by franchisees;

f. Diversion requirements. Franchisees shall divert a minimum of fifty-five percent (55%), subject to increase as required by state law, of all processable municipal solid waste, recyclable materials, food scraps and green waste collected by franchisee. Franchisees shall divert a minimum of sixty-five percent (65%), subject to increase as required by state law, of all construction and demolition debris collected by franchisees;

g. Disposal requirements. Franchisees shall dispose of Commercial Solid Waste, not otherwise diverted, in Orange County landfills pursuant to the City's waste disposal agreement with the County of Orange. City maintains the right to designate disposal facilities to be used by franchisees;

h. Billing. Franchisees shall be responsible for all billing and collection for its accounts;

i. Termination. Franchise shall not be revoked unless franchisee has defaulted in the performance of any obligation of the 2020 Franchise, and the Franchise may be terminated pursuant to Newport Beach Municipal Code Section 12.63.140;

j. Application requirements. Prior to obtaining the 2020 Franchise, franchisees shall designate the specific Commercial Franchise Services for which it desires to apply and shall demonstrate competence in and compliance with the City's insurance, equipment, and diversion requirements with respect to those Commercial Franchise Services;

k. Public education. Franchisees shall meet City's requirements to implement recycling, diversion and source reduction public education activities;

l. Recycling/diversion programs. Franchisees shall implement and provide recycling and diversion programs for all customers subject to California State Assembly Bills 939, 341, and 1826, and the California Green Building Standards Code, codified in the California Code of Regulations Title 24, Part 11, ("CALGreen");

m. Hauler representative. Franchisees shall designate a representative to assist in implementing State-imposed recycling and diversion programs; and

n. Compliance. Franchisees shall comply with all state, federal laws and regulations, terms and conditions of the franchise agreement, the City Charter and the Newport Beach Municipal Code.

Section 2: The City intends to grant the 2020 Franchise to the following entities (collectively, "Proposed Grantees"), which currently hold a 2017 Franchise and are presently licensed and permitted to conduct business in the City:

- a. Arakelian Enterprises, Inc. dba Athens Services;
- b. CR&R Incorporated;
- c. Direct Disposal;
- d. Haul-Away Rubbish Service Co.;
- e. Interior Removal Specialist, Inc.;
- f. JD Demolition and Grading, Inc.;
- g. Rainbow Disposal Co., Inc.;
- h. Tight Quarters, Inc.
- i. Universal Waste Systems, Inc.
- j. Ware Disposal, Inc.; and
- k. Waste Management Collection and Recycling, Inc. dba Waste Management of Orange County.

Should any of the above entities be granted a 2020 Franchise, and accept such 2020 Franchise, the respective entity's 2017 Franchise shall be abandoned at such time the 2020 Franchise is granted pursuant to City Charter Section 1303.

Section 3: The City intends to grant the 2020 Franchise to the following entities (collectively, "Proposed Grantees"), which do not currently hold a franchise with the City:

- a. American Wrecking Inc.;
- b. Dallaco, Inc. dba Pacific Coast Environmental;
- c. Kevin Ray Demolition Inc.; and
- d. L.A.L. Services, Inc.

Section 4: The City Council shall conduct a public hearing on August 25, 2020 at 5:00 p.m., or as soon thereafter as is practical, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California, to consider granting the Proposed Grantees the 2020 Franchise. Persons who have an interest in or objection to the granting of the 2020 Franchise to the Proposed Grantees may appear before the City Council and be heard at that date and time.

Section 5: The City Council of the City of Newport Beach finds the adoption of this resolution is categorically exempt from the California Environmental Quality Act ("CEQA") under Sections 15301 and 15308 of the California Code of Regulations set forth in Title 14, Division 6, Chapter 3 which exempts "existing operations and facilities" and "actions by regulatory agencies for protection of the environment." Application of Sections 15301 and 15308 is appropriate because the resolution does not change nor expand existing solid waste operations and facilities within the City. This resolution is also consistent with the goals of California State Assembly Bills 939, 341, and 1826, *The California Solid Waste Management Act*, CALGreen, as well as the objectives of the City's Source Reduction and Recycling Element.

Section 6: The recitals provided above are true and correct and are incorporated into the substantive portion of this resolution.

Section 7: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 8: Pursuant to City Charter Section 1301, this resolution shall be published in the City's official newspaper within fifteen (15) days of its adoption and at least ten (10) days prior to August 25, 2020.

ADOPTED this 28th day of July, 2020.



Will O'Neill
Mayor

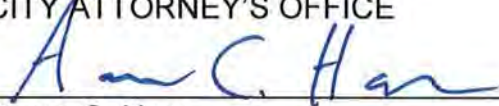
ATTEST:



Leilani I. Brown
City Clerk



APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; the foregoing resolution, being Resolution No. 2020-70, was duly introduced before and adopted by the City Council of said City at a regular meeting of said Council held on the 28th day of July, 2020; and the same was so passed and adopted by the following vote, to wit:

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

NAYS: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 29th day of July, 2020.



Leilani I. Brown
City Clerk
Newport Beach, California



ATTACHMENT B

ORDINANCE NO. 2020-20

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, GRANTING THE 2020 NON-EXCLUSIVE FRANCHISE AGREEMENT FOR COMMERCIAL SOLID WASTE AND DIVERTIBLE MATERIALS HANDLING SERVICES WITHIN THE CITY OF NEWPORT BEACH

WHEREAS, the City Council of the City of Newport Beach ("City Council") finds and determines that the collection of municipal solid waste and divertible materials, including recyclable materials, food scraps, green waste, wood waste, construction and demolition debris and all other materials that can be diverted from landfill disposal (collectively, "Commercial Solid Waste") generated within the City of Newport Beach ("City") is a vital public service;

WHEREAS, the City Council further finds and determines the collection, transportation, storage, and disposal of municipal solid waste and the collection, transportation, processing and diversion of processable municipal solid waste and divertible materials ("Commercial Franchise Services") is a matter of great public concern because improper control of such matters subjects the City to potential liability, damages and penalties and may create a public nuisance, air pollution, fire hazard, infestation and other problems affecting the public health, safety and welfare;

WHEREAS, the non-exclusive franchises for use of public streets to provide Commercial Franchise Services promotes the public health, safety and welfare by providing permanence and stability among those businesses wishing to provide such service and accountability to the City for compliance with current and future state mandates;

WHEREAS, in 2017, the City Council adopted a model non-exclusive commercial solid waste franchise agreement for private solid waste haulers and, thereafter, entered into franchise agreements with a number of commercial solid waste franchise haulers ("2017 Franchise"), effective through November 8, 2024;

WHEREAS, although the 2017 Franchise does not expire until November 8, 2024, on October 22, 2019, the City Council approved a new model franchise agreement in compliance with Assembly Bill 1826 and Assembly Bill 341 ("2020 Franchise"), that expires in the year 2027;

WHEREAS, the City has since received applications from 2017 Franchise holders and new applicants that wish to perform work under the 2020 Franchise;

WHEREAS, pursuant to Article XIII of the City Charter, Chapter 12.63 (Solid Waste Management) of the Newport Beach Municipal Code ("NBMC"), and California Public Resources Code Sections 40059, 49300, and 49500 through 49523, or any successor statutes, the City is authorized to enter into non-exclusive franchise agreements for Commercial Franchise Services with private solid waste haulers;

WHEREAS, pursuant to City Charter Section 1301 (Granting of Franchise), on July 28, 2020, the City Council adopted Resolution No. 2020-70, providing notice of a public hearing to be held on August 25, 2020 to grant the 2020 Franchise to the franchise haulers identified in the resolution;

WHEREAS, a public hearing was held on August 25, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Section 1301 of the City Charter. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing;

WHEREAS, pursuant to Section 12.63.080 (Required Findings) of the NBMC, the City Council finds, on the basis of the application, information, materials, and testimony submitted, that:

- The applications submitted by Franchisees (defined herein) complies with Chapter 12.63 of the NBMC;
- The Franchisees have not within the past three years: (1) had a franchise terminated by the City; and/or (2) operated a solid waste enterprise within the City without a franchise;
- Awarding the 2020 Franchise is in accordance with the objectives of Chapter 12.63 of the NBMC;
- Granting the 2020 Franchise to Franchisees will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the City or be materially detrimental to the public welfare or injurious to property or public improvements; and
- Franchisees have demonstrated sufficient experience, equipment and a recycling plan and diversion program to safely comply with the requirements of the 2020 Franchise; and

WHEREAS, having considered all oral and documentary evidence presented at the public hearing, the City Council determines that the granting of the 2020 Franchise to Franchisees is in the public interest.

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

Section 1: There is hereby granted to each entity listed below (collectively, “Franchisees”), which currently hold a 2017 Franchise and are presently licensed and permitted to conduct business within the City, the 2020 Franchise attached hereto as Attachment 1 and incorporated into this ordinance by reference:

- a. Arakelian Enterprises, Inc. dba Athens Services;
- b. CR&R Incorporated;
- c. Direct Disposal;
- d. Haul-Away Rubbish Service Co.;
- e. Interior Removal Specialist, Inc.;
- f. JD Demolition and Grading, Inc.;
- g. Rainbow Disposal Co., Inc.;
- h. Tight Quarters, Inc.;
- i. Universal Waste Systems, Inc.;
- j. Ware Disposal, Inc.; and
- k. Waste Management Collection and Recycling, Inc. dba Waste Management of Orange County.

With the exception of the continuing obligations set forth in Section 23(J) (Continuing Obligations) of the 2017 Franchise, the 2017 Franchise is abandoned at such time the 2020 Franchise is granted pursuant to Section 1303 (Grant to be in Lieu of all Other Franchises) of the City Charter which provides that the acceptance of a franchise shall be in lieu of all other franchises granted by the City.

Section 2: There is hereby granted to each entity listed below (collectively, “Franchisees”), which do not currently hold a franchise with the City, the 2020 Franchise attached hereto as Attachment 1:

- a. American Wrecking Inc.;
- b. Dallaco, Inc. dba Pacific Coast Environmental;
- c. Kevin Ray Demolition Inc.; and
- d. L.A.L. Services, Inc.

Section 3: Franchisees' right to use City's public streets, ways, alleys and places for the purposes set forth in this ordinance, is not exclusive and the City reserves the right to grant a similar use of public streets, ways, alleys and places to any person at any time from the effective date of this ordinance until the expiration of the 2020 Franchise on October 7, 2027.

Section 4: Franchisees shall comply with and shall be bound by all terms, provisions and conditions contained in the City Charter and the NBMC including, but not limited to, Chapters 6.04 (Garbage, Refuse and Cuttings), 6.06 (State Mandated Municipal Solid Waste Diversion Programs), and 12.63 (Solid Waste Management), Resolution No. 2020-70, this ordinance, and the 2020 Franchise attached hereto as Attachment 1.

Section 5: The 2020 Franchise granted under this ordinance shall take effect on October 8, 2020, and shall expire October 7, 2027, unless terminated earlier pursuant to the terms of the agreement. Notwithstanding the effective date above, the 2020 Franchise granted by this ordinance shall not become effective unless and until the Franchisee files written acceptance of the 2020 Franchise with the City Clerk, and delivers to the City all bonds and insurance policies required to be furnished in accordance with the requirements of Chapter 12.63 of the NBMC and the 2020 Franchise. The written acceptance shall be in form and substance as prescribed by the City Attorney and shall operate as an acceptance of each and every term, condition and limitation contained in this ordinance, the 2020 Franchise, Article XIII (Franchises) of the City Charter, Resolution No. 2020-70, and Chapter 12.63 of the NBMC. A Franchisee shall file written acceptance of the 2020 Franchise no later than ten (10) days after the adoption of this ordinance.

Section 6: During the term of the 2020 Franchise, Franchisee shall pay to City franchise fees for the privilege of providing Commercial Solid Waste and Divertible Materials Handling Services in the City of Newport Beach and use of public streets, ways, alleys and places for such purposes. Franchise fee payments shall be paid quarterly and shall be computed and paid on the basis of paid receipts received by the Franchisee for all Commercial Solid Waste and Divertible Materials Handling Services provided by the Franchisee within the City. Franchise fees shall total sixteen percent (16%) of Franchisee's gross receipts as follows:

(a) Franchisee shall pay to the City ten and one-half percent (10.5%) of the Franchisee's gross receipts, of which one-half of one percent (0.5%) shall be attributable for the preparation, adoption, and implementation of an integrated waste management plan consistent with of the City's Source Reduction and Recycling Element; and

(b) Franchisee shall pay to the City Environmental Liability Fund five and one-half percent (5.5%) of Franchisee's gross receipts.

Section 7: The City Council authorizes the Mayor and City Clerk to execute the attached 2020 Franchise in substantially the same form as the attached.

Section 8: The City Council of the City of Newport Beach finds that this ordinance is not a project subject to the California Environmental Quality Act ("CEQA") in accordance with Sections 15060(c)(2), 15060(c)(3), 15061(b)(3) and 15308 of the California Code of Regulations Title 14, Division 6, Chapter 3. The City Council further finds that this ordinance is categorically exempt under Sections 15301 and 15308, which exempts "existing operations and facilities" and "actions by regulatory agencies for protection of the environment." Application of Sections 15301 and 15308 is appropriate because neither this ordinance nor the 2020 Franchise changes or expands existing solid waste operations and facilities within the City. This ordinance is also consistent with the goals of California State Assembly Bills 939, 341, and 1826, *The California Solid Waste Management Act*, CALGreen, as well as the objectives of the City's Source Reduction and Recycling Element.

Section 9: The recitals provided above are true and correct and are incorporated into the substantive portion of this ordinance.

Section 10: If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 11: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause this ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, held on the 25th day of August 2020, and adopted on the 8th day of September 2020, by the following vote to-wit:

AYES: _____

NAYES: _____

ABSENT: _____

WILL O'NEILL, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

Attachments: Attachment 1 - Agreement Template for 2020 Non-Exclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services

**NON-EXCLUSIVE FRANCHISE AGREEMENT BETWEEN THE CITY OF
NEWPORT BEACH AND _____ FOR COMMERCIAL
SOLID WASTE AND DIVERTIBLE MATERIALS HANDLING SERVICES**

This Non-exclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services ("Agreement") is entered into this 8th day of October, 2020 ("Effective Date") by and between the City of Newport Beach, a California municipal corporation and charter city organized and existing under the laws of the State of California ("City"), and _____, a [insert name and type of business entity e.g. corporation, LLC, partnership] ("Franchisee") (City and Franchisee may collectively be referred to as "Parties"), whose address is _____ and is made with reference to the following:

RECITALS

This Agreement is entered into on the basis of the following facts:

A. Assembly Bill ("AB") 939 (the California Integrated Solid Waste Management Act of 1989, hereinafter the "Act"; Public Resources Code Sections 40000 *et seq.*) requires the City to divert from landfill disposal a minimum of fifty percent (50%) of all municipal solid waste generated within the City.

B. In 2011, the Act was amended by AB 341 to establish a statewide goal of diverting from landfills seventy-five percent (75%) of all municipal solid waste by 2020 and required the City, on or before July 1, 2012, to provide a commercial recycling program.

C. AB 341 also requires all businesses generating more than four (4) cubic yards per week of commercial municipal solid waste and all multifamily dwellings of five (5) units or more to arrange for recycling services by July 1, 2012.

D. In 2014, the Act was further amended by AB 1826 to require the City, on or before January 1, 2016, to provide a diversion program for collection and diversion of food scraps and green waste.

E. AB 1826 also requires commercial generators of certain quantities of food scraps and green waste to participate in a diversion program beginning on a date between April 1, 2016 and January 1, 2019, depending on the quantity of waste generated. Some smaller commercial generators are required by CalRecycle to participate on or after January 1, 2020.

F. The City has received written notification from CalRecycle of its intention to enforce the deadlines for implementation of AB 341 and AB 1826 programs within the City as required by the Act; therefore, it is important that Franchisee implement and maintain successful AB 341 and AB 1826 diversion programs for all commercial customers as required by the Act, to the satisfaction of both the City and CalRecycle.

G. Pursuant to Article XIII of the City Charter, Code Chapter 12.63, and Public Resources Code Sections 40059, 49300, and 49500 through 49523, or any successor statutes, the City is authorized to enter into non-exclusive franchise agreements for commercial solid waste and divertible materials handling services.

H. On October 10, 2017, the City Council of the City of Newport Beach ("City Council") adopted Ordinance No. 2017-16, An Ordinance of the City Council of the City of Newport Beach, California, Granting Non-Exclusive Solid Waste Franchises to Provide Commercial Solid Waste Handling Services Within the City of Newport Beach.

I. As part of its adoption of Ordinance No. 2017-16, the City entered into a number of nonexclusive franchise agreements allowing solid waste haulers to operate in the City.

J. On October 22, 2019, the City Council approved revisions to the nonexclusive franchise agreement with solid waste haulers to improve procedures for compliance with Assembly Bills 341 and 1826. The revised nonexclusive franchise agreement also extended the term for an additional two (2) years.

K. Pursuant to Code Chapter 12.63, Franchisee has filed a franchise application with the City to operate under the new Nonexclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services.

L. The Parties now wish to terminate the franchise agreement adopted pursuant to Ordinance No. 2017-16 and enter into a new Nonexclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services.

ALTERNATIVE, IF THEY DO NOT HAVE A CURRENT FRANCHISE AGREEMENT, THEN L. WOULD READ, "The Parties now wish to enter into a Nonexclusive Franchise Agreement for Commercial Solid Waste and Divertible Materials Handling Services."

M. City has reviewed Franchisee's application and Franchisee has represented it is capable of providing collection services for commercial recyclable materials, food scraps, green waste, municipal solid waste, and/or construction and demolition debris in the City.

N. Pursuant to this Agreement, City desires to authorize Franchisee to provide those non-exclusive commercial services for collection, transportation, delivery, and disposal of Municipal Solid Waste and/or collection, transportation, processing and diversion of recyclable materials, food scraps, green waste, wood waste, and construction and demolition debris as requested in Franchisee's application and for which Franchisee has demonstrated capability.

O. The City Council has determined that this grant of a non-exclusive franchise is in the public interest.

NOW, THEREFORE, the City and Franchisee do hereby agree as follows:

SECTION 1. GRANT OF FRANCHISE

A. By Ordinance No. 2020-20, City has granted to Franchisee a non-exclusive Franchise authorizing Franchisee to provide Commercial Franchise Services within all or any part of the City and to use the public streets and public right-of-ways for such purpose. Franchisee acknowledges that the Franchise is not exclusive and that the Franchise is subject to all provisions of applicable law, including, but not limited to, Article XIII of the City Charter, Ordinance No. 2020-20, Code Chapter 12.63, and the terms and conditions of this Agreement.

B. Upon the Effective Date of this Agreement, the parties agree that any prior authorization relating to the provision of Commercial Franchise Services within all or any part of the City arising under and pursuant to any prior franchise issued to Franchisee shall be deemed to be abandoned and of no further force or effect except the Franchisee's obligation(s) to comply with the Diversion requirements set forth in Sections 12 through 15, the Continuing Obligations set forth in Section 23(J), or any other obligations specified in the franchise agreement granted pursuant to Ordinance No. 2017-16.

SECTION 2. TERM OF FRANCHISE

This Agreement shall commence on the Effective Date, and shall terminate on the Termination Date, unless terminated earlier as set forth herein.

SECTION 3. DEFINITIONS

"AB 341 Generator" means all Municipal Solid Waste generators required by AB 341 (Public Resources Code Section 41780.01) to divert Recyclable Materials generated on-site from Disposal including (A) all businesses located and operating within the City, and the responsible party, property owners, owners, operators, property managers, tenants and lessees of same, that generate four (4) or more cubic yards of Municipal Solid Waste per week; including but not limited to, retail stores, restaurants, offices, supermarkets, convenience stores, malls, strip malls, service businesses, hospitals, assisted living facilities, and federal, state and local government facilities; (B) Multifamily Dwellings consisting of five (5) or more units regardless of the amount of Municipal Solid Waste generated; (C) the City, its facilities, its non-residential properties, and (D) special events that take place in the City that generate four (4) or more cubic yards of municipal solid waste per event whether or not sponsored by the City.

"AB 1826 Generator" means all food-generating businesses within the City, and the responsible parties, property owners, owners, operators, property managers, tenants and lessees of same, that generate four (4) or more cubic yards of Municipal Solid Waste per week and are required by AB 1826, as codified in Public Resources Code Section 42649.82, to divert all Food Scraps generated on-site from Disposal; including but not limited to, all restaurants, cafeterias, hospitals, and supermarkets; (B) all non-food-generating businesses and the responsible parties, property owners, owners, operators, property managers, tenants and lessees of same, that generate four (4) or more cubic

yards of Municipal Solid Waste per week and that generate Green Waste and/or Wood Waste (C) all Multifamily Dwellings consisting of five (5) or more units regardless of the amount of Municipal Solid Waste generated; (D) federal, state and local government facilities, schools, the City, its facilities, and its non-residential properties; and (E) special events that take place within the City that generate four (4) or more cubic yards of municipal solid waste per event, whether or not sponsored by the City. As of the effective date of this Agreement, the threshold amount of Municipal Solid Waste provided for in Public Resources Code Section 42649.81 is four (4) or more cubic yards of Municipal Solid Waste per week on or after January 1, 2020. If CalRecycle changes the quantities of Municipal Solid Waste necessary to be considered an AB 1826 Generator, the definition of an AB 1826 Generator shall be automatically amended to reflect these new quantities.

“Act” means the California Integrated Waste Management Act of 1989 (Public Resources Code Sections 40000, *et seq.*) as amended and as implemented by regulations of CalRecycle (or its successor agency) and the Air Resources Board (or its successor agency).

“Alternative Daily Cover” or “ADC” means cover material other than earthen material placed on the surface of the active face of a Municipal Solid Waste Landfill at the end of each operating day to control vectors, flies, fires, odors, blowing litter and scavenging. Prior to 2014, Green Waste was included in the list of CalRecycle-approved ADC materials and use of Green Waste for this purpose was counted as “Diversion” for purposes of the Act. AB 1594, passed and signed into law in 2014, phases out the use of Green Waste as ADC effective January 1, 2020. As of January 1, 2020, no Green Waste Collected within the City will not be used as ADC and Green Waste must be diverted for processing such as mulching, Composting, as feedstock for Anaerobic Digestion or other CalRecycle-approved means that counts as Diversion.

“Anaerobic Digestate” or “Digestate” means the material left at the conclusion of a biological process that decomposes organic matter in an enclosed environment with little or no oxygen, resulting in a biogas and a liquid/solid stream called Digestate (CCR Section 17896.2(a)(6)). Any Digestate created from Green Waste, Food Scraps or other organic materials Collected within the City must be further processed at a permitted Composting Facility or utilized in another manner that is fully permitted and approved by all federal, state and local regulatory agencies, including but not limited to CalRecycle, and that is considered as “Diversion” by CalRecycle for purposes of the Act.

“Anaerobic Digestion” means a biological process that decomposes organic matter in an environment with little or no oxygen, resulting in a biogas and a liquid/solid stream called Anaerobic Digestate. Such activity takes place at an “Anaerobic Digestion Facility.”

“Bin(s)” means open top rectangular containers with wheels, with attached plastic or metal lids, used for storage of Municipal Solid Waste, Recyclable Materials, Green Waste, Food Scraps, Construction and Demolition Debris or other materials that are Collected by Franchisees or other Persons authorized to Collect and transport such materials within City.

“Bioengineered Feedstock” means a mixture of materials utilized in Wastewater Treatment Plants (WWTP’s) or publically-owned treatment works (POTW’s) to produce biogas. (This process is also referred to as “wet anaerobic digestion.”) Bioengineered Feedstock may include primary and secondary sludge, greases from the WWTP grease trap, and organic materials such as Food Scraps from businesses and households or other organic materials from industries that have been pre-treated and liquefied to the required consistency.

“Bioengineered Feedstock Facility” means a Processing Facility that accepts Food Scraps and other Bioengineered Feedstock, chops, macerates or otherwise size-reduces the incoming materials, mixes the material with liquid and produces a slurry which is then transported or otherwise delivered to a Wastewater Treatment Plant or similar facility that uses Bioengineered Feedstock to produce methane,

“CalRecycle” means the California Department of Resources Recycling and Recovery, the successor agency to the former California Integrated Waste Management Board.

“Can” means a receptacle for Municipal Solid Waste, Recyclable Materials, Green Waste, Food Scraps or wood provided by the Customer and Collected using manual (instead of automated) means of Collection.

“Cart” means a plastic wheeled Container with a hinged lid used to store Municipal Solid Waste, Recyclable Materials, Green Waste or Food Scraps that is Collected by an automated or semi-automated vehicle.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC §9601 *et seq.*).

“City Council” means the City Council of the City of Newport Beach.

“City Manager,” “Finance Director,” and “Public Works Director” mean the City Manager, Finance Director and Public Works Director of the City or their designee.

Clean Materials Recovery Facility (“Clean MRF”) means a materials recovery facility (“MRF”), or that portion of a MRF, that processes Recyclable Materials that have been separated from Municipal Solid Waste such as Single Material Recyclables and Single Stream Recyclable Materials, containing no more than the maximum Residue or contamination allowed by CalRecycle (10% Residue).

“Code” means the Newport Beach Municipal Code.

“Collect” or “Collection” means taking physical possession of Commercial Solid Waste, or other materials, from Customers and transporting such materials by means of a motor vehicle, or other means, to a MRF, Compost Facility, other Organics Processing Facility, Construction and Demolition Debris Processing Facility, transfer station or Landfill.

“Commercial Franchise Services” means the services provided by Franchisees pursuant to the terms and conditions of the Franchise and includes the Collection, transportation, storage, and Disposal of Municipal Solid Waste and the Collection, transportation, Processing and Diversion of Processible Municipal Solid Waste, Recyclable Materials, Green Waste, Wood Waste, Food Scraps and/or Construction and Demolition Debris by private solid waste enterprises, and includes, without limitation, the placement of Commercial Solid Waste and Divertible Materials Containers on public property.

“Commercial Premises” means all occupied real property in the City used for commercial purposes including, without limitation, wholesale or retail establishments, restaurants, other food establishments, bars, stores, shops, offices, mechanized manufacturing facilities, repair, research and development or professional services, sports or recreational facilities, industrial facilities, federal, state and local government facilities, schools, Multi-Family Dwellings that receive centralized Collection service and construction and demolition sites.

“Compactor” means an enclosed rectangular or square metal container containing a ramrod to condense and compress the contents, and is typically used to store Municipal Solid Waste, Green Waste, Recyclable Materials, Food Scraps or Construction and Demolition Debris. Compactors may be small (3 or 4 cubic yards) for use on smaller Commercial Premises or large (10, 20, 30 or cubic yards) for use at large Commercial Premises such as supermarkets, hotels, and large retail stores or at construction sites. A special Roll Off vehicle equipped with hooks and a winch to pull the Compactor on to the railed bed of the vehicle is used to Collect Compactors and transport them to a Landfill or to a Processing Facility.

“Compost” means the product resulting from the controlled biological decomposition of organic wastes which are separated from the Municipal Solid Waste stream at the point of generation and includes Food Scraps, Green Waste, and wood that are not hazardous wastes.

“Compost Facility” means a facility that processes one (1) or more of the following: Food Scraps, Green Waste, wood and food-soiled fiber such as paper napkins and paper towels, by means of outdoor windrow composting, aerated static pile composting, covered composting, vermiculture or other outdoor composting methods or covered composting with use of either finished compost or fiber, synthetic or other type(s) of cover(s) applied to the compost piles.

“Composting” means the controlled microbial degradation of organic materials yielding a safe and nuisance-free finished product called Compost, a soil amendment suitable for incorporating into topsoil and for growing plants.

“Construction and Demolition Debris” means all inert material of every nature, description or kind, which has resulted from the building or demolition of a structure, pavements, sidewalks, curbs, gutters and other concrete structures, including all lumber scraps, shingles, plaster, sheetrock, packaging, rubble, brick, stone, concrete, asphalt,

dirt, rock and other building material. A facility that accepts Construction and Demolition Debris for separation and further processing to prepare materials for sale or re-use (such as removing nails and screws from wood, or grinding of concrete and asphalt) and then markets the materials for re-use is a "Construction and Demolition Debris Processing Facility."

"Container(s)" means any object designed and used to hold or store Municipal Solid Waste, Recyclable Materials, Food Scraps, Green Waste, or Construction and Demolition Debris to be Collected by Franchisees. Containers include Carts, Bins, open top Roll Off Boxes, and Compactors.

"Contamination" means materials that are not specified for Collection in particular Containers or for processing at either a Clean MRF or a Dirty MRF, which would either interfere with such processing and/or reduce the quality and value of the Recovered Materials. For example, for purposes of Collection, metals and plastics would constitute "Contamination" if placed in a Food Scrap Container and tree trimmings would constitute "Contamination" if placed in a Recyclable Materials Container.

"Customer" means the owner, occupant, manager or user of premises at which Municipal Solid Waste, Recyclable Materials, Green Waste, Wood Waste, Food Scraps or Construction and Demolition Debris are generated who requests and receives Commercial or Multifamily Collection services for Municipal Solid Waste and/or Divertible Materials from one or more Franchisees. In the event a business, non-residential property, Multifamily dwelling or Commercial Premises shares Containers and/or Collection services, "Customer" refers only to the entity that arranges and pays for such services.

Dirty Materials Recovery Facility ("Dirty MRF") means a facility, or that certain portion of a facility, that processes Processable Municipal Solid Waste to separate Recyclable Materials, Green Waste, Wood Waste, Construction and Demolition Debris and other Divertible materials for sale to end users. Franchisees shall not utilize any Dirty MRF that has not been approved by City and that does not meet the standards and requirements of Public Resources Code Section 42649 and all subsequent amendments, rules, and regulations promulgated in furtherance thereof requiring a Dirty MRF to be a source-separated comparable MRF.

"Disposal" means the final disposition of solid waste of Municipal Solid Waste at a permitted landfill or transformation at a permitted facility, as transformation is defined and limited by the Act other permitted solid waste disposal facility.

"Diversion" or "Divert" means any combination of Recycling, sorting, Composting and other processing activities conducted at a Clean MRF, a Dirty MRF, a Compost Facility, an Anaerobic Digestion Facility, a Bioengineered Feedstock Facility, and/or a Construction and Demolition Debris Processing Facility in order to use or market the materials for re-use, remanufacture, reconstitution or otherwise return the materials to the economic marketplace and to prevent the materials from being Disposed in a Landfill.

“Diversion Plan” or “the Plan” means a plan prepared for a Customer by Franchisee pursuant to Exhibit E, Section A 2 of this Franchise Agreement that describes in detail the Diversion Program(s) recommended by Franchisee to be implemented at Customer’s premises. A Diversion Plan contains estimated quantities of Divertible Materials generated at the Customer’s premises, recommended types and sizes of outside Containers for storage of Divertible Materials, recommended frequency of Collection; modifications to sizes, types and Collection frequency for Containers for Municipal Solid Waste to adjust for the separate storage and Collection of Divertible Materials, and plans for the flow of materials through Customer’s premises, including the location and sizing of interior Containers required for separation and interim storage of Divertible Materials. Diversion Plans also contain projected costs and any projected cost savings to the Customer for implementing the Diversion Plan.

“Diversion Program(s),” “Recycling Program(s)” and “Diversion Services” mean Recyclable Materials Collection, Green Waste Collection, Wood Waste Collection, Food Scraps Collection, Processable Municipal Solid Waste Collection, Construction and Demolition Debris Collection and subsequent processing of the Collected materials at a Clean MRF, a Dirty MRF, a Compost Facility, an Anaerobic Digestion Facility, a facility creating Engineered Feedstock for digestion at a wastewater treatment plant, a Construction and Demolition Debris Processing Facility and all other programs operated by Franchisees, the City, Residents, Customers or other Persons that have the effect of Diverting Municipal Solid Waste from Landfill Disposal. Diversion Programs includes, but is not limited to, all of the programs included in the City’s SRRE and all of the programs included in this Agreement.

“Divertible Materials” or “Divertible” means Recyclable Materials, Food Scraps, Green Waste, Wood Waste, Construction and Demolition Debris, electronic waste, universal waste and all other materials that can be diverted from Landfill Disposal. Divertible Materials includes, but is not limited to, all materials required to be diverted from Landfill Disposal by City, CalRecycle or any state or federal agency.”

“Edible Food For Human Consumption” or “Edible Food” means food that has been prepared but not served, and includes, but is not limited to: any appetizer, soup, salad, entrée, dessert, raw fruit and vegetable, that may or may not have been sliced, grated, cooked, baked or otherwise prepared for consumption but not served; any packaged sandwich, salad, fruit and fruit salad and any other non-served food that meets state and local requirements as being edible for human consumption.

“Effective Date” means the date upon which this Agreement is effective as set forth in the first paragraph of this Agreement.

“Environmental Laws” means any and all present and future federal, state or local laws (whether common law, statute, rule, regulation or otherwise), permits, orders and any other requirements of Governmental Authorities relating to the environment or any “Hazardous Substance” or “Hazardous Substance Activity” as defined herein, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sections 9601 *et seq.*) as amended from time to time and

the applicable provisions of the California Health and Safety Code and California Water Code.

“Food Scraps” means material resulting from the production, processing, preparation or cooking of food for human consumption that is separated from Municipal Solid Waste. Food scraps include surplus or unsold edible food, raw food left over after food preparation, leftover cooked food, as well as spoiled food such as vegetables and culls, and plate scrapings. Food scraps includes food-soiled paper that is mixed in with the food scraps. “Food Scraps” are Collected and transported to Food Scrap Processing Facilities which include Compost Facilities, Anaerobic Digestion Facilities, and Wastewater Treatment Plants utilizing Engineered Feedstock.

“Food Soiled Paper” means paper towels, tissue products, paper napkins, paper plates and cups, coffee filters, tea bags, waxed paper, butcher paper, paper take-out boxes and containers, greasy pizza boxes, paper bags, cardboard and wax-coated cardboard produce boxes that are Contaminated with Food Scraps. Food Soiled Paper does not include polystyrene, aluminum foil, foil-lined wrap or diapers.

“Franchise” or “Franchise Agreement” means this Agreement between the City and a Franchisee, granted pursuant to Agreement Section 1(A), providing Franchisee the right, for a specified period of time and pursuant to Article XIII of the City Charter, the Code, and the terms and conditions of this Agreement, to provide for the Collection and Diversion of Commercial Solid Waste Handling Services to Commercial Premises and Multifamily Dwellings within all or any part of the City of Newport Beach and to use the public streets and public right-of-ways for such purpose. Throughout this Agreement, the terms “Agreement,” “Franchise” or “Franchise Services” may be used interchangeably unless otherwise specified or the context requires otherwise.

“Franchisee” means the individual or business entity identified as “Franchisee” on the signature page of this Agreement.

“Franchise Fee” means the fee or assessment imposed by the City on a Franchisee, which among other things, is intended to offset the City’s expenses related to the administration of the Franchise Agreement, the Integrated Waste Management Program, the maintenance and implementation of the City’s Source Reduction and Recycling Element, compliance with the California Integrated Waste Management Act, to compensate the City for damages to its streets, sidewalks, curbs and gutters and other infrastructure resulting from the Franchisee’s exercise of its rights under the franchise, City’s reporting requirements and other related expenses.

“Generator” means a resident, an owner or responsible party for a Multifamily Dwelling, Commercial Premises, or business that Generates Municipal Solid Waste, Recyclable Materials, Green Waste, Food Scraps and/or Construction and Demolition Debris as a result of its business, commercial facility or property activity. Generator may also include tenants, property managers for facilities with leased space, employees and contractors of Generator.

“Generate” means to bring into existence or create, or to use, maintain, or possess an item, material or product, the result of which such creation, bringing into existence, use, maintenance or possession is that the item, material or product first becomes, or is converted transformed, evolved or deemed as Municipal Solid Waste, Recyclable Materials, Food Scraps, Green Waste or Construction and Demolition Debris.

“Green Waste” means any debris that is composed of organic material or plantlike matter, which is a result of seasonal variations, landscape or gardening activities. Green Waste includes, without limitation, grass clippings, leaves, shrubs, trees, branches, stumps, flowers, plant stalks and non-hazardous wood. Green Waste does not include Food Scraps.

“Gross Receipts” means all money, whether paid by cash, check, debit or credit, or other consideration collected from Customers by Franchisee that relates in any way to Commercial Franchise Services provided by Franchisee to Customers, whether or not such services occur wholly or partially within the City, including, but not limited to, Collection, processing, removal, marketing and Diversion of Recyclable Materials, Green Waste, Food Scraps, Processable Municipal Solid Waste and Construction and Demolition Debris and Disposal of Non-Processable Municipal Solid Waste, Industrial Waste, trash, litter, as well as fuel surcharges. Gross receipts shall also include all money received by any Person other than the Franchisee, where the money was paid to the Person to avoid the Franchisee’s obligations under this chapter and/or the Franchise. Gross Receipts shall not include (or if included there shall be deducted, but only to the extent they have been included) the following: (1) if any sales taxes are levied on the Franchisee’s Commercial Franchise Services in the City, the amount of State sales taxes collected in connection with Franchisee’s provision of such services in the City and remitted to the State pursuant to State law; (2) the amount of documented bad debt write-offs due to uncollectible accounts for Franchisee’s Commercial Franchise Services in the City, not to exceed three percent (3%) of Gross Receipts; and (3) revenues collected for Franchisee’s Commercial Franchise Services provided to the City through a written contract.

“Hazardous Waste” or “Hazardous Substance” means any (a) chemical, compound, material, mixture or substance that is now or hereinafter defined or listed in, or otherwise classified pursuant to any Environmental Law as a “hazardous substance,” “hazardous material,” “hazardous waste,” “extremely hazardous waste,” “infectious waste,” “toxic waste,” “toxic pollutant,” or any other formulation intended to define, list or classify substances by reason of deleterious properties or effect and (b) petroleum, petroleum by-products, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas in such synthetic gas), ash, steam, drilling fluids, produced waters and other wastes associated with the exploration, development and production of crude oil, natural gas or geothermal resources.

“Industrial Waste” means solid waste originating from mechanized manufacturing facilities, factories, refineries, construction and demolition projects, publicly operated treatment works, or solid waste placed in Commercial Solid Waste containers excluding hazardous waste.

“Landfill” means a fully permitted disposal site that accepts Municipal Solid Waste that is in compliance with all Federal, State and local laws, regulations and permits conditions at the time Municipal Solid Waste is delivered and unloaded at the disposal site.

“Multifamily Dwelling” mean housing projects containing or consisting of five (5) or more units, whether apartment houses, condominiums, townhomes, or mixed use projects, mixed use condominiums and rental housing, which use centralized Commercial Solid Waste Containers (including Bins, Carts and/or Compactors) for storage of Municipal Solid Waste, Recyclable Materials, Green Waste and/or Food Scraps. Multifamily Dwelling does not include single-family residences, duplexes, tri-plexes or four-plexes that receive individual Collection services for Municipal Solid Waste, Recyclable Materials, Green Waste and/or Food Scraps stored in wheeled carts. For purposes of the implementation of the Diversion programs, reporting requirements, and the percentage Diversion requirements, “Commercial Tons” shall include only Tons Collected from Multifamily Dwellings in Carts, Bins, Compactors or Roll Off Boxes and shall not include any Tons Collected from Containers Collected from Commercial Premises. Tons Collected from Containers Collected from Commercial Premises shall be reported separately.

“Municipal Solid Waste” means all Processable Municipal Solid Waste and all Non-Processable Municipal Solid Waste, putrescible and nonputrescible solid and semisolid wastes, Generated in or upon, related to the occupancy of, remaining in or emanating from residential, commercial, and/or industrial premises, including, but not limited to, garbage, trash, refuse, rubbish, ashes, Industrial Waste, discarded home and industrial appliances, manure, vegetable or animal solid or semisolid wastes, and other solid and semisolid wastes. Municipal Solid Waste excludes Recyclable Materials, Green Waste, Food Scraps, Construction and Demolition Debris, liquid wastes, abandoned vehicles and hazardous, biohazardous and biomedical wastes.

“Non-Processable Municipal Solid Waste” means putrescible and non-putrescible solid and semi-solid wastes Generated in or upon, related to the occupancy of, remaining or emanating from residential, Commercial, and/or industrial premises, that has been segregated or separated from Recyclable Materials, Food Scraps, Green Waste, wood and/or Construction and Demolition Debris such that the remaining constituents in the Non-Processable Municipal Solid Waste (such as broken glass, diapers, ashes, Industrial Waste, discarded Bulky Goods that cannot be re-used or dismantled for Recycling, manure, vegetable or animal solid or semi-solid wastes that remain after segregation of Food Scraps and Green Waste) cannot be diverted by reasonable economic or technologically available means. Non-Processable Municipal Solid Waste does not include Recyclable Materials, Green Waste, Food Scraps, wood, Construction and Demolition Debris, Bulky Goods or other materials that have been segregated for Diversion; liquid wastes; low level radioactive waste regulated under California Health and Safety Code Sections 20015, *et seq.*; abandoned vehicles and auto parts; hazardous, biohazardous and biomedical wastes.

“Person” means an individual, firm, association, organization, partnership, corporation, business trust, joint venture, Limited Liability Company, the United States,

the State of California, the County, municipality, special purpose district or any other business entity whatsoever.

“Processable Municipal Solid Waste” means putrescible and non-putrescible solid and semi-solid wastes Generated in or upon, related to the occupancy of, remaining or emanating from residential, commercial, and/or industrial premises that can be sorted at a Dirty MRF to separate any Divertible Materials contained therein for Recycling. Processable Municipal Solid Waste may also contain non-divertible constituents including but not limited to, broken glass, diapers, ashes, Industrial Waste, discarded Bulky Goods that cannot be re-used or dismantled for Recycling, manure, vegetable or animal solid or semi-solid wastes that remain after segregation of Food Scraps and Green Waste, which cannot be separated or sorted out of the Processable Municipal Solid Waste by reasonable economic or technologically available means.

“Processing Facility/Facilities” means a facility or facilities where the following activities are conducted: sorting, cleaning, treating, Composting and reconstituting Collected materials and returning these materials to the economic mainstream in the form of raw materials for new, reused or reconstituted products which meet the quality standards of the market place (activities are herein collectively defined as “Processing”). Processing Facilities include Materials Recovery Facilities (both Clean and Dirty MRF’s as defined herein), Composting Facilities, Anaerobic Digestion Facilities, Wastewater Treatment Plants, Construction and Demolition Debris sorting facilities, and concrete and asphalt grinding facilities. Processing Facilities do not include waste-to-energy, thermal destruction or any type of Transformation facilities.

“Recycle/Recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become Non-Processable Municipal Solid Waste, and returning them to the economic mainstream in the form of raw materials for new, reused, or reconstituted products which meet the quality standards used in the marketplace. Recycling does not include Transformation.

“Recycling Facility” means a Recycling Materials Recovery Facility (either a Clean or Dirty MRF), a Construction and Demolition Debris sorting facility or a re-use facility that is fully permitted and operating in compliance with federal, state and local laws and regulations and includes Recycling Facilities that receive, process, and market Recyclable Materials that have been source separated by the Generator or segregated from Processable Municipal Solid Waste, such as Single-Material Recyclables and Single Stream Recyclable Materials. The Recycling Facility may be located at a landfill.

“Recyclable Materials” means items in the solid waste stream which can be reused or processed into a form suitable for reuse consistent with the requirements of State law (*i.e.*, AB 939). Recyclable materials include, but are not limited to, aluminum and tin cans, glass bottles, plastic bottles, plastic containers, newspaper, paper, printed materials, paper containers, cardboard and textiles.

“Recycling Requirements” means the obligations imposed by or upon the City pursuant to State, Federal and local law, ordinance, resolution, policy, plan or program relative to Diverting all, or a portion, of the Municipal Solid Waste generated within the

City including, without limitation, State mandates to Divert fifty percent (50%) of the Municipal Solid Waste Generated within the City, achievement of the per capita Diversion requirements in the Act, and the provision of City-approved Diversion services to all Customers. Recycling Requirements includes future changes to the Act that may require the City to Divert higher percentages of Municipal Solid Waste Generated within the City and/or to provide additional and/or enhanced or expanded Diversion Programs.

“Residue” means the Non-Processable Municipal Solid Waste destined for Disposal in a Landfill, which remains after processing at a Processing Facility has taken place. Residue does not include Anaerobic Digestate. The percent of Residue is calculated by dividing the weight of the Residue by the weight of the total materials delivered for processing at the facility. State law and regulations govern the allowable amount of Residue that can be Generated by a Processing Facility. Franchisees shall not utilize Processing Facilities that exceed State-required maximum Residue Generation rates for any materials Collected within the City.

“Responsible Party” means the individual or entity responsible for the Generator’s management of solid waste and/or Recycling at the Generator’s commercial premises, business, or non-residential property.

“Roll Off Boxes” means large open top rectangular metal Containers used to store and transport Municipal Solid Waste, Recyclable Materials, Green Waste, Construction and Demolition Debris or other materials.

“Single Material Recyclables” means those Recyclable Materials which satisfy each of the following requirements: (1) have been segregated from Processable Municipal Solid Waste for separate handling and Diversion by or for the Generator thereof; (2) have been further segregated or sorted so that various types of Recyclable Materials, such as glass, metals, paper, cardboard, plastics are not commingled; and (3) after such segregation, contain no more than five percent (5%) by weight (measured by each load being transported, Collected and/or Disposed) of any Residue or Contamination material which cannot be Recycled, Composted or similarly utilized, and which instead must be Disposed in a Landfill.

“Single Stream Recyclable Materials” or “Single Stream Recyclables” means those Recyclable Materials collected as separated from Processable Municipal Solid Waste by the Generator or Customer and consisting of a mixture of metals, glass, plastics #1-7, and all paper from Residential Premises, Commercial Premises, Multifamily Dwellings and industrial premises. Single Stream Recyclable Materials are distinguished from Single-Material Recyclables, which consist of only a single type of material such as cardboard, separated from other Recyclable Materials.

“Split Bins” means Bins that have a divider down the middle, dividing the Bin into two (2) separate compartments. Such Bins have separate locking lids for each side of the Bin that allows the Bin to be emptied one (1) side at a time. The lid on the side of the Bin that is for storage of Recyclable Materials is designed such that it allows for the placement of Recyclable Materials in the Bin without unlocking or opening the lid, and yet

does not allow Recyclable Materials to spill out when the lid is closed and locked for the emptying of the MSW stored on the opposite side of the Bin.

“SRRE” means the Source Reduction and Recycling Element of the Integrated Waste Management document for the City prepared and updated pursuant to the California Public Resources Code.

“Term” means the finite amount of time that commences on the Effective Date and terminates on the Termination Date.

“Termination Date” means November 8, 2027.

“State” means the State of California.

“Transformation” means incineration, pyrolysis, distillation, or biological conversion (other than Composting) to turn Municipal Solid Waste and/or organic materials into a fuel used to produce energy (example: waste-to-energy). Transformation does not include Composting, gasification, Biomass Conversion, or wet or dry Anaerobic Digestion.

“Transformation Facility” means a facility using a Transformation process to turn Municipal Solid Waste and/or organic materials into a fuel used to produce energy. A Franchisee may only utilize Transformation for the quantity of Municipal Solid Waste allowed by CalRecycle to be counted as Diversion pursuant to the Act, as this may be changed in the future by legislation or regulations. The Act currently provides that a jurisdiction can only use Transformation to divert up to ten percent (10%) of the Municipal Solid Waste generated in the jurisdiction. Therefore, materials collected by a Franchisee and processed at a Transformation Facility shall be limited to ten percent (10%) of the Non-Processable Municipal Solid Waste Collected by the Franchisee within City.

“Ton” means a short ton of two-thousand (2,000) pounds avoirdupois.

“Wood Waste” means all non-hazardous wood material that is not painted with lead-based or other paints containing materials identified as hazardous waste, or treated with creosote or other hazardous materials. Wood Waste includes, but is not limited to, tree branches and other wood trimmings, dimensional lumber and other pieces of wood generated during the manufacture or processing of wood products. For wood generated from construction and/or demolition activities, see the definition of “Construction and Demolition Debris.”

SECTION 4. FRANCHISE FEES

A. During the Term of this Franchise, Franchisee shall pay to City Franchise Fees for the privilege of providing Commercial Franchise Services in the City and for the use of public streets, right-of-ways and places for such purposes. The Franchise Fees that Franchisee shall pay to the City shall total sixteen percent (16%) of the gross receipts which are reasonably related to the value of Agreement for all Commercial Franchise Services provided by Franchisee in the City as follows:

1. Ten and one-half percent (10.5%) of the Gross Receipts for all Commercial Franchise Services provided by the Franchisee in the City ("Commercial Franchise Service Fee"), of which one half percent (.5%) shall be attributable to the maintenance and implementation of the City's SRRE, and shall be separately accounted for, and used only for the costs stated in Public Resources Code Section 41901 or any successor provision.

2. Five and one-half percent (5.5%) of the Gross Receipts for all Commercial Franchise Services provided by Franchisee in the City shall be paid into an Environmental Liability Fund, which shall be a separate fund established and maintained by City ("Environmental Liability Fund Fee"). Hereinafter, Environmental Liability Fund Fee and Commercial Franchise Fee shall be collectively referred to as "Fees."

B. City and Franchisee acknowledge the potential environmental liability that may result from Commercial Franchise Services under Federal and State environmental protection laws and the Public Resources Code. City intends to take reasonable actions to obtain protection and indemnification against future environmental liability for Commercial Solid Waste and Divertible Materials generated within the City and the activities of Franchisee under this Agreement for handling such Commercial Solid Waste and Divertible Materials. To provide protection and indemnification to City for Franchisee's Commercial Franchise Services in the City, Franchisee agrees to collect from its customers an Environmental Liability Fund Fee for payment into the Environmental Liability Fund. The Environmental Liability Fund may be used by the City for any expense associated with this Franchise, including, but not limited to, the purchase of environmental liability insurance and paying all costs, expenses, and penalties that arise from or in any way relate to liability incurred by the City as a result of any act, negligence, or omission by the City, Franchisee, Franchisee Customer, or any of their respective officers, directors, shareholder members, volunteers, partners, employees, agents, subcontractors, suppliers, representatives or affiliates. The Environmental Liability Fund may also be used by the City to pay for any Disposal, Diversion, or Recycling activity required of the City, Franchisee, or any Generator under State, Federal or local law. The Fund shall not be commingled with or included in the City's General Fund.

1. The Fees shall be paid concurrently.

2. Compliance with this Section shall not limit Franchisee's indemnification as set forth in Agreement Section 10; however, the indemnification provisions of Agreement Section 10 shall be secondary to the Environmental Liability Fund established by this Section or any insurance purchased by the Environmental Liability Fund.

C. The Fees shall be paid on a calendar quarterly basis on forms prescribed by the Finance Director.

D. All payments shall be made in lawful money of the United States of America and shall be paid to City in person or by United States' mail, or overnight mail service, at the Cashier's Office located at 100 Civic Center Drive, P.O. Box 1768, Newport Beach,

California, 92658, or to such other address as City may from time to time designate in writing to Franchisee. If requested by City, Franchisee shall make payments electronically (at www.newportbeachca.gov) or by wire transfer (at Franchisee's cost). Franchisee assumes all risk of loss and responsibility for late charges and delinquency rates if payments are not timely received by City regardless of the method of transmittal.

E. Franchisee hereby acknowledges that the late payment of Fees or other sums due hereunder will cause City to incur costs not contemplated by this Agreement, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, any payment of any sum to be paid by Franchisee not paid within five (5) calendar days of its due date shall be subject to a ten percent (10%) late charge plus interest on the amount due at the rate of ten percent (10%) per annum from the date due and payable by the terms of this Agreement until the same shall be paid. City and Franchisee agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to City for its loss suffered by such late payment by Franchisee.

F. With the exception of October 30, 2020, Fees shall be due and payable on April 30, July 30, October 30 and January 30 of each calendar year of the Term. Any dates falling on a weekend or holiday may be paid the first business day following the weekend or holiday. Fees must be received by City, not merely postmarked, by or before the aforementioned dates.

G. In the event Franchisee believes that it has paid Fees in excess of the Fees due to City, Franchisee may submit a request for refund to the Finance Director on a form provided by the Finance Director. If proof of overpayment is satisfactory to the Finance Director, the Finance Director shall refund to Franchisee any overpayment. Franchisee shall not apply any overpayment as a credit against any other amounts payable to City unless specifically authorized by the Finance Director in writing.

H. Each Franchise Fee and Environmental Liability Fund Fee payment shall be accompanied by a written statement described in Code Section 12.63.090, or any successor section, on a form provided by the Finance Director. No statement filed under this Section shall be conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude the City from collecting by appropriate action the sum that is actually due and payable.

I. Franchisee may separately list the actual Franchise Fee rate and Environmental Liability Fund Fee rate as established by this Section, and any other fees required by this Agreement, on its invoices to its customers. In no case may the Franchise Fee rate or Environmental Liability Fund Fee rate listed by the Franchisee on the invoice exceed the actual Franchise Fee or Environmental Liability Fund Fee rates imposed by the City.

SECTION 5. PERFORMANCE BOND/DEPOSIT

A. Prior to the placement of any Container for Commercial Franchise Services on public or private property, Franchisee shall, to ensure compliance with the duties and

obligations imposed by the provisions of the Code, State regulation, regulations adopted by the City Manager and this Agreement, either: (1) provide City with a cash deposit ("Deposit"); or (2) obtain, provide and maintain, at its own expense, a faithful performance bond ("Bond"). The amount of the Deposit and Bond shall be determined in the Public Works Director's sole and absolute discretion.

B. If Franchisee decides to provide a Bond, the Bond shall be issued by an insurance organization or surety: (1) currently authorized by the Insurance Commissioner to transact business of insurance in the State of California; (2) listed as an acceptable surety in the latest revision of the Federal Register Circular 570; and (3) assigned a Policyholders' Rating A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide: Property-Casualty. The Bond shall be in the form attached hereto as Exhibit "A," which is incorporated herein by this reference.

SECTION 6. DIVERSION AND DISPOSAL OF MUNICIPAL SOLID WASTE, RECYCLABLE MATERIALS, FOOD SCRAP AND GREEN WASTE

A. Franchisee shall comply with all Diversion requirements imposed by law, ordinance, or regulation on City, Franchisee, and/or any Commercial Premises or Multifamily Dwelling. On a monthly basis, Franchisee shall Divert a minimum of fifty-five percent (55%) of all Processable Municipal Solid Waste, Recyclable Materials, Food Scraps and Green Waste Collected in the City by Franchisee. This Diversion requirement is separate from and in addition to any Diversion requirements set forth in Agreement Sections 7, 12, 13, 14 and 15. In the event new or additional Diversion requirements are imposed by law, ordinance or regulation on City, Franchisee, and/or any Commercial Premises or Multifamily Dwelling, the City shall have the right to require Franchisee to Divert additional Municipal Solid Waste, Recyclable Materials, Food Scraps, and/or Green Waste by providing Franchisee with thirty (30) calendar days written notice of the new Diversion requirements. Upon request of the Public Works Director, Franchisee shall provide all documents and information requested by the Public Works Director to prove that Franchisee has complied with this subsection, any applicable law, ordinance, regulation, or condition related to Recycling and Diversion of Municipal Solid Waste, Recyclable Materials, Food Scraps and/or Green Waste.

B. Franchisee shall Dispose of all Non-Processable Municipal Solid Waste collected in the City, over which Franchisee has control, in accordance with the Franchise Hauler Acknowledgment, attached hereto as Exhibit "B" and incorporated herein by reference. Franchisee hereby accepts and agrees to abide by all terms of the Franchise Hauler Acknowledgment. If, during the Term of this Agreement, the City's Waste Disposal Agreement with Orange County expires, lapses, or is terminated, the Franchise Hauler Acknowledgment shall be null and void and Franchisee shall Dispose of Municipal Solid Waste Collected in the City only by taking it to a fully permitted Orange County certified/licensed landfill or to a fully permitted licensed transfer station, which is lawfully authorized to accept that specific type of solid waste material and has been approved by the City.

C. Franchisee shall not Dispose of Municipal Solid Waste, Recyclable Materials, Food Scraps, or Green Waste by depositing it on any land except a permitted facility, whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system. Nothing in this Agreement shall be deemed or construed as authorizing Franchisee to operate a Landfill, Recycling Facility, or other solid waste disposal facility in the City.

D. If Franchisee violates the terms in Agreement Section 6(A) and/or Section 6(B) above, Franchisee agrees that the City has the future right to direct that all Municipal Solid Waste be delivered to a fully permitted Disposal facility designated by City and that Recyclable Materials, Food Scraps, Green Waste and/or Wood Waste be delivered to a fully permitted Processing Facility designated by City. This exercise of "flow control" by the City shall be made upon at least thirty (30) calendar days prior written notice to Franchisee, and written notice shall include the violation(s) prompting the City's action regarding "flow control." Failure to comply with the Recycling, Diversion, and/or Disposal requirements set forth in this Section shall be a material breach of this Agreement.

E. Franchisee shall include as a condition to its contractual agreement with its Customers a provision prohibiting disposal of Hazardous Waste in any Container.

F. Franchisee shall implement a load check program that includes, at a minimum, a visual check of all Containers to be emptied to protect against inclusion of Hazardous Waste and shall prepare a written record of all Hazardous Waste discovered during the process. The records shall comply with all State and Federal Hazardous Waste Regulations and shall be maintained for the length of the Term of the Franchise and for a minimum period of three (3) years, or for any longer period required by law, after the Extended Termination Date. The records shall be made available to the City in Franchisee's monthly reports submitted pursuant to Agreement Section 16.

G. This Agreement does not purport to grant Franchisee or City ownership over materials that Franchisee's Customers discard for pickup by Franchisee or that Franchisee handles under this Agreement. The right to possession or ownership of those materials shall be determined in accordance with law and any agreement between Franchisee and its Customers, and not as a result of this Agreement. Parties acknowledge that City has no ownership rights in Divertible Materials or revenue from sale thereof, except as provided in this Agreement.

H. City makes no representations or warranties with respect to characterization of Municipal Solid Waste, Recyclable Materials, Food Scraps, or Green Waste within City. City expressly disclaims any representations and warranties, either express or implied, as to the merchantability or fitness of Municipal Solid Waste, Recyclable Materials, Food Scraps, or Green Waste for any particular purpose.

SECTION 7. DIVERSION OF CONSTRUCTION AND DEMOLITION DEBRIS

A. On a monthly basis, Franchisee shall Divert a minimum of sixty-five percent (65%) of all Construction and Demolition Debris collected in the City by Franchisee. This Diversion requirement shall be in addition to and separate from any Diversion

requirements set forth in Agreement Section 6. Franchisee shall also comply with all requirements of Section 15. If new or additional Diversion requirements are imposed by law, ordinance or regulation on City, Franchisee, and/or any Commercial Premises or Multifamily Dwelling, the City shall have the right to require Franchisee to Divert additional Construction and Demolition Debris by providing Franchisee with ten (10) calendar days written notice of the new Diversion requirements. Upon request of the Public Works Director, Franchisee shall provide all documents and information requested by the Public Works Director to prove that Franchisee has complied with this subsection, any applicable law, ordinance, regulation, or condition related to Recycling and Diversion of Construction and Demolition Debris.

B. Franchisee shall Dispose of, or oversee Disposal of, any Construction and Demolition Debris collected in the City by Franchisee, and not diverted pursuant to Agreement Section 7(A), in accordance with the Franchise Hauler Acknowledgment, attached hereto as Exhibit "B." Franchisee hereby accepts and agrees to abide by all terms of the Franchise Hauler Acknowledgment. If, during the Term of this Agreement, the City's Waste Disposal Agreement with Orange County expires, lapses or is terminated, the Franchise Hauler Acknowledgment shall be null and void and Franchisee shall Dispose of non-Diverted Construction and Demolition Debris collected by Franchisee in the City only by taking such debris to an Orange County certified/licensed landfill, State certified/licensed transfer station, State certified/licensed recycling facility or State certified/licensed materials recovery facility which is lawfully authorized to accept that specific type of solid waste material. Franchisee shall not dispose of Construction and Demolition Debris by depositing it on any land except a permitted facility, whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system.

C. If Franchisee violates the terms in Agreement Section 7(A) and/or Section 7(B) above, Franchisee agrees that the City has the future right to direct that Construction and Demolition Debris be delivered to a permitted processing and/or disposal facility designated by City. This exercise of "flow control" by the City shall be made upon at least thirty (30) calendar days prior written notice to Franchisee, and written notice shall include the violation(s) prompting the City's action regarding "flow control." Failure to comply with the Recycling, Diversion, and/or Disposal requirements set forth in this Section shall be a material breach of this Agreement.

D. Franchisee shall include as a condition to its contractual agreement with its Customers a provision prohibiting disposal of Hazardous Waste in any Container.

E. Franchisee shall implement, or require a third party to implement, a load check program that includes, at a minimum, a visual check of all Containers to be emptied to protect against inclusion of Hazardous Waste and shall prepare a written record of all Hazardous Waste discovered during the process. The records shall comply with all local, State and Federal Hazardous Waste regulations, and shall be maintained for the length of the Term of the Franchise and for a minimum period of three (3) years, or for any longer period required by law, after the Extended Termination Date. The records shall be made available to the City upon request.

F. This Agreement does not purport to grant Franchisee or City ownership over materials that Franchisee's Customers discard for pickup by Franchisee or that Franchisee handles under this Agreement. The right to possession or ownership of those materials shall be determined in accordance with law and any agreement between Franchisee and its customers, and not as a result of this Agreement. Parties acknowledge that City has no ownership rights in Recyclable Materials or revenue from sale thereof, except as provided in this Agreement.

G. City makes no representations or warranties with respect to characterization of Construction and Demolition Debris within City. City expressly disclaims any representations and warranties, either express or implied, as to the merchantability or fitness of Construction and Demolition Debris for any particular purpose.

SECTION 8. FRANCHISEE'S APPLICATION; RECORDS; AUDITS

A. Application. Franchisee has submitted an application to City in substantially the same form as the template attached hereto as Exhibit "C" and incorporated herein by reference as a condition of entering into this Agreement. Franchisee hereby represents and warrants that all information contained in the application submitted to City, and any information submitted by Franchisee to City supplementary thereto, is true and correct and does not contain any untrue statement of a material fact nor omit a material fact that makes a statement contained therein misleading.

B. Records. Franchisee shall maintain all records relating to Franchisee's Commercial Franchise Services provided hereunder including, but not limited to, Customer lists, billing records, accounts payable records, maps, service requests, cash receipts records, AB 939/341/1826 compliance records, tonnage reports, weight tickets and invoices from all Landfills, Processing Facilities, and Recycling Facilities utilized for Commercial Solid Waste collected within City, and all other documents and materials which reasonably relate to Franchisee's compliance with and performance of the provisions of this Agreement ("Records"), for the full Term of this Agreement and an additional period thereafter of not less than three (3) years, or any longer period required by law. Such Records shall be made available to City at Franchisee's regular place of business, but in no event outside the County of Orange. All Records shall be clearly identifiable, and Franchisee shall maintain record security sufficient to preserve records from destruction or damage from foreseeable events. Data maintained in an electronic medium shall be protected, and backed up, with a copy stored at a separate site from the original data.

C. CERCLA Defense Records. City's ability to defend against CERCLA and related litigation is a matter of great importance. Franchisee shall maintain and preserve records establishing where Solid Waste Collected in the City was landfilled for the full Term of this Agreement and an additional period thereafter of not less than five (5) years, or any longer period required by law. At any time, including after the expiration of the Term, Franchisee shall provide copies of such records to City within three (3) business days of City's request.

D. Inspection; Audit. On an annual or as-needed basis, City shall have the right, upon five (5) business days advance notice, to inspect Franchisee's Records and/or conduct, or to contract with an independent auditing firm to perform, an audit, at City's expense, of Franchisee's Records ("City Audit") to ensure compliance with the provisions of this Agreement. The City Audit shall include, without limitation, review and/or copying of Franchisee's cash receipts, books of account, Municipal Solid Waste and Divertible Materials tonnage reports, Collection, Disposal and Diversion records, and other related records, as well as those of each of its parent, subsidiary and/or affiliated companies, as appropriate. As part of the City Audit, Franchisee's Customer accounts and related records may be subject to review. While Franchisee will not be required to submit for copying detailed account records, such as Customer names, Franchisee shall make such records and information available for review in connection with the City Audit. The purpose of the City Audit shall be for: (a) verification of the Fees paid by Franchisee under this Agreement, and the accuracy thereof; (b) verification of the amounts of Municipal Solid Waste and Divertible Materials reported as Collected, processed, Diverted and Disposed by Franchisee pursuant to this Agreement; (c) verification of Recycling/Diversion program implementation efforts and actions taken by Franchisee pursuant to this Agreement; and (d) verification of such other information as is reasonably deemed appropriate by the Public Works Director to evaluate Franchisee's performance hereunder.

E. Reimbursement. Franchisee shall reimburse City for all of City's costs in performance of an audit if, as a result of the audit, it is determined:

1. There was any intentional misrepresentation by Franchisee with respect to the amount of Fees due to the City;

2. There is a One Thousand and 00/100 Dollars (\$1,000.00) or greater discrepancy in the amount of Fees due to the City.

3. There was any intentional misrepresentation by Franchisee with respect to Franchisee's Commercial Franchise Services and/or Franchisee's handling and transportation of Municipal Solid Waste and/or Divertible Materials or with regard to any information provided about Diversion; or

4. There is a discrepancy (whether intentional or not) in the number of Tons of Municipal Solid Waste, Recyclable Materials, Green Waste, Foods Scraps and/or Construction and Demolition Debris Collected, Recycled, processed and/or Disposed that equals or exceeds two percent (2%).

Such reimbursement shall be paid by Franchisee within ten (10) calendar days of the date City notifies Franchisee in writing that Franchisee is liable to reimburse the City in conformance with this subsection and the amount of City's audit costs.

SECTION 9. INSURANCE REQUIREMENTS

Without limiting Franchisee's indemnification of City, and prior to commencement of the Effective Date of this Agreement, Franchisee shall obtain, provide copies to City and maintain at its own expense during the Term of this Agreement policies of insurance of the type and amounts described in the Insurance Requirements attached hereto as Exhibit "D" and incorporated herein by reference.

SECTION 10. RESPONSIBILITY FOR DAMAGES AND INJURY/INDEMNIFICATION

A. Franchisee Responsibility. Franchisee shall be solely responsible for any damages caused as a result of Franchisee's acts, negligence, or omissions including, but not limited to, injuries to or death of any person or damage to public and/or private property and damages to public improvements arising from or as a result of Franchisee's Commercial Franchise Services.

B. General Indemnification. Franchisee shall indemnify, hold harmless, and defend City, and each of its past, present and future elected officials, officers, employees, agents, consultants, volunteers, affiliates, assignees, representatives, attorneys, subsidiaries, and affiliated entities and their respective successors, heirs and assigns (collectively, "Indemnified Parties") from and against any costs, expenses, damages, and losses, including actual attorneys' fees ("Losses") of any kind or character to any person or property arising directly or indirectly from or caused by any of the following: (i) any act, negligence, or omission of Franchisee or its respective officers, directors, shareholder members, partners, employees, agents, Franchisee's subcontractors, suppliers, representatives and affiliates ("Franchisee Representatives"); (ii) Franchisee's or Franchisee Representative's activities; (iii) any accident or casualty within or arising out of the performance of Franchisee's Commercial Franchise Services under this Franchise; (iv) any violation or alleged violation of any law, ordinance or statute now or hereafter enacted arising out of Commercial Recyclable Materials, Food Scraps, Green Waste, Wood Waste, Construction and Demolition Debris and/or Municipal Solid Waste services performed pursuant to the Franchise; (v) the negligence or willful misconduct of Franchisee or any of Franchisee Representatives in the performance of Franchisee's Commercial Franchise Services under the Franchise; and (vi) any breach of the Franchise.

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

C. Hazardous Substances Indemnification. Franchisee shall indemnify the Indemnified Parties from and against all claims, actual damages including, but not limited to, special and consequential damages, natural resource damage, punitive damages, injuries, costs, response, remediation, and removal costs, losses, demands, debts, liens,

liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnified Parties or Franchisee arising directly or indirectly from or caused by any of the following: (i) the violation of any environmental laws or the failure to clean up and mitigate the consequences of the spill or release of any Hazardous Substance; and (ii) Franchisee's activities under this Agreement concerning any Hazardous Substance at any place where Franchisee stores or disposes of solid or Hazardous Waste pursuant to this Agreement, or preceding Agreements between City and Franchisee. The foregoing indemnity is intended to operate as an agreement pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9607(e)) and any amendments thereto, and California Health and Safety Code Section 25364, or any successor statute, to insure, protect, hold harmless, and indemnify City from liability.

D. AB 939 Indemnification. Franchisee agrees to meet all requirements of City's SRRE as to the portion of the Commercial Solid Waste stream Collected and/or handled by Franchisee. Franchisee agrees to protect, defend, indemnify, and hold the Indemnified Parties harmless against all fines or penalties imposed by CalRecycle, or other entity, arising from the failure of Franchisee to meet Act Diversion requirements with respect to the portion of the Commercial Solid Waste stream collected by Franchisee.

E. AB 341 Indemnification. Franchisee agrees to meet all requirements of AB 341, specifically Public Resources Code Section 42649, or any successor statute, as to the portion of the Municipal Solid Waste and Recyclable Materials stream Collected and/or handled by Franchisee. Franchisee agrees to protect, defend, indemnify, and hold the Indemnified Parties harmless against all fines or penalties imposed by CalRecycle, or other entity, arising from the failure of Franchisee to meet AB 341 diversion and recycling requirements with respect to the Municipal Solid Waste and Divertible Materials Collected and/or handled by Franchisee.

F. AB 1826 Indemnification. Franchisee agrees to meet all requirements of AB 1826, specifically Public Resources Code Section 42649.82, or any successor statute, as to the portion of the Food Scraps, Green Waste and Wood Waste streams Collected and/or handled by Franchisee. Franchisee agrees to protect, defend, indemnify, and hold the Indemnified Parties harmless against all fines or penalties imposed by CalRecycle, or other entity, arising from the failure of Franchisee to meet AB 1826 recycling requirements with respect to the Food Scraps and Green Waste collected and/or handled by Franchisee.

G. Notice. City agrees to give notice to Franchisee when the City receives a claim for damages or other liability for which Franchisee has provided indemnification under this Section.

SECTION 11. COMMERCIAL SOLID WASTE AND DIVERTIBLE MATERIALS COLLECTION SERVICES

A. Authorized Collection Services. Franchisee may only provide those Commercial Franchise Services designated in Franchisee's application, or any amended application, and for which Franchisee has demonstrated compliance with Code Section 12.63.050, or any successor section.

B. Frequency of Collection. Franchisee shall collect all Municipal Solid Waste and Divertible Materials from Commercial Premises and Multifamily Dwellings on a schedule to be agreed upon between Franchisee and its Customers, subject to the restrictions set forth in Agreement Section 11(C); provided, however, that such schedule complies with Code Subsections 6.04.110 and 6.04.120 and does not permit the accumulation of Commercial Solid Waste or Divertible Materials in quantities that are unreasonable or detrimental to the public health or safety. Requests for Collection from Customer Premises with overflowing Containers, or from Customer Premises where there have been missed pickups, shall be serviced within twenty-four (24) hours of any such request by the Customer or City. Should City receive a Customer complaint related to or arising from Franchisee's failure to collect Commercial Solid Waste and Divertible Materials as provided herein, Franchisee's Collection schedule shall be submitted to the City for review.

C. Hours and Days of Collections.

1. Franchisee shall not collect Commercial Solid Waste or Divertible Materials in any area of the City after 6:30 p.m. and prior to 5:00 a.m.

2. Franchisee shall not Collect Commercial Solid Waste or Divertible Materials from any Commercial Premises or Multifamily Dwelling located within five hundred (500) feet of an occupied residential premise, motel or hotel, nor shall any of Franchisee's Collection vehicles be operated in any residential areas of the City except between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, nor on any Saturday or Sunday, except between the hours of 8:00 a.m. and 6:00 p.m.

3. Franchisee shall neither operate its Collection vehicles nor Collect Commercial Solid Waste or Divertible Materials from any Commercial Premises, governmental facility, or Multifamily Dwelling located within five hundred (500) feet of a school, or other educational facility between the hours of 7:30 a.m. and 9:00 a.m. or 1:00 p.m. and 3:00 p.m., Monday through Friday. The limitations in Agreement Section 11(C)(3) notwithstanding, Franchisee's operation of Collection vehicles on any non-residential arterial roadway within the City are subject to Section 6.04.130(A) but shall not be prohibited or limited under this Agreement.

4. Commercial Solid Waste and Divertible Materials collection on Sundays shall be limited to Food Scraps and Municipal Solid Waste from Commercial Premises, which require Collection every day due to public health and safety concerns.

5. At Franchisee's request, the City shall provide maps illustrating the geographic limitations placed on Franchisee's Collection services pursuant to Agreement Section 11(C)(3) ("Maps"). City expressly disclaims any liability related to or arising from the accuracy of any Maps provided by City. City may update the Maps as needed, and Franchisee's failure to request or secure the Maps, or any updated Maps, shall not relieve Franchisee of any obligations under this Agreement.

D. Containers. Franchisee shall provide the appropriate sized Containers to each Customer for storage of the Commercial Solid Waste and Divertible Materials Collected by Franchisee. Containers provided by Franchisee must be identified with Franchisee's name and be in the color identified by Franchisee in Franchisee's application.

SECTION 12. AB 341 RECYCLING PROGRAM FOR COMMERCIAL PREMISES AND MULTIFAMILY DWELLINGS

A. Diversion Program. The Act requires all AB 341 Generators to arrange for Recyclable Materials Collection services by July 1, 2012. The Act requires all cities to provide a commercial Recyclable Materials Collection Program for AB 341 Generators on or before July 1, 2012. Franchisee acknowledges these requirements and agrees that, subject to the restrictions contained in Agreement Section 11(A), for all AB 341 Generators that contract with or pay Franchisee to haul Municipal Solid Waste and/or Divertible Materials, Franchisee shall implement a Recyclable Materials Collection Program using one or more of the following:

1. Provide Single Stream Recyclable Materials and (if applicable) Single Material Collection service on a weekly or more frequent basis.
2. Provide Collection of Recyclable Materials commingled with Municipal Solid Waste and process the Collected material at a City-approved Dirty MRF that yields Diversion results comparable to source separation. No Dirty MRF may be used for separation of AB 341 materials unless the Dirty MRF has been approved by City as meeting the standards and requirements of Public Resources Code Section 42649 and all rules, amendments and regulations promulgated in furtherance thereof.
3. If Franchisee observes that the AB 341 Generator has one (1) or more internal Programs that Divert Recyclable Materials, is self-hauling or backhauling Recyclable Materials, donating or selling Recyclable Materials to a third party, or is using a third party or other Franchisee to Collect Recyclable Materials, Franchisee shall report this to City and City, in its sole discretion, shall make a final determination as to the adequacy of the internal and/or third party Recyclable Materials Diversion Program(s). If the City finds the internal and/or third party Program(s) inadequate, Franchisee shall proceed to implement a Recyclable Materials Diversion Program to Divert all the remaining AB

341 Recyclable Materials generated by the AB 341 Generator as described in Exhibit E, which is incorporated herein by reference.

B. Act Compliance. The Parties agree that provision of an AB 341 Diversion Program, as set forth in this Section 12 and in Exhibit "E," is of paramount importance for the City to comply with the Act. The Parties further agree that providing high quality Diversion Services, public education and technical assistance to AB 341 Generators to obtain their full participation in AB 341 Diversion Program is essential for Franchisee to implement an effective Diversion Program for each and every AB 341 Generator it serves. The Parties acknowledge that achievement of this requirement is integral to the City's compliance with the Act and that failure to implement said AB 341 Diversion Programs may cause City to be non-compliant with the Act and be grounds for termination of this Agreement.

C. Program Implementation. Within ninety (90) calendar days of either: (1) the Effective Date of this Agreement; or (2) the date an AB 341 Generator initiates service with Franchisee to collect or transport Municipal Solid Waste and/or Divertible Materials, whichever is later, Franchisee shall implement a Recyclable Materials Diversion Program for said AB 341 Generator. For purposes of this Section 12, "implement" as provided herein shall mean Franchisee's completion of all of the steps and requirements in Exhibit E.

SECTION 13. AB 1826 FOOD SCRAP DIVERSION PROGRAM FOR COMMERCIAL PREMISES

A. Food Scrap Diversion Program. The Act requires AB 1826 Generators to implement Diversion Programs as follows. On or after January 1, 2017, all owners and responsible parties of Commercial Premises generating four (4) or more cubic yards of Food Scraps and/or Green Waste per week must arrange for Diversion Programs for those materials. On or after January 1, 2019, all owners and responsible parties of Commercial Premises generating four (4) or more cubic yards of Commercial Solid Waste per week must arrange for Diversion Programs for Food Scraps and Green Waste. The Act requires cities to provide a commercial Food Scrap Diversion Program for AB 1826 Food Scrap Generators on or before January 1, 2016. Franchisee acknowledges these requirements and agrees that, subject to the restrictions contained in Agreement Section 11(A), for all AB 1826 Food Scrap Generators that contract with or pay Franchisee to haul Municipal Solid Waste and/or Divertible Materials Franchisee shall implement a Food Scrap Diversion Program. The City will maintain a listing of all AB 1826 Food Scrap Generators. City expressly disclaims any liability related to or arising from the accuracy of any lists provided by City. Franchisee's failure to request or secure the list on an annual basis shall not relieve Franchisee of any obligations under this Section. Franchisee shall implement a Food Scrap Diversion Program using one or more of the following:

1. Provide source separated Food Scrap Collection service on a weekly or more frequent basis.
2. If Franchisee observes that the AB 1826 Food Scrap Generator has one (1) or more internal Food Scrap Diversion Programs, is self-hauling

or backhauling Food Scraps, is donating or selling Food Scraps, is donating edible food for human consumption, and/or is using a third party or other Franchisee to Collect Food Scraps, Franchisee shall report this to City and City, in its sole discretion, shall make a final determination as to the adequacy of the internal and/or third party Food Scrap Diversion Program(s). If the City finds the internal and/or third party program(s) are inadequate, Franchisee shall proceed to implement a Diversion Program to Divert all the remaining AB 1826 Food Scraps generated by the AB 1826 Generator.

B. Act Compliance. The parties agree that provision of a Food Scrap Diversion Program as described in this Section 13 and in Exhibit "E" is of paramount importance for the City to comply with the Act. The parties further agree that providing high quality Diversion Services, public education, and technical assistance to AB 1826 Food Scrap Generators to obtain their full participation in AB 1826 Diversion Programs is essential for Franchisee to implement an effective Food Scrap Diversion Program for each and every AB 1826 Food Scrap Generator it serves. The parties acknowledge that achievement of this requirement is integral to the City's compliance with the Act and that failure to implement said Diversion Program may cause City to be non-compliant with the Act and be grounds for termination of this Agreement.

C. Program Implementation. Within ninety (90) calendar days of either: (1) the Effective Date of this Agreement; or (2) the date an AB 1826 Food Scrap Generator initiates service with Franchisee to Collect and/or transport Municipal Solid Waste and/or Divertible Materials, whichever is later, Franchisee shall implement a Food Scrap Diversion Program for said AB 1826 Food Scrap Generator. For purposes of this Section, Franchisee shall be found to have "implemented" a Food Scrap Diversion Program for an AB 1826 Food Scrap Generator only if Franchisee completes all of the steps and requirements in Exhibit E.

SECTION 14. AB 1826 COMMERCIAL AND MULTIFAMILY GREEN WASTE AND WOOD WASTE COLLECTION PROGRAM.

A. Act Requirements. The Act requires all AB 1826 Generators of Green Waste and/or Wood Waste to implement Diversion Programs as follows. All Commercial Premises and all Multifamily Dwellings generating four (4) or more cubic yards of Food Scraps and/or Green Waste and Wood Waste must arrange for Diversion Programs for Green Waste and Wood Waste on or before January 1, 2017. On or after January 1, 2019, all owners and responsible parties of Commercial Premises and Multifamily Dwellings generating four (4) or more cubic yards of Commercial Solid Waste per week are required to arrange for Diversion Programs for Green Waste and Wood Waste. The Act requires cities to provide Commercial and Multifamily Green Waste and Wood Waste Diversion Programs for AB 1826 Green Waste and Wood Waste Generators on or before January 1, 2016. Franchisee acknowledges these requirements and agrees that, subject to the restrictions contained in Agreement Section 11(A), for all AB 1826 Green Waste and Wood Waste Generators that contract with or pay Franchisee to haul Municipal Solid Waste and/or Divertible Materials, Franchisee shall implement a Green Waste and Wood Waste Diversion Program. (For wood generated by construction and demolition projects,

the requirements of Sections 7 and 15 shall apply.) The City will maintain a listing of all AB 1826 Green Waste and Wood Waste Generators. City expressly disclaims any liability related to or arising from the accuracy of any lists provided by City. Franchisee's failure to request or secure the list on an annual basis shall not relieve Franchisee of any obligations under this Section. Franchisee shall implement a Green Waste and Wood Waste Diversion Program using one or more of the following:

Provide source separated Green Waste and Wood Waste Collection service on a weekly or more frequent basis.

1. Provide Collection of Green Waste and Wood Waste co-mingled with Municipal Solid Waste and process the Collected material at a City-approved Dirty MRF that yields Diversion results comparable to source separation. No Dirty MRF may be used for separation of AB 1826 Green Waste or Wood Waste materials unless the Dirty MRF has been approved by City as meeting the standards and requirements of Public Resources Code Section 42649 and all rules, amendments and regulations promulgated in furtherance thereof.
2. If Franchisee observes that the AB 1826 Green Waste and Wood Waste Generator has one (1) or more internal Green Waste and/or Wood Waste Diversion Program(s), is self-hauling or backhauling Green Waste and/or Wood Waste, is donating or selling Green Waste and/or Wood Waste, or is using a third party or other Franchisee to Collect Green Waste and/or Wood Waste, Franchisee shall report this to City and City, in its sole discretion, shall make a final determination as to the adequacy of the internal and/or third party Green Waste and/or Wood Waste Diversion Program(s). If the City finds the internal and/or third party program(s) are inadequate, Franchisee shall proceed to implement a Diversion Program to Divert all the remaining Green Waste and Wood Waste generated by the Customer.
3. If the AB 1826 Green Waste and Wood Waste Generator is using a landscaping company to haul away Green Waste and Wood Waste, Franchisee shall report this to the City and City, in its sole discretion, shall make a final determination as to the adequacy of the landscaper program to Divert all the Green Waste and Wood Waste. If the City finds the landscaper program to be inadequate and/or lacking the proper documentation of the end use for the Collected Green Waste and Wood Waste, Franchisee shall proceed to implement a Diversion Program to Divert all the Green Waste and Wood Waste generated by the AB 1826 Generator.

All Green Waste and Wood Waste Collected by Franchisee shall be delivered to a permitted Green Waste and/or Wood Waste Processing Facility for Diversion. No Green Waste or Wood Waste Collected in City may be used as Alternative Daily Cover at a

landfill as an end use. This prohibition includes Green Waste and Wood Waste processed at a permitted Processing Facility as well as the residue from such Facility.

B. Act Compliance. The parties agree that provision of a Green Waste and Wood Waste Diversion Program as described in this Section 14 and in Exhibit "E" is of paramount importance for the City to comply with the Act. The parties further agree that providing high quality Diversion Services, public education, and technical assistance to AB 1826 Green Waste and Wood Waste Generators to obtain their full participation in AB 1826 Diversion Programs is essential for Franchisee to implement an effective Green Waste and Wood Waste Diversion Program for each and every AB 1826 Green Waste and Wood Waste Generator it serves. The parties acknowledge that achievement of this requirement is integral to the City's compliance with the Act and that failure to implement said Diversion Programs may cause City to be non-compliant with the Act and be grounds for termination of this Agreement.

C. Program Implementation. Within ninety (90) calendar days of either: (1) the Effective Date of this Agreement; or (2) the date an AB 1826 Green Waste and Wood Waste Generator initiates service with Franchisee to Collect and/or transport Municipal Solid Waste and/or Divertible Materials, whichever is later, Franchisee shall implement a Green Waste and Wood Waste Diversion Program for said AB 1826 Green Waste and Wood Waste Generator. For purposes of this Section, Franchisee shall be found to have "implemented" a Green Waste and Wood Waste Diversion Program for an AB 1826 Green Waste and Wood Waste Generator only if Franchisee completes all of the steps and requirements in Exhibit E.

SECTION 15. CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING PROGRAM

A. Act Requirements. The California Green Building Standards Code codified in the California Code of Regulations Title 24, Part 11, ("CalGreen") and adopted by reference in Code Section 15.11.010, requires mandatory diversion of Construction and Demolition Debris. Contractor shall comply with all requirements of CalGreen, as it may be amended from time to time. In the event CalGreen and the City's Construction and Demolition Debris diversion requirements differ, Franchisee shall comply with the highest Construction and Demolition Debris Diversion percentage. Further, City reserves the right to amend and/or expand its own Construction and Demolition Debris Recycling ordinance at any time during the Term. Contractor shall provide all services necessary to (a) inform Customers of, (b) support Customer compliance with, and (c) support City's enforcement of, the Construction and Demolition Debris Recycling requirements pursuant to CalGreen and the Code.

B. Construction and Demolition Debris Diversion Program. Franchisee acknowledges these requirements and agrees that, subject to the restrictions contained in Agreement Section 11(A), for all Customers that contract with or pay Franchisee to haul Construction and Demolition Debris, Franchisee shall implement a Diversion Program as described and set forth in Exhibit "F" which is incorporated herein by reference.

SECTION 16. REPORTING REQUIREMENTS.

A. Monthly Reports. Franchisee shall submit monthly reports to the Public Works Director identifying, at a minimum, the following information:

1. The address of each facility serviced and the precise services provided to each address including, but not limited to, Commercial Franchise Services broken down by type (*i.e.*, Recyclable Materials, Food Scraps, Green Waste, Wood Waste, Construction and Demolition Debris, and/or Municipal Solid Waste) presented in an Excel format acceptable to the City;

2. The frequency of Commercial Franchise Services provided to each address;

3. The number of containers by type and size at each address and the frequency of collection;

4. The actual tonnage, by material category, collected per month in tons.;

5. The location of the Landfill and/or Processing Facility to which the Municipal Solid Waste, Recyclable Materials, Green Waste, Wood Waste and/or Food Scraps were taken during the previous month and the Diversion rate achieved if the facility accepts mixed waste materials/Processable Municipal Solid Waste;

6. AB 341 and AB 1826 compliance information by Generators, including the total number of AB 341 and AB 1826 accounts serviced by the Franchisee, the total number of accounts that have a Recycling Program, Food Scrap Diversion Program, and/or Green Waste/Wood Waste Diversion Program provided by the Franchisee, the number of Customers with Franchisee-documented internal Diversion programs that comply with AB 1826 and AB 341, the number of Customers that comply with AB 341 or AB 1826 via a Clean or Dirty MRF, the number of Customers that do not have an AB 341 or AB 1826-compliant Diversion program, and a description of outreach efforts for non-compliant Generators;

7. The "Exhibit E Tracking Document" described in subparts D, E and F of Exhibit E.

8. Such other tonnage or other information as requested by the Public Works Director including weight tickets and Diversion records.

B. Form of Report. Monthly reports shall be included in the City provided electronic template. No other templates or formats will be accepted. Use of any alternate format or template shall result in the monthly report being considered incomplete and inaccurate and the Franchisee shall be subject to assessment of liquidated damages pursuant to Section 24(B) of the Franchise.

C. Report Due Date. Each monthly report shall be submitted on or before the 25th day of the month following the end of the month.

D. Submission. Franchisee shall submit each monthly report to:

Public Works Director
City of Newport Beach
P.O. Box 1768
100 Civic Center Dr.
Newport Beach, CA 92658

E. No Waiver. Franchisee shall file the monthly report required under Agreement Section 16(A) regardless of whether Franchisee has provided Commercial Franchise Services in the City during the reported month.

F. Compliance. Franchisee shall comply with all Recycling and Diversion requirements imposed by law, ordinance, or regulation on the City. At the end of each calendar month, reports will be evaluated for compliance with City Recycling and Diversion requirements. Failure to comply with City Recycling and Diversion requirements shall be a material breach of this Agreement.

SECTION 17. HAULER REPRESENTATIVE

Franchisee shall designate, at a minimum, one (1) individual employed by Franchisee to assist City in implementing the Agreement's Recycling and Diversion programs, as applicable, and to manage all reporting requirements set forth herein ("Hauler Representative"). Franchisee shall provide City with the Hauler Representative's contact information, and the Hauler Representative shall be the primary contact for the City. The Hauler Representative shall respond to any City questions or concerns relating to or arising from Franchisee's performance under this Agreement within five (5) business days of City submitting such question or concern.

SECTION 18. VEHICLES AND EQUIPMENT

A. Containers. Any and all Containers provided to Customers for storage, Collection or transportation of Municipal Solid Waste, Recyclable Materials, Food Scraps, and/or Green Waste shall meet the requirements designated by the Public Works Director as well as State of California minimum standards for solid waste handling established under Public Resources Code Section 43020 and applicable health requirements, or any successor statutes or requirements.

B. Identification. All Containers and vehicles used by Franchisee in the performance of Commercial Franchise Services shall be marked with Franchisee's name in letters which are not less than four inches (4") high and which are easily read by the general public.

C. Equipment.

1. Maintenance; Records. Franchisee shall, at all times, provide such number of vehicles and such equipment as will be adequate for the Commercial Franchise Services, which it is authorized to provide under this Agreement. All vehicles utilized by Franchisee in the performance of this Agreement shall be registered with the California Department of Motor Vehicles. All vehicles must pass annual "BIT" and brake inspections and Franchisee shall provide evidence of such to the Public Works Department upon request. Upon request by the City, Franchisee shall provide records from the most recent California Highway Patrol biennial inspection of the terminal(s) responsible for the maintenance and repair of equipment used in the City. All vehicles shall be properly maintained, kept clean and in good condition and repair, shall not leak any fluids, and shall be uniformly painted. All Commercial Solid Waste and Divertible Materials Containers used in the performance of this Agreement shall be kept clean and in good repair, shall not leak any fluids, and shall be uniformly painted in the color identified by Franchisee in Franchisee's application. All equipment required by City in the performance of this Agreement, including vehicle mirrors and the collision avoidance system, may be subject to inspection by the City upon twenty-four (24) hours' notice by the Public Works Director. All drivers employed by Franchisee and operating equipment in the City shall be properly licensed for the class of vehicle they drive, enrolled in the Department of Motor Vehicles Employee Pull Notice (EPN) program, and abide by all State and federal regulations for driver hours and alcohol and controlled substances testing.

2. Solid Waste and Divertible Materials Retention. Each vehicle shall be so constructed and used in a manner so that no rubbish, garbage, debris, oil, grease or other material will blow, fall, or leak out of the vehicle. All Municipal Solid Waste and Divertible Materials shall be transported by means of vehicles that are covered in such a manner as to securely contain all Solid Waste and Divertible Materials and to prevent such Municipal Solid Waste and Divertible Materials from projecting, blowing, falling or leaking out of the vehicles. Any Municipal Solid Waste or Divertible Materials dropped or spilled in Collection, transfer or transportation shall be immediately cleaned up by Franchisee. A broom and a shovel shall be carried at all times on each vehicle for this purpose. In addition, each Collection vehicle shall be equipped with trash bags, masking tape and notice of non-Collection tags for the purpose of separating Hazardous Waste for return to the Generator. A communications device such as a two-way radio or a cellular telephone shall also be maintained on each vehicle at all times.

3. Vehicle Mirrors. All equipment used by Franchisee for Commercial Franchise Services in the City with a gross vehicle weight rating of twenty-six thousand (26,000) pounds or more shall be equipped with a convex mirror on the front of each vehicle, adjusted so as to enable the operator to see all points on an imaginary horizontal line which:

- (a) Is three feet (3') above the road;
- (b) Is one foot (1') directly forward from the midpoint of the front of the vehicles; and

(c) Extends the full width of the front of the vehicle.

4. Collision Avoidance System. All vehicles operated by Franchisee in the City shall include the best available collision avoidance system that is capable of detecting adjacent pedestrians and bicyclists. City reserves the right to inspect Franchisee's vehicles, at any time, to confirm that the installation and capability of Franchisee's collision avoidance system is consistent with Section 18(C)(4).

On or before January 1 of each year, Franchisee shall submit to City a certification signed under penalty of perjury containing the following:

- i. List of any collection vehicle (including front loader, rear loader, side loader, and roll off vehicles and all "spares") of such vehicles that franchisee operate in the City.
- ii. Collision Avoidance System installed on each vehicle including name of system, manufacturer, date installed, name of Person who installed the system, name of Person(s) who tested the system to ensure proper installation and operation of system.

5. Storage. Franchisee shall not store any vehicle or equipment on any public street, public right-of-way or other public property in the City without obtaining a Temporary Street Closure Permit from the Public Works Department and prior written consent of the Public Works Development.

6. Compliance. Should the Public Works Director at any time give written notification to Franchisee that any vehicle does not comply with the standards hereunder, the vehicle shall be promptly removed from service by Franchisee and not used again until inspected and authorized in writing by the Public Works Director.

7. City Standards. Placement of Containers and equipment shall be in accordance with the standards set by the City.

8. Equipment Standards. All equipment provided by Franchisee shall be in accordance with standards set by the Public Works Department.

SECTION 19. ABANDONED CONTAINERS

A. If Franchisee abandons any Commercial Solid Waste or Divertible Materials Container within the City, the City may remove the Container and/or dispose of the contents of the Container and recover its cost from Franchisee.

B. For the purposes of this Section, "abandons" includes:

1. Franchisee's failure to remove the Container within the time period specified by the City Council upon termination of the Franchise pursuant to Section 12.63.140 of the Code, or any successor statute;

2. Franchisee's failure to remove the Container within ten (10) calendar days after the expiration or termination of the Franchise granted to Franchisee, except in the case where Franchisee has been granted an extension of the Term of said Franchise or Franchisee has been granted a subsequent franchise authorizing Franchisee to Collect and transport the type or types of Commercial Solid Waste for which the Container was used pursuant to this Agreement; or

3. Franchisee's failure to collect the Container and dispose of the contents of the Container within two (2) calendar days after the Public Works Director issues written notice to Franchisee to dispose of the contents.

4. Franchisee's failure to replace a Container that fails to comply with the City's aesthetic standards, as set forth in this Agreement, within five (5) calendar days of receiving written notice from the Public Works Director of non-compliance.

SECTION 20. COMPLIANCE WITH LAW

A. Franchisee shall perform all Commercial Franchise Services in accordance with applicable federal, state, and local law, including, but not limited to, Code Chapter 12.63, Article XIII of the City Charter, Ordinance No. 2020-20 and the terms and conditions of this Agreement.

B. During the Term of this Agreement, Franchisee and City agree that the City's ordinances may be amended as provided herein, as provided in Chapter 12.63 or as necessary to permit the City to comply with changes to federal, state, and local legislative regulatory requirements, which may affect or alter City's obligations or requirements for Commercial Solid Waste management. Franchisee agrees to comply with any such amendment of the City's ordinances without the need to amend this Agreement.

SECTION 21. PERMITS AND LICENSES

A. Applicable Permits and Licenses. Franchisee shall obtain and maintain, at Franchisee's sole cost and expense, all permits and licenses applicable to Franchisee's operations under the Franchise, which are required of Franchisee by any governmental agency. Payment of the Franchise Fee and Environmental Liability Fund Fee shall be in addition to any permit or license fees or business tax prescribed by the City for the same period.

B. Orange County Landfill Account. Franchisee shall obtain and maintain for the Term of this Agreement an account with the Orange County landfills. If Franchisee disposes of any Municipal Solid Waste collected from the City at an Orange County landfill, the Franchisee shall utilize its landfill account only (no "cash" disposal).

SECTION 22. PUBLIC EDUCATION ACTIVITIES

A. Informational Materials. Each year during the Term of this Agreement, Franchisee shall transmit informational materials to all Customers and to such prospective Customers as it may select, informing them of the Commercial Franchise Services that are required of them under State law as well as Hazardous Waste Disposal requirements.

B. Customer Compliance Notification. Each year during the Term of this Agreement, Franchisee shall notify all AB 1826 and AB 341 accounts for which it provides Commercial Franchise Services of the Customer's compliance obligations.

C. Submission to City of Informational Materials. Franchisee's informational materials shall be provided to the Public Works Director upon request if, in City's sole and absolute discretion, such informational materials are necessary for City to comply with State reporting requirements.

SECTION 23. SUSPENSION; TERMINATION; APPEAL

A. City's Right to Suspend or Terminate. The Franchise granted to Franchisee may be suspended or terminated by the City Council pursuant to Code Section 12.63.140, or any successor statute.

B. Notice of Default. Should the Public Works Director determine Franchisee has defaulted in the performance of any obligation hereunder, the Public Works Director may provide written notice to Franchisee of such default ("Default Notice"). The Public Works Director may, in the Default Notice, set a reasonable time within which Franchisee may cure such default. Unless a longer or shorter time is otherwise specified by the Public Works Director, a reasonable time for correction shall be thirty (30) calendar days from the date the Default Notice is issued.

C. Public Works Director Review. Within ten (10) business days of the Public Works Director's issuance of the Default Notice, at the request of Franchisee, the Public Works Director will hold a meeting with Franchisee to discuss the failure(s) described in the Default Notice. Such request shall immediately suspend any deadlines set forth in Agreement Section 23(B) or the Default Notice. During Franchisee's meeting with the Public Works Director, Franchisee shall have an opportunity to present evidence explaining or justifying the failures described in the Default Notice. After the meeting, the Public Works Director will make a determination, in his or her sole discretion, as to whether to uphold the Default Notice, or any portion thereof, and shall issue such determination within five (5) business days of the meeting. Franchisee will have thirty (30) calendar days from the date the Public Works Director's determination is issued to cure the upheld Default Notice or portion thereof.

D. Appeal to City Manager. Within five (5) business days of the Public Works Director issuing his/her determination, Franchisee may appeal the Public Works Director's determination, in writing, to the City Manager. City's receipt of such appeal request shall immediately suspend any deadlines set forth in Agreement Section 23(C).

The City Manager will hold a meeting with Franchisee no more than ten (10) business days after receiving Franchisee's written appeal request. After the meeting, the City Manager will make a determination, in his or her sole discretion, as to whether to uphold the Default Notice, or any portion thereof, and shall issue such determination within five (5) business days of the meeting. The decision of the City Manager shall be final. Franchisee will have thirty (30) calendar days from the date the City Manager's determination is issued to cure the upheld Default Notice or any portion thereof.

F. Failure to Timely Cure. If Franchisee fails to timely cure a Default Notice, or any portion thereof, then the applicable liquidated damages set forth in Agreement Section 24 shall be final and conclusive and the amount(s) shall be immediately due and payable. Franchisee's failure to timely cure three (3) Default Notices shall be a material breach of this Agreement.

G. Audit Findings. Notwithstanding anything to the contrary, if Franchisee disagrees with City's audit findings, then Franchisee may, within ten (10) business days after service of the audit finding, appeal to the City Manager specifying the basis for its disagreement with City's audit findings. If Franchisee fails to timely request such an appeal, then the discrepancy determinations shall be final and conclusive and the violation shall be deemed established.

H. Termination Without Right to Cure. City shall have the right of suspension or termination as a result of Franchisee's failure to timely cure any deficiency or default as set forth above, which right is in addition to City's right to terminate this Agreement without affording Franchisee an opportunity to cure in circumstances where Franchisee is determined to have materially breached this Agreement. Notwithstanding anything to the contrary, in the event of any material breach hereof, City shall have the right to terminate this Agreement without affording Franchisee the right to cure including, without limitation, any action, inaction or circumstance defined herein as a material breach and/or under any of the following circumstances which are hereby defined as material breaches:

1. If Franchisee conducts, or attempts to conduct, fraud upon City.
2. If Franchisee becomes insolvent, unable, or unwilling to pay its debts.
3. If Franchisee fails to materially comply with any insurance or indemnification requirement set forth in this Agreement; provided, however, that Franchisee shall have a reasonable opportunity to cure any default relating to the Franchisee's failure to provide the City with proof of insurance, so long as such insurance is in effect at all times.
4. If City is required to pay any fine or penalty, which Franchisee is required by the terms hereof to pay, yet which Franchisee fails, refuses, neglects or is unable to timely pay.

5. If Franchisee fails to submit Records thirty (30) calendar days or more following a written request by City, or its designated representative for Records disclosure.

6. Franchisee fails to meet the Diversion requirements of this Agreement or pursuant to applicable laws.

I. Removal of Commercial Solid Waste and Divertible Materials Containers; Customer Notification. In the event this Franchise is terminated or expires without a grant of a subsequent franchise allowing Franchisee to continue performing Commercial Franchise Services in City, then within ten (10) calendar days of such termination or expiration Franchisee shall:

1. Remove all of Franchisee's Municipal Solid Waste and Divertible Materials Containers from all Franchisee's Collection service locations and properly dispose of all Municipal Solid Waste in such containers and deliver all Divertible Materials to Processing Facilities for Diversion within the time period specified by the City Council; and

2. Submit to the Public Works Director a list of the names and addresses of Generators in the City for which Franchisee provided Commercial Franchise Services as of the date of termination or expiration (*i.e.*, Franchisee's City of Newport Beach customer list); or

3. Send written notification to each Solid Waste Generator, AB 341 Generator and AB 1826 Generator on Franchisee's customer list that Franchisee is no longer authorized to provide Commercial Franchise Services in the City. Such notification shall be in the form provided by the Public Works Director and shall be personally delivered or shall be sent by first class mail, postage prepaid, to the customers' billing addresses. Franchisee shall submit to the Public Works Director an affidavit, signed under penalty of perjury, stating that the required notification has been provided by Franchisee to all of Franchisee's City Customers.

J. Continuing Obligations. Upon Agreement termination, suspension or expiration:

1. Franchisee shall have no right or authority to engage in Commercial Franchise Services in the City, subject to the provisions of Sections 49520-49524 of the Public Resources Code, or any successor statutes.

2. Franchisee shall remain liable to City for any and all Franchise Fees and Environmental Liability Fund Fees that would otherwise be payable by Franchisee, for any and all liquidated damages, late charges and/or interest assessed.

3. Franchisee shall have a continuing obligation to submit to City all reports and records required by this Agreement. Franchisee's obligation shall survive this Agreement shall continue for such period of time as required by this Agreement or applicable law.

4. Franchisee shall allow the Commercial Solid Waste Generators, AB 341 Generators and AB 1826 Generators served by Franchisee to arrange for Commercial Franchise Services with another Franchise Holder or Person authorized to perform such services, without penalty or liability for breach of contract on the part of the generators, for such period of time as Franchisee is not authorized to perform such services because of termination or suspension.

5. Franchisee shall have a continuing obligation to provide the indemnifications required in this Agreement. Such indemnifications include, but are not limited to, the Hazardous Materials indemnification and AB 939, AB 341, and AB 1826 indemnifications as set forth in Agreement Section 10.

SECTION 24. CITY'S REMEDIES

A. The City incurred considerable time and expense procuring this Agreement to secure an improved level and quality of Recycling and compliance with State Diversion mandates.

B. Liquidated Damages. The Parties agree the following liquidated damages schedule represents a reasonable estimate of the amount of damages, considering all the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be expected in anticipation that proof of actual damages would be costly or inconvenient:

Applicable Section(s)	Failure(s)*	Damages
6(A), 7(A)	Comply with City-mandated Diversion requirements within thirty (30) calendar days of notification by City	Two hundred fifty dollars (\$250) per business day until compliant
6(B), 7(B)	Deliver Commercial Solid Waste as designated	Two hundred fifty dollars (\$250) per truck delivery
8(B)	Provide requested records	Two hundred fifty dollars (\$250) per business day until completed
11(A)	Provide only those Commercial Franchise Services for which Franchisee has applied	Two hundred fifty dollars (\$250)
11(C)	Collect at unauthorized locations and/or during unauthorized hours five (5) or more times in a twelve (12) month period	Two hundred fifty dollars (\$250)

11(D)	Label Containers; paint vehicles and/or Containers corporate color	Fifty dollars (\$50) per business day until corrected
12(A), 12(C), Exhibit E, Parts A, B and C	Implement AB 341 Diversion Program including Tasks 1-16 in Exhibit E, Part A within the timeframe in Franchise Section 12C. Comply with the requirements of Exhibit E, Parts B and C within ninety (90) days of the events described in Part B, or within ninety (90) days of a previously operating AB 341 Program malfunctioning as required by Part C.	One thousand dollars (\$1,000) per occurrence
13(A), 13(C), Exhibit E, Parts A, B and C	Implement AB 1826 Food Scrap Diversion Program including Tasks 1-16 in Exhibit E, Part A, within the timeframe in Franchise Section 13C. Comply with the requirements of Exhibit E, Parts B and C within ninety (90) days of the events described in Part B or within ninety (90) days of a previously operating Food Scrap Diversion Program malfunctioning as required by Part C.	One thousand dollars (\$1,000)
14(A), 14(C), Exhibit E, Parts A, B and C	Implement AB 1826 Green Waste and Wood Waste Diversion Program including Tasks 1-16 in Exhibit E, Part A, within the timeframe in Franchise Section 14C. Comply with the requirements of Exhibit E, Parts B and C within ninety (90) days of the events described in Part B or within ninety (90) days of a previously operating Green Waste and Wood Waste Diversion Program malfunctioning as required by Part C.	Five hundred dollars (\$500)
15(B)	Implement Construction and Demolition Diversion Program	One thousand dollars (\$1,000)
16(A), 16(B), 16(E)	Submit complete and accurate monthly reports	One hundred dollars (\$100) per business day until corrected or completed

16(C)	Submit timely monthly reports	One hundred dollars (\$100) – if not submitted when due
		Five hundred dollars (\$500) – if not submitted w/in thirty (30) calendar days after due date
17	Designate qualified Hauler Representative; Failure of Hauler Representative to timely respond to City	Fifty dollars (\$50) per business day until completed
18(C)	Secure or maintain vehicles or vehicle equipment	One hundred dollars (\$100) per business day until completed
19	Remove, replace, or collect abandoned Container(s)	Fifty dollars (\$50) per business day until completed

*Unless otherwise designated, reference to “failure(s)” refers to each occurrence of specified breach (such as for each Customer or each Customer record entry or complaint) and not for aggregate occurrences of those breaches (such as for all Customers on a given route or day).

C. City’s Remedies Cumulative. The rights and remedies of City set forth herein shall be in addition to any and all other rights and privileges City may have, and shall not be deemed to limit any such other rights or privileges of City under this Agreement or by virtue of any law.

By placing its initials below, each party specifically confirms:

- (1) the accuracy of the statements made in Agreement Section 24; and
- (2) it has had ample opportunity to consult with legal counsel and obtain an explanation of liquidated damage provisions prior to signing this Agreement.

FRANCHISEE
Initial Here: _____

CITY
Initial Here: _____

SECTION 25. CONFIDENTIAL INFORMATION.

A. Confidential Information. In the performance of this Agreement or in contemplation thereof, the parties and their respective employees and agents may have access to private or confidential information owned or controlled by the other party and such information may contain proprietary details and disclosures. All information and

data identified in writing as proprietary or confidential by either party ("Confidential Information") and so acquired by the other party or its employees or agents under this Agreement or in contemplation thereof shall be and shall remain the disclosing party's exclusive property. The recipient of Confidential Information shall use all reasonable efforts (which in any event shall not be less than the efforts the recipient takes to ensure the confidentiality of its own proprietary and other confidential information) to keep, and have its employees and agents keep, any and all Confidential Information confidential, and shall not copy, or publish or disclose it to others, nor authorize its employees, agents or anyone else to copy or disclose it to others, without the disclosing party's written approval; nor shall the recipient make use of the Confidential Information except for the purposes of executing its obligations hereunder, and (except as provided for herein) shall return the Confidential Information and data to the first party at its request. The City's duty to maintain confidentiality as described hereunder shall be subject to the laws of the State of California.

B. Excluded Information. The foregoing conditions will not apply to information or data which is, or which becomes generally known to the public by publication or by any means other than a breach of duty on the part of the recipient hereunder, is information previously known to the recipient, is information independently developed by or for the recipient or is information generally released by the owning party without restriction.

C. Public Records Request. Should City receive a public records request, or otherwise be directed by any governmental authority to disclose any or all Confidential Information in City's possession, custody or control, City shall promptly provide notice to Franchisee of such request to allow Franchisee an opportunity to prevent disclosure.

D. Right to Injunctive Relief. Because of the unique nature of the Confidential Information, the parties agree that each party may suffer irreparable harm in the event that the other party fails to comply with any of its obligations under this Section, and that monetary damages may be inadequate to compensate either party for such breach. Accordingly, the parties agree that either party will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief to enforce the terms of this Section.

SECTION 26. ASSIGNMENT

Franchisee shall not assign, sell, subcontract, transfer or otherwise delegate its authority to perform any portion of the Commercial Franchise Services or obligations under the Franchise without prior express consent of the City Council. This prohibition includes any transfer of ownership or control of Franchisee, or the conveyance of a majority of Franchisee's stock to a new controlling interest. City's consent shall not be unreasonably withheld.

SECTION 27. MISCELLANEOUS PROVISIONS

A. Notices. Except as otherwise provided in this Agreement, all notices required by this Agreement shall be given by personal service or by deposit in the United States mail, postage pre-paid and return receipt requested, addressed to the parties as follows:

To: Public Works Director
City of Newport Beach
P.O. Box 1768
100 Civic Center Dr.
Newport Beach, CA 92660

To Franchisee: _____

Notice shall be deemed effective on the date personally served or, if mailed, three (3) calendar days after the date deposited in the mail.

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

C. Amendments. This Agreement supersedes all prior agreements and understandings between the parties and may not be modified or terminated orally, and no modification, termination or attempted waiver of any of the provisions hereof shall be binding unless in writing and signed by both parties.

D. Recitals. The Parties acknowledge that the Recitals are true and correct and are hereby incorporated by reference into this Agreement.

E. Applicable Law. The laws of the City, State of California, and applicable Federal law, shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

F. Authority. The parties signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

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

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

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

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

K. Compliance with Laws. Franchisee shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. Franchisee agrees to obtain a business license from the City in accordance with the Code. The parties hereto agree that the Franchise and this Agreement are the only authorizations to conduct Commercial Franchise Services in the City and that the issuance of a business license does not grant the Franchisee a right to conduct Commercial Franchise Services or other business in the City.

L. Conflicts of Interest. Franchisee and its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "California Political Reform Act"), which (i) requires such persons to disclose any financial interest that may foreseeably be materially affected by the work performed under this Agreement, and (ii) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest. If subject to the California Political Reform Act, Franchisee shall conform to all requirements of the California Political Reform Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Franchisee shall indemnify and hold harmless City for any and all claims for damages resulting from Franchisee's violation of this subsection.

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

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

Date: _____

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Aaron C. Harp
City Attorney

By: _____
Will O'Neill
Mayor

ATTEST:

Date: _____

FRANCHISEE:

Date: _____

By: _____
Leilani I. Brown
City Clerk

By: _____

Date: _____

By: _____

[END OF SIGNATURES]

Attachments: Exhibit A – Faithful Performance Bond
 Exhibit B – Franchise Hauler Acknowledgement
 Exhibit C – Franchisee Application Template
 Exhibit D – Insurance Requirements
 Exhibit E – Required Tasks for Implementation of Diversion Programs
 Exhibit F – Construction and Demolition Debris Diversion Program

EXHIBIT A

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

The premium charges on this Bond is \$ _____.

WHEREAS, the City of Newport Beach, State of California, has awarded to _____ hereinafter designated as the "Principal," a Non-exclusive Franchise for Commercial Solid Waste and Divertible Materials Handling Services ("Franchise Agreement") in the City of Newport Beach, in strict conformity with the Franchise Agreement on file with the office of the City Clerk of the City of Newport Beach, which is incorporated herein by this reference.

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

NOW, THEREFORE, we, the Principal, and _____, duly authorized to transact business under the laws of the State of California as Surety (hereinafter "Surety"), are held and firmly bound unto the City of Newport Beach, in the sum of _____ (\$_____) lawful money of the United States of America, to be paid to the City of Newport Beach, its successors, and assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, or assigns, jointly and severally, firmly by these present.

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

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

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

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

This Faithful Performance Bond shall be extended and maintained by the Principal in full force and effect for seven (7) years following the date Principal is granted the Franchise Agreement by City.

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

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

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

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

Date: _____

By: _____

Aaron C. Harp
City Attorney

*NOTARY ACKNOWLEDGMENTS OF
CONTRACTOR AND SURETY MUST BE ATTACHED*

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

—

Signature

(seal)

ACKNOWLEDGMENT

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

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

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

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

WITNESS my hand and official seal.

Signature

(seal)

EXHIBIT B

FRANCHISE HAULER ACKNOWLEDGEMENT

THIS FRANCHISE HAULER ACKNOWLEDGMENT is entered into as of this 8th day of October, 2020 (the "Acknowledgment"), by and between the City of Newport Beach, a charter city and municipal corporation (the "City"), and _____ (the "Franchise Hauler").

WITNESSETH

WHEREAS, the City and the Franchise Hauler have heretofore entered into an agreement entitled NONEXCLUSIVE FRANCHISE AGREEMENT BETWEEN THE CITY OF NEWPORT BEACH AND _____ FOR COMMERCIAL SOLID WASTE AND DIVERTIBLE MATERIALS HANDLING SERVICES (the "Franchise"); and

WHEREAS, the Franchise provides for the collection and disposal of certain municipal commercial solid waste as described therein ("Franchise Waste") generated within the City; and

WHEREAS, the County of Orange (the "County") owns, manages and operates a sanitary landfill disposal system for municipal solid waste generated within the County; and

WHEREAS, the City and the County have heretofore entered into a Waste Disposal Agreement as of 2009, and subsequent Amendment to the Waste Disposal Agreement dated April 28, 2016 (collectively, the "Disposal Agreement"), determining that the execution of such Disposal Agreement will serve the public health, safety and welfare of the residents of the City and County, by maintaining public ownership and stewardship over the Orange County Landfill Disposal System (the "Disposal System"); and

WHEREAS, under the Disposal Agreement, the County has agreed to provide long-term disposal of all municipal solid waste generated within the City and the City has agreed to exercise all legal, and contractual power which it possesses from time to time to deliver or cause the delivery of such waste to the Disposal System; and

WHEREAS, the provisions of the Waste Disposal Agreement which guarantee capacity for the long term disposal of waste at specified rates generated in the City provide significant benefits to the Franchise Hauler; and

WHEREAS, notwithstanding any Franchise provisions to the contrary, the Franchise Hauler explicitly acknowledges the aforementioned benefits to the City, the County and the Franchise Hauler in providing for the disposal of all Franchise Waste to the Disposal System; and

WHEREAS, the City and the Franchise Hauler desire to enter into this Acknowledgment to assure that the City and the Franchise Hauler will be entitled to the benefits of the Waste Disposal Agreement and to assure conformity with the waste

delivery obligations which have been agreed to by the City under the Disposal Agreement through the delivery of waste by the Franchise Hauler to the Disposal System; and

WHEREAS, the Franchise Hauler's agreement to deliver Franchise Waste to the Disposal System under this Acknowledgment is given in consideration of the Franchise Hauler's right to receive the Contract Rate for such disposal as provided in the Disposal Agreement.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Capitalized terms used and not otherwise defined herein are used as defined in the Disposal Agreement.
2. The Franchise Hauler hereby waives any right which it may possess under applicable law to contest on any ground, constitutional, statutory, case law, administrative or otherwise, (a) the right, power or authority of the County or the City to enter into or perform their respective obligations under the Disposal Agreement, (b) the enforceability against the County or the City of the Disposal Agreement, or (c) the right, power or authority of the City to deliver or cause the delivery of all Controllable Waste to the Designated Disposal Facility in accordance with this Acknowledgment.
3. The City and the Franchise Hauler each hereby represent that this Acknowledgment has been duly authorized by all necessary action of their respective governing bodies.
4. The Franchise Hauler shall deliver or cause to be delivered all Controllable Waste (including all residue from the processing by any means, wherever conducted, of Controllable Waste) to the Disposal System, and shall otherwise assist the City in complying with its obligations under the Waste Disposal Covenant in Section 3.1 of the Disposal Agreement.
5. The Franchise Hauler shall not haul Controllable Waste to any materials recovery facility, composting facility, intermediate processing facility, recycling center, transfer station or other waste handling or management facility unless the contract or other agreement or arrangement between the Franchise Hauler and the operator of such facility is sufficient in the opinion of the County to assure that the Residue from such facility constituting City Acceptable Waste (or Tonnage equivalencies) and the City Acceptable Waste transferred by such facility shall be delivered to the Designated Disposal Facility in compliance with the Waste Disposal Covenant.

6. The Franchise Hauler shall pay the Contract Rate imposed by the County at the Designated Disposal Facility for the disposal of all Controllable Waste, which rate shall be subject to potential adjustment necessary to reflect the circumstances set forth in the Disposal Agreement.
7. Nothing in this Acknowledgment is intended to restrict any right or responsibility explicitly given the Franchise Hauler in the Franchise to recycle City Acceptable Waste, except as provided in paragraph 5 above with respect to Residue from any such recycling operations.
8. The obligations of the Franchise Hauler under this Acknowledgment shall apply notwithstanding any provision of the Franchise which may conflict herewith.
9. This Acknowledgment may be enforced by the City by any available legal means. In any enforcement action by the City, the burden of proof shall be on the Franchise Hauler to demonstrate compliance herewith.
10. This Acknowledgment shall be in full force and effect and shall be legally binding upon the City and Franchise Hauler from the date hereof and shall continue in full force and effect until the earlier of (i) the end of the term of the Franchise or (ii) the end of the term of the Disposal Agreement.
11. The City and Hauler agree that the County shall be an express third party beneficiary of this Acknowledgment, and shall be entitled to independently enforce the obligations of the Franchise Hauler hereunder.
12. Franchise Hauler agrees to assist the County in verifying tonnage collected by the Franchise Hauler and providing information required by the County. Franchise Hauler will provide upon request refuse tonnage collected within the County, and outside the County (if relevant to confirming tonnage origination), separated by jurisdiction, by load type (residential, commercial, roll-off box), and by facility to which it was delivered (specify which landfill or transfer station). Franchise Hauler will provide customer service levels and route lists. Franchise Hauler will cooperate with County audits to verify reported origin of tonnage by making records and personnel available to the County and/or its auditors.

EXHIBIT C

FRANCHISE APPLICATION TEMPLATE



CITY OF NEWPORT BEACH

SOLID WASTE AND DIVERTIBLE MATERIALS FRANCHISE INFORMATION AND APPLICATION

2020 UPDATE

Requirements for Solid Waste and Divertible Materials Franchise

Section 12.63.030 of the Newport Beach Municipal Code states:

No person shall provide commercial solid waste handling services or conduct a solid waste enterprise in the City without having first been awarded a franchise and entered into a franchise agreement with the City. The franchise agreement shall include terms and conditions for the commercial solid waste handling services in the City. The franchise shall be in addition to any business license or permit otherwise required by the City. All the franchisees shall comply with all of the requirements of the City Charter, the ordinance granting the franchise, the franchise agreement and this chapter.

Procedure for Obtaining a Solid Waste and Divertible Materials Franchise

Application. Solid Waste Franchise applicants are required to:

- Submit the written application in a complete form, including all attachments;
- Pay a non-refundable application fee of \$884.00;
- Provide an insurance certificate(s) evidencing coverage that meets requirements listed in the franchise agreement and insert the certificates as Attachment 5 to the application.
- Carefully review the 2020 Non-Exclusive Franchise Agreement.

City Approval Process. Municipal Operations Division staff will review the application for completeness and evaluate the submitted collection and diversion plans. Following this analysis, staff will notify the applicant of any deficiencies in the application. If there are no deficiencies, the City will include your firm in a resolution of intent presented to the City Council at the March 10, 2020 meeting. Upon approval of the resolution by the City Council, the City will prepare the franchise agreement for signature by your company and email a copy of the franchise to your company. Prior to the City sending the final version of the franchise to your company for signature, the City will 1) fill in your company's corporate name and address as shown in Section 1 of this application and 2) incorporate this completed application as Exhibit C to the franchise agreement. Your company will be required to download, print, and execute two (2) original, paper-versions of the signed franchise agreement and submit them to the City **by March 27, 2020** (hand delivery or priority/overnight delivery is recommended). The City must have the signed franchise agreement from your company in hand prior to City Council consideration of your franchise. After the resolution of intent is approved by the City Council, a separate Ordinance granting the new 2020 franchises will be considered by the City Council on April 28, 2020. A second reading of the Ordinance will be scheduled for the May 12, 2020 City Council meeting. If approved, the new



City of Newport Beach Solid Waste Franchise Application

franchise will become effective 30 days after the second reading of the Ordinance. **Please note that by the terms of the new 2020 franchise and the Ordinance, once the agreement is signed by your company, approved and signed by the City, and the Ordinance becomes effective (which will be 30 days after the second reading of the Ordinance), any existing or prior franchise agreement between your company and the City will be automatically terminated simultaneously with the new 2020 franchise becoming effective.**

Where to Find More Information

Applicants should review Chapter 12.63 of the Newport Beach Municipal Code (see link below) and the complete information included in the application packet. Applicants should also review Sections 6.04 and 6.06 of the Newport Beach Municipal Code which contain additional solid waste and divertible materials collection and handling requirements. For more information, the applicant may contact the Municipal Operations Division at (949) 644-3055.

<https://www.codepublishing.com/CA/NewportBeach/#!/NewportBeach12/NewportBeach1263.html#12.63>

Where to Send a Completed Application

Please do not bind or place the application in a protective covering. Applicants should retain a copy of completed materials for their records. Please submit the completed application, including application fee payment, to:

City of Newport Beach
Municipal Operations Division
100 Civic Center Drive
Newport Beach, CA 92660

Alternatively, the application may be hand delivered to the Municipal Operations Department administrative office:

City of Newport Beach
Corporation Yard
592 Superior Avenue, Building A
Newport Beach, CA 92663

To expedite the City's processing of your company's franchise application, you may submit an electronic version of your application to the following email address provided a paper copy, with the application fee, is concurrently mailed or delivered to one of the two addresses noted above:

khinckley@newportbeachca.gov

Authorized Signatories



City of Newport Beach
Solid Waste Franchise Application

Items below only apply if entering into this Agreement as a Corporation, LLC or with a Fictitious Business Name ("DBA"):

1. Corporations. If the Contractor is a corporation (including any non-profit corporation), two (2) officers of the corporation (on the Board of Directors) must sign the contract (Corp. Code § 313). One officer from column A and one officer from column B must sign. It is permissible for one signatory to hold two officer titles. In this instance, one signature is sufficient if both titles are listed.

A.	B.
President	Secretary
Any Vice President	Chief Financial Officer
Chairman of the Board	Any Assistant Secretary
	Any Assistant Treasurer

If the corporation cannot provide the above signatures, it may have one officer sign only if an authorizing resolution from the Board of Directors is also provided (Corp Code § 314).

2. Limited Liability Company. If the limited liability company has officers, see the requirements applicable to corporations above. If the limited liability company has members and managers, as opposed to officers, two (2) managers/members must sign or one managing member may sign if the articles of organization provide that such member has authority to execute documents on behalf of the limited liability company (Corp Code § 17703.01(b)(2) and (d)).
3. Fictitious Business Name. If doing business under a Fictitious Business Name (i.e., FBN or DBA), please provide a copy of the fictitious business name statement filed with the County.

These documents must be included in the application, as they will be required for developing the franchise agreement.

Business Tax Certificate (aka Business License)

All persons operating a solid waste enterprise in Newport Beach must apply to the City's Revenue Division and receive a City Business Tax Certificate to begin and/or continue operations. A valid Business License issued by the City of Newport Beach must be submitted with the application as Attachment 1.

For more information, please see www.newportbeachca.gov/business

Public Information

Information provided by the applicant(s) for a Solid Waste and Divertible Materials Franchise will be made available for public review unless otherwise exempted by law.



City of Newport Beach
Solid Waste Franchise Application

Section 1: Company Information

Legal Name and DBA*:			
Business Address*:			
Business Phone:		Business Email	
Contact name:		Phone	
Email:			
Newport Beach Business License # (include copy of current license as Attachment 1):			
Website:			

*These will be used to prepare the 2020 non-exclusive franchise agreement for signature by your company. Please provide the exact corporate or legal name under which your company will sign the actual franchise agreement.

Section 2: Type of Organization

<input type="checkbox"/>	Individual (owner/operator)	<input type="checkbox"/>	Limited partnership	<input type="checkbox"/>	Joint venture
<input type="checkbox"/>	Husband and wife	<input type="checkbox"/>	Limited liability company	<input type="checkbox"/>	Unincorporated association other than a partnership
<input type="checkbox"/>	Corporation	<input type="checkbox"/>	Business trust	<input type="checkbox"/>	Public agency
<input type="checkbox"/>	General partnership	<input type="checkbox"/>	Co-partners		

Section 3: Desired Franchise

Tier 1 (MSW and Divertible Materials)	<input type="checkbox"/>
MSW	<input type="checkbox"/>
Dirty MRF Processing	<input type="checkbox"/>
Source-separated Dry Recyclables	<input type="checkbox"/>
Food Scraps	<input type="checkbox"/>
Green / Wood Waste	<input type="checkbox"/>
Tier 2 (Construction and Demolition)	<input type="checkbox"/>

Section 4: Name of Signatories

Name	Title	Corporate Resolution Needed		
		Yes	No	N/A
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Name	Title	Corporate Resolution Needed		
		Yes	No	N/A
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



City of Newport Beach
Solid Waste Franchise Application

Section 5: Solid Waste Collection and Recycling Plans

Applicants must complete a listing of solid waste collection and diversion plans (Attachment 2) The form must include, at a minimum, each waste stream; the type/sizes of containers to be utilized; description of how waste is processed; a listing of any facility where material may be taken; and the ultimate disposition of any non-processible portions of the waste stream.

☐ I have completed Attachment 2 and included it in this application packet.

Section 6: List of Vehicles to Be Utilized Under the Franchise and Certification of Installed Collision Avoidance Systems for Each Vehicle

Applicants must list all vehicles to be used in performing services in the City in Attachment 3. Further, Applicants must certify that they have installed the collision avoidance system(s) on all vehicles in service within the City as required by Section 18.C 4. **Note:** All vehicles must meet the equipment standards listed in the 2020 franchise agreement, including, but not limited to, those listed in Section 18 of the agreement.

☐ I have completed Attachment 3 and included it in this application packet.

Section 7: Vehicle and Container Color Scheme

The franchise agreement requires all vehicles and containers to be painted uniform colors.

Color of vehicles:

Color of containers:

Section 8: Designation of Hauler Representative

The franchise agreement requires that waste haulers designate a Hauler Representative to assist in managing your recycling and diversion programs and manage reporting requirements. This person will also be the main contact for City staff and the hauler's customers in Newport Beach. Please provide the following information on the hauler representative:

Name:

Title/position:

Direct phone number:

Email address:

Section 9: Additional information Required with Submission of Franchise Application

1. The applicant must complete Form 200/200D/200P as appropriate, describing officers, partners, etc., having legal responsibility for the franchise agreement.

☐ I have completed the Form 200/200D/200P and included it as Attachment 4 to this application packet.

2. A current insurance certificate conforming to the requirements listed in the franchise agreement, including the applicable endorsements.

☐ I have included the applicable insurance certificates as Attachment 5 to this application packet.

3. The applicant hereby represents that he/she read the 2020 non-exclusive franchise agreement and the company has the experience, capability, and all required vehicles, personnel, and equipment to provide the services indicated in Section 3 of this application.

4. If your company has not conducted solid waste handling services in the City of Newport Beach for the past three (3) years, please provide information from the previous calendar year including tonnage collected by activity (residential, commercial, industrial, construction and demolition); corresponding revenue for each activity; tonnage recycled or caused to be recycled by applicant's collection, transportation, and/or disposition of materials collected and categorized by method of recycling, material types recycled, and the tonnage disposed by facility utilized; and a listing of all California jurisdictions where your firm was authorized to provide, and did provide, collection services.

☐ Our firm has not provided solid waste services to Newport beach in the past three years. I have included the requested documentation as Attachment 6.

☐ Our firm has conducted solid waste handling services in the City of Newport Beach within the past three (3) years.



City of Newport Beach
Solid Waste Franchise Application

Section 10: Accounting Practices Disclosures

In the past year, have you or your firm:		
1. Maintained all books of account pursuant to generally accepted accounting principles (GAAP)?		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
2. Generated all income statements using either a cash or accrual accounting method?		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
3. Truthfully and accurately reported all tonnage and/or the disposition of all materials collected in any jurisdiction where you are authorized to perform solid waste services?		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A

Section 11: Authorized Signature(s) of Applicant

THE UNDERSIGNED HEREBY DECLARES THAT THE INFORMATION INCLUDED ON THIS APPLICATION IS TRUE AND CORRECT AND THAT THE APPLICANT HAS READ AND UNDERSTOOD HIS OR HER OBLIGATIONS UNDER ANY FRANCHISE OBTAINED BASED ON THIS APPLICATION.

- A. If the applicant is a sole proprietor, the application shall be signed by the proprietor.
- B. If the application is a partnership, the application shall be signed by each partner.
- C. If the application is a firm, association, corporation, county, city, public agency, or other governmental entity, the application shall be signed by the chief executive officer or the individual legally responsible for representing the agency.
- D. The applicant(s) affirms that all facts and representations contained in this application and supporting documents are true and correct.

(Signature) (Title) (Date)

(Signature) (Title) (Date)

(Signature) (Title) (Date)



City of Newport Beach
Solid Waste Franchise Application

Attachment 1: Copy of Valid City of Newport Beach Business License



City of Newport Beach
Solid Waste Franchise Application

Attachment 2: Solid Waste Collection and Diversion Plan

Service Tier (I or II)	Waste Stream	Type and Size(s) of Containers	How is it processed?	Processing Facility (Name and Address)	Solid Waste Information System (SWIS) Number of Facility	Disposal Location of Non-Recyclable Portion	Comments

Applicants Name:



City of Newport Beach
Solid Waste Franchise Application

Attachment 3: List of Vehicles to be Provided under the Franchise and Certification of Installed Collision Avoidance Technology

An electronic version can be accessed here: <http://bit.ly/NewportBeachVehiclesForm>

Ref #	General Vehicle Information						Collision Avoidance Information						Mirror Requirements		
	Vehicle Type (i.e. front-loader FEL, side-loader ASL, rear-loader RL, roll-off RO)	Vehicle Number	17-digit Vehicle Identification Number (aka VIN Number)	Route Assignment (i.e. commercial MSW, commercial recycling, commercial organics, mixed C&D, etc.)	Model Year	Weight Rating	Name of Collision Avoidance System	Manufacturer of Collision Avoidance System	Date Installed	Name of Person who Installed System	Name of Person(s) who tested the system to ensure proper installation and operation of system	Photo Number(s) of Exterior of Vehicle with Collision Avoidance Sensors	Photo Number(s) of Interior of Vehicle with Collision Avoidance Display	Convex Mirrors Installed Y/N (If the gross vehicle weight rating exceeds 26,000 lbs.)	Photo Number(s) of Exterior Mirrors
1															
2															
3															
4															
5															
6															
7															
8															
9															
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30															

I, _____, certify under penalty of perjury, that the above information and the attached photographs are true and correct.

Signature _____ Date _____

Title _____

Photographs ____ through ____ are attached and incorporated herein by this reference.

Attachment 4: Form 200 and Form 200P



City of Newport Beach
Solid Waste Franchise Application

**City of Newport Beach
Solid Waste Franchise Application – Information
Attachment 5: Insurance Certificates**

EXHIBIT D

INSURANCE REQUIREMENTS

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

Franchisee 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 Contractor performs the Project and/or Services contemplated by this Agreement.

B. General Liability Insurance. Franchisee shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than Two Million Dollars (\$2,000,000) per occurrence, Four Million Dollars (\$4,000,000) general aggregate and Four Million Dollars (\$4,000,000) completed operations 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) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract.

C. Automobile Liability Insurance. Franchisee 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 the Franchisee 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 Ten Million Dollars (\$10,000,000) combined single limit for each accident.

D. Pollution Liability Insurance. Franchisee shall maintain pollution liability insurance covering all of the Franchisee's operations to include onsite and offsite coverage for bodily injury (including death and mental anguish), property damage, non-owned disposal site liability, defense costs, cleanup costs, and pollution conditions that arise from or in connection with the transportation (including loading and unloading) by or on behalf of the Franchisee, of any waste or waste materials. Coverage shall be provided for both sudden and accidental and gradual and continuous pollution events with limits no less than \$5,000,000 each loss and \$10,000,000 in the aggregate. The policy shall not exclude any hazardous materials for which there is an exposure. If all or any portion of the pollution liability coverage is available only on a claims-made basis, then a 10-year extended reporting period shall also be purchased. The policy shall not contain any provision or exclusion (including any so-called "insured versus insured" exclusion or "cross-liability" exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.

4. 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 Franchisee performs the Services contemplated by this Agreement or shall specifically allow Franchisee or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Franchisee hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.

B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, but not including professional liability (if required), shall provide or be endorsed to provide that City a 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 Franchisee performs the Services contemplated by this Agreement shall be included as additional 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) days notice of cancellation (except for nonpayment for which ten (10) 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. Franchisee shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a

waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Franchisee shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

B. City's Right to Revise Requirements. The City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Franchisee sixty (60) days advance written notice of such change.

C. Right to Review Subcontracts. Franchisee agrees that upon request, all contracts with subcontractors or others with whom Franchisee enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such contracts will not impose any liability on City, or its employees. Franchisee shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Franchisee 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 Contract Provisions. Franchisee acknowledges and agrees that any actual or alleged failure on the part of the City to inform Franchisee of non-compliance with any requirement imposes no additional obligations on the 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.

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 Franchisee 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 Franchisee'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 Franchisee or reimbursed by Franchisee upon demand.

H. Timely Notice of Claims. Franchisee shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Franchisee'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. Franchisee's Insurance. Franchisee 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 Franchise.

EXHIBIT E

REQUIRED TASKS FOR IMPLEMENTATION OF DIVERSION PROGRAMS

A. For purposes of complying with Sections 12 through 14 of this Agreement Franchisee shall complete all of the following to the satisfaction of the City:

1. Franchisee has contacted the Authorized Customer Representative. For purposes of this section, the "Authorized Customer Representative" is the Person who subscribes to and pays for any service provided by the Franchisee and/or for any Municipal Solid Waste Collection or Diversion Services provided by any other entity. The Authorized Customer Representative may be the owner or on-site manager; or if Customer is a corporation with multiple locations and centralized decision-making, the manager with decision-making authority; or in the case of a broker or waste arranger, the Authorized Customer Representative is the Person who has the decision-making authority to subscribe to and pay for Municipal Solid Waste Collection and Diversion Services. Franchisee shall provide written notice of the requirements of the Act and the City Code for the Customer to have in place specified Diversion Program(s) as of the date(s) applicable to that Customer. If applicable, Franchisee shall also provide written notice of the requirements of CalGreen.

2. Franchisee shall estimate the quantities of Municipal Solid Waste, Recyclable Materials, Food Scraps (for businesses), Green Waste/Wood and any other Divertable Materials generated by the Customer, calculate the appropriate number and size of Containers required for storage, calculate the recommended frequency of service to optimize cost for the Customer, prepare a written Diversion Plan containing estimated costs and recommended levels of service, and submit the Plan to the Authorized Customer Representative. Franchisee shall discuss the Plan with the Authorized Customer Representative and obtain the Authorized Customer Representative's approval to implement the finalized Diversion Plan.

3. If the Customer is generating Food Scraps, Franchisee shall provide the Authorized Customer Representative with information on the available edible food donation programs in City including coordinators, vendors and non-profit agencies, as directed by City, and shall factor any applicable edible food donation opportunities into the calculations for sizing of Food Scrap Containers and frequency of Food Scrap Collection service. Franchisee shall cooperate fully and in good faith with all edible food donation efforts of City, all third parties and Customer.

4. If the Customer is already Diverting Recyclable Materials and/or Food Scraps using an in-house program, backhauling, on site processing, self-hauling, or donating or selling materials to a third party, Franchisee shall notify City so City can obtain a completed and signed "Self-Certification Form" for that program. Franchisee shall record the notification to City on the "Exhibit E Tracking Document" described in subpart D herein. City will obtain a completed Self-

Certification Form, evaluate the information provided and take steps to verify the in-house program(s). City will inform the Franchisee of City's decision regarding the adequacy of the in-house program(s).

- (i) In the event City notifies the Franchisee that the in-house program(s) are inadequate, Franchisee shall comply with all the requirements contained in Sections 12, 13, 14 and in this Exhibit E to fully implement all Diversion Programs required by this Franchise.
- (ii) In the event City notifies the Franchisee that some, but not all, of the in-house program(s) are adequate, (a) Franchisee shall be relieved from its responsibility to implement the Diversion Programs targeting materials that are being Diverted by the City-verified in-house program(s) for a period of 12 months; and (b) Franchisee shall comply with all the requirements contained in this Exhibit E to fully implement all Diversion Programs for Recyclable Materials, Food Scraps, Green Waste and Wood Waste not adequately Diverted through the City-verified in-house program(s). At the end of twelve (12) months, Franchisee shall submit a written request to City to determine whether the Customer filed a new Self-Certification Form and whether the City has determined that any of the Customer's in-house program(s) are adequate. If so, Franchisee shall record this in the Exhibit E Tracking Document and shall be relieved from its responsibility to implement the Diversion Programs targeting materials that are being Diverted by the City-verified in-house program(s) for an additional period of 12 months. Franchisee shall continue to provide and maintain all Diversion Programs required by this Franchise for which there is no City-verified in-house program(s). This process shall be repeated by Franchisee annually as long as the Customer is served by the Franchisee at the same premises. In the event a Customer ceases operation of any or all of its in-house program(s) and/or the City makes a determination that any or all of the previously City-verified in-house program(s) are no longer operating or are no longer adequate, then Franchisee shall comply with all the requirements contained in Sections 12, 13, 14 and in this Exhibit E to fully implement all Diversion Programs required by this Franchise.
- (iii) In the event City notifies the Franchisee that the in-house program(s) are adequate, Franchisee shall be relieved from its responsibility to implement the Diversion Programs targeting materials that are being Diverted by the City-verified in-house program(s) for a period of 12 months. At the end of twelve (12) months, Franchisee shall submit a written request to City to determine whether the Customer filed a new Self-Certification Form and whether the City has determined that the in-house program(s) are adequate. If the City determines any or all of the in-house programs are adequate, Franchisee shall record this in the Exhibit E Tracking Document and shall be relieved from its

responsibility to implement the Diversion Programs targeting materials that are being Diverted by the City-verified in-house program(s) for an additional period of 12 months. Franchisee shall continue to provide and maintain all Diversion Programs required by this Franchise for which there is no City-verified in-house program(s). This process shall be repeated by Franchisee annually as long as the Customer is served by the Franchisee at the same premises. In the event a Customer ceases operation of any or all of its in-house program(s) and/or the City makes a determination that any or all of the in-house program(s) are no longer adequate, then Franchisee shall comply with all the requirements contained in Sections 12, 13, 14 and in this Exhibit E to fully implement all Diversion Programs required by this Franchise.

5. If the Customer is using a landscaping company to haul away Green Waste/Wood, Franchisee shall notify City so City can obtain a completed and signed "Landscaper Self-Certification Diversion Form" for Green Waste/Wood at that Premises. Franchisee shall record the notification to City on the Exhibit E Tracking Document. City will obtain a completed Self-Certification Form, and take steps to verify the landscaper program(s). City will inform the Franchisee of City's decision regarding the adequacy of the landscaper program(s).

- (i) In the event City notifies the Franchisee that the landscaper program(s) are inadequate, Franchisee shall comply with all the requirements contained in Section 14 and in this Exhibit E to fully implement all Diversion Programs for Green Waste/Wood required by this Franchise.
- (ii) In the event City notifies the Franchisee that some, but not all, of the landscaper program(s) are adequate, (a) Franchisee shall be relieved from its responsibility to implement the Diversion Programs targeting Green Waste and/or Wood Waste that is being Diverted by the City-verified landscaper program(s) for a period of 12 months; and (b) Franchisee shall comply with all the requirements contained in Section 14 and in this Exhibit E to fully implement all Diversion Programs for Green Waste and/or Wood Waste not adequately Diverted through the City-verified landscaper program(s). At the end of twelve (12) months, Franchisee shall submit a written request to City to determine whether the Customer filed a new "Landscaper Self-Certification Form" and whether the City has determined that any or all of the Customer's landscaper program(s) are adequate. If the City has determined that any or all of the in-house program(s) are adequate, Franchisee shall record this in the Exhibit E Tracking Document and shall be relieved from its responsibility to implement the Diversion Programs targeting Green Waste and/or Wood Waste that are being Diverted by the City-verified landscaper program(s) for an additional period of twelve (12) months. Franchisee shall continue to provide and maintain all Diversion Programs required by this

Franchise for which there is no City-verified in-house program(s). This process shall be repeated by Franchisee annually as long as the Customer is served by the Franchisee at the same premises. In the event a Customer ceases operation of any or all of its landscaper program(s) and/or the City makes a determination that any or all of the previously City-verified landscaper program(s) are no longer operating or are no longer adequate, then Franchisee shall comply with all the requirements contained in Section 14 and in this Exhibit E to fully implement all Diversion Programs for Green Waste and Wood Waste required by this Franchise.

- (iii) In the event City notifies the Franchisee that the landscaper program(s) are adequate, Franchisee shall be relieved from its responsibility to implement the Diversion Programs targeting Green Waste and Wood Waste that are being Diverted by the City-verified landscaper program(s) for a period of twelve (12) months. At the end of twelve (12) months, Franchisee shall submit a written request to City to determine whether the Customer filed a new "Landscaper Self-Certification Form" and whether the City has determined that the landscaper program(s) are adequate. If so, Franchisee shall record this in the Exhibit E Tracking Document and shall be relieved from its responsibility to implement the Diversion Programs targeting Green Waste and Wood Waste that are being Diverted by the City-verified landscaper program(s) for an additional period of twelve (12) months. This process shall be repeated by Franchisee annually as long as the Customer is served by the Franchisee at the same premises. In the event a Customer ceases operation of its landscaper program(s) and/or the City makes a determination that the landscaper program(s) are no longer adequate, then Franchisee shall comply with all the requirements contained in Section 14 and in this Exhibit E to fully implement all Diversion Programs for Green Waste and Wood Waste required by this Franchise.

6. In the event Franchisee has taken all required actions and completed all required tasks in Steps 1 through 5 herein, and the Authorized Customer Representative has refused the service or has refused to implement all of the recommended programs in the Diversion Plan(s) prepared by the Franchisee, the Franchisee shall notify the City of the Customer's refusal. The Franchisee shall request that the City or its agent accompany the Franchisee on a site visit to the Customer's premises to meet with the Authorized Customer Representative to explain the requirements of the Act and the City Code that require implementation of the Diversion Program(s) described in the Plan prepared by the Franchisee and submitted to the Authorized Customer Representative in Step 2. If, after a site visit with the City and the Franchisee, the Authorized Customer Representative continues to refuse to implement the recommended Diversion Program(s) contained in the Plan submitted to the Authorized Customer Representative in Step 2, the Franchisee shall include details about the meeting date, attendees, and the Customer's decision in Franchisee's next monthly Exhibit E Tracking

Document submittal. Franchisee shall fully and completely cooperate with, and reinforce, City's efforts to enforce the City Code and to obtain the Authorized Customer Representative's approval to implement the required Diversion Program(s).

7. In the event City is successful in obtaining the recalcitrant Authorized Customer Representative's approval to implement the required Diversion Program(s), City will notify the Franchisee and the Franchisee shall proceed to implement the Diversion Program(s) as described in the Diversion Plan prepared in Step 2 hereof, by completing implementation Steps 1 through 16 of this Exhibit E.

8. In the event the Customer initially approved the Diversion Program plan prepared by the Franchisee in Step 2, and Franchisee has completed Steps 3, 4 and 5, Franchisee shall proceed to implement Steps 9 through 16.

9. Franchisee shall deliver the appropriate type(s) and size(s) of Containers to the Customer's premises for storage of Single Material Recyclables and Single Stream Recyclable Materials. In the case of a Food Scrap Generator, Franchisee shall also provide the appropriate type(s) and size(s) of Containers for storage and collection of Food Scraps. If the Customer is generating Green Waste/Wood the Franchisee shall provide the appropriate type(s) and size(s) of Containers for storage and collection of Green Waste/Wood.

10. Franchisee shall Collect the Recyclable Materials, Food Scraps, and Green Waste/Wood (as applicable) from the Customer's Containers at the frequency of Collection required to prevent litter, vectors, odors and Contamination of Divertable Materials in Containers and is, at a minimum, performing Collection of Recyclable Materials and Green Waste/Wood at least once each week. In the case of a Food Scrap Generator, Franchisee is Collecting the Food Scraps one (1) to six (6) times each week as needed to prevent litter, vectors, odors and Contamination of Divertable Materials in Containers.

11. Franchisee shall evaluate and reduce the level of the Customer's Municipal Solid Waste Collection service to complement the separate Collection of Recyclable Materials, Green Waste/Wood and Food Scraps. Franchisee shall check back with the Authorized Customer Representative and make at least two (2) additional on-site visits to determine if the initial sizing of the Containers and frequency of service is optimal for the Customer. Franchisee shall recommend appropriate adjustments as needed to the Authorized Customer Representative and implement all adjustments agreed to by the Authorized Customer Representative.

12. Franchisee has provided employee education and training materials to the Customer (or in the case of Multifamily Dwellings, Gated Communities, HOA's and mobile home parks, to all management) explaining (a) the requirements of the Act and of the City Code, (b) the operation of each Diversion Program and (c) specifically what Divertable Materials may be placed in the Recycling

Container(s) and the Green Waste/Wood Containers and what materials are to be placed in the Municipal Solid Waste Container(s). In the case of a Food Scrap generator, Franchisee shall explain what Food Scrap materials are to be placed in the Food Scrap Container. Employee/management training shall include at least one on-site training conducted by the Franchisee for all management and all employees of Customer. If there are multiple shifts, or if management and/or employees work on different days, Franchisee shall conduct multiple trainings until all management and employees have been trained. Internal containers for the Divertable Materials are to be provided by the Customer, pursuant to the City Code. If directed by the City, Franchisee shall provide City-approved training posters, signage, and stickers/labels for the internal Containers showing what materials are allowed in each. Franchisee shall provide training and training materials in English and in any other language requested by the Authorized Customer Representative.

13. Franchisee shall make at least two (2) follow-up site visits to confirm the Diversion Program(s) is/are operating optimally within the first two weeks after program initiation. (These site visits are in addition to the site checks to confirm Municipal Solid Waste quantities and optimization of Municipal Solid Waste service described in Step 11 above.) Franchisee shall respond to the Customer's questions and to any complaints and shall promptly and successfully resolve all questions and complaints.

14. Within ninety (90) days after implementation of each Diversion Program at the premises of the Customer, Franchisee shall ensure that the programs are operating effectively such that the Municipal Solid Waste Container(s) at the premises contain no more than twenty percent (20%) Recyclable Materials and Food Scraps (combined), and the Recyclable Materials Container(s) contain no more than ten percent (10%) Municipal Solid Waste and Food Scraps, combined (if the Customer generates Food Scraps). If the Customer is participating in the Food Scrap Diversion Program, the Food Scrap Container(s) shall contain no more than ten percent (10%) of any non-food materials. If these performance standards are not being achieved, Franchisee shall work with the Customer, Authorized Customer Representative, owner(s), manager(s) and employees as needed to re-train, troubleshoot and otherwise provide technical assistance to ensure the Contamination standards described herein are met.

15. Franchisee shall conduct a minimum of one (1) annual on-site review of the Diversion Plan prepared for the Customer in Step 2, and of each Diversion Program at each Customer, and conduct annual re-training for all employees, residents and tenants (that meets all of the requirements listed for the initial training required in Step 12). Franchisee has conducted troubleshooting for each Diversion Program and ensure that each Diversion Program is robust and successfully Diverting the targeted materials within the Contamination limits identified in Step 14.

16. In the event the Customer has a functioning Diversion Program that has been implemented by the Franchisee through the completion of all required

actions and tasks in steps 1 through 15 and the Diversion Program(s) is not successfully Diverting all targeted Material(s) and/or is not meeting the Contamination performance standards in Step 14, the non-compliant Customer shall be reported to City on the Exhibit E Tracking Document in the section labeled "Non-Compliant Customers Referred to City for Compliance Action Under Newport Beach Municipal Code". City will contact the Customer concerning the requirements of the Act and the City Code. This may include warnings to the Customer, Notice of Violation, fines and/or other enforcement actions. If the Authorized Customer Representative agrees to take all necessary steps to fully implement the Diversion Program(s) as required by the Act and the City Code, City will refer the Customer back to the Franchisee for additional on-site work, training of the Customer's management and employees, troubleshooting and all Steps in this Exhibit E required to achieve full implementation of the program(s). In such event, the Customer shall be removed from the list of "Non-Compliant Customers Referred to City for Compliance Action Under Newport Beach Municipal Code" in the Exhibit E Tracking Document. If the Authorized Customer Representative continues to refuse to take the steps necessary to fully implement one or more of the required Diversion Programs after City action, the Customer will remain on the Non-Compliant Customer list. In the City's sole discretion, upon receipt of written notice by the City, the Franchisee may be relieved of the responsibility to implement the Diversion Program(s) specified by City, at that non-compliant Customer's premises.

B. In the event there is a change of ownership, management or other change resulting in cessation of a Diversion Program(s) or causing any one of the steps herein to not be fully complied with at all times, Franchisee shall repeat all steps necessary to establish or re-establish a fully implemented Diversion Program. Franchisee shall complete re-establishment of a fully implemented Diversion Program within ninety (90) days of either (i) discovering any malfunction in the Program, or (ii) City or Customer reporting a problem to Franchisee, whichever is earlier.

C. For each Diversion Program required by this Franchise for each Customer, Franchisee shall be responsible for maintaining fully implemented, successfully operating program(s) as described herein, for as long as the Customer is served by the Franchisee. In the event a program malfunctions or is not operating optimally at any time, Franchisee shall repeat all steps included in this Exhibit E that are necessary to re-establish a fully implemented Diversion Program. Franchisee shall accomplish this within ninety (90) days of either (i) discovering any sub-optimal functioning of the Program, or (ii) City or Customer reporting such sub-optimal functioning to Franchisee, whichever is earlier.

D. Franchisee shall submit, as part of Franchisee's monthly reports described in Section 16 of the Franchise, a monthly report describing the status of each step listed herein for each type of Diversion Program, for each Customer and shall include details for each step as follows:

- Details of all Customer interactions for the month (and for prior months) including telephone calls, texts, e-mails, site visits, Authorized Representative and/or other persons contacted
- Dates of all such contacts
- Photos from the site visits and assessments conducted
- Photos of any internal Diversion Programs being conducted by the Customer
- Customer objections
- Log of contamination incidents
- Franchisee staff/representative(s) making the contacts
- Franchisee lead staff person responsible for each Customer's Diversion Program implementation.

With regard to Customers with fully implemented, successfully operating Diversion Programs, the Exhibit E Tracking Document shall include any changes in the program(s) during the preceding month (change of Containers, Container sizes, frequency of Collection) and shall also list the date of Franchisee's next planned site visit to that Customer's premises.

This portion of the monthly report shall be called the "Exhibit E Tracking Document".

E. The Exhibit E Tracking Document shall be filled in on the City-provided electronic template. No other templates or formats will be accepted. Use of any alternate format or template shall result in the monthly report being considered incomplete and inaccurate and the Franchisee shall be subject to assessment of liquidated damages pursuant to Section 24B of the Franchise.

F. Each monthly report shall also include a copy of the Diversion Plan(s) prepared by Franchisee for Customers as described in Step 2 of this Exhibit E, during the preceding month. When Containers for any Diversion Program are delivered, changed or removed, the number, sizes and types of Containers delivered, changed or removed shall be noted in the Exhibit E Tracking Document along with the frequency of service for each Container. All changes in frequency of Collection service for a Diversion Program shall also be noted in the Exhibit E Tracking Document.

G. The City Code provides a process for Customers to request a waiver from the requirements to implement Diversion Program(s) due to lack of available space and/or *de minimus* quantity(ies) of Divertible Materials. In the event a Customer served by Franchisee has applied for such a waiver, Franchisee shall note this in the Exhibit E Tracking Document.

If the waiver is approved by the City, Franchisee shall confirm this with City and shall record this in the Exhibit E Tracking Document. Franchisee shall be relieved of its duty to provide the Diversion Program(s) that are specified in the waiver granted by the City, for the effective dates of the waiver.

Annually thereafter, thirty (30) days prior to the termination date of the waiver, (or in the event of a waiver of less than twelve months, thirty (30) days prior to the termination date of the waiver) Franchisee shall submit a written request to City to determine whether the Customer applied for, and was granted a new waiver for another twelve (12) month (or shorter) period. If so, Franchisee shall record this in the Exhibit E Tracking Document and shall be relieved of its duty to provide the Diversion Program(s) that are specified in the new waiver granted by the City for the period the new waiver is effective.

This process shall be repeated by Franchisee thirty (30) days prior to the expiration date of each waiver, as long as the Customer is served by the Franchisee at the same premises.

In the event a Customer's request for a waiver is denied by the City, Franchisee shall comply with all the requirements contained in Sections 12, 13 and 14 and in this Exhibit E to fully implement all Diversion Programs required by this Franchise.

EXHIBIT F

CONSTRUCTION AND DEMOLITION DEBRIS DIVERSION PROGRAM

Franchisee shall provide all services necessary to support Customer compliance with, and City's enforcement of, the California Green Building Standards Code requirements for Diversion of Construction and Demolition Debris.

Franchisee's Construction and Demolition Debris Diversion Program shall include, but not be limited to:

- (A) Informing all Customers requesting Construction and Demolition Debris hauling services of the requirements of the California Green Building Standards Code;
- (B) Providing Containers and/or Bins, Roll Off Boxes, and Compactors as needed for storage and transport of single-material Construction and Demolition Debris, and commingled Construction and Demolition Debris;
- (C) Providing Collection service for all Containers on a timely basis, which, at a minimum, complies with Section 11 of the Agreement; and
- (D) Working and coordinating with Customer, or customer's recycling coordinator, to ensure a smooth and effective Diversion program and the Diversion of a minimum of sixty-five percent (65%) of all Construction and Demolition Debris generated at each of Customer's job sites (or a higher percentage Diversion if required by the California Green Building Standards Code) for which Franchisee is providing Construction and Demolition Debris Collection service.

Franchisee shall inform Customers utilizing Containers and/or Bins and Roll Off Boxes on a temporary basis, that materials being generated must be Diverted pursuant to the requirements of City Code and the California Green Building Standards Code.



CITY OF

NEWPORT BEACH

City Council Staff Report

August 25, 2020
Agenda Item No. 16

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: David Blumenthal, AICP, Planning Consultant
dblumenthal@newportbeachca.gov

PHONE: 949-644-3204

TITLE: Ordinance No. 2020-21: Zoning Code Amendment to Allow Wine Tasting Room Uses within the Industrial Zoning District (PA2020-042)

ABSTRACT:

The Industrial Zoning District (IG) currently limits eating and drinking establishments to "Take-Out Service – Limited" only. The proposed Newport Beach Municipal Code (NBMC) amendment would allow wine tasting rooms as an allowed use in the IG, subject to the approval of a conditional use permit. For City Council's consideration is an ordinance amending Title 20 of the NBMC to allow wine tasting room uses in the IG.

RECOMMENDATION:

- a) Conduct a public hearing;
- b) Find this action proposed herein is not a project subject to the California Environmental Quality Act ("CEQA") in accordance with Section 21065 of the California Public Resources Code and Sections 15060 (c)(2), 15060 (c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). The proposed action is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment; and
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2020-21, *An Ordinance of the City Council of the City of Newport Beach, California, adopting Zoning Code Amendment No. CA2020-005 to Amend Section 20.24.020 (Industrial Zoning Land Uses and Permit Requirements) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code and other Related Provisions to Allow for Wine Tasting Rooms Within the Industrial Zoning District (IG) (PA2020-042)*, and pass to second reading on September 8, 2020.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

INTRODUCTION:

Project Setting

The Industrial Zoning District (IG) is located in the southwest portion of the City, near 16th Street and Placentia Avenue (see Figure 1). The IG is intended to provide for areas appropriate for a wide range of moderate to low intensity industrial uses (e.g., light manufacturing and research and development) and limited accessory commercial and office uses.

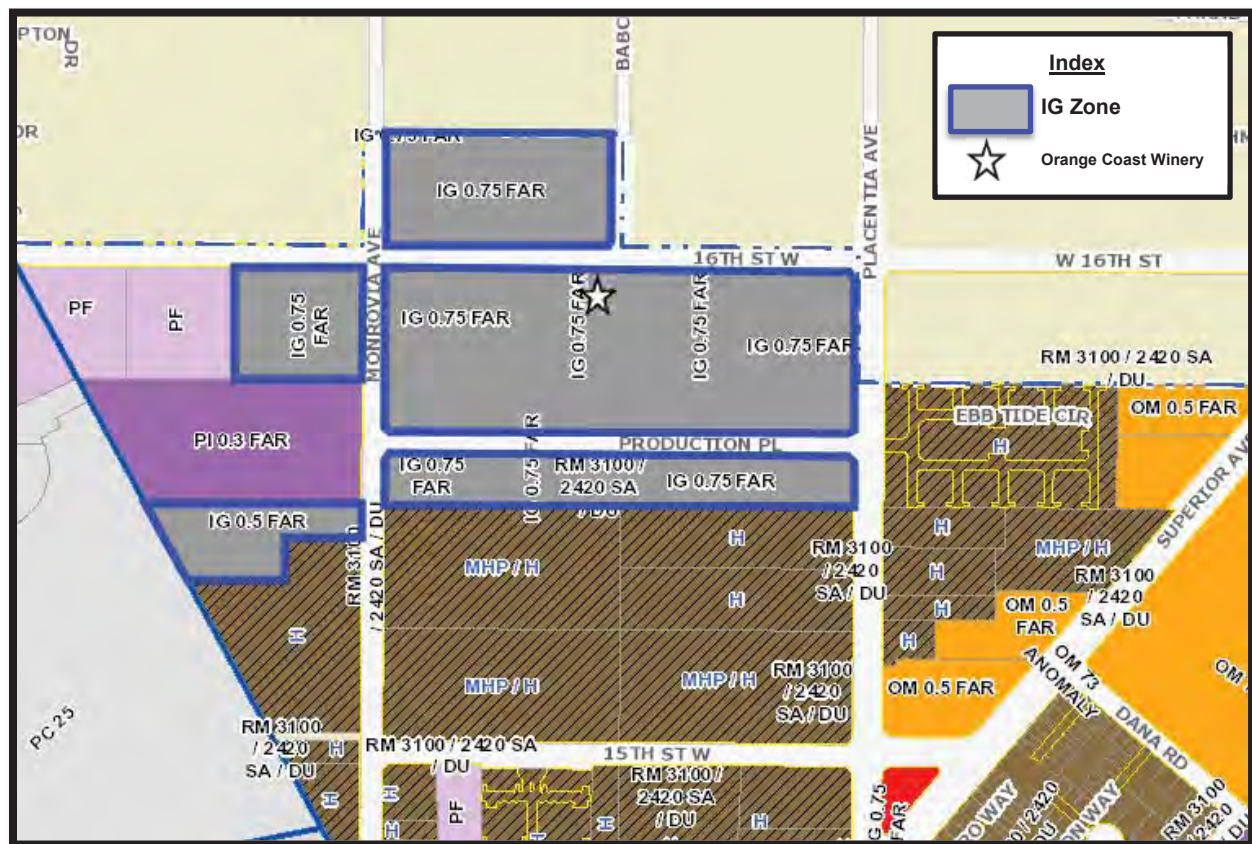


Figure 1 – IG Zone Boundaries

Among the various permitted uses allowed in the IG, eating and drinking establishments are limited to “Take-Out Service – Limited” only.

Wine Tasting Rooms

A wine tasting room operates under a Department of Alcoholic Beverage Control (ABC) Type 2 (Winegrower) license. The Type 2 license was originally intended to allow the operation of a winegrower who has facilities and equipment to convert fruit into wine (e.g. a winery). When a winery desires to operate a tasting room, ABC will only issue a duplicate Type 2 license to the master license holder. This is not to say that every business that operates under the ABC Type 2 license is a wine tasting room. Retail sales can also be provided under the Type 2 license. However, the wine that is sold for retail can only be produced at the winery that holds the master Type 2 license.

DISCUSSION:

Project Description

The proposed amendment would establish “Wine Tasting Rooms” as a new subset of eating and drinking establishments within Title 20 (Planning and Zoning code); as well as allow them to operate within the IG, subject to approval of a conditional use permit (Attachment B). Specifically, the proposed ordinance would amend the following to the NBMC:

- Section 20.24.020 (Industrial Zoning District Land Uses and Permit Requirements) would be amended to require a conditional use permit for the operation of a wine tasting room in the IG and would limit the hours of operations to Monday through Friday from 4 p.m. to 11 p.m. and Saturday and Sunday from 12 p.m. to 11 p.m.
- Section 20.40.040 (Off-Street Parking Spaces Required) would be amended to add a parking requirement for wine tasting rooms. The parking requirement is proposed as one space per each four persons based on allowed occupancy load or as required by the conditional use permit. This parking requirement is consistent with the current code requirements for bars, lounges, and nightclubs.
- Section 20.48.090 (Eating and Drinking Establishments) would be amended to provide specific requirements for the wine tasting rooms. This includes a 500-foot separation requirement from schools as measured from the school property line to the building in which the wine tasting room is located, a prohibition on live entertainment, and a prohibition on any food preparation equipment that would require a mechanical ventilation system.
- Section 20.70.020 (Definitions of Specialized Terms and Phrases) would be amended to include the definition of wine tasting rooms within the definitions of an eating and drinking establishment.

Staff's initial proposal to the Planning Commission also included a 500-foot separation between properties with wine tasting rooms; however, as discussed below, the Planning Commission removed this requirement as part of their recommendation.

The operation of a wine tasting room in the IG is not unprecedented. In 2010, the City Council approved an Interim Study (IS) Overlay to allow the operation of the Newport Beach Wine Company located at 869 West 16th Street, which manufactured wine on-site and provided ancillary tastings (Attachment C). However, the use, now known as the Orange Coast Winery, changed and began to operate as a tasting room that did not manufacture wine but instead sold it as retail. Retail sales of wine with no on-site manufacturing is not an allowed use under the current Planning and Zoning code. If this amendment is approved, Orange Coast Winery would be permitted to apply for a conditional use permit, consistent with the proposed regulations for wine tasting rooms.

Planning Commission Review

On July 23, 2020, the Planning Commission conducted a duly noticed public hearing to consider the request (Attachments D and E). The Commission received four letters in opposition and one in favor of the amendment. Additionally, two public speakers addressed the Commission (one in favor and one opposed), both of which had previously submitted letters. Opponents to the proposed amendment expressed concern that allowing wine tasting rooms within the IG is not consistent with the General Plan, the additional alcohol sales would create impacts to the surrounding area, and the proposed amendment would benefit too few properties. One individual was not opposed to the amendment per se, but rather opposed to the 500-foot separation requirement from schools. In addition to the opposition, a representative for Orange Coast Winery spoke in favor of the request.

During their deliberations, the Planning Commission articulated concerns that the proposed 500-foot separation between properties with wine tasting rooms would result in a spot zone since it only would benefit a few property owners. With the operation of Orange Coast Winery and the 500-foot separation requirement, only one additional property in the IG would be allowed to operate. To avoid this, the Planning Commission revised the proposed code text to remove the 500-foot separation. As a result of this change, 23 properties could accommodate wine tasting rooms. It is important to note that this change did not alter the requirement for wine tasting rooms to maintain a 500-foot distance from primary and secondary schools.

At the conclusion of the public hearing, the Planning Commission adopted Resolution No. PC2020-29, thereby recommending the City Council approve the project, by a 4-2 vote (Attachment F).

General Plan Consistency

According to the General Plan, “[t]he IG designation is intended to provide for a wide range of moderate to low intensity industrial uses, such as light manufacturing and research and development, and limited ancillary commercial and office uses.” The Zoning Code Amendment would allow wine tasting rooms with limitations within the IG zone, which are accessory to wine production, sales and distribution and ancillary to the industrial uses in the vicinity. The wine tasting room would benefit those who live and work in the area, as it would provide for a location to try wine products before purchasing.

ENVIRONMENTAL REVIEW:

The Code Amendment is not a project subject to the California Environmental Quality Act (“CEQA”) in accordance with Section 21065 of the California Public Resources Code and Sections 15060 (c)(2), 15060 (c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3 (“CEQA Guidelines”). The proposed action is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. While this amendment would allow a new category of use in an existing zoning district, it does not authorize new development that would directly result in physical change to the environment. There is no evidence that alcoholic beverage service in the IG zone would result in any different or new effects on the environment than were already assumed with the IG zone.

NOTICING:

Notice of this amendment was published in the Daily Pilot as an eighth page advertisement, consistent with the provisions of the Municipal Code. The item also appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

ATTACHMENTS:

- Attachment A – Ordinance No. 2020-21
- Attachment B – Redlined Zoning Code Text Changes
- Attachment C – Ordinance No. 2010-17
- Attachment D – Planning Commission staff report, dated July 23, 2020
- Attachment E – Planning Commission draft minute excerpts, dated July 23, 2020
- Attachment F – Planning Commission Resolution No. PC2020-29

ATTACHMENT A

ORDINANCE NO. 2020-21

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADOPTING ZONING CODE AMENDMENT NO. CA2020-005 TO AMEND SECTION 20.24.020 (INDUSTRIAL ZONING LAND USES AND PERMIT REQUIREMENTS) OF TITLE 20 (PLANNING AND ZONING) OF THE NEWPORT BEACH MUNICIPAL CODE AND OTHER RELATED PROVISIONS TO ALLOW FOR WINE TASTING ROOMS WITHIN THE INDUSTRIAL ZONING DISTRICT (IG) (PA2020-042)

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

WHEREAS, the Industrial Zoning District (IG) enumerates various permitted and conditionally permitted uses; however, wine tasting rooms are not currently listed as a permitted use within the Industrial Zoning District (IG);

WHEREAS, on April 14, 2020, the City Council of the City of Newport Beach adopted Resolution 2020-38 initiating an amendment to Title 20 (Planning and Zoning) of the Newport Beach Municipal Code ("NBMC") to allow wine tasting rooms in the Industrial Zoning District (IG) ("Zoning Code Amendment No. CA2020-005");

WHEREAS, a telephonic public hearing was held by the Planning Commission on July 23, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place, and purpose of the public hearing was given in accordance with Government Code Section 54950 et seq. ("Ralph M. Brown Act") and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

WHEREAS, at the hearing, the Planning Commission adopted Resolution No. PC2020-029 by a majority vote (4 ayes, 2 naves) recommending to the City Council approve Zoning Code Amendment No. CA2020-005;

WHEREAS, a telephonic public hearing was held by the City Council on August 25, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place, and purpose of the public hearing was given in accordance with Ralph M. Brown Act and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing;

WHEREAS, the Industrial Zoning District (IG) is intended to provide for a wide range of moderate to low intensity industrial uses, such as light manufacturing and research and development, and limited ancillary commercial and office uses;

WHEREAS, Zoning Code Amendment No. CA2020-005 would allow wine tasting rooms within the Industrial Zoning District (IG) which are accessory to wine production, sales and distribution; and

WHEREAS, wine tasting rooms are a commercial use, ancillary to the industrial uses in the vicinity, that would serve those who live and work in the area by allowing sampling of wine products.

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

Section 1: Table 2-12 (Allowed Uses and Permit Requirements) of Section 20.24.020(C) (Applicable Regulations) of Chapter 20.24 (Industrial Zoning District (IG)) of the Newport Beach Municipal Code (NBMC) is amended in its entirety to read as follows:

	Industrial Zoning District Permit Requirements	
		Permitted by P Right Conditional Use Permit (Section CUP 20.52.020) Minor Use Permit (Section MUP 20.52.020) Limited Term Permit (Section LTP 20.52.040) — Not allowed *
TABLE 2-12 ALLOWED USES AND PERMIT REQUIREMENTS		
Land Use	IG	

See Part 7 of this title for land use definitions. See Chapter <u>20.12</u> for unlisted uses.		Specific Use Regulations
Industry, Manufacturing and Processing, Warehousing Uses		
Food Processing	P	
Handicraft Industry	P	
Industry		
Small—10,000 sq. ft. or less	P	
Large—Over 10,000 sq. ft.	MUP	
Personal Storage (Mini Storage)	MUP	
Research and Development, General	P	
Research and Development, Restricted	MUP	
Warehousing		
Small—10,000 sq. ft. or less	P	
Large—Over 10,000 sq. ft.	MUP	
Wholesaling	P	
Recreation, Education, and Public Assembly Uses		
Assembly/Meeting Facilities	CUP	
Retail Trade Uses		
Alcohol Sales (off-sale)	MUP	Section <u>20.48.030</u>
Alcohol Sales (off-sale), Accessory Only	P	
Building Materials and Services	P	
Contractor's Storage Yards	MUP	
Marine Rentals and Sales		
Boat Rentals and Sales	MUP	
Marine Retail Sales	P	
Retail Sales	P	
Service Uses—Business, Financial, Medical, and Professional		
ATMs	P	
Offices—Business and Professional	P	
Service Uses—General		
Ambulance Services	P	
Animal Sales and Services		
Animal Boarding/Kennels	MUP	Section <u>20.48.050</u>

Animal Grooming	P	Section <u>20.48.050</u>
Animal Hospitals/Clinics	MUP	Section <u>20.48.050</u>
Animal Retail Sales	P	Section <u>20.48.050</u>
Catering Services	P	
Eating and Drinking Establishments		
Take-Out Service—Limited	P	Section <u>20.48.090</u>
Wine Tasting Room (1)	CUP	Section <u>20.48.090</u>
Funeral Homes and Mortuaries	CUP	
Health/Fitness Facilities		
Small—2,000 sq. ft. or less	P	
Large—Over 2,000 sq. ft.	MUP	
Laboratories	P	
Maintenance and Repair Services	P	
Marine Services		
Boat Storage	MUP	
Boat Yards	MUP	
Personal Services		
Studios	P	
Postal Services	P	
Printing and Duplicating Services	P	
Recycling Facilities		
Collection Facility—Large	CUP	Section <u>20.48.160</u>
Collection Facility—Small	MUP	Section <u>20.48.160</u>
Transportation, Communications, and Infrastructure Uses		
Communication Facilities	P	
Heliports and Helistops (2)	CUP	
Parking Facilities	P	
Utilities, Minor	P	
Utilities, Major	CUP	
Wireless Telecommunication Facilities	CUP/MUP/LTP	Chapter <u>20.49</u>

Vehicle Rental, Sale, and Service Uses		
Vehicle/Equipment Rentals		
Office Only	P	
Limited	P	
Vehicles for Hire	CUP	
Vehicle/Equipment Rentals and Sales	MUP	
Vehicle/Equipment Repair		
General	CUP	
Limited	MUP	
Vehicle/Equipment Services		
Automobile Washing/Detailing	MUP	
Service Stations	CUP	Section <u>20.48.210</u>
Vehicle Storage	MUP	
Other Uses		
Accessory Structures and Uses	P	
Caretaker Residence	P	
Drive-Through Facilities	CUP	Section <u>20.48.080</u>
Outdoor Storage and Display	MUP	Section <u>20.48.140</u>
Special Events	Chapter <u>11.03</u>	
Temporary Uses	LTP	Section <u>20.52.040</u>

* Uses Not Listed. Land uses that are not listed in the table above, or are not shown in a particular zoning district, are not allowed, except as otherwise provided by Section 20.12.020 (Rules of Interpretation).

Section 2: A new Footnote (1) is added with renumbering of the subsequent footnote to Table 2-12 (Allowed Uses and Permit Requirements) of Section 20.24.020(C) (Allowed Uses and Permit Requirements) of Chapter 20.24 (Industrial Zoning District (IG)) of the NBMC to read as follows:

(1) Wine Tasting Room Hours of Operation. The permitted hours of operation shall be limited to Monday through Friday from 4:00 p.m. to 11:00 p.m., and Saturday and Sunday from 12:00 p.m. to 11:00 p.m.

(2) Applicants for City approval of a heliport or helistop shall provide evidence that the proposed heliport or helistop complies fully with State of California permit procedures and with any and all conditions of approval imposed by the Federal Aviation Administration (FAA), the Airport Land Use Commission for Orange County (ALUC), and by the Caltrans Division of Aeronautics.

Section 3: A new Subsection (F) "Standards-Wine Tasting Rooms" is added to Section 20.48.090 (Eating and Drinking Establishments) of Chapter 20.48 (Standards for Specific Land Uses) of the NBMC with re-lettering of the subsequent subsection to read as follows:

F. Standards - Wine Tasting Rooms. In addition to the standards set forth in subsections (A) through (D), wine tasting rooms shall comply with the following standards:

1. The building in which the wine tasting room is located shall be a minimum of 500 feet from the property line of any property that contains a preschool, elementary, middle, or high school.
2. The wine tasting room shall operate under an ABC Type 2 (Winegrower) license only.
3. The wine tasting room shall not operate as a bona fide eating establishment, but may serve incidental foods such as bread, crackers, cheeses or nuts. Any kitchen or food preparation area provided shall have no cooking equipment that requires a mechanical ventilation system to exhaust heat, steam or grease vapor.
4. Limited private events may occur within the wine tasting room, provided the wine tasting room remains open to the public.
5. Live entertainment is prohibited.

G. Permit Requirements.

1. New Establishments. Permits and licenses required by Title 5 (Business Licenses and Regulations) shall be obtained for new eating and drinking establishments, in addition to permits required by Part 2 of this title (Zoning Districts, Allowable Land Uses, and Zoning District Standards).
2. Existing Establishments. An existing eating and drinking establishment, including bars, lounges, and nightclubs, shall obtain permits and licenses required by Title 5 (Business Licenses and Regulations) in the following circumstances:
 - a. Substantial Change. When there is a substantial change in operation including any of the following:

- i. An application for, or a change in type of, retail liquor license from the Department of Alcoholic Beverage Control;
- ii. An increase in the floor area principally devoted to alcohol sales by twenty-five (25) percent or more or by two hundred fifty (250) square feet or more, whichever is less; or
- iii. A reinstatement of alcohol sales after the ABC has revoked or suspended the existing ABC license for a period of longer than thirty (30) days.

b. **Objectionable Conditions.** When the establishment is operated or maintained under objectionable conditions that constitute a public nuisance, including any of the following:

- i. A pattern of documented violations of the permit conditions, this Zoning Code, the Municipal Code, the Penal Code, or other State statutes; or
- ii. A pattern of substantiated complaints of activity constituting evidence of a nuisance.

3. Review Criteria.

a. **Late-Hour Operations.** When reviewing an application to allow late-hour operations, the review authority shall consider the following potential impacts upon adjacent or nearby uses:

- i. Noise from music, dancing, and voices associated with allowed indoor or outdoor uses and activities;
- ii. High levels of lighting and illumination;
- iii. Increased pedestrian and vehicular traffic activity during late night and early morning hours;
- iv. Increased trash and recycling collection activities;
- v. Occupancy loads of the use; and
- vi. Any other factors that may affect adjacent or nearby uses.

b. **Outdoor Dining.** When reviewing an application to allow outdoor dining, the review authority shall consider the relation of outdoor dining areas to sensitive noise receptors (e.g., hospitals, schools, and residential uses). Mitigation measures shall be applied to eliminate potential impacts related to glare, light, loitering, and noise.

c. On-Sale Alcohol Sales. When reviewing an application to allow an eating or drinking establishment to sell, serve, or give away alcohol, the review authority shall:

i. Evaluate the potential impacts upon adjacent uses outlined in subsection (F)(3)(a) of this section (Late-Hour Operations). For the purposes of this subsection, “adjacent uses” shall mean those uses within one hundred (100) feet of the proposed use, as measured between the nearest lot lines;

ii. Consider the proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption; and

iii. Make the findings in Section 20.48.030(C)(3) (alcohol sales—off-sale).

4. Post-Decision Procedures.

a. With On-Sale Alcohol Sales. For establishments with permits for on-sale alcohol sales, the post-decision procedures in Section 20.48.030(C)(4) shall apply.

b. Without On-Sale Alcohol Sales. For establishments that do not sell, serve, or give away alcohol, the procedures and requirements in Chapter 20.54 (Permit Implementation, Time Limits, and Extensions), and those related to appeals in Part 6 of this title (Zoning Code Administration) shall apply.

Section 4: Table 3-10 (Off-Street Parking Requirements) of Section 20.40.040 (Off-Street Parking Spaces Required) of Chapter 20.40 (Off-Street Parking) of the NBMC is amended in its entirety to read as follows:

TABLE 3-10

OFF-STREET PARKING REQUIREMENTS

Land Use	Parking Spaces Required
Industry, Manufacturing and Processing, Warehousing Uses	
Food Processing	1 per 2,000 sq. ft.
Handicraft Industry	1 per 500 sq. ft.
Industry	
Small—5,000 sq. ft. or less	1 per 500 sq. ft.
Large—Over 5,000 sq. ft.	1 per 1,000 sq. ft.
Industry, Marine-Related	1 per 750 sq. ft.
Personal Storage (Mini Storage)	2 for resident manager, plus additional for office as required by minor use permit

Research and Development	1 per 500 sq. ft.
Warehousing and Storage	1 per 2,000 sq. ft., plus one per 350 sq. ft. for offices. Minimum of 10 spaces per use
Wholesaling	1 per 1,000 sq. ft.
Recreation, Education, and Public Assembly Uses	
Assembly/Meeting Facilities	1 per 3 seats or one per 35 sq. ft. used for assembly purposes
Commercial Recreation and Entertainment	As required by conditional use permit
Cultural Institutions	1 per 300 sq. ft.
Schools, Public and Private	As required by conditional/minor use permit
Residential Uses	
Accessory Dwelling Units	As required per Section <u>20.48.200</u>
Single-Unit Dwellings—Attached	2 per unit in a garage
Single-Unit Dwellings—Detached and less than 4,000 sq. ft. of floor area	2 per unit in a garage
Single-Unit Dwellings—Detached and 4,000 sq. ft. or greater of floor area	3 per unit in a garage
Single-Unit Dwellings—Balboa Island	2 per unit in a garage
Multi-Unit Dwellings—3 units	2 per unit covered, plus guest parking; 1—2 units, no guest parking required 3 units, 1 guest parking space
Multi-Unit Dwellings—4 units or more	2 per unit covered, plus 0.5 space per unit for guest parking
Two-Unit Dwellings	2 per unit; 1 in a garage and 1 covered or in a garage
Live/Work Units	2 per unit in a garage, plus 2 for guest/customer parking
Senior Housing—Market rate	1.2 per unit
Senior Housing—Affordable	1 per unit
Retail Trade Uses	
Appliances, Building Materials, Home Electronics, Furniture, Nurseries, and Similar Large Warehouse-type Retail Sales and Bulk Merchandise Facilities	1st 10,000 sq. ft.—1 space per 300 sq. ft. Over 10,000 sq. ft.—1 space per 500 sq. ft. Plus 1 per 1,000 sq. ft. of outdoor merchandise areas
Food and Beverage Sales	1 per 200 sq. ft.
Marine Rentals and Sales	
Boat Rentals and Sales	1 per 1,000 sq. ft. of lot area, plus 1 per 350 sq. ft. of office area

Marine Retail Sales	1 per 250 sq. ft.
Retail Sales	1 per 250 sq. ft.
Shopping Centers	1 per 200 sq. ft. See Section <u>20.40.050</u>
Service Uses—Business, Financial, Medical, and Professional	
Convalescent Facilities	1 per 3 beds or as required by conditional use permit
Emergency Health Facilities	1 per 200 sq. ft.
Financial Institutions and Related Services	1 per 250 sq. ft.
Hospitals	1 per bed; plus 1 per resident doctor and 1 per employee.
Offices*—Business, Corporate, General, Governmental First 50,000 sq. ft. Next 75,000 sq. ft. Floor area above 125,001 sq. ft.	1 per 250 sq. ft. net floor area 1 per 300 sq. ft. net floor area 1 per 350 sq. ft. net floor area
* Not more than 20% medical office uses.	
Offices—Medical and Dental Offices	1 per 200 sq. ft.
Outpatient Surgery Facility	1 per 250 sq. ft.
Service Uses—General	
Adult-Oriented Businesses	1 per 1.5 occupants or as required by conditional use permit
Ambulance Services	1 per 500 sq. ft.; plus 2 storage spaces.
Animal Sales and Services	
Animal Boarding/Kennels	1 per 400 sq. ft.
Animal Grooming	1 per 400 sq. ft.
Animal Hospitals/Clinics	1 per 400 sq. ft.
Animal Retail Sales	1 per 250 sq. ft.
Artists' Studios	1 per 1,000 sq. ft.
Catering Services	1 per 400 sq. ft.
Care Uses	
Adult Day Care—Small (6 or fewer)	Spaces required for dwelling unit only
Adult Day Care—Large (7 or more)	2 per site for drop-off and pick-up purposes (in addition to the spaces required for the dwelling unit)
Child Day Care—Small (6 or fewer)	Spaces required for dwelling unit only
Child Day Care—Large (9 to 14)	2 per site for drop-off and pick-up purposes (in addition to the spaces required for the dwelling unit)

Day Care—General	1 per 7 occupants based on maximum occupancy allowed per license
Residential Care—General (7 to 14)	1 per 3 beds
Eating and Drinking Establishments	
Accessory (open to public)	1 per each 3 seats or 1 per each 75 sq. ft. of net public area, whichever is greater
Bars, Lounges, and Nightclubs	1 per each 4 persons based on allowed occupancy load or as required by conditional use permit
Food Service with/without alcohol, with/without late hours	1 per 30—50 sq. ft. of net public area, including outdoor dining areas exceeding 25% of the interior net public area or 1,000 sq. ft., whichever is less. See Section <u>20.40.060</u>
Food Service—Fast food	1 per 50 sq. ft., and 1 per 100 sq. ft. for outdoor dining areas
Take-Out Service—Limited	1 per 250 sq. ft.
Wine Tasting Room	1 per each 4 persons based on allowed occupancy load or as required by conditional use permit
Emergency Shelter	1 per 4 beds plus 1 per staff; and if shelter is designed with designated family units then 0.5 parking space per bedroom designated for family units
Funeral Homes and Mortuaries	1 per 35 sq. ft. of assembly area
Health/Fitness Facilities	
Small—2,000 sq. ft. or less	1 per 250 sq. ft.
Large—Over 2,000 sq. ft.	1 per 200 sq. ft.
Laboratories (medical, dental, and similar)	1 per 500 sq. ft.
Maintenance and Repair Services	1 per 500 sq. ft.
Marine Services	
Boat Storage—Dry	0.33 per storage space or as required by conditional use permit
Boat Yards	As required by conditional use permit
Dry Docks	2 per dry dock
Entertainment and Excursion Services	1 per each 3 passengers and crew members
Marine Service Stations	As required by conditional use permit
Sport Fishing Charters	1 per each 2 passengers and crew members
Water Transportation Services—Office	1 per 100 sq. ft., minimum 2 spaces

Personal Services	
Massage Establishments	1 per 200 sq. ft. or as required by conditional use permit
Nail Salons	1 per 80 sq. ft.
Personal Services, General	1 per 250 sq. ft.
Studio (dance, music, and similar)	1 per 250 sq. ft.
Postal Services	1 per 250 sq. ft.
Printing and Duplicating Services	1 per 250 sq. ft.
Recycling Facilities	
Collection Facility—Large	4 spaces minimum, but more may be required by the review authority
Collection Facility—Small	As required by the review authority
Visitor Accommodations	
Bed and Breakfast Inns	1 per guest room, plus 2 spaces
Hotels and accessory uses	As required by conditional use permit
Motels	1 per guest room or unit
Recreational Vehicle Parks	As required by conditional use permit
Time Shares	As required by conditional use permit
Transportation, Communications, and Infrastructure Uses	
Communication Facilities	1 per 500 sq. ft.
Heliports and Helistops	As required by conditional use permit
Marinas	0.75 per slip or 0.75 per 25 feet of mooring space
Vehicle Rental, Sale, and Service Uses	
Vehicle/Equipment Rentals	
Office Only	1 per 250 sq. ft.
Limited	1 per 300 sq. ft., plus 1 per rental vehicle (not including bicycles and similar vehicles)
Vehicle/Equipment Rentals and Sales	1 per 1,000 sq. ft. of lot area
Vehicles for Hire	1 per 300 sq. ft., plus 1 per each vehicle associated with the use and stored on the same site
Vehicle Sales, Office Only	1 per 250 sq. ft., plus 1 as required by DMV
Vehicle/Equipment Repair (General and Limited)	1 per 300 sq. ft. or 5 per service bay, whichever is more
Vehicle/Equipment Services	

Automobile Washing	1 per 200 sq. ft. of office or lounge area; plus queue for 5 cars per washing station
Service Station	1 per 300 sq. ft. or 5 per service bay, whichever is more; minimum of 4
Service Station with Convenience Market	1 per 200 sq. ft., in addition to 5 per service bay
Vehicle Storage	1 per 500 sq. ft.
Other Uses	
Caretaker Residence	1 per unit
Special Events	As required by Chapter <u>11.03</u>
Temporary Uses	As required by the limited term permit in compliance with Section <u>20.52.040</u>

Section 5: Subsection (10) is added to include the definition of “Wine Tasting Room” to the definition of “Eating and Drinking Establishments (Land Use)” within Section 20.70.020 (Definitions of Specialized Terms and Phrases) of Chapter 20.70 (Definitions) of the NBMC to read as follows:

Eating and Drinking Establishments (Land Use). See also “Alcohol sales, on-sale” and “Drive-through facilities.”

10. “Wine Tasting Room” means an establishment that operates pursuant to an ABC Type 2 (Winegrower) license to provide the sale of wine that is produced by said winery for on- and off-site consumption. The sale of other types of alcohol, such as beer and distilled spirits, shall be expressly prohibited.

Section 6: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 7: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 8: The City Council finds the introduction and adoption of this ordinance is not a project subject to CEQA in accordance with Section 21065 of CEQA and CEQA Guideline Sections 15060 (c)(2), 15060 (c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3. Zoning Code Amendment No. CA2020-005 is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), because it has no potential to have a significant effect on the environment.

Section 9: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the NBMC shall remain unchanged and shall be in full force and effect.

Section 10: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 25th day of August, 2020, and adopted on the 8th day of September, 2020, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

WILL O'NEILL, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

Attachment B

Redlined Zoning Code Text Changes

TITLE 20 (PLANNING AND ZONING)

20.24.020 Industrial Zoning District Land Uses and Permit Requirements.

Table 2-12

Land Use	IG	Specific Use Regulations
Service Uses - General		
Eating and Drinking Establishments		
Take-Out Service - Limited	P	Section 20.48.090
Wine Tasting Room (1)	CUP	Section 20.48.090

[\(1\) Wine Tasting Room Hours of Operation. The permitted hours of operation that the establishment is open to the public shall be limited to Monday through Friday from 4:00 p.m. to 11:00 p.m. and Saturday and Sunday from 12:00 p.m. to 11:00 p.m.](#)

20.40.040 Off-Street Parking Spaces Required.

Table 3-10

Land Use	Parking Spaces Required
Service Uses—General	
Eating and Drinking Establishments	
Wine Tasting Room	1 per each 4 persons based on allowed occupancy load or as required by conditional use permit

20.48.090 Eating and Drinking Establishments

This section provides standards for the establishment and operation of eating and drinking establishments.

A. Standards - All Eating and Drinking Establishments.

1. Outdoor Activities. Activities shall be conducted entirely within an enclosed structure, except for the following, which shall not be located between the activity and the side of a structure adjacent to a residential zoning district.

- The checking of patrons' identification;
- Valet parking activities;
- Outdoor dining when in compliance with the standards in subsection (D) of this section (Standards—Outdoor Dining);
- Outdoor smoking areas in compliance with State law;
- Queuing of patrons, which shall be managed to:

- i. Allow pedestrian passage on the sidewalk; and
 - ii. Not be adjacent to residential zoning districts and residential uses.
- 2. Outdoor Storage. Outdoor storage of boxes, equipment, materials, merchandise, and other similar items shall be allowed if the storage area is:
 - a. Screened from public view, subject to the Director's approval; and
 - b. Dedicated for storage only; provided, that the dedicated area shall not occupy required parking spaces or open space areas.
- 3. Solid Waste Storage. The review authority may require storage areas and receptacles that are in addition to the requirements for solid waste storage areas in Section 20.30.120 (Solid Waste and Recyclable Materials Storage).

B. Standards - On-Sale Alcohol Sales.

- 1. Operational Standards. In addition to the standards in subsection (A) of this section, the following standards shall apply to eating and drinking establishments that sell, serve, or give away alcohol:
 - a. Sales Activities. Alcoholic beverages shall not be sold, served, or given away:
 - i. Outside of the exterior walls of the eating and drinking establishment, except for approved outdoor dining areas;
 - ii. From drive-up or walk-up service windows; or
 - iii. To persons in watercraft.
 - b. Litter and Graffiti. The owner/operator shall:
 - i. Maintain the exterior of the premises, including signs and accessory structures, free of litter and graffiti at all times;
 - ii. Provide for daily removal of trash, from the premises and abutting sidewalks or alleys within twenty (20) feet of the premises; and
 - iii. Remove graffiti within forty-eight (48) hours of written notice from the City.
 - c. Security. The review authority may require the eating and drinking establishment to provide security personnel, security programs, and/or surveillance devices.
 - d. Sales Training.
 - i. Owners, operators, servers, vendors, and persons selling, serving, or giving away alcoholic beverages shall complete a Licensee Education on Alcohol and Drugs (LEAD) program sponsored by the Department of Alcoholic Beverage Control.
 - ii. Records of each owner's, operator's, server's, vendor's, and employee's successful completion of the LEAD training program shall be maintained on the premises and shall be presented to a representative of the City upon request.

e. Conditions of Approval. The owner/operator shall maintain a copy of the most recent City permit conditions of approval on the premises and shall post a notice that these are available for review on the premises. The posted notice shall be signed by the permittee.

f. Public Telephones. Upon request of the Police Chief or as required by the ABC, a public telephone located on the premises or in an adjacent area under the control of the owner/operator shall be equipped with devices or mechanisms that prevent persons from calling in to that public telephone.

2. Development Standards.

a. Signs. Signs shall comply with Chapter 20.42 (Sign Standards). In addition, the following shall apply:

i. Window signs shall not obstruct the view of the interior of the premises (e.g., sales counter, cash register, employees, customers, etc.) from the exterior.

ii. Loitering, open container, and other signs specified by the Alcoholic Beverage Control Act shall be posted as required by the ABC.

b. Site and Floor Plans. The site and floor plans of an eating and drinking establishment that sells, serves, or gives away alcohol shall incorporate design features to reduce alcohol-related problems. The review authority may require the incorporation of preventive design features (e.g., openness to surveillance and control of the premises, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public rights-of-way and neighboring property; illumination of interior and exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior) and other safety features (e.g., security, restrooms, additional exits, etc.).

C. Standards - Noise Control Late-Hour Operations. To encourage appropriate patron conduct, the owner/operator of an eating and drinking establishment that sells, serves, or gives away alcohol shall post signs at clearly visible locations within the establishment and at both on-site and off-site parking areas under the owner/operator's control. The signs shall request patrons to keep noise to a minimum.

D. Standards - Outdoor Dining (Including Late-hour Operations).

1. Public Property. Outdoor dining on public property shall comply with Chapter 13.18 (Use of Public Sidewalks for Outdoor Dining) and the standards of the Public Works Department.

2. Private Property. Outdoor dining on private property shall comply with the following standards:

a. Barriers. Appropriate barriers shall be placed between outdoor dining areas and parking, pedestrian, and vehicular circulation areas. Barriers shall serve only to define the areas and shall not constitute a permanent all-weather enclosure.

b. Associated Elements. Physical elements (e.g., awnings, covers, furniture, umbrellas, etc.) that are visible from public rights-of-way shall be compatible with one another and with the overall character and design of the principal structure(s).

E. Standards - Bars, Nightclubs, and Lounges. Bars, nightclubs, and lounges shall comply with the standards in subsections (A) through (D) of this section. In addition, the structure in which the bar, nightclub, or lounge is located shall be adequately soundproofed so that interior noise is not audible beyond the lot line with the doors and windows closed.

F. Standards - Wine Tasting Rooms. In addition to the standards set forth in subsection (A) through (D), wine tasting rooms shall comply with the following standards:

1. The building in which the wine tasting room is located shall be a minimum of 500 feet from the property line of any property that contains an elementary, middle, or high school.

2. The wine tasting room shall operate under a ABC Type 2 (Winegrower) license only.

3. The wine tasting room shall not operate as a bona fide eating establishment, but may serve incidental foods such as bread, crackers, cheeses or nuts. Any kitchen or food preparation area provided shall have no cooking equipment that requires a mechanical ventilation system to exhaust heat, steam or grease vapor.

4. Limited private events may occur within the wine tasting room, provided the wine tasting room remains open to the public.

5. Live entertainment is prohibited.

G.F. Permit Requirements.

1. New Establishments. Permits and licenses required by Title 5 (Business Licenses and Regulations) shall be obtained for new eating and drinking establishments, in addition to permits required by Part 2 of this title (Zoning Districts, Allowable Land Uses, and Zoning District Standards).

2. Existing Establishments. An existing eating and drinking establishment, including bars, lounges, and nightclubs, shall obtain permits and licenses required by Title 5 (Business Licenses and Regulations) in the following circumstances:

a. Substantial Change. When there is a substantial change in operation including any of the following:

i. An application for, or a change in type of, retail liquor license from the Department of Alcoholic Beverage Control;

ii. An increase in the floor area principally devoted to alcohol sales by twenty-five (25) percent or more or by two hundred fifty (250) square feet or more, whichever is less; or

iii. A reinstatement of alcohol sales after the ABC has revoked or suspended the existing ABC license for a period of longer than thirty (30) days.

b. Objectionable Conditions. When the establishment is operated or maintained under objectionable conditions that constitute a public nuisance, including any of the following:

- i. A pattern of documented violations of the permit conditions, this Zoning Code, the Municipal Code, the Penal Code, or other State statutes; or
- ii. A pattern of substantiated complaints of activity constituting evidence of a nuisance.

3. Review Criteria.

a. Late-Hour Operations. When reviewing an application to allow late-hour operations, the review authority shall consider the following potential impacts upon adjacent or nearby uses:

- i. Noise from music, dancing, and voices associated with allowed indoor or outdoor uses and activities;
- ii. High levels of lighting and illumination;
- iii. Increased pedestrian and vehicular traffic activity during late night and early morning hours;
- iv. Increased trash and recycling collection activities;
- v. Occupancy loads of the use; and
- vi. Any other factors that may affect adjacent or nearby uses.

b. Outdoor Dining. When reviewing an application to allow outdoor dining, the review authority shall consider the relation of outdoor dining areas to sensitive noise receptors (e.g., hospitals, schools, and residential uses). Mitigation measures shall be applied to eliminate potential impacts related to glare, light, loitering, and noise.

c. On-Sale Alcohol Sales. When reviewing an application to allow an eating or drinking establishment to sell, serve, or give away alcohol, the review authority shall:

- i. Evaluate the potential impacts upon adjacent uses outlined in subsection (F)(3)(a) of this section (Late-Hour Operations). For the purposes of this subsection, “adjacent uses” shall mean those uses within one hundred (100) feet of the proposed use, as measured between the nearest lot lines;
- ii. Consider the proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption; and
- iii. Make the findings in Section 20.48.030(C)(3) (alcohol sales—off-sale).

4. Post-Decision Procedures.

a. With On-Sale Alcohol Sales. For establishments with permits for on-sale alcohol sales, the post-decision procedures in Section 20.48.030(C)(4) shall apply.

b. Without On-Sale Alcohol Sales. For establishments that do not sell, serve, or give away alcohol, the procedures and requirements in Chapter 20.54 (Permit Implementation, Time Limits, and Extensions), and those related to appeals in Part 6 of this title (Zoning Code Administration) shall apply

20.70.020 Definitions of Specialized Terms and Phrases.

Eating and Drinking Establishments (Land Use). See also “Alcohol sales, on-sale” and “Drive-through facilities.”

1. Accessory food service” means a type of food service establishment that:
 - a. Sells food and/or beverages as an accessory use in a retail, office, or institutional structure;
 - b. Does not change the character of the principal use;
 - c. Does not sell, serve, or give away alcoholic beverages;
 - d. Does not have an entrance separate from the principal use; and
 - e. Has hours of operation that are the same as those of the principal use.
2. Bar, lounge, and nightclub” means an establishment that sells or serves alcoholic beverages for consumption on the premises and is holding or applying for a public premises license from the California State Department of Alcoholic Beverage Control (ABC) (i.e., ABC License Type 42 (On-Sale Beer and Wine—Public Premises), ABC License Type 48 (On-Sale General—Public Premises), and ABC License Type 61 (On-Sale Beer—Public Premises)). Persons under twenty-one (21) years of age are not allowed to enter and remain on the premises. The establishment shall include any immediately adjacent area that is owned, leased, rented, or controlled by the licensee.
3. Fast food” means an establishment whose design or principal method of operation includes four or more of the following characteristics:
 - a. A permanent menu board is provided from which to select and order food;
 - b. A chain or franchise restaurant;
 - c. Customers pay for food before consuming it;
 - d. A self-service condiment bar and/or drink service is/are provided;
 - e. Trash receptacles are provided for self-service bussing; and
 - f. Furnishing plan indicates stationary seating arrangements.

A fast food establishment may or may not have late hour operations (see “Late hour operations”). Alcoholic beverages are not sold, served, or given away on the premises. If alcoholic beverages are sold, served, or given away on the premises, the use shall be considered a food service use. See “Food service.”

4. Food service, no late hours” means an establishment that sells food and beverages, including alcoholic beverages, prepared for primarily on-site consumption, and that has all of the following characteristics:
 - a. Establishment does not have late hour operations (see “Late hour operations”);
 - b. Customers order food and beverages from individual menus;

c. Food and beverages are served to the customer at a fixed location (i.e., booth, counter, or table); and

d. Customers pay for food and beverages after service and/or consumption.

5. Food service, late hours” means an establishment that sells food and beverages, including alcoholic beverages, prepared for primarily on-site consumption, and that has all of the following characteristics:

a. Establishment does have late hour operations (see “Late hour operations”);

b. Customers order food and beverages from individual menus;

c. Food and beverages are served to the customer at a fixed location (i.e., booth, counter, or table); and

d. Customers pay for food and beverages after service and/or consumption.

6. Late hour operations” means facilities that provide service after 11:00 p.m.

7. Outdoor dining, accessory” means an outdoor dining area contiguous and accessory to a food service establishment.

8. Take-out service, limited” means an establishment that sells food or beverages and that has all of the following characteristics:

a. Sales are primarily for off-site consumption;

b. Customers order and pay for food at either a counter or service window;

c. Incidental seating up to six seats may be provided for on-site consumption of food or beverages; and

d. Alcoholic beverages are not sold, served, or given away on the premises.

Typical uses include bakeries, candy, coffee, nut and confectionery stores, ice cream and frozen dessert stores, small delicatessens, and similar establishments.

9. Take-out service only” means an establishment that offers a limited variety of food or beverages and that has all of following characteristics:

a. Sales are for off-site consumption;

b. Seating is not provided for on-site consumption of food or beverages; and

c. Alcoholic beverages are not sold, served, or given away on the premises.

10. “Wine Tasting Room” means an establishment that operates pursuant to an ABC Type 2 (Winegrower) license winery to provide the sale of wine that is produced by said winery for on- and off-site consumption. The sale of other types of alcohol, such as beer and distilled spirits, shall be expressly prohibited.

Attachment C

Ordinance No. 2010-17

ORDINANCE NO. 2010-17

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NEWPORT BEACH APPROVING CODE AMENDMENT NO.
CA2010-005 TO APPLY THE INTERIM STUDY (IS) OVERLAY
DISTRICT BY REVISING DISTRICTING MAP NOS. 22 AND 25
APPLICABLE TO PROPERTY LOCATED AT 869 WEST 16th
STREET AND APPROVING A STUDY PLAN TO ALLOW FOOD
PROCESSING USES (PA 2010-078)**

WHEREAS, an application was filed by the Newport Beach Wine Company and Winery, Inc. with respect to property located at 869 West 16th Street, and legally described as First Addition to Newport Mesa Tract, Lot 913, Westerly 396 feet, requesting approval of a code amendment to apply the interim study overlay district designation and approval of a Study Plan to allow Food Processing as an allowed use at the subject property in advance of the proposed Zoning Code update; and

WHEREAS, as part of the General Plan Implementation Program, the City Council adopted Resolution No. 2007-3 establishing an interim development review process to provide a mechanism for projects that are consistent with the General Plan but inconsistent with the current zoning regulations. This process requires project proponents to request approval of a Code Amendment to apply the Interim Study (IS) Overlay District zoning designation on the property. A development Study Plan is required to establish development regulations to implement the General Plan; and

WHEREAS, the subject property is located within the Controlled Manufacturing (M-1-A) Zoning District. The proposed winery is designated as "Food Processing" by Section 20.05.060 (Industrial Use Classifications) of the Zoning Code. Per Section 20.20.020 (Industrial Districts: Land Use Regulations) of the Zoning Code, Food Processing is not an allowed use in the M-1-A District; and

WHEREAS, the General Plan Land Use Element category for this property is Industrial (IG), which provides for a wide range of moderate to low intensity industrial uses, such as light manufacturing and research and development, and limited ancillary commercial and office uses; and

WHEREAS, the proposed Study plan provided establishes development regulations to create Zoning Code consistency with the General Plan and is consistent with the provisions of Resolution No. 2007-003 and Chapter 20.53 (Interim Study (IS) Overlay District) of the Newport Beach Municipal Code; and

WHEREAS, this project is categorically exempt under the requirements of the California Environmental Quality Act under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines – Class 1 (Existing Facilities), which exempts minor alterations to existing facilities. The proposed project includes a change in use and interior alterations within an existing industrial building; and

WHEREAS, on August 5, 2010, the Planning Commission conducted a public hearing in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting. At the conclusion of the public hearing the Planning Commission voted (6 ayes, 1 absent) to recommend City Council approval of the proposed Code Amendment by adopting Resolution No. 1817; and

WHEREAS, the City Council conducted a public hearing on September 14, 2010, in the City Hall Councils Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Municipal Code. Evidence, both written and oral, was presented to, and considered by, the City Council at this meeting ; and

WHEREAS, In accordance with City Council Resolution No. 2007-3 establishing the Interim Study process, the following findings and facts in support of such findings are set forth:

Finding:

A. The proposed plan implements and is in compliance with all applicable policies of the General Plan.

Facts in Support of Finding:

- A-1. The project site is designated as Industrial (IG) by the Land Use Element of the General Plan. The proposed project is consistent with the IG Land Use Category, which is intended to provide for a wide range of moderate to low intensity industrial uses, such as light manufacturing and research and development, and limited ancillary commercial and office uses. Wine production is a moderate to low intensity industrial use that is consistent with the IG General Plan Land Use Category.
- A-2. The proposed project is consistent with Goal LU 5.5 because the immediately adjacent properties are industrial. The use will not involve new exterior equipment or storage that would detract from the existing aesthetic of the building.
- A-3. The proposed project is consistent with Goal LU 6.7 because this food production use is contained within an existing building and would not noticeably change the makeup of the district. Approval of the project to allow the proposed use is consistent with Goal LU 6.7 and Policy LU 6.7.1 because it provides an opportunity for entrepreneurship for a food processing use in an established light industrial area.

B. The proposed plan conforms to all applicable design guidelines, such as those included in the Mariner's Mile Design Framework, and any existing Specific Plan design guidelines.

Facts in Support of Finding:

B-1. There are no design guidelines for this area and the area is not subject to a Specific Plan.

C. Any changes from existing zoning regulations that otherwise would apply are justified by compensating benefits of the proposed plan.

Facts in Support of Finding:

C-1. Changing the permitted uses to allow for "Food Processing" in this IS Overlay District is justified by the benefits of having a new small business in the City.

D. The proposed development and/or use and its development and operation as proposed in the Study Plan will not be detrimental to the public health, safety and welfare of the persons residing in or working in the proposed structures or in developments adjacent to the proposed project, properties or improvements in the vicinity or to the general welfare of the City.

Facts in Support of Finding:

D-1. The properties immediately adjacent to the subject site are being used for industrial uses.

D-2. The sale of alcoholic beverages is licensed and controlled by the State Department of Alcoholic Beverage Control (ABC). The wine tasting will be accessory to the wine production use.

D-3. There is adequate parking on site to support the existing uses on site and the proposed use.

D-4. There will be no outside storage of equipment and the trash receptacle will have a cover, which will prevent any potential negative odor impacts; and

WHEREAS, the City Council finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

**THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH DOES HEREBY
ORDAIN AS FOLLOWS:**

SECTION 1: The Study Plan is approved as provided in Exhibit A, which is incorporated by reference herein.

SECTION 2: Districting Map Nos. 22 and 25 shall be amended as provided in Exhibit B, which is incorporated by reference herein.

SECTION 3: This action shall become null and void and the M-1-A-IS District designation for the subject property will be eliminated upon the adoption of the comprehensive Zoning Code update.

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

SECTION 5: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the same to be published once in the official newspaper of the City, and it shall be effective thirty (30) days after its adoption.

SECTION 6: This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, held on the 14th day of September 2010, and adopted on the 28th day of September 2010, by the following vote, to wit:


AYES, COUNCILMEMBERS Selich, Rosansky,

Henn, Webb, Gardner, Daigle, Mayor Curry

NOES, COUNCILMEMBERS None

ABSENT COUNCILMEMBERS None

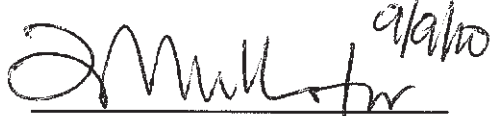
MAYOR 

ATTEST: 

CITY CLERK



APPROVED AS TO FORM:

 *alaho*

David R. Hunt, City Attorney
For the City of Newport Beach

CODE AMENDMENT NO. CA2010-005
STUDY PLAN FOR 869 WEST 16TH STREET

EXHIBIT – A

**Study Plan
For
Newport Beach Wine Company & Winery Inc.
869 West 16th Street
Newport Beach, CA.**

Project Description and Justification

Proposed Project

Newport Beach Wine Company and Winery Inc. (NB Wine Company) has leased and proposed to use property located at 869 West 16th Street, Newport Beach, CA (Premises) to manufacture, bottle, and sell wine. The leased space is part of a large industrial building divided into eight (8) similarly sized units. The subject space is approximately 2,500 SF which includes a small office and employee area (approx. 700 SF) in the front of the building, and the remaining space to be used for wine production, barrel, tanks, case storage, and wine tasting (1800 SF) in the rear. The current space has access to five (5) unreserved vehicle parking spaces. Retail sales will be restricted to weekends only.

NB Wine Company will act as a typical winery; bringing in fresh or frozen grapes for pressing or chilled or frozen grape juice, fermenting, producing, barrel fermentation, bottling, and blending wine, allowing tasting, and will sell some wine to consumers from the premises.

Wine Making Equipment

The facility will have all the necessary winemaking equipment required for the production, bottling and storage of fine wine.

Delivery of Grapes and Production of Wine

NB Wine Company will purchase both fresh and frozen grapes from growers in Central and Northern California. The grapes will be delivered by commercial carrier/trucking company. The grapes will be crushed and processed into juice to be stored in fermentation tanks located in the production warehouse area. The wine will be monitored and later pumped into barrels for aging. Once aged appropriately, the wine will be bottled, labeled, boxed, and stored for sale.

Recycling and Waste Management

The production of wine will be as "green" as possible given the size of the production facility. Grape stems, seeds, skins and other natural by-products (e.g., yeast residue and corks) will be removed and composted off site. All other production waste consisting of cardboard, paper and glass will be recycled. Office related waste will be disposed by standard trash disposal.

Retail Wine Sales and Tasting

Wine will be available for sale to consumers on weekends only or by mail-order. No consumption of purchased wine will be permitted on the premises. Wines will be sold for off-site consumption by the bottle or case. It is anticipated that most wine will be purchased then shipped via common carrier (UPS or FedEx) to consumers and retailers.

A small tasting bar comparable to Napa Valley will be available for tastings. Tastings to the trade (retailers, restaurants and distributors) will be by appointment during the week and weekends from 11:00 am to 9:30 pm. Retail tasting for consumers will be held on weekends only from 11:00 am to 9:30 pm. Retail tasting will be \$10.00 and include a logo wine glass. Retail tastes will be limited to one & one half ounce (1 1/2 oz.) pours with a limit of six (6) total tastes. Wine will be poured by one & one half ounce tastes, not by the glass. Tastings will be supervised by an employee who will also provide information about each wine that is tasted.

Justification

The current and proposed zoning permits low to moderate intensity industrial uses. The manufacturing of wine is a compatible use as no heavy machinery, loud noises or intense fumes, waste or byproducts are produced. Wine making is similar to food production in that raw natural food/consumable products are processed and packaged for sale. Like food production, winemaking is heavily regulated and inspected as the ultimate product is for human consumption. While not specifically permitted or mentioned in the current Zoning Code, permitting production of wine will not negatively impact the general health, safety or welfare of the public and is consistent with the General Plan. As you are aware, we are a tenant in an existing Industrially Zoned building. Additionally, it will not impact the other users in the building that will continue to operate various manufacturing operations.

General Plan Consistency

The project site is designated as Industrial (IG) by the Land Use Element of the General Plan. The IG land use category is intended to provide for a wide range of moderate to low intensity industrial uses, such as light manufacturing and research and development, and limited ancillary commercial and office uses. The applicant's proposed use is a moderate to low intensity industrial-type use that would appear to be consistent with the IG General Plan Land Use Category.

Zoning

The current zoning for the project is M-1-A (Controlled Manufacturing). The intent of this Study Plan is to set permitted uses and development standards for the Interim Study Overlay District.

Permitted Uses

The current Zoning Code permits controlled low to moderate intensity industrial uses, but does not specifically permit food processing, however proposed Draft Zoning Code does permit food processing.

This Interim Study Overlay District shall allow "Food Processing" as a permitted use. All other permitted uses allowed in the current Zoning Code Section 20.20.020 (Industrial Districts: Land Use Regulations) shall be permitted in this IS Overlay District.

Development Standards

All development standards addressed in the current Zoning Code Section 20.20.030 (Industrial Districts: Property Development Regulations) and other relevant sections of the Municipal Code shall be applicable in this IS Overlay District, unless otherwise specified below.

Lot Dimensions

Lot Area: 10,000 square feet
Lot Width: 0 feet

FAR

Industrial FAR: 0.75

Setbacks

Front: 15 feet
Sides: 0 feet
Rear: 0 feet

Parking

Food Processing: 1 space for each 2,000 square feet of gross floor area
All other uses: pursuant to Chapter 20.66 of the Zoning Code

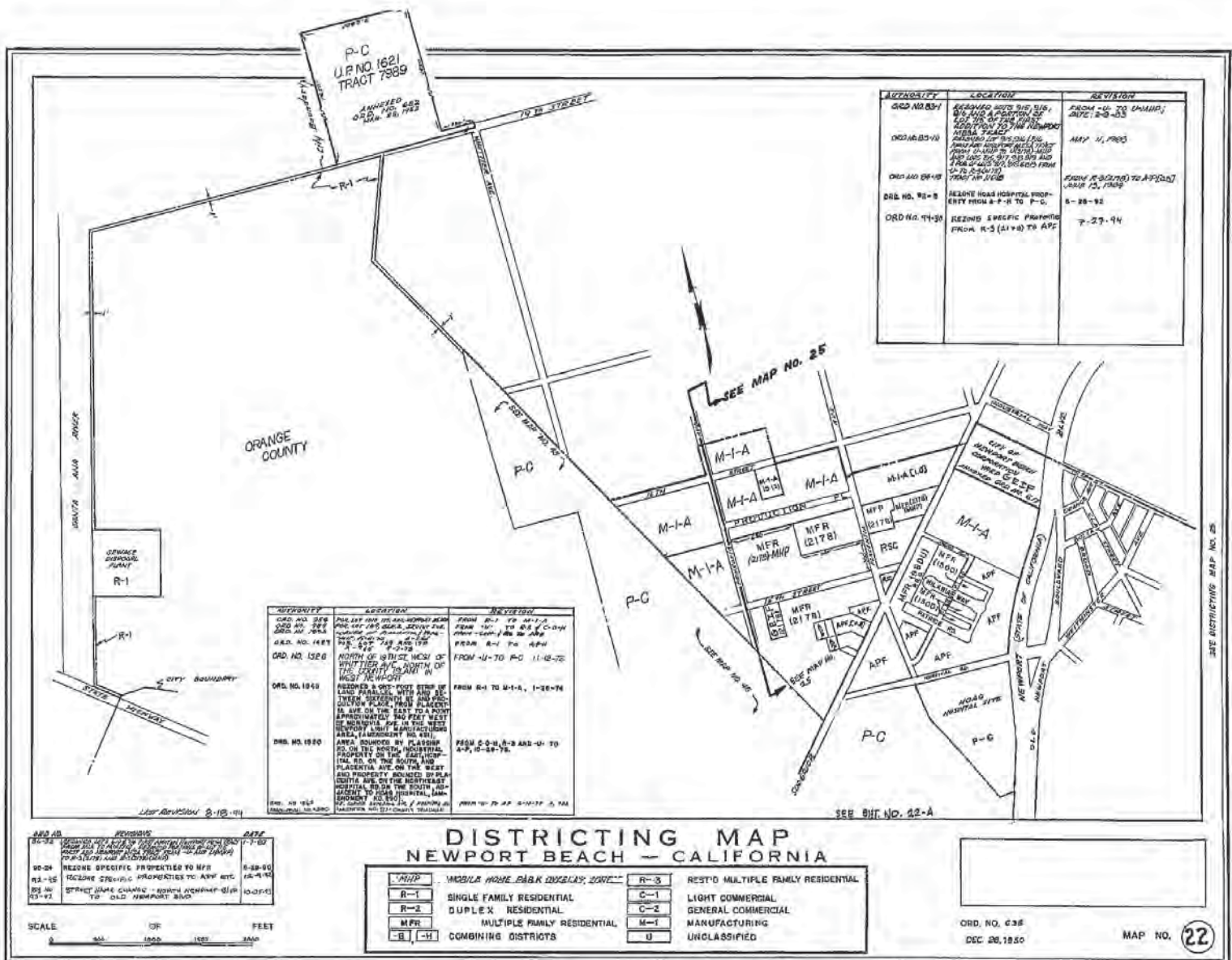
Landscaping

Per Chapter 20.36 (Landscaping Standards) of the draft Zoning Code
Per Water Efficient Landscape Ordinance, Chapter 14.17 of the Municipal Code

CODE AMENDMENT NO. CA2010-005

DISTRICTING MAP NOS. 22 and 25

EXHIBIT – B



STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Ordinance No. 2010-17 was duly and regularly introduced on the 14th day of September, 2010, and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 28th day of September, 2010, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Selich, Rosansky, Henn, Webb, Gardner, Daigle, Mayor Curry

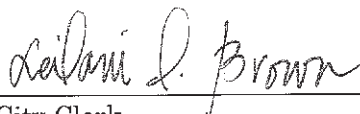
Noes: None

Absent: None

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 29th day of September, 2010.





City Clerk
City of Newport Beach, California

CERTIFICATE OF PUBLICATION

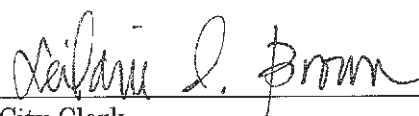
STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, LEILANI I. BROWN, City Clerk of the City of Newport Beach, California, do hereby certify that Ordinance No. 2010-17 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in *The Daily Pilot*, a daily newspaper of general circulation on the following dates:

Introduced Ordinance: September 18, 2010
Adopted Ordinance: October 2, 2010

In witness whereof, I have hereunto subscribed my name this 8th day of October 2010.





City Clerk
City of Newport Beach, California

Attachment D

Planning Commission staff report, dated July 23, 2020



CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

July 23, 2020
Agenda Item No. 4

SUBJECT: Industrial Zoning District Code Amendments (PA2020-042)
▪ Code Amendment No. CA2020-005

SITE LOCATION: Industrial Zoning (IG) District

APPLICANT: City of Newport Beach

PLANNER: David Blumenthal, AICP, Planning Consultant
949-644-3200, dblumenthal@newportbeachca.gov

PROJECT SUMMARY

The Industrial Zoning District (IG) currently limits eating and drinking establishments to "Take-Out Service – Limited" only. The proposed Zoning Code Amendment would allow Wine Tasting Rooms, subject to the approval of a conditional use permit in the IG zone.

RECOMMENDATION

- 1) Conduct a public hearing;
- 2) Find this action proposed herein is not a project subject to the California Environmental Quality Act ("CEQA") in accordance with Section 21065 of the California Public Resources Code and Sections 15060 (c)(2), 15060 (c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). The proposed action is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment; and
- 3) Adopt Resolution No. PC2020-029 recommending the City Council approve Zoning Code Amendment No. CA2020-005 to amend Sections 20.24.020 (Industrial Zoning District Land Uses and Permit Requirements), 20.40.040 (Off-Street Parking Spaces Required), 20.48.090 (Eating and Drinking Establishments), and 20.70.020 (Definitions of Specialized Terms and Phrases), of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code (PA2020-042) (Attachment No. PC 1).

Background

The Industrial (IG) Zoning District is located in the southwest portion of the City, near 16th Street and Placentia Avenue (see Figure 1), which is within the West Newport Mesa District (Attachment No. PC 2). The IG zone is intended to provide for areas appropriate for a wide range of moderate to low intensity industrial uses (e.g., light manufacturing and research and development) and limited accessory commercial and office uses.

Figure 1



On April 14, 2020, the City Council adopted Resolution 2020-38, initiating the subject Code Amendment and directing staff to analyze allowing food and alcohol service in the IG zone (Attachments No. PC 3 and PC 4).

Wine Tasting Room

The amendment would establish “Wine Tasting Rooms” as a new subset of eating and drinking establishments within the Zoning Code; as well as allow them to operate within the IG zone, subject to approval of a Conditional Use Permit at a noticed public hearing by the Planning Commission. A wine tasting room operates under a Department of Alcoholic Beverage Control (ABC) Type 2 (Winegrower) license. ABC will only issue a duplicate Type 2 license for operation of a wine tasting room to a duly licensed winery. No production is allowed at the tasting room site and wine that is sold for on- or off-site consumption can only be produced at the winery that holds the master Type 2 license. ABC further prohibits the wine tasting rooms from operating as a bona fide eating place

(i.e. no kitchen is permitted under State regulations). Notwithstanding the prohibition on providing food service, the operator is allowed to serve palate cleansers, such as charcuterie and cheese boards.

The proposal includes the following changes to the Newport Beach Municipal Code (NBMC) (Attachment No. PC 5):

- Section 20.24.020 (Industrial Zoning District Land Uses and Permit Requirements) would be amended to require a conditional use permit for the operation of a wine tasting room in the IG zone and would limit the hours of operations in the IG to Monday through Friday from 4:00 p.m. to 11:00 p.m. and Saturday and Sunday from 12:00 p.m. to 11:00 p.m.
- Section 20.40.040 (Off-Street Parking Spaces Required) would be amended to add a parking requirement for wine tasting rooms. The parking requirement is proposed as one space per each four persons based on allowed occupancy load or as required by the conditional use permit. This parking requirement is consistent with the current code requirements for bars, lounges, and nightclubs
- Section 20.48.090 (Eating and Drinking Establishments) would be amended to provide specific requirements for the wine tasting rooms. This includes a 500-foot separation requirement from schools, as measured from the school property line to the building in which the wine tasting room is located, a 500-foot separation between properties that have wine tasting rooms, a prohibition on live entertainment, and a prohibition on any food preparation equipment that would require a mechanical ventilation system.
- Section 20.70.020 (Definitions of Specialized Terms and Phrases) would be amended to include the definition of wine tasting rooms within the definitions of an eating and drinking establishment.

The operation of a wine tasting room in the IG zone is not unprecedented. In 2010, the City Council approved an Interim Study (IS) Overlay to allow the operation of the Newport Beach Wine Company located at 869 West 16th Street, which manufactured wine on-site and provided ancillary tastings (Attachment No. PC 6). However, the use, now known as the Orange Coast Winery, is requesting the ability to operate a dedicated tasting room with no on-site manufacturing. If this amendment is approved, Orange Coast Winery would be permitted to apply for a conditional use permit, consistent with the proposed regulations for wine tasting rooms.

General Plan Consistency

According to the General Plan, “[t]he IG designation is intended to provide for a wide range of moderate to low intensity industrial uses, such as light manufacturing and research and development, and limited ancillary commercial and office uses.” The Zoning

Code Amendment would allow wine tasting rooms with limitations within the IG zone, which are accessory to wine production, sales and distribution and ancillary to the industrial uses in vicinity. The wine tasting room would benefit those who live and work in the area, as it would provide for a location to try wine products before purchasing.

Environmental Review

The Code Amendment is not a project subject to the California Environmental Quality Act ("CEQA") in accordance with Section 21065 of the California Public Resources Code and Sections 15060 (c)(2), 15060 (c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). The proposed action is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. While this amendment would allow a new category of use in an existing zoning district, it does not authorize new development that would directly result in physical change to the environment. There is no evidence that alcoholic beverage service in the IG zone would result in any different or new effects on the environment than were already assumed with the IG zone.

Public Notice

Notice of this amendment was published in the Daily Pilot as an eighth page advertisement, consistent with the provisions of the Municipal Code. The item also appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:

Submitted by:



David Blumenthal, AICP
Planning Consultant



Jim Campbell
Deputy Community Development Director

ATTACHMENTS

- PC 1 Draft resolution recommending the City Council approve Zoning Code Amendment No. CA2020-005
- PC 2 West Newport Mesa Map
- PC 3 City Council Resolution No. 2020-38
- PC 4 City Council Minute excerpts, dated April 14, 2020
- PC 5 Redlined Zoning Code text changes
- PC 6 City Council Ordinance No. 2010-17

Attachment E

Planning Commission draft minute excerpts, dated July 23, 2020

Shawna Schaffner, applicant representative, indicated three parcels on the street have previously been divided into two parcels with configurations similar to that proposed for the subject parcel. She reiterated the proposed lot sizes, access from Santiago Drive, and a net increase of one residential lot.

Jim Mosher remarked regarding the application's consistency with the General Plan. The staff report and proposed resolution do not indicate the General Plan provision that will be amended. Staff indicated the application is consistent with the General Plan policy that prohibits new residential subdivisions, which appears to be a contradiction. He inquired whether a condition of approval prohibiting a gate across the driveway is necessary so that emergency access is available at all times.

In reply to Chair Weigand's inquiry, Community Development Director Seimone Juris related that a condition of approval requiring an application for development of the property be presented to the Zoning Administrator as a receive and file item can be added. Chair Weigand explained that he wants to provide neighbors with an opportunity for input, to increase vetting of any project, and to provide the Planning Commission with an opportunity to call the project for review.

Chair Weigand closed the public hearing.

Motion made by Commissioner Kleiman and seconded by Commissioner Ellmore to find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 under Class 3 (New Construction) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and adopt Resolution No. PC2020-028 approving General Plan Amendment No. GP2020-003 and Tentative Parcel Map No. NP2020-007.

Chair Weigand reopened the public hearing.

In answer to Chair Weigand's query, Ms. Schaffner commented that staff's review of projects is thorough. If staff determines a future application for a residence meets the City's stringent guidelines, the application should not be presented to the Zoning Administrator as the Zoning Code grants the Zoning Administrator little authority to change the project. She requested a condition of approval not be added.

Commissioner Kleiman concurred with Ms. Schaffner's analysis.

Chair Weigand closed the public hearing.

AYES: Weigand, Lowrey, Kleiman, Ellmore, Klaustermeier, Rosene
NOES:
ABSTAIN:
ABSENT: Koetting

[The Planning Commission proceeded to Item 2.]

ITEM NO. 4. INDUSTRIAL ZONING (IG) ZONING DISTRICT CODE AMENDMENTS (PA2020-042)
Site Location: Northwest corner of the City near Costa Mesa along Production Place, 16th Street, and portions of Monrovia Avenue

Summary:

Amendments to Sections 20.70.020 (Definitions of Specialized Terms and Phrases), 20.24.020 (Industrial Zoning District Land Uses and Permit Requirements), 20.40.040 (Off-Street Parking Spaces Required), and 20.48.090 (Eating and Drinking Establishments) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code. The changes would allow wine tasting rooms subject to obtaining a conditional use permit in the IG Zoning District.

Recommended Action:

1. Conduct a public hearing;
2. Find this action proposed herein is not a project subject to the California Environmental Quality Act ("CEQA") in accordance with Section 21065 of the California Public Resources Code and Sections

15060 (c)(2), 15060 (c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). The proposed action is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment; and

3. Adopt Resolution No. PC2020-029 recommending the City Council approve Zoning Code Amendment No. CA2020-005 to amend Sections 20.24.020 (Industrial Zoning District Land Uses and Permit Requirements), 20.40.040 (Off-Street Parking Spaces Required), 20.48.090 (Eating and Drinking Establishments), and 20.70.020 (Definitions of Specialized Terms and Phrases), of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code.

Planning Consultant David Blumenthal explained the licensing process and requirements for a wine tasting room. The proposal is to allow wine tasting rooms in the Industrial Zoning District (IG) and to require a conditional use permit prior to operations commencing. The amendment would prohibit the sale of beer or distilled spirits, allow onsite and offsite consumption of wine, prohibit live entertainment and operations as a restaurant, limit hours of operation to 4 p.m. to 11 p.m. Monday through Friday and noon to 11 p.m. on Saturday and Sunday, and require separation of wine tasting rooms from other wine tasting rooms and schools. Orange Coast Winery, a wine tasting room, has been operating as a nonconforming use since 2010. If the amendment is approved, Orange Coast Winery will need to apply for a conditional use permit.

In response to Chair Weigand's inquiries, Planning Consultant Blumenthal advised that one or two properties in the IG Zone could accommodate a wine tasting room with Orange Coast Winery operating at its site. Wine tasting rooms would have to be located 500 feet from Pacifica Christian school. The separation requirement is limited to primary and secondary education sites.

Vice Chair Lowrey and Chair Weigand disclosed ex parte communications with the consultant. All other Commissioners disclosed no ex parte communications.

Chair Weigand opened the public hearing.

Philip Greer, consultant for Orange Coast Winery, advised that the staff report is comprehensive.

Jim Mosher remarked that the amendment appears to benefit only one property owner. The separation requirement is measured to the building because part of the parcel would be eliminated if the measurement is to the property. In 2010, food processing uses were approved in the IG Zone. A wine tasting room is not consistent with the General Plan.

Chair Weigand closed the public hearing.

Commissioner Kleiman recalled a similar application which the Planning Commission approved and the City Council denied. Community Development Director Jurjis clarified that the prior application was for a brewery, a distillery, and a winery. The Council initiated the current application and directed staff to develop a restricted standard to allow a winery. Commissioner Kleiman indicated she considered the application as spot zoning and would not support approval. This is an opportunity for one business to be located in an area where it does not belong.

In answer to Chair Weigand's questions, Community Development Director Jurjis explained that the Commission is making a recommendation to the City Council. If the Council denies the amendment, the existing use will have to cease operations or convert its business model to the original model. The business is producing offsite.

Commissioner Rosene agreed that the amendment seems to benefit a single entity and to be spot zoning. The IG Zone could benefit from a new and interesting use. There is not much opportunity for other businesses to utilize the amendment.

Assistant City Attorney Summerhill clarified spot zoning as a parcel being given less rights than surrounding parcels. While only one or two properties could be a winery, this is not necessarily quintessential spot zoning. The Planning Commission could recommend a smaller separation to allow additional wineries in the area.

In response to Chair Weigand's queries, Community Development Director Jurjis indicated staff set the 500-foot distance. The Council directed staff to include a separation requirement but did not specify a distance. Planning Consultant Blumenthal did not know the number of parcels that could accommodate a winery if the separation requirement from the existing business is eliminated. The number could be greater than ten.

Chair Weigand could support removing the separation requirement from the existing winery.

Commissioner Kleiman shared her understanding of spot zoning. The Council denied the earlier application because it was piecemeal and the proposed use needed a more comprehensive review. Schools and churches are located in the area.

In reply to Commissioner Ellmore's inquiry, Planning Consultant Blumenthal explained that the proposed amendment pertains to the IG Zone only, and a wine tasting room is not allowed elsewhere in the City.

Motion made by Commissioner Kleiman and seconded by Commissioner Rosene to recommend the Council deny the application.

Substitute Motion made by Chair Weigand and seconded by Vice Chair Lowrey to recommend the Council approve the application and remove the 500-foot separation distance from the existing winery.

Vote on the Substitute Motion:

AYES: Weigand, Lowrey, Ellmore, Klaustermeier
NOES: Kleiman, Rosene
ABSTAIN:
ABSENT: Koetting

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 5 MOTION FOR RECONSIDERATION

None

ITEM NO. 6 REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE PLACED ON A FUTURE AGENDA.

Community Development Director Jurjis reported the Council on July 29, 2020 will review and consider Local Coastal Program cleanup amendments, an extension of the Development Agreement with Hoag Hospital, and the Newport Airport Village project. The Airport Land Use Commission found the project inconsistent with the Airport Land Use Plan. The Planning Commission's next meeting will be August 20, 2020.

ITEM NO. 7 REQUESTS FOR EXCUSED ABSENCES

None

X. ADJOURNMENT – 10:32 p.m.

Attachment F

Planning Commission Resolution No. PC2020-29

RESOLUTION NO. PC2020-029

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE ZONING CODE AMENDMENT NO. CA2020-005, TO AMEND SECTIONS 20.24.020 (INDUSTRIAL ZONING DISTRICT LAND USES AND PERMIT REQUIREMENTS), 20.40.040 (OFF-STREET PARKING SPACES REQUIRED), 20.48.090 (EATING AND DRINKING ESTABLISHMENTS), AND 20.70.020 (DEFINITIONS OF SPECIALIZED TERMS AND PHRASES) OF TITLE 20 (PLANNING AND ZONING) OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE (PA2020-042)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. On April 14, 2020, the City Council of the City of Newport Beach adopted Resolution 2020-38 initiating an amendment to Title 20 (Planning and Zoning) to allow food and alcohol service in the Industrial Zoning District (IG) ("Zoning Code Amendment").
2. A telephonic public hearing was held by the Planning Commission on July 23, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place, and purpose of the public hearing was given in accordance with Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 20.62 (Public Hearings) of the Newport Beach Municipal Code ("NBMC"). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The Zoning Code Amendment is not a project subject to the California Environmental Quality Act in accordance with Section 21065 of the California Public Resources Code ("CEQA") and Sections 15060 (c)(2), 15060 (c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). The proposed action is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. While this amendment would allow a new category of use in an existing zoning district, it does not authorize new development that would directly result in physical change to the environment.

SECTION 3. FINDINGS.

1. The Zoning Code Amendment is consistent with the City of Newport Beach General Plan (“General Plan”). According to the General Plan, “[t]he IG designation is intended to provide for a wide range of moderate to low intensity industrial uses, such as light manufacturing and research and development, and limited ancillary commercial and office uses.” The Zoning Code Amendment would allow wine tasting rooms with limitations within the Industrial Zoning District (IG), which are accessory to wine production, sales and distribution and is a commercial use that is ancillary to the industrial uses in the vicinity. The wine tasting room would also benefit those who live and work in the area, as it would provide for a location to try wine products before purchasing.
2. The proposed limitations on wine tasting rooms will help ensure that potential nuisances are minimized and that the use would not operate as an eating and drinking establishment or wine bar.
3. The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission finds the Zoning Code Amendment is not a project subject to CEQA in accordance with Section 21065 of CEQA and CEQA Guideline Sections 15060 (c)(2), 15060 (c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3. The Zoning Code Amendment is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), because it has no potential to have a significant effect on the environment.
2. The Planning Commission of the City of Newport Beach hereby recommends the City Council approve Zoning Code Amendment No. CA2020-005 as set forth in Exhibit “A,” which is attached hereto and incorporated herein by reference.

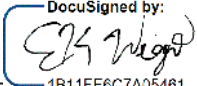
PASSED, APPROVED, AND ADOPTED THIS 23rd DAY OF JULY 2020.

AYES: Ellmore, Klaustermeier, Lowrey, and Weigand

NOES: Kleiman and Rosene

ABSTAIN: None

ABSENT: Koetting

BY: 
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Erik Weigand, Chair

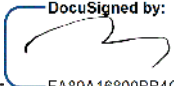
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Lauren Kleiman, Secretary

EXHIBIT “A”**ZONING CODE AMENDMENT NO. CA2020-005**

Section 1: The row entitled “Eating and Drinking Establishments” of Table 2-12 (Allowed Uses and Permit Requirements) of Section 20.24.020(C) (Allowed Uses and Permit Requirements) of Chapter 20.24 (Industrial Zoning District (IG)) of the Newport Beach Municipal Code (NBMC) is amended to read as follows:

Land Use	IG	Specific Use Regulations
Service Uses - General		
Eating and Drinking Establishments		
Take-Out Service - Limited	P	Section 20.48.090
Wine Tasting Room (1)	CUP	Section 20.48.090

Section 2: Footnote (1) is added to Table 2-12 (Allowed Uses and Permit Requirements) of Section 20.24.020(C) (Allowed Uses and Permit Requirements) of Chapter 20.24 (Industrial Zoning District (IG)) of the NBMC to read as follows:

- (1) Wine Tasting Room Hours of Operation. The permitted hours of operation shall be limited to Monday through Friday from 4:00 p.m. to 11:00 p.m., and Saturday and Sunday from 12:00 p.m. to 11:00 p.m.

Section 3: Section 20.48.090 (Eating and Drinking Establishments) of Chapter 20.48 (Standards for Specific Land Uses) of the NBMC is re-lettered and amended to read as follows:

20.48.090 Eating and Drinking Establishments

This section provides standards for the establishment and operation of eating and drinking establishments.

A. Standards - All Eating and Drinking Establishments.

1. Outdoor Activities. Activities shall be conducted entirely within an enclosed structure, except for the following, which shall not be located between the activity and the side of a structure adjacent to a residential zoning district.

- a. The checking of patrons' identification;
- b. Valet parking activities;

- c. Outdoor dining when in compliance with the standards in subsection (D) of this section (Standards—Outdoor Dining);
- d. Outdoor smoking areas in compliance with State law;
- e. Queuing of patrons, which shall be managed to:
 - i. Allow pedestrian passage on the sidewalk; and
 - ii. Not be adjacent to residential zoning districts and residential uses.

2. Outdoor Storage. Outdoor storage of boxes, equipment, materials, merchandise, and other similar items shall be allowed if the storage area is:

- a. Screened from public view, subject to the Director's approval; and
- b. Dedicated for storage only; provided that the dedicated area shall not occupy required parking spaces or open space areas.

3. Solid Waste Storage. The review authority may require storage areas and receptacles that are in addition to the requirements for solid waste storage areas in Section 20.30.120 (Solid Waste and Recyclable Materials Storage).

B. Standards - On-Sale Alcohol Sales.

1. Operational Standards. In addition to the standards in subsection (A) of this section, the following standards shall apply to eating and drinking establishments that sell, serve, or give away alcohol:

- a. Sales Activities. Alcoholic beverages shall not be sold, served, or given away:
 - i. Outside of the exterior walls of the eating and drinking establishment, except for approved outdoor dining areas;
 - ii. From drive-up or walk-up service windows; or
 - iii. To persons in watercraft.
- b. Litter and Graffiti. The owner/operator shall:
 - i. Maintain the exterior of the premises, including signs and accessory structures, free of litter and graffiti at all times;

- ii. Provide for daily removal of trash, from the premises and abutting sidewalks or alleys within twenty (20) feet of the premises; and
 - iii. Remove graffiti within forty-eight (48) hours of written notice from the City.
- c. Security. The review authority may require the eating and drinking establishment to provide security personnel, security programs, and/or surveillance devices.
- d. Sales Training.
 - i. Owners, operators, servers, vendors, and persons selling, serving, or giving away alcoholic beverages shall complete a Licensee Education on Alcohol and Drugs (LEAD) program sponsored by the Department of Alcoholic Beverage Control.
 - ii. Records of each owner's, operator's, server's, vendor's, and employee's successful completion of the LEAD training program shall be maintained on the premises and shall be presented to a representative of the City upon request.
- e. Conditions of Approval. The owner/operator shall maintain a copy of the most recent City permit conditions of approval on the premises and shall post a notice that these are available for review on the premises. The posted notice shall be signed by the permittee.
- f. Public Telephones. Upon request of the Police Chief or as required by the ABC, a public telephone located on the premises or in an adjacent area under the control of the owner/operator shall be equipped with devices or mechanisms that prevent persons from calling in to that public telephone.

2. Development Standards.

- a. Signs. Signs shall comply with Chapter 20.42 (Sign Standards). In addition, the following shall apply:
 - i. Window signs shall not obstruct the view of the interior of the premises (e.g., sales counter, cash register, employees, customers, etc.) from the exterior.
 - ii. Loitering, open container, and other signs specified by the Alcoholic Beverage Control Act shall be posted as required by the ABC.
- b. Site and Floor Plans. The site and floor plans of an eating and drinking establishment that sells, serves, or gives away alcohol shall incorporate design features to reduce alcohol-related problems. The review authority may require the

incorporation of preventive design features (e.g., openness to surveillance and control of the premises, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public rights-of-way and neighboring property; illumination of interior and exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior) and other safety features (e.g., security, restrooms, additional exits, etc.).

C. Standards - Noise Control Late-Hour Operations. To encourage appropriate patron conduct, the owner/operator of an eating and drinking establishment that sells, serves, or gives away alcohol shall post signs at clearly visible locations within the establishment and at both on-site and off-site parking areas under the owner/operator's control. The signs shall request patrons to keep noise to a minimum.

D. Standards - Outdoor Dining (Including Late-hour Operations).

1. Public Property. Outdoor dining on public property shall comply with Chapter 13.18 (Use of Public Sidewalks for Outdoor Dining) and the standards of the Public Works Department.

2. Private Property. Outdoor dining on private property shall comply with the following standards:

a. Barriers. Appropriate barriers shall be placed between outdoor dining areas and parking, pedestrian, and vehicular circulation areas. Barriers shall serve only to define the areas and shall not constitute a permanent all-weather enclosure.

b. Associated Elements. Physical elements (e.g., awnings, covers, furniture, umbrellas, etc.) that are visible from public rights-of-way shall be compatible with one another and with the overall character and design of the principal structure(s).

E. Standards - Bars, Nightclubs, and Lounges. Bars, nightclubs, and lounges shall comply with the standards in subsections (A) through (D) of this section. In addition, the structure in which the bar, nightclub, or lounge is located shall be adequately soundproofed so that interior noise is not audible beyond the lot line with the doors and windows closed.

F. Standards - Wine Tasting Rooms. In addition to the standards set forth in subsections (A) through (D), wine tasting rooms shall comply with the following standards:

1. The building in which the wine tasting room is located shall be a minimum of 500 feet from the property line of any property that contains a preschool, elementary, middle, or high school.

2. The wine tasting room shall operate under an ABC Type 2 (Winegrower) license only.
3. The wine tasting room shall not operate as a bona fide eating establishment, but may serve incidental foods such as bread, crackers, cheeses or nuts. Any kitchen or food preparation area provided shall have no cooking equipment that requires a mechanical ventilation system to exhaust heat, steam or grease vapor.
4. Limited private events may occur within the wine tasting room, provided the wine tasting room remains open to the public.
5. Live entertainment is prohibited.

G. Permit Requirements.

1. New Establishments. Permits and licenses required by Title 5 (Business Licenses and Regulations) shall be obtained for new eating and drinking establishments, in addition to permits required by Part 2 of this title (Zoning Districts, Allowable Land Uses, and Zoning District Standards).
2. Existing Establishments. An existing eating and drinking establishment, including bars, lounges, and nightclubs, shall obtain permits and licenses required by Title 5 (Business Licenses and Regulations) in the following circumstances:
 - a. Substantial Change. When there is a substantial change in operation including any of the following:
 - i. An application for, or a change in type of, retail liquor license from the Department of Alcoholic Beverage Control;
 - ii. An increase in the floor area principally devoted to alcohol sales by twenty-five (25) percent or more or by two hundred fifty (250) square feet or more, whichever is less; or
 - iii. A reinstatement of alcohol sales after the ABC has revoked or suspended the existing ABC license for a period of longer than thirty (30) days.
 - b. Objectionable Conditions. When the establishment is operated or maintained under objectionable conditions that constitute a public nuisance, including any of the following:
 - i. A pattern of documented violations of the permit conditions, this Zoning Code, the Municipal Code, the Penal Code, or other State statutes; or

- ii. A pattern of substantiated complaints of activity constituting evidence of a nuisance.

3. Review Criteria.

a. Late-Hour Operations. When reviewing an application to allow late-hour operations, the review authority shall consider the following potential impacts upon adjacent or nearby uses:

- i. Noise from music, dancing, and voices associated with allowed indoor or outdoor uses and activities;
- ii. High levels of lighting and illumination;
- iii. Increased pedestrian and vehicular traffic activity during late night and early morning hours;
- iv. Increased trash and recycling collection activities;
- v. Occupancy loads of the use; and
- vi. Any other factors that may affect adjacent or nearby uses.

b. Outdoor Dining. When reviewing an application to allow outdoor dining, the review authority shall consider the relation of outdoor dining areas to sensitive noise receptors (e.g., hospitals, schools, and residential uses). Mitigation measures shall be applied to eliminate potential impacts related to glare, light, loitering, and noise.

c. On-Sale Alcohol Sales. When reviewing an application to allow an eating or drinking establishment to sell, serve, or give away alcohol, the review authority shall:

- i. Evaluate the potential impacts upon adjacent uses outlined in subsection (F)(3)(a) of this section (Late-Hour Operations). For the purposes of this subsection, “adjacent uses” shall mean those uses within one hundred (100) feet of the proposed use, as measured between the nearest lot lines;
- ii. Consider the proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption; and
- iii. Make the findings in Section 20.48.030(C)(3) (alcohol sales—off-sale).

4. Post-Decision Procedures.

a. With On-Sale Alcohol Sales. For establishments with permits for on-sale alcohol sales, the post-decision procedures in Section 20.48.030(C)(4) shall apply.

b. Without On-Sale Alcohol Sales. For establishments that do not sell, serve, or give away alcohol, the procedures and requirements in Chapter 20.54 (Permit Implementation, Time Limits, and Extensions), and those related to appeals in Part 6 of this title (Zoning Code Administration) shall apply.

Section 4: Table 3-10 (Off-Street Parking Requirements) in Section 20.40.040 (Off-Street Parking Spaces Required) is amended to add a row to include parking standards for Wine Tasting Rooms to read as follows:

Land Use	Parking Spaces Required
Service Uses—General	
Eating and Drinking Establishments	
Wine Tasting Room	1 per each 4 persons based on allowed occupancy load or as required by conditional use permit

Section 5: The definition for “Eating and Drinking Establishments (Land Use)” within Section 20.70.020 (Definitions of Specialized Terms and Phrases) of Chapter 20.70 (Definitions) shall be amended to include the definition of “Wine Tasting Room” to read as follows:

Eating and Drinking Establishments (Land Use). See also “Alcohol sales, on-sale” and “Drive-through facilities.”

1. “Accessory food service” means a type of food service establishment that:
 - a. Sells food and/or beverages as an accessory use in a retail, office, or institutional structure;
 - b. Does not change the character of the principal use;
 - c. Does not sell, serve, or give away alcoholic beverages;
 - d. Does not have an entrance separate from the principal use; and
 - e. Has hours of operation that are the same as those of the principal use.
2. “Bar, lounge, and nightclub” means an establishment that sells or serves alcoholic beverages for consumption on the premises and is holding or applying for a public premises license from the California State Department of Alcoholic Beverage Control (ABC) (i.e., ABC License Type 42 (On-Sale Beer and Wine—Public Premises), ABC

License Type 48 (On-Sale General—Public Premises), and ABC License Type 61 (On-Sale Beer—Public Premises)). Persons under twenty-one (21) years of age are not allowed to enter and remain on the premises. The establishment shall include any immediately adjacent area that is owned, leased, rented, or controlled by the licensee.

3. “Fast food” means an establishment whose design or principal method of operation includes four or more of the following characteristics:

- a. A permanent menu board is provided from which to select and order food;
- b. A chain or franchise restaurant;
- c. Customers pay for food before consuming it;
- d. A self-service condiment bar and/or drink service is/are provided;
- e. Trash receptacles are provided for self-service bussing; and
- f. Furnishing plan indicates stationary seating arrangements.

A fast food establishment may or may not have late hour operations (see “Late hour operations”). Alcoholic beverages are not sold, served, or given away on the premises. If alcoholic beverages are sold, served, or given away on the premises, the use shall be considered a food service use. See “Food service.”

4. “Food service, no late hours” means an establishment that sells food and beverages, including alcoholic beverages, prepared for primarily on-site consumption, and that has all of the following characteristics:

- a. Establishment does not have late hour operations (see “Late hour operations”);
- b. Customers order food and beverages from individual menus;
- c. Food and beverages are served to the customer at a fixed location (i.e., booth, counter, or table); and
- d. Customers pay for food and beverages after service and/or consumption.

5. “Food service, late hours” means an establishment that sells food and beverages, including alcoholic beverages, prepared for primarily on-site consumption, and that has all of the following characteristics:

- a. Establishment does have late hour operations (see “Late hour operations”);
- b. Customers order food and beverages from individual menus;
- c. Food and beverages are served to the customer at a fixed location (i.e., booth, counter, or table); and
- d. Customers pay for food and beverages after service and/or consumption.

6. “Late hour operations” means facilities that provide service after 11:00 p.m.

7. “Outdoor dining, accessory” means an outdoor dining area contiguous and accessory to a food service establishment.

8. “Take-out service, limited” means an establishment that sells food or beverages and that has all of the following characteristics:

- a. Sales are primarily for off-site consumption;
- b. Customers order and pay for food at either a counter or service window;
- c. Incidental seating up to six seats may be provided for on-site consumption of food or beverages; and
- d. Alcoholic beverages are not sold, served, or given away on the premises.

Typical uses include bakeries, candy, coffee, nut and confectionery stores, ice cream and frozen dessert stores, small delicatessens, and similar establishments.

9. “Take-out service only” means an establishment that offers a limited variety of food or beverages and that has all of following characteristics:

- a. Sales are for off-site consumption;
- b. Seating is not provided for on-site consumption of food or beverages; and
- c. Alcoholic beverages are not sold, served, or given away on the premises.

10. “Wine Tasting Room” means an establishment that operates pursuant to an ABC Type 2 (Winegrower) license to provide the sale of wine that is produced by said winery for on- and off-site consumption. The sale of other types of alcohol, such as beer and distilled spirits, shall be expressly prohibited.



CITY OF

NEWPORT BEACH

City Council Staff Report

August 25, 2020
Agenda Item No. 17

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

PREPARED BY: Benjamin M. Zdeba, AICP, Senior Planner - 949-644-3253,
bzdeba@newportbeachca.gov
Lauren Wooding Whitlinger, Real Property Administrator
949-644-3236, lwooding@newportbeachca.gov

TITLE: Resolution No. 2020-76: Appeal of Planning Commission's Decision
of an AT&T Small Cell Installation (PA2019-111)

ABSTRACT:

This item is an appeal of the Planning Commission's decision on July 9, 2020, to approve a minor use permit and a coastal development permit allowing the installation of a small cell wireless facility on a City-owned streetlight pole on the northern side of Balboa Boulevard at the northwestern corner of the 30th Street intersection (Attachment A). For City Council's consideration is to determine whether to uphold or deny the Planning Commission's decision.

RECOMMENDATION:

- a) Conduct a de novo public hearing;
- b) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the State CEQA (California Environmental Quality Act) Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment and the exceptions to the Class 3 exemption under Section 15300.2 do not apply; and
- c) Adopt Resolution No. 2020-76, *A Resolution of the City Council of Newport Beach, California, Upholding the Decision of the Planning Commission Approving Minor Use Permit No. UP2019-030 and Coastal Development Permit No. CD2020-052 for a Small Cell Facility Located Within the Public Right-of-Way on City Streetlight No. SCL0796, at the Northwestern Corner of Balboa Boulevard and 30th Street (PA2019-111), and denying the appeal.*

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

Small Cell Wireless Overview

For a brief overview of small cell wireless facilities and the City's Master License Agreement (MLA) with New Cingular Wireless PCS, LLC, please reference Attachment C.

Project Setting and Description

The proposed project is located on Streetlight No. SLC0796, which is owned by the City of Newport Beach. City Streetlight No. SLC0796 is located within the public right-of-way on the northern side of Balboa Boulevard at the northwestern corner of the 30th Street intersection. It is immediately adjacent to an unusually large landscaped parkway that is approximately 20 feet wide. Beyond the parkway to the northeast is a block of two-unit residential development. All surrounding land uses are residential and vary in density from two- to single-unit residential. The only exception is a Commercial Visitor Serving (CV) zoned parcel across 30th Street from the site, which is presently developed with a laundromat (Beach Coin Laundry). As the streetlight is located within the public right-of-way, the site is not designated by the General Plan Land Use Element and, therefore, is not located within a zoning district.

New Cingular Wireless, LLC d/b/a AT&T Mobility c/o Ericsson, Inc. (Applicant) seeks approval of a minor use permit and a coastal development permit to allow the installation of telecommunications equipment for a small cell wireless facility on the City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on Balboa Boulevard and includes the following: (1) Removal and replacement of an existing City streetlight; (2) Installation of a small cell wireless facility that consists of four remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter equipment shroud. This equipment would be fixed to the top of the replaced streetlight pole for a maximum height of 34 feet, 9 inches; and (3) Establishment of new below-grade support equipment adjacent to the streetlight. The proposed facility is classified as a stealth facility under Newport Beach Municipal Code (NBMC) Section 20.49.030(N) and the project is designed to be as visually inconspicuous as possible with all equipment and antennas screened and is consistent with the conceptual designs included in the MLA. Project renderings follow on the next page as Figure 1.



Figure 1, Existing photograph (left) with proposed rendering (right) showing the replaced streetlight pole, antenna, equipment shroud, and below-grade equipment handholes.

In pursuing this location, the Applicant considered five other nearby sites. This detailed analysis is reflected in the Planning Commission staff report, which is attached. Ultimately, the proposed location was selected by the Applicant as it has the necessary utility connections readily available, is feasible from a signal propagation perspective, is free of obstructions, and has a good line of sight to meet coverage objectives. It was also determined to be the least impactful as the unusually large parkway for the area provides a softening mechanism to best blend the facility.

Construction of the proposed project will take approximately 30 days. All construction will be done in a manner that minimizes impact to residents and/or businesses in the area. Maintenance of the unmanned facility is not expected to create any congestion, and maintenance activity is expected to be minimal. AT&T will be responsible for maintenance of the telecom facility including, but not limited to, any missing, discolored or damaged screening, promptly removing all graffiti, and keeping the facility clean and free of litter. Monitoring is typically done remotely and, if necessary, a site visit to change any radio equipment will be coordinated with the City, as appropriate.

Project Background

On April 16, 2020, the Zoning Administrator conducted a public hearing and approved the Applicant's request. During the meeting, three members of the public spoke in opposition to the Minor Use Permit expressing concerns regarding health and general incompatibility with the neighborhood.

One member of the public, Mark Pollock, also spoke in opposition expressing concerns about the validity of the application and insurance requirements being satisfied as part of the MLA. Staff from the City Attorney's Office addressed Mr. Pollock's concerns as outlined in his March 25, 2020, letter at this hearing and noted that staff informed the City Attorney's Office that the insurance requirements were satisfied.

On April 28, 2020, Mr. Pollock filed an appeal of the decision of the Zoning Administrator for the purpose of bringing the item before the Planning Commission for review. The appeal again expressed concerns regarding proof of adequate insurance, as well as the ability for the Applicant to file an application under the MLA. It is notable that the appeal did not focus on the specific location or design of the proposed project, but rather it focused on the compliance with the MLA.

The project was scheduled for a de novo public hearing by the Planning Commission for June 4, 2020 but was continued to allow staff additional time to review the project. Of concern was whether the project also required a coastal development permit.

Upon finding that a coastal development permit should be required, staff prepared a revised public hearing notice including the Coastal Development Permit in accordance with NBMC Chapters 20.62 and 21.62. On July 9, 2020, the Planning Commission conducted a noticed public hearing and, following receipt of public comments and deliberation, voted unanimously to adopt Resolution No. PC2020-018 approving the project, which includes the written findings for the action (Attachment D).

The staff report and meeting minutes are attached to this report for review, Attachment F and G respectfully.

On July 15, 2020, Mr. Pollock ("appellant") filed an appeal of the decision of the Planning Commission for the purpose of bringing the item before the City Council for review. The appeal again expresses concerns regarding proof of adequate insurance, as well as the ability for the Applicant to file an application under the MLA. The complete appeal application and its expanded brief have been attached as Attachment E.

Based on NBMC Subsections 20.64.030©(3) and 21.64.030(C)(3) (Conduct of Hearing), a public hearing on an appealed matter is conducted "de novo," meaning that it is a new hearing. The City Council is not bound by the prior decision of the Planning Commission.

Basis of Appeal

The appellant represents an anonymous Newport Beach resident. It should be noted staff received no written opposition to the project during Planning Commission review and the appellant was the only member of the public who spoke in opposition to the project at the public hearing. Based on the application to appeal the project, the appellant's primary concerns are discussed below:

- 1) Licensee under MLA is not Applicant for permit and AT&T is not the licensee.

Staff response: An MLA for use of City-owned streetlights for telecommunications facilities was executed by and between the City and New Cingular Wireless PCS, LLC, dated February 12, 2019. New Cingular Wireless PCS, LLC (Licensee) is a Delaware limited liability company that is registered to do business in the State of California, and whose Manager is AT&T Mobility Corporation.

Additionally, AT&T Mobility Corporation recorded a Fictitious Business Name Statement to do business as "AT&T Mobility" on November 21, 2016, as Instrument No. 20166459312 in the Official Records of Orange County, California. The City holds sufficient documentation showing the Licensee under the MLA is the same entity represented as the Applicant under this permit application.

2) No proof of insurance under the MLA.

Staff response: The City is in possession of certificates of insurance listing New Cingular Wireless PCS, LLC as the insured, with scopes of coverage and policy limits that comply with the insurance requirements in the MLA. The certificates filed with the City include a current policy period as of the date of this report and have been reviewed and approved by the City's Risk Manager.

3) Permit granted to entity without MLA in violation of Title 20.49.080.

Staff response: As described above, the Licensee has provided appropriate documentation and proof of insurance and has a valid MLA. Upon approval of a use permit for a specific site, the City will process an amendment to the MLA licensing use of that particular City-owned streetlight. The amendment will be noticed to City Council pursuant to City Council Policy L-23 (The Siting of Wireless Telecommunications Equipment on City-Owned Property) prior to being executed, pursuant to NBMC Section 20.49.080 (Agreement for Use of City-Owned or City-Held Trust Property).

Summary

The appeal filed by Mr. Pollock focuses on alleged underlying issues with the City Council-authorized MLA, the authorized representatives who may pursue the sites, and insurance requirements. Nothing in the appeal discusses specific issues with the proposed location of this project and its appropriateness.

The streetlight serves as a part of the City's existing streetlight inventory. The replacement streetlight pole design is consistent with the size, shape, style, and design of that existing, including the attached light arm and luminaire. Maintaining the same luminaire height as the existing streetlight pole will help to ensure visual continuity on the streetscape corridor with respect to light standard design. The larger landscaped parkway with several palm trees serves to soften the facility's appearance and provides a mechanism of blending consistent with NBMC Chapters 20.49 and 21.49. The proposed location was ultimately found to best meet the Applicant's objectives and appears to be the best location among the alternative sites examined, in staff's opinion.

Staff believes the project meets all findings required under Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) and that there are no underlying issues with the MLA. As such, staff recommends approval of the project thereby upholding the Planning Commission's July 9, 2020 decision.

Alternatives

The City Council may choose to modify or deny the project. If denied, staff will return at the next City Council meeting with a resolution of denial.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. Class 2 consists of replacement or reconstruction of existing structures and facilities, where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another, where only minor modifications are made in the exterior of the structure.

In this case, the proposal includes the removal and replacement of an existing City streetlight pole to install a small telecommunications wireless facility, including below-grade accessory equipment.

The exceptions to the Class 3 categorical exemption under Section 15300.2 do not apply. This project does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

NOTICING:

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

ATTACHMENTS:

Attachment A – Vicinity Map

Attachment B – Draft Resolution for Approval

Attachment C – Brief Overview of Small Cell Facilities and the MLA

Attachment D – Planning Commission Resolution No. PC2020-018 adopted July 9, 2020

Attachment E – Appellant's Appeal Application received July 15, 2020

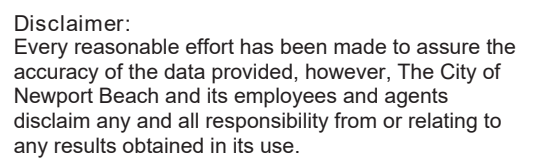
Attachment F – Planning Commission Staff Report from July 9, 2020

Attachment G – Planning Commission Meeting Minutes from July 9, 2020

Attachment H – Project Renderings and Plans

Attachment A

Vicinity Map



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Attachment B

Draft Resolution for Approval

RESOLUTION NO. 2020-76

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, UPHOLDING THE DECISION OF THE PLANNING COMMISSION APPROVING MINOR USE PERMIT NO. UP2019-030 AND COASTAL DEVELOPMENT PERMIT NO. CD2020-052 FOR A SMALL CELL FACILITY LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY ON CITY STREETLIGHT NUMBER SLC0796, AT THE NORTHWESTERN CORNER OF BALBOA BOULEVARD AND 30TH STREET (PA2019-111)

WHEREAS, an application was filed by New Cingular Wireless, LLC (“Applicant”), with respect to City of Newport Beach (“City”) Streetlight Number SLC0796 (“SLC0796”), located within the public right-of-way, at the northwestern corner of Balboa Boulevard and 30th Street, requesting approval of a minor use permit;

WHEREAS, the Applicant has applied for a minor use permit and coastal development permit for the installation of a small cell wireless facility on a City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on Balboa Boulevard and includes the following: (1) removal and replacement of an existing City streetlight; (2) installation of a small cell wireless facility that consists of four remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter equipment shroud, with the equipment being fixed to the top of the replaced streetlight pole for a maximum height of 34 feet, 9 inches; and (3) establishment of new below-grade support equipment adjacent to the streetlight (the “Project”);

WHEREAS, since the SLC0796 streetlight is located within the public right-of-way, the proposal is regulated by Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property), as well as Chapter 20.49 (Wireless Telecommunication Facilities) of the Newport Beach Municipal Code (“NBMC”);

WHEREAS, the City’s regulatory review of wireless telecom siting is limited by three federal laws: (1) the Communications Act of 1934; (2) Telecommunications Act of 1996 (Telecommunications Act); and (3) the Middle-Class Tax Relief and Job Creation Act of 2012 (Spectrum Act), which aim to facilitate wireless infrastructure development and restrict certain aspects of local authority in review and permitting of wireless telecommunications facilities;

WHEREAS, on January 14, 2019, the Federal Communications Commission (“FCC”) Declaratory Ruling and Order FCC 18-133 (“Order”), modified in part by City of Portland v. United States, No. 18-72689 (9th Cir. 2020), removed barriers to wireless infrastructure deployment and established accelerated timelines for processing wireless applications at the local level;

WHEREAS, the Order also limited the City's rights as a property owner, restricting the type and amount of fees that can be collected for private use of public property such that City's review and approval is primarily limited to reasonable aesthetic requirements, environmental concerns, and land use compatibility;

WHEREAS, a public hearing was held on April 16, 2020, in the Community Room located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act"), Chapter 20.62 and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this public hearing;

WHEREAS, the Zoning Administrator adopted Resolution No. ZA2020-030 approving Minor Use Permit No. UP2019-030;

WHEREAS, on April 28, 2020, attorney Mark Pollock filed an appeal of the Zoning Administrator's decision primarily citing concerns with the City's Master License Agreement and the Applicant's authority to file for this application;

WHEREAS, the Project was scheduled for a de novo public hearing by the Planning Commission for June 4, 2020, but was continued from that agenda to allow staff additional time to review the Project.

WHEREAS, the Project is located within the Coastal Zone. Subsection 21.49.020(B) (Permit and Agreement Required) of the NBMC requires a coastal development permit for a wireless telecommunication facility unless said facility is exempted by Subsection 21.49.020(C) (Exempt Facilities);

WHEREAS, the Project does not meet any of the prescribed exemptions; therefore, a coastal development permit is required;

WHEREAS, upon finding that a coastal development permit is required, the Applicant revised the request to include said permit, the Zoning Administrator deferred action on Coastal Development Permit CD2020-052 and referred the Project to the Planning Commission pursuant to Section 21.50.020 footnote (3) (Authority for Decisions) for consideration and final action along with Minor Use Permit No. UP2019-030;

WHEREAS, the Project was noticed for the Planning Commission's review. A de novo telephonic public hearing was held by the Planning Commission on July 9, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of this public meeting was given in accordance with the Ralph M. Brown Act, Chapter 20.62 and Chapter 21.62 of the NBMC. The Planning Commission considered evidence both written and oral at this hearing;

WHEREAS, the Planning Commission adopted Resolution No. PC2020-018 approving Coastal Development Permit No. CD2020-052 and upholding the Zoning Administrator's decision to approve Minor Use Permit No. UP2019-030;

WHEREAS, on July 15, 2020, attorney Mark Pollock filed an appeal of the Planning Commission's decision primarily citing concerns with the City's Master License Agreement and the Applicant's authority to file for this application;

WHEREAS, a Master License Agreement for use of City-owned streetlights for telecommunications facilities was executed by and between the City and New Cingular Wireless PCS, LLC, dated February 12, 2019 (Contract No. C-8584-1);

WHEREAS, New Cingular Wireless PCS, LLC is a Delaware limited liability company that is registered to do business in the State of California, whose Manager is AT&T Mobility Corporation;

WHEREAS, AT&T Mobility Corporation recorded a Fictitious Business Name Statement to do business as AT&T Mobility on November 21, 2016, as Instrument No. 20166459312 in the Official Records of Orange County, California;

WHEREAS, the City holds sufficient documentation showing the Licensee under the MLA is the same entity represented as the Applicant under this permit application;

WHEREAS, the City will enforce the other terms of the Master License Agreement;
and

WHEREAS, a de novo telephonic public hearing was held by the City Council on August 25, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of this public meeting was given in accordance with the Ralph M. Brown Act, Chapter 20.62 and Chapter 21.62 of the NBMC. The City Council considered evidence both written and oral at this public hearing.

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

Section 1: The City Council does hereby uphold the Planning Commission's approval of Minor Use Permit No. UP2019-030 and Coastal Development Permit No. CD2020-052 subject to the conditions of approval attached as Exhibit "A," and incorporated herein by reference. The City Council's decision is made in accordance with the following subsections and is supported by the facts to support each beneath them:

Minor Use Permit

In accordance with Subsection 20.52.020(F) (Conditional Use Permits and Minor Use Permits) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

A. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

1. SLC0796 is designated as Public Right-of-Way ("ROW"), which is property held in trust by the City, and allows for the construction and maintenance of public roads, crosswalks, pedestrian walkways, electric transmission lines, oil or gas pipeline, water line, sanitary or storm sewer, or other similar uses. City Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property) governs procedures and locations for siting wireless telecommunications equipment in the ROW. Streetlights are eligible for telecom use, subject to entitlements (such as this minor use permit request), yearly rent, and a license agreement.
2. The City of Newport Beach General Plan ("General Plan") Natural Resources Goal NR 21 recommends the "minimized visual impacts of signs and utilities." The proposed design is consistent with NR 21 by introducing no new vertical obstructions in the ROW, employing stealth elements like colorization (painting to match the streetlight pole), and installing the associated equipment below grade. Conditions of Approval No. 20 and 21 prohibit advertising signage or identifying logos on the small cell facility except for small identification, address, warning, and similar information plates. Signage required by State or Federal regulations shall be allowed in its smallest permissible size.

3. General Plan Land Use Policy LU 6.1.3 promotes “architecture and planning that complements adjoining uses.” The proposed design adjoins residential uses and aligns with LU 6.1.3 by copying the size, shape, style, and design of the existing streetlight pole to decrease potential disruption of the visual environment. Adverse impact to circulation, aesthetics, sounds, or odor are not anticipated from project implementation.
4. General Plan Land Use Policy LU 4 calls for the “management of growth and change to protect and enhance the livability of neighborhoods and achieve distinct and economically vital business and employment districts, which are correlated with supporting infrastructure and public services and sustain Newport Beach’s natural setting.” The Project upholds the intent of LU 4 by providing infrastructure to add system capacity for service gaps that may occur for residents and businesses of the area in regular and high demand periods. It also benefits the community by improving the existing coverage and capacity to increase the voice and data system already in use by its customers. The small cell facility is designed to adapt and accept future technologies, such as 5G, and will help meet local demand and sustain the livability of the area.
5. SLC0796 is not located within a specific plan area

Finding:

- B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding:

1. See Fact in Support of Finding A.1.
2. Wireless telecommunication facilities are regulated by Chapter 20.49 (Wireless Telecommunication Facilities) of the NBMC. To site small cell equipment in the ROW assigns the project a Class 3 specification (Public Right-of-Way Installations) and requires the Applicant to obtain a minor use permit from the Zoning Administrator pursuant to Section 20.49.060 (Permit Review Procedures) of the NBMC. In this case, the Zoning Administrator’s approval was appealed; therefore, the Planning Commission is the review authority.
3. Section 20.49.040(A) (Preferred Locations) of the NBMC, prioritizes telecom facilities from most preferred (1) to least preferred (4) as follows: (1) collocation of a new facility at an existing facility; (2) Class 1 (Stealth/Screened); (3) Class 2 (Visible Antennas) and Class 3 (Public Right-of-Way); and (4) Class 4

(Freestanding Structure). Although lower on the listing of priority facilities, the proposed facility consists of one (1) small cell facility that is designed to not visually dominate the surrounding area and instead to blend into the existing block.

4. Section 20.49.050 (General Development and Design Standards) of the NBMC, requires projects to be visually compatible with surrounding structures. In reviewing this application, the review authority shall consider the proposed facility's use of color blending, equipment screening, and the limited size of the equipment designed consistently with the aforementioned criteria. All telecommunications equipment on top of the streetlight pole would be concealed within a painted-to-match 12-inch diameter shroud. The Project would rely on likeness with the streetlight pole through style, color, and material to help disguise its presence. Engineering of the replacement streetlight pole accommodates and withstands the weight of the small cell equipment and has ability to display a future City banner, if needed. Electrical and wiring components of the telecommunications equipment are designed to be fully contained within the new streetlight pole. The overall height of 34 feet, 9 inches from finished grade to the top of the proposed facility complies with the maximum allowed. Equipment not contained within the shroud on the streetlight pole would be out of sight, located below the ground in the adjacent ROW. Condition of Approval No. 32 requires approved design drawings from Southern California Edison ("SCE") of the power supply to the small cell facility before construction of the facility is to commence.
5. Existing residential properties contiguous to the Project are in the R-2 (Two-Unit Residential) Zoning District. R-2-zoned sites allow for structures up to 24 feet for flat roof elements and 29 feet to the ridge of a sloped roof. The height of the existing streetlight SLC0796 sits just above the maximum allowable height for residential structures. The streetlight is separated from the residences by a large 20-foot vegetated parkway that is landscaped with taller palm trees. Given this buffer between the streetlight and the residences, SLC0796 is softened and screened by the landscaping from the residential neighborhood beyond. Furthermore, keeping the luminaire the same height as the existing streetlight lessens visual obtrusion from the proposed small cell facility with the line of the existing development.
6. Submitted materials from the Applicant demonstrate the proposal would conform with Federal Communications Commission ("FCC") Rules and Regulations regarding safety and radio frequency emissions.
7. Section 20.49.080 (Agreement for Use of City-Owned or City-Held Trust Property) of the NBMC requires a license agreement for all telecom facilities located on City-owned or City-held trust property. A Master License Agreement for use of City-owned streetlights for telecommunications facilities was executed by and between

the City and New Cingular Wireless PCS, LLC, dated February 12, 2019 (Contract No. C-8584-1). New Cingular Wireless PCS, LLC (Licensee) is a Delaware limited liability company that is registered to do business in the State of California, and whose Manager is AT&T Mobility Corporation. AT&T Mobility Corporation recorded a Fictitious Business Name Statement to do business as AT&T Mobility on November 21, 2016, as Instrument No. 20166459312 in the Official Records of Orange County, California. The City holds sufficient documentation showing the Licensee under the MLA is the same entity represented as the Applicant under this permit application.

8. The Project will comply with applicable requirements of the NBMC with construction as shown on the plans and implementation of the conditions of approval.

Finding:

- C. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. City of Newport Beach Streetlight No. SLC0796 is located within the public right-of-way on the northern side of Balboa Boulevard at the northwestern corner of the 30th Street intersection. It is immediately adjacent to an unusually large vegetated parkway that is approximately 20 feet wide. Beyond the parkway to the northeast is a block of two-unit residential development. All surrounding land uses are residential and vary in density from two-unit residential to single-unit residential. The only exception is a CV (Commercial Visitor Serving) zoned parcel across 30th Street from the site, which is presently developed with a laundromat (Beach Coin Laundry).
2. Under the new FCC Order, wireless providers are not required to demonstrate a significant coverage gap, a qualification previously required by local jurisdictions in order to support an application. Pursuant to the Order, the City cannot "materially [inhibit] the introduction of new services or the improvement of existing services." Moreover, pursuant to Section 332(c)(7)(B)(i)(II) of U.S. Code Title 47 (Telecommunications), the City may "not regulate the placement, construction or modification of wireless service facilities in a manner that prohibits the provision of personal wireless services." Although not required, the Applicant produced a coverage map for the Project. This map indicates the proposed facility would boost the supply of capacity and coverage in the vicinity.

3. SLC0796 serves as a part of the City's existing streetlight inventory. The Applicant proposes to: (1) remove and replace SLC0796 with a new streetlight in the same location; (2) maintain the existing luminaire height of 29 feet, 9 inches; (3) install telecommunications equipment for a small cell wireless facility on top of the new streetlight pole resulting in an overall height of 34 feet, 9 inches; and (4) establish new below-grade support equipment adjacent to the streetlight, within the public right-of-way.
4. The replacement streetlight pole design is consistent with the size, shape, style, and design of that existing, including the attached light arm and luminaire. For safety and circulation of the area during construction, Condition of Approval No. 40 requires traffic control plans illustrating compliance with the 2016 WATCHbook to be reviewed and approved by the Public Works Department prior to the issuance of any building permit.
5. The Project is anticipated to enhance coverage and capacity for residents, visitors and businesses in the neighborhood by providing wireless access to voice and data transmission services. The proposed telecom facility is not expected to result in any material changes to the character of the local community.
6. See Facts in Support of Finding B.4, B.5, and B.6.
7. The Project will be unmanned, will have no impact on the circulation system, and, as conditioned, will not generate noise, odor, smoke, or any other adverse impacts to adjacent land uses.

Finding:

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding:

1. Adequate public and emergency vehicle access, public services, and utilities are provided to and around the subject site and the proposed use will not change this.
2. The Project will be unmanned and will have no permanent impact on the circulation system and adjacent land uses due to its location in the parkway, outside of existing vehicle or pedestrian circulation areas.

3. The Public Works Department and Utilities Department have reviewed the project proposal and do not have any concerns regarding access, public services, or utilities provided to the existing neighborhood and surrounding area.

Finding:

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The Project will only require periodic maintenance and will not generate any type of significant adverse impacts to the environment, such as noise, odor, smoke, etc.
2. The Project must and will comply with the applicable Federal and State rules, regulations and standards thus, ensuring public health and safety.
3. See Facts in Support of Finding B.4, B.5, B.6, and B.7.
4. The Project will be effectively blended based upon the design and location with the incorporation of the conditions of approval to the greatest extent feasible. As a result, the proposed facility at this location is not expected to result in conditions that are materially detrimental to nearby property owners, residents, and businesses, nor to public health or safety.

Wireless Telecommunications Facility

In accordance with Subsection 20.49.060(H)(1) (General Findings for Telecom Facilities) of the NBMC, the following additional findings and facts in support of such findings are set forth:

Finding:

F. The proposed telecom facility is visually compatible with the surrounding neighborhood.

Facts in Support of Finding:

1. See Facts in Support of Finding B.4, B.5, and B.6.

2. The closest residentially zoned property is located approximately 20 feet northeast of SLC0796 and is buffered by a large 20-foot-wide parkway area with vegetation of varying heights. SLC0796 is located along the inland side of a well-traveled street and will blend in with the surrounding streetscape. There are no public parks near the Project. The Project and below-grade accessory equipment meets the City's design parameters approved by the City's Master License Agreement, which emphasizes stealth techniques and best practices to not be materially detrimental to the surrounding area.

Finding:

G. The proposed telecom facility complies with height, location and design standards, as provided for in this chapter.

Facts in Support of Finding:

1. The 34-foot, 9-inch tall small cell facility would comply with the maximum height limit of 35 feet for telecom facilities installed on streetlights within the public right-of-way.
2. See Facts in Support of Finding B in its entirety.
3. The application includes documentation indicating the need to provide and improve coverage to the residential areas within the City. Moreover, the additional system capacity provided by the Project will address service gaps that occur during high demand periods, as well as service gaps that exist at all demand periods to the surrounding area. SLC0796 will help meet coverage objectives and improve coverage to nearby areas that are currently marginal.

Finding:

H. An alternative site(s) located further from a residential district, public park or public facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.

2. Five nearby streetlights were identified and investigated by the Applicant as possible alternate locations for this small cell facility; however, all sites were found by the applicant to be not viable.
3. Alternative Site #1 is a wooden utility pole located approximately 100 feet north of the proposed streetlight. This pole is located immediately in front of a two-unit residential structure that is oriented towards Balboa Boulevard within a narrower parkway area. Installation of small cell infrastructure at this location would require placement of a crossarm with exposed equipment on either side of the wooden pole and would not be as aesthetically compatible as the proposed location. Most importantly, the wooden utility pole is located within an approved underground assessment and utility district, which will aim to eventually eliminate such above-ground utilities in the area.
4. Alternative Site #2 at City Streetlight No. SLC0767 located approximately 160 feet northwest of the proposed streetlight on the opposite side of Balboa Boulevard. This alternative location is in very close proximity to overhead powerlines, which would make additional height above the existing streetlight pole infeasible. Furthermore, the existing streetlight is located such that accessibility is limited and a girthier pole could not be accommodated without further constraining the sidewalk.
5. Alternative Site #3 is a wooden utility pole located approximately 78 feet west of the proposed streetlight. This pole is located immediately adjacent to the front patio of an existing, single-story residence. Like Alternative Site #1, installation of small cell infrastructure at this location would require placement of a crossarm with exposed equipment on either side of the wooden pole and would not be as aesthetically compatible as the proposed location. Most importantly, the wooden utility pole is located within an approved underground assessment and utility district, which will aim to eventually eliminate such above-ground utilities in the area.
6. Alternative Site #4 at City Streetlight No. SLC0768 is located at the southwest corner of Balboa Boulevard and 30th Street approximately 100 feet from the proposed streetlight. Like Alternative Site #2, this alternative location is in very close proximity to overhead powerlines, which would make additional height above the existing streetlight pole infeasible. Accessibility is also limited here and a girthier pole cannot be accommodated without further constraining the sidewalk.
7. Alternative Site #5 at City Streetlight No. SLC0766 is located at the alleyway between 30th Street and 29th Street, approximately 175 feet southeast of the proposed streetlight. Like Alternative Site #2 and Alternative Site #4, accessibility

is limited at this location and a girther pole cannot be accommodated without further constraining the sidewalk.

Finding:

- I. *An alternative plan that would result in a higher preference facility class category for the proposed facility is not available or reasonably feasible and desirable under the circumstances.*

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.
2. The Applicant's analysis concluded that a more preferred location as defined by Subsection 20.49.040(A) (Preferred Locations) of the NBMC, such as a collocation or a Class 1 or 2 facility, would not be technically feasible from an RF or construction perspective. The analysis explained that small cell facilities are low powered and must be located at the precise location selected to serve the network traffic demands of the specific limited area. Further, this type of service cannot be accomplished with a traditional macro collocation or building mounted site in the area. The abutting properties are zoned for residential use and, as such, a building mounted "stealth" facility would not be possible.

Coastal Development Permit

In accordance with Subsection 21.52.015(F) (Coastal Development Permits, Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

- J. *Conforms to all applicable sections of the certified Local Coastal Program.*

Facts in Support of Finding:

1. The Project is considered a Class 3 (Public Right-of-Way) installation. Section 21.49.040 (Telecom Facility Preferences and Prohibited Locations) of the NBMC lists Class 3 Installations as third on the installation preference list. It is not proposed at a location that is prohibited by NBMC Subsection 21.49.040(B) (Prohibited Locations).
2. See Fact in Support of Finding I.2.

3. The Project complies with Section 21.30.100 (Scenic and Visual Quality Protection) of the NBMC. It is not on a coastal bluff or canyon, not adjacent to or within the viewshed of a public view point, coastal view road, public park or beach, or public accessway, as identified on the Coastal Land Use Plan Map 4-3 (Coastal Views), and does not contain significant natural landforms or vegetation. The Project scope involves the removal and replacement of an existing City streetlight in the same location with the same luminaire height. The shielded antennas will extend above the pole by approximately 5 feet, 6 inches while the antenna shroud will be visible from the immediate vicinity. The Project has been designed to blend in within the existing streetscape. The replacement streetlight is consistent with the size, shape, style, and design of the existing pole. No above-ground mounted equipment is proposed and the support equipment is proposed to be placed in underground handholes. All transmission equipment, including remote radio units and the raycap disconnect switch, are fully concealed within a screening shroud. There will be no negative impacts on coastal views or coastal resources with the Project's implementation.
4. The proposed replacement streetlight and antenna structure will comply with the maximum allowable height limit of 35 feet from existing finished grade.

Finding:

- K. *Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

Facts in Support of Finding:

1. SLC0796 is not located between the nearest public road and the sea or shoreline; therefore, the Project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities. Vertical access to the beach is provided by way of street-ends in the area, including 30th Street. Lateral access along the beach provided on the beach itself and along the Oceanfront Boardwalk. The equipment will be below grade and will not impact any public way.
2. The Project will allow the installation of a small cell facility that complies with all applicable Local Coastal Program (LCP) development standards and maintains development attributes consistent with the existing and anticipated future surrounding neighborhood pattern of development. Therefore, the Project does not have the potential to degrade public views within the Coastal Zone.

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

Section 3: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4: The City Council finds the adoption of this resolution is exempt from the California Environmental Quality Act ("CEQA") pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. In this case, the Project includes the removal and replacement of an existing City streetlight pole to install a small telecommunications wireless facility, including below-grade accessory equipment. The exceptions to the Class 3 categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

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


ADOPTED this 25th day of August, 2020.

Will O'Neill
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachment(s): Exhibit "A" Conditions of Approval

EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning Division

1. The development shall be in substantial conformance with the plans, including elevation exhibits and visual simulations, stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this approval.
4. The Project approved by this permit shall comply with all applicable Federal and State rules, regulations, and standards.
5. The replacement pole shall be reconstructed in the exact location of the existing streetlight pole.
6. The reconstructed streetlight pole design shall be consistent with the size (including diameter), shape, style, and design of the existing streetlight pole to the greatest extent feasible, including the attached light arm and luminaire. All mounted equipment shall be painted to match the color and style of the replacement streetlight pole.
7. All accessory support equipment of this Project shall be installed underground.
8. All electrical and antenna wiring shall be fully encased within the reconstructed streetlight pole.
9. The Project approved by the use permit shall comply with the Master License Agreement (Contract No. C-8584-1) and any easements, covenants, conditions, or restrictions on the underlying City-trust property upon which the Project is located.
10. Anything not specifically approved by this permit is not permitted and must be addressed in a separate and subsequent review.
11. Prior to building permit final, a Height Certification Inspection shall be required. The small cell facility and base streetlight pole approved by this permit shall not exceed a total of 34 feet, 9 inches in height from existing grade (maximum elevation height of 43.57 feet above finish grade using the North American Vertical Datum of 1988 [NAVD88]).

12. Prior to building permit issuance, all contractors and subcontractors shall have a valid City of Newport Beach business license.
13. The Applicant shall continually maintain the Project so that it retains its original appearance at the time the building permit is finalized by the City of Newport Beach.
14. On an annual basis, the Applicant shall conduct maintenance inspections of the wireless telecom facility, including the small cell facility and below-grade equipment areas, and make all necessary repairs. The Community Development Director may require additional inspections and/or maintenance activities at his/her discretion.
15. The Applicant shall not prevent the City of Newport Beach from having adequate spectrum capacity on the City's 800 MHz radio frequencies at any time.
16. The Project shall transmit at the approved frequency ranges established by the FCC. The Applicant shall inform the City in writing of any proposed changes to the frequency range in order to prevent interference with the City's Public Safety radio equipment.
17. The Project shall at no time interfere with the frequencies used by the City of Newport Beach for public safety. "Comprehensive advanced planning and frequency coordination" engineering measures shall prevent interference, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the "Best Practices Guide" published by the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), and as endorsed by the FCC.
18. Should interference with the City's Public Safety radio equipment occur, use of the Project authorized by this permit may be suspended until the radio frequency interference is corrected and verification of the compliance is reported.
19. The Applicant shall provide a "single point of contact" for carriers in its Engineering and Maintenance Departments that is monitored 24 hours per day to ensure continuity on all interference issues, and to which interference problems may be reported. The name, telephone number, fax number, and email address of that person shall be provided to the Community Development Department and Newport Beach Police Department's Support Services Commander prior to activation of the facility. If the point of contact changes, the City shall be immediately alerted and updated.
20. No advertising signage or identifying logos shall be displayed on the Project except for small identification, address, warning, and similar information plates. A detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.

21. Appropriate information warning signs or plates shall be posted on the base streetlight pole of the transmitting antenna. In addition, contact information (e.g., a telephone number) shall be provided on the warning signs or plates. The location of the information warning signs or plates shall be depicted on the plans submitted for construction permits. Signage required by State or federal regulations shall be allowed in its smallest permissible size.
22. Prior to the final of building permits, the Applicant shall schedule an evening inspection by the Code Enforcement Division to confirm compliance with lighting. The telecom facility shall be lighted to the extent deemed necessary by the Newport Beach Police and Utilities Departments for security lighting and consistency with other streetlights in the area.
23. The Applicant shall maintain the Project in good repair, such that it is always consistent with this approval.
24. The Applicant shall ensure that its Project complies with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The Applicant shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. This information shall be made available by the Applicant upon request of the Community Development Director.
25. The Project shall comply with all applicable provisions of U.S. Code Title 47 (Telecommunications) rules and regulations, including those related to FCC Radio Frequency safety.
26. Prior to final of building permits, the Applicant shall schedule an inspection by the Planning Division to ensure materials and colors match existing architecture as illustrated in the approved photographic simulations and in conformance with NBMC Section 20.49.050.
27. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Division by certified mail no less than thirty (30) days prior to such action. The operator shall have ninety (90) days from the date of abandonment or discontinuance to reactivate use of the facility or remove the telecom facility and restore the site.
28. The City reserves the right and jurisdiction to review and modify any permit approved pursuant to NBMC Chapters 20.49 and 21.49, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Division of any proposal to change the height or size of the facility; increase the size, shape, or number of antennas; change the facility's color or materials or location on the site; or increase the signal output above the maximum permissible exposure ("MPE") limits imposed by the radio frequency emissions guidelines of the FCC. Any changed circumstance shall require the operator to

apply for a review of the modification, and possible amendment to the use permit, prior to implementing any change.

29. Coastal Development Permit No. CD2020-052 and Minor Use Permit No. UP2019-030 shall expire unless exercised within 24 months from the date of approval as specified in Sections 20.54.060 and 21.54.060 (Time Limits and Extensions) of the NBMC, unless an extension is otherwise granted.
30. Construction activities shall comply with Section 10.28.040 of the NBMC, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or holidays.
31. This approval may be modified or revoked by the City Council if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
32. A copy of the Resolution, including conditions of approval Exhibit "A," and approved drawings from Southern California Edison (SCE) for the power supply and design, shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
33. The Applicant shall promptly notify the City if the landscaped parkway of the subject streetlight pole is negatively affected or otherwise damaged by project implementation.
34. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Small Cell on SLC0796, including, but not limited to, Minor Use Permit No. UP2019-030 and Coastal Development Permit No. CD2020-052 (PA2019-111). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Public Works Department

35. Prior to the issuance of a building permit, an encroachment permit shall be required.
36. Prior to the issuance of a building permit, traffic control plans illustrating compliance with the 2016 WATCHbook requirements shall be reviewed and approved by the Public Works Department before their implementation. Large construction vehicles shall not be permitted to travel narrow streets as determined by the Public Works Department. Disruption caused by construction work along roadways and by movement of construction vehicles shall be minimized by proper use of traffic control equipment and flagman.

Additional Conditions of Approval

37. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds pursuant to MBTA:
 - A. The Project area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.

Attachment C

Overview of Small Cell Wireless

Attachment C

Small Cell Wireless Overview

Over the last several decades, with the invention of new technologies like smartphones, tablets, and smartwatches, connectivity for wireless devices drove telecommunications companies to deploy new equipment to allow for the transmission of more data. Wireless data demand continues to grow, outpacing the capacity of the existing telecommunications infrastructure.

Small cell technology, like that proposed, is now being deployed across the country as a new solution to increase data speed and capacity and to make coverage more reliable. In contrast to traditional macro wireless sites (i.e., cell towers), small cells advance a signal over a smaller radius by the means of minimal equipment on existing infrastructure. The result is more limited visual intrusion and enhanced wireless network capacity, which helps to meet the demands of residents, businesses, and visitors.

The City of Newport Beach's (City) regulatory review of wireless telecom siting is limited by three federal laws: (1) The Communications Act of 1934; (2) the Telecommunications Act of 1996 (Telecommunications Act); and (3) a provision of the Middle-Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). Together, these laws aim to facilitate wireless infrastructure development and restrict certain aspects of local authority in review and permitting of wireless telecommunications facilities. On January 14, 2019, Federal Communications Commission (FCC) Declaratory Ruling and Order FCC 18-133 (Order) became effective. This directive removed barriers to wireless infrastructure deployment related to small cell and established accelerated timelines for processing small cell applications at the local level. It also limited the City's rights as a property owner, restricting the type and amount of fees that can be collected for private use of public property.

On February 12, 2019, the City Council authorized execution of a Master License Agreement (MLA) (Contract No. C-8584-1) with New Cingular Wireless PCS, LLC (AT&T). The MLA authorized non-exclusive use of City-owned streetlights in the public right-of-way to install telecommunications equipment for small cell facilities. The MLA approved conceptual designs, as well as fee and rent assessment. AT&T is responsible for all resultant construction, installation, maintenance, and repair of the small cell facilities, including all related costs and expenses. Further, AT&T is responsible for complying with all laws, statutes, ordinances, rules, and regulations that may be required for their projects.

As the local regulatory agency, the City assesses wireless service facilities under local permitting protocol and ensures sites adhere to responsible regulatory practices, including safety, accessibility, environmental impact, land use, and aesthetics. However, Section 332(c)(7)(B)(iv) of U.S. Code Title 47 (Telecommunications) reads, "no state or local government may regulate wireless telecommunication facilities on the basis of the perceived health effects of radio frequency (RF) emissions to the extent that the proposed

facilities comply with FCC regulations concerning emissions.” Submitted RF materials from the Applicant demonstrate the proposal would conform with FCC Rules and Regulations. Condition of Approval No. 25 requires the Applicant to comply with all applicable provisions of U.S. Code Title 47 (Telecommunications) rules and regulations, including those related to radio frequency emissions.

Under the new FCC Order, wireless providers are not required to demonstrate a significant coverage gap, a qualification previously required by local jurisdictions in order to support an application. Pursuant to the Order, the City cannot “materially [inhibit] the introduction of new services or the improvement of existing services.” Moreover, pursuant to Section 332(c)(7)(B)(i)(II) of U.S. Code Title 47 (Telecommunications), the City may “not regulate the placement, construction or modification of wireless service facilities in a manner that prohibits the provision of personal wireless services.” Although not required, the Applicant produced a coverage map for the project. This map indicates the proposed facility would boost the capacity and coverage in the vicinity.

Attachment D

Planning Commission Resolution No.
PC2020-018 adopted July 9, 2020

RESOLUTION NO. PC2020-018

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-052 AND UPHOLDING THE DECISION OF THE ZONING ADMINISTRATOR APPROVING MINOR USE PERMIT NO. UP2019-030 FOR A SMALL CELL FACILITY LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY ON CITY STREETLIGHT NUMBER SLC0796, AT THE NORTHWESTERN CORNER OF BALBOA BOULEVARD AND 30TH STREET (PA2019-111)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by New Cingular Wireless, LLC (“Applicant”), with respect to City of Newport Beach Streetlight Number SLC0796 (“SLC0796”), located within the public right-of-way, at the northwestern corner of Balboa Boulevard and 30th Street, requesting approval of a minor use permit.
2. The Applicant proposes the installation of a small cell wireless facility on a City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on Balboa Boulevard and includes the following: (1) removal and replacement of an existing City streetlight; (2) installation of a small cell wireless facility that consists of four remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter equipment shroud, with the equipment being fixed to the top of the replaced streetlight pole for a maximum height of 34 feet, 9 inches, and (3) establishment of new below-grade support equipment adjacent to the streetlight. Also included is the review of a coastal development permit. (the “Project”).
3. Since the SLC0796 streetlight is located within the public right-of-way. The proposal is regulated by Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property), as well as Chapter 20.49 (Wireless Telecommunication Facilities) of the Newport Beach Municipal Code (“NBMC”).
4. A public hearing was held on April 16, 2020, in the Community Room located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”), Chapter 20.62 and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this public hearing.
5. The Zoning Administrator adopted Resolution No. ZA2020-030 approving Minor Use Permit No. UP2019-030.

6. On April 28, 2020, attorney Mark Pollock filed an appeal of the Zoning Administrator's decision primarily citing concerns with the City's Master License Agreement and the Applicant's authority to file for this application.
7. The Project was scheduled for a de novo public hearing by the Planning Commission for June 4, 2020 but was continued from that agenda to allow staff additional time to review the Project. Of concern was whether the Project also required a coastal development permit.
8. The Project is located within the Coastal Zone. Subsection 21.49.020(B) (Permit and Agreement Required) of the NBMC requires a coastal development permit for a wireless telecommunication facility unless said facility is exempted by Subsection 21.49.020(C) (Exempt Facilities). In this case, the Project does not meet any of the prescribed exemptions; therefore, a coastal development permit is required.
9. Upon finding that a coastal development permit is required, the Zoning Administrator deferred action on Coastal Development Permit CD2020-052 and is referring it to the Planning Commission pursuant to Section 21.50.020 footnote (3) (Authority for Decisions) for consideration and final action along with Minor Use Permit No. UP2019-030. The Project was noticed for the Planning Commission's review. A de novo telephonic public hearing was held by the Planning Commission on July 9, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of this public meeting was given in accordance with the Ralph M. Brown Act, Chapter 20.62 and Chapter 21.62 of the NBMC. The Planning Commission considered evidence both written and oral at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Project is exempt from the California Environmental Quality Act ("CEQA") pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.
2. In this case, the Project includes the removal and replacement of an existing City streetlight pole to install a small telecommunications wireless facility, including below-grade accessory equipment.

3. The exceptions to the Class 3 categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

Minor Use Permit

In accordance with Subsection 20.52.020(F) (Conditional Use Permits and Minor Use Permits) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The use is consistent with the General Plan and any applicable specific plan.*

Facts in Support of Finding:

1. SLC0796 is designated as Public Right-of-Way ("ROW"), which is property held in trust by the City, and allows for the construction and maintenance of public roads, crosswalks, pedestrian walkways, electric transmission lines, oil or gas pipeline, water line, sanitary or storm sewer, or other similar uses. City Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property) governs procedures and locations for siting wireless telecommunications equipment in the ROW. Streetlights are eligible for telecom use, subject to entitlements (such as this minor use permit request), yearly rent, and a license agreement.
2. The City of Newport Beach General Plan ("General Plan") Natural Resources Goal NR 21 recommends the "minimized visual impacts of signs and utilities." The proposed design is consistent with NR 21 by introducing no new vertical obstructions in the ROW, employing stealth elements like colorization (painting to match the streetlight pole), and installing the associated equipment below grade. Conditions of Approval No. 20 and 21 prohibit advertising signage or identifying logos on the small cell facility except for small identification, address, warning, and similar information plates. Signage required by State or Federal regulations shall be allowed in its smallest permissible size.
3. General Plan Land Use Policy LU 6.1.3 promotes "architecture and planning that complements adjoining uses." The proposed design adjoins residential uses and aligns with LU 6.1.3 by copying the size, shape, style, and design of the existing streetlight pole to decrease potential disruption of the visual environment. Adverse impact to circulation, aesthetics, sounds, or odor are not anticipated from project implementation.
4. General Plan Land Use Policy LU 4 calls for the "management of growth and change to protect and enhance the livability of neighborhoods and achieve distinct and economically vital business and employment districts, which are correlated with

supporting infrastructure and public services and sustain Newport Beach's natural setting." The Project upholds the intent of LU 4 by providing infrastructure to add system capacity for service gaps that may occur for residents and businesses of the area in regular and high demand periods. It also benefits the community by improving the existing coverage and capacity to increase the voice and data system already in use by its customers. The small cell facility is designed to adapt and accept future technologies, such as 5G, and will help meet local demand and sustain the livability of the area.

5. SLC0796 is not located within a specific plan area

Finding:

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding:

1. See Fact in Support of Finding A.1.
2. Wireless telecommunication facilities are regulated by Chapter 20.49 (Wireless Telecommunication Facilities) of the NBMC. To site small cell equipment in the ROW assigns the project a Class 3 specification (Public Right-of-Way Installations) and requires the Applicant to obtain a minor use permit from the Zoning Administrator pursuant to Section 20.49.060 (Permit Review Procedures) of the NBMC. In this case, the Zoning Administrator's approval was appealed; therefore, the Planning Commission is the review authority.
3. Section 20.49.040(A) (Preferred Locations) of the NBMC, prioritizes telecom facilities from most preferred (1) to least preferred (4) as follows: (1) collocation of a new facility at an existing facility; (2) Class 1 (Stealth/Screened); (3) Class 2 (Visible Antennas) and Class 3 (Public Right-of-Way); and (4) Class 4 (Freestanding Structure). Although lower on the listing of priority facilities, the proposed facility consists of one (1) small cell facility that is designed to not visually dominate the surrounding area and instead to blend into the existing block.
4. Section 20.49.050 (General Development and Design Standards) of the NBMC, requires projects to be visually compatible with surrounding structures. In reviewing this application, the review authority shall consider the proposed facility's use of color blending, equipment screening, and the limited size of the equipment designed consistently with the aforementioned criteria. All telecommunications equipment on top of the streetlight pole would be concealed within a painted-to-match 12-inch diameter shroud. The Project would rely on likeness with the streetlight pole through style, color, and material to help disguise its presence. Engineering of the replacement streetlight pole accommodates and withstands the weight of the small cell equipment and has ability to display a future City banner, if needed. Electrical and wiring components of the telecommunications equipment are designed to be fully contained within the new streetlight pole. The overall height of 34 feet, 9 inches from finished grade to the top of

the proposed facility complies with the maximum allowed. Equipment not contained within the shroud on the streetlight pole would be out of sight, located below the ground in the adjacent ROW. Condition of Approval No. 32 requires approved design drawings from Southern California Edison ("SCE") of the power supply to the small cell facility before construction of the facility is to commence.

5. Existing residential properties contiguous to the Project are in the R-2 (Two-Unit Residential) Zoning District. R-2-zoned sites allow for structures up to 24 feet for flat roof elements and 29 feet to the ridge of a sloped roof. The height of the existing streetlight SLC0796 sits just above the maximum allowable height for residential structures. The streetlight is separated from the residences by a large 20-foot vegetated parkway that is landscaped with taller palm trees. Given this buffer between the streetlight and the residences, SLC0796 is softened and screened by the landscaping from the residential neighborhood beyond. Furthermore, keeping the luminaire the same height as the existing streetlight lessens visual obtrusion from the proposed small cell facility with the line of the existing development.
6. Submitted materials from the Applicant demonstrate the proposal would conform with Federal Communications Commission ("FCC") Rules and Regulations regarding safety and radio frequency emissions.
7. The Project will comply with applicable requirements of the NBMC with construction as shown on the plans and implementation of the conditions of approval.

Finding:

- C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. City of Newport Beach Streetlight No. SLC0796 is located within the public right-of-way on the northern side of Balboa Boulevard at the northwestern corner of the 30th Street intersection. It is immediately adjacent to an unusually large vegetated parkway that is approximately 20 feet wide. Beyond the parkway to the northeast is a block of two-unit residential development. All surrounding land uses are residential and vary in density from two-unit residential to single-unit residential. The only exception is a CV (Commercial Visitor Serving) zoned parcel across 30th Street from the site, which is presently developed with a laundromat (Beach Coin Laundry).
2. Under the new FCC Order, wireless providers are not required to demonstrate a significant coverage gap, a qualification previously required by local jurisdictions in order to support an application. Pursuant to the Order, the City cannot "materially [inhibit] the introduction of new services or the improvement of existing services." Moreover, pursuant to Section 332(c)(7)(B)(i)(II) of U.S. Code Title 47 (Telecommunications), the City may "not regulate the placement, construction or modification of wireless service facilities in a manner that prohibits the provision of personal wireless services." Although

not required, the Applicant produced a coverage map for the Project. This map indicates the proposed facility would boost the supply of capacity and coverage in the vicinity.

3. SLC0796 serves as a part of the City's existing streetlight inventory. AT&T proposes to: (1) remove and replace SLC0796 with a new streetlight in the same location; (2) maintain the existing luminaire height of 29 feet, 9 inches; (3) install telecommunications equipment for a small cell wireless facility on top of the new streetlight pole resulting in an overall height of 34 feet, 9 inches; and (4) establish new below-grade support equipment adjacent to the streetlight, within the public right-of-way.
4. The replacement streetlight pole design is consistent with the size, shape, style, and design of that existing, including the attached light arm and luminaire. For safety and circulation of the area during construction, Condition of Approval No. 40 requires traffic control plans illustrating compliance with the 2016 WATCHbook to be reviewed and approved by the Public Works Department prior to the issuance of any building permit.
5. The Project is anticipated to enhance coverage and capacity for residents, visitors and businesses in the neighborhood by providing wireless access to voice and data transmission services. The proposed telecom facility is not expected to result in any material changes to the character of the local community.
6. See Facts in Support of Finding B.4, B.5, and B.6.
7. The Project will be unmanned, will have no impact on the circulation system, and, as conditioned, will not generate noise, odor, smoke, or any other adverse impacts to adjacent land uses.

Finding:

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding:

1. Adequate public and emergency vehicle access, public services, and utilities are provided to and around the subject site and the proposed use will not change this.
2. The Project will be unmanned and will have no permanent impact on the circulation system and adjacent land uses due to its location in the parkway, outside of existing vehicle or pedestrian circulation areas.
3. The Public Works Department and Utilities Department have reviewed the project proposal and do not have any concerns regarding access, public services, or utilities provided to the existing neighborhood and surrounding area.

Finding:

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The Project will only require periodic maintenance and will not generate any type of significant adverse impacts to the environment, such as noise, odor, smoke, etc.
2. The Project must and will comply with the applicable Federal and State rules, regulations and standards thus, ensuring public health and safety.
3. See Facts in Support of Finding B.4, B.5, B.6, and B.7.
4. The Project will be effectively blended based upon the design and location with the incorporation of the conditions of approval to the greatest extent feasible. As a result, the proposed facility at this location is not expected to result in conditions that are materially detrimental to nearby property owners, residents, and businesses, nor to public health or safety.

Wireless Telecommunications Facility

In accordance with Subsection 20.49.060(H)(1) (General Findings for Telecom Facilities) of the NBMC, the following additional findings and facts in support of such findings are set forth:

Finding:

F. The proposed telecom facility is visually compatible with the surrounding neighborhood.

Facts in Support of Finding:

1. See Facts in Support of Finding B.4, B.5, and B.6.
2. The closest residentially zoned property is located approximately 20 feet northeast of SLC0796 and is buffered by a large 20-foot-wide parkway area with vegetation of varying heights. SLC0796 is located along the inland side of a well-traveled street and will blend in with the surrounding streetscape. There are no public parks near the Project. The Project and below-grade accessory equipment meets the City's design parameters approved by the City's Master License Agreement, which emphasizes stealth techniques and best practices to not be materially detrimental to the surrounding area.

Finding:

G. The proposed telecom facility complies with height, location and design standards, as provided for in this chapter.

Facts in Support of Finding:

1. The 34-foot, 9-inch tall small cell facility would comply with the maximum height limit of 35 feet for telecom facilities installed on streetlights within the public right-of-way.
2. See Facts in Support of Finding B in its entirety.
3. The application includes documentation indicating the need to provide and improve coverage to the residential areas within the City. Moreover, the additional system capacity provided by the Project will address service gaps that occur during high demand periods, as well as service gaps that exist at all demand periods to the surrounding area. SLC0796 will help AT&T to meet its coverage objectives and improve coverage to nearby areas that are currently marginal.

Finding:

H. An alternative site(s) located further from a residential district, public park or public facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.
2. Five nearby streetlights were identified and investigated by the Applicant as possible alternate locations for this small cell facility; however, all sites were found by the applicant to be not viable.
3. Alternative Site #1 is a wooden utility pole located approximately 100 feet north of the proposed streetlight. This pole is located immediately in front of a two-unit residential structure that is oriented towards Balboa Boulevard within a narrower parkway area. Installation of small cell infrastructure at this location would require placement of a crossarm with exposed equipment on either side of the wooden pole and would not be as aesthetically compatible as the proposed location. Most importantly, the wooden utility pole is located within an approved underground assessment and utility district, which will aim to eventually eliminate such above-ground utilities in the area.
4. Alternative Site #2 at City Streetlight No. SLC0767 located approximately 160 feet northwest of the proposed streetlight on the opposite side of Balboa Boulevard. This alternative location is in very close proximity to overhead powerlines, which would make additional height above the existing streetlight pole infeasible. Furthermore, the existing streetlight is located such that accessibility is limited and a girthier pole could not be accommodated without further constraining the sidewalk.

5. Alternative Site #3 is a wooden utility pole located approximately 78 feet west of the proposed streetlight. This pole is located immediately adjacent to the front patio of an existing, single-story residence. Like Alternative Site #1, installation of small cell infrastructure at this location would require placement of a crossarm with exposed equipment on either side of the wooden pole and would not be as aesthetically compatible as the proposed location. Most importantly, the wooden utility pole is located within an approved underground assessment and utility district, which will aim to eventually eliminate such above-ground utilities in the area.
6. Alternative Site #4 at City Streetlight No. SLC0768 is located at the southwest corner of Balboa Boulevard and 30th Street approximately 100 feet from the proposed streetlight. Like Alternative Site #2, this alternative location is in very close proximity to overhead powerlines, which would make additional height above the existing streetlight pole infeasible. Accessibility is also limited here and a girthier pole cannot be accommodated without further constraining the sidewalk.
7. Alternative Site #5 at City Streetlight No. SLC0766 is located at the alleyway between 30th Street and 29th Street, approximately 175 feet southeast of the proposed streetlight. Like Alternative Site #2 and Alternative Site #4, accessibility is limited at this location and a girthier pole cannot be accommodated without further constraining the sidewalk.

Finding:

- I. *An alternative plan that would result in a higher preference facility class category for the proposed facility is not available or reasonably feasible and desirable under the circumstances.*

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.
2. AT&T's analysis concluded that a more preferred location as defined by Subsection 20.49.040(A) (Preferred Locations) of the NBMC, such as a collocation or a Class 1 or 2 facility, would not be technically feasible from an RF or construction perspective. The analysis explained that small cell facilities are low powered and must be located at the precise location selected to serve the network traffic demands of the specific limited area. Further, this type of service cannot be accomplished with a traditional macro collocation or building mounted site in the area. The abutting properties are zoned for residential use and, as such, a building mounted "stealth" facility would not be possible.

Coastal Development Permit

In accordance with Subsection 21.52.015(F) (Coastal Development Permits, Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

J. Conforms to all applicable sections of the certified Local Coastal Program.

Facts in Support of Finding:

1. The Project is considered a Class 3 (Public Right-of-Way) installation. Section 21.49.040 (Telecom Facility Preferences and Prohibited Locations) of the NBMC lists Class 3 Installations as third on the installation preference list. It is not proposed at a location that is prohibited by NBMC Subsection 21.49.040(B) (Prohibited Locations).
2. See Fact in Support of Finding I.2.
3. The Project complies with Section 21.30.100 (Scenic and Visual Quality Protection) of the NBMC. It is not on a coastal bluff or canyon, not adjacent to or within the viewshed of a public view point, coastal view road, public park or beach, or public accessway, as identified on the Coastal Land Use Plan Map 4-3 (Coastal Views), and does not contain significant natural landforms or vegetation. The Project scope involves the removal and replacement of an existing City streetlight in the same location with the same luminaire height. The shielded antennas will extend above the pole by approximately 5 feet, 6 inches while the antenna shroud will be visible from the immediate vicinity. The Project has been designed to blend in within the existing streetscape. The replacement streetlight is consistent with the size, shape, style, and design of the existing pole. No above-ground mounted equipment is proposed and the support equipment is proposed to be placed in underground handholes. All transmission equipment, including remote radio units and the raycap disconnect switch, are fully concealed within a screening shroud. There will be no negative impacts on coastal views or coastal resources with the Project's implementation.
4. The proposed replacement streetlight and antenna structure will comply with the maximum allowable height limit of 35 feet from existing finished grade.

Finding:

K. Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.

Facts in Support of Finding:

1. SLC0796 is not located between the nearest public road and the sea or shoreline; therefore, the Project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities. Vertical access to the beach is provided by way of street-ends in the area, including 30th Street. Lateral access along the beach provided on the beach itself and along the Oceanfront Boardwalk. The equipment will be below grade and will not impact any public way.

2. The Project will allow the installation of a small cell facility that complies with all applicable Local Coastal Program (LCP) development standards and maintains development attributes consistent with the existing and anticipated future surrounding neighborhood pattern of development. Therefore, the Project does not have the potential to degrade public views within the Coastal Zone.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. This Project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to the Class 3 exemption do not apply.
2. The Planning Commission of the City of Newport Beach hereby approves Coastal Development Permit No. CD2020-052 and upholds the Zoning Administrator's decision approving Minor Use Permit No. UP2019-030, subject to the conditions set forth in "Exhibit A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Office of the City Clerk in accordance with Title 21 (Local Coastal Program Implementation Plan) of the NBMC. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeals to the Coastal Commission) of the NBMC, California Code of Regulations Title 14, Division 5.5, Chapter 5, Subchapter 2, Sections 13111 through 13120, and Section 30603 of the California Public Resources Code.

PASSED, APPROVED, AND ADOPTED THIS 9TH DAY OF JULY, 2020.

AYES: Ellmore, Klostermeier, Kleiman, Koetting, Lowrey, Rosene, and Weigand

NOES:

ABSTAIN:

ABSENT:

BY: 
Erik Weigand, Chairman

BY: 
Lauren Kleiman, Secretary

EXHIBIT “A”**CONDITIONS OF APPROVAL**Planning Division

1. The development shall be in substantial conformance with the plans, including elevation exhibits and visual simulations, stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this approval.
4. The Project approved by this permit shall comply with all applicable Federal and State rules, regulations, and standards.
5. The replacement pole shall be reconstructed in the exact location of the existing streetlight pole.
6. The reconstructed streetlight pole design shall be consistent with the size (including diameter), shape, style, and design of the existing streetlight pole to the greatest extent feasible, including the attached light arm and luminaire. All mounted equipment shall be painted to match the color and style of the replacement streetlight pole.
7. All accessory support equipment of this Project shall be installed underground.
8. All electrical and antenna wiring shall be fully encased within the reconstructed streetlight pole.
9. The Project approved by the use permit shall comply with any easements, covenants, conditions, or restrictions on the underlying City-trust property upon which the Project is located.
10. Anything not specifically approved by this permit is not permitted and must be addressed in a separate and subsequent review.
11. Prior to building permit final, a Height Certification Inspection shall be required. The small cell facility and base streetlight pole approved by this permit shall not exceed a total of 34 feet, 9 inches in height from existing grade (maximum elevation height of 43.57 feet above mean sea level using the North American Vertical Datum of 1988 [NAVD88]).

-
12. Prior to building permit issuance, all contractors and subcontractors shall have a valid City of Newport Beach business license.
 13. The Applicant shall continually maintain the Project so that it retains its original appearance at the time the building permit is finalized by the City of Newport Beach.
 14. On an annual basis, the Applicant shall conduct maintenance inspections of the wireless telecom facility, including the small cell facility and below-grade equipment areas, and make all necessary repairs. The Community Development Director may require additional inspections and/or maintenance activities at his/her discretion.
 15. The Applicant shall not prevent the City of Newport Beach from having adequate spectrum capacity on the City's 800 MHz radio frequencies at any time.
 16. The Project shall transmit at the approved frequency ranges established by the FCC. The Applicant shall inform the City in writing of any proposed changes to the frequency range in order to prevent interference with the City's Public Safety radio equipment.
 17. The Project shall at no time interfere with the frequencies used by the City of Newport Beach for public safety. "Comprehensive advanced planning and frequency coordination" engineering measures shall prevent interference, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the "Best Practices Guide" published by the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), and as endorsed by the FCC.
 18. Should interference with the City's Public Safety radio equipment occur, use of the Project authorized by this permit may be suspended until the radio frequency interference is corrected and verification of the compliance is reported.
 19. The Applicant shall provide a "single point of contact" for carriers in its Engineering and Maintenance Departments that is monitored 24 hours per day to ensure continuity on all interference issues, and to which interference problems may be reported. The name, telephone number, fax number, and email address of that person shall be provided to the Community Development Department and Newport Beach Police Department's Support Services Commander prior to activation of the facility. If the point of contact changes, the City shall be immediately alerted and updated.
 20. No advertising signage or identifying logos shall be displayed on the Project except for small identification, address, warning, and similar information plates. A detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.
 21. Appropriate information warning signs or plates shall be posted on the base streetlight pole of the transmitting antenna. In addition, contact information (e.g., a telephone number) shall be provided on the warning signs or plates. The location of the information warning signs or plates shall be depicted on the plans submitted for construction permits.

Signage required by State or federal regulations shall be allowed in its smallest permissible size.

22. Prior to the final of building permits, the Applicant shall schedule an evening inspection by the Code Enforcement Division to confirm compliance with lighting. The telecom facility shall be lighted to the extent deemed necessary by the Newport Beach Police and Utilities Departments for security lighting and consistency with other streetlights in the area.
23. The Applicant shall maintain the Project in good repair, such that it is always consistent with this approval.
24. The Applicant shall ensure that its Project complies with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The Applicant shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. This information shall be made available by the Applicant upon request of the Community Development Director.
25. The Project shall comply with all applicable provisions of U.S. Code Title 47 (Telecommunications) rules and regulations, including those related to FCC Radio Frequency safety.
26. Prior to final of building permits, the Applicant shall schedule an inspection by the Planning Division to ensure materials and colors match existing architecture as illustrated in the approved photographic simulations and in conformance with NBMC Section 20.49.050.
27. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Division by certified mail no less than thirty (30) days prior to such action. The operator shall have ninety (90) days from the date of abandonment or discontinuance to reactivate use of the facility or remove the telecom facility and restore the site.
28. The City reserves the right and jurisdiction to review and modify any permit approved pursuant to NBMC Chapters 20.49 and 21.49, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Division of any proposal to change the height or size of the facility; increase the size, shape, or number of antennas; change the facility's color or materials or location on the site; or increase the signal output above the maximum permissible exposure ("MPE") limits imposed by the radio frequency emissions guidelines of the FCC. Any changed circumstance shall require the operator to apply for a review of the modification, and possible amendment to the use permit, prior to implementing any change.
29. Coastal Development Permit No. CD2020-052 and Minor Use Permit No. UP2019-030 shall expire unless exercised within 24 months from the date of approval as specified in

Sections 20.54.060 and 21.54.060 (Time Limits and Extensions) of the NBMC, unless an extension is otherwise granted.

30. Construction activities shall comply with Section 10.28.040 of the NBMC, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or holidays.
31. This approval may be modified or revoked by the Planning Commission if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
32. A copy of the Resolution, including conditions of approval Exhibit "A," and approved drawings from Southern California Edison (SCE) for the power supply and design, shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
33. The Applicant shall promptly notify the City if the landscaped parkway of the subject streetlight pole is negatively affected or otherwise damaged by project implementation.
34. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of AT&T Small Cell on SLC0796, including, but not limited to, Minor Use Permit No. UP2019-030 and Coastal Development Permit No. CD2020-052 (PA2019-111). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Public Works Department

35. Prior to the issuance of a building permit, an encroachment permit shall be required.
36. Prior to the issuance of a building permit, traffic control plans illustrating compliance with the 2016 WATCHbook requirements shall be reviewed and approved by the Public Works Department before their implementation. Large construction vehicles shall not be permitted to travel narrow streets as determined by the Public Works Department.

Disruption caused by construction work along roadways and by movement of construction vehicles shall be minimized by proper use of traffic control equipment and flagman.

Additional Conditions of Approval

37. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds pursuant to MBTA:
- A. The Project area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.

Attachment E

Appellant's Appeal Application received July
15, 2020



Appeal Application

City Clerk's Office
100 Civic Center Drive / P.O. Box 1768
Newport Beach, CA 92658-8915
949-644-3005

Clerk's Date & Time Stamp

RECEIVED

2020 JUL 15 AM 11:19

OFFICE OF

Appeals are time sensitive and must be received by the City Clerk specified time period from a decision or final action by a decision-maker. It is advisable to consult with the Department managing the issue if there is question with regards to appealing an action. This is an appeal of the:

- ☐ (CDD222)Community Development Director Action to the Planning Commission - \$1,692
- ☐ (CDD222)Zoning Administrator Action to the Planning Commission - \$1,692
- ☒ (CDD222)Planning Commission Action to the City Council - \$1,692
- ☐ (CDD222)Hearing Officer Action to the City Council - \$1,692
- ☐ (CDD223)Building Official/Fire Marshal Action to the Building/Fire Board of Appeals - \$1,692
- ☐ (CDD224)Chief of Police Action on an Operator License to the City Manager - \$757
- ☐ (RSS073)City Manager Action on a Special Events Permit to the City Council - \$1,747
- ☐ (HBR001)Harbormaster Action on a Lease/Permit to the Harbor Commission - \$100
- ☐ (HBR001)Harbormaster Action to the Harbor Commission - Hourly Cost
- ☐ (HBR001)Harbor Commission Action to the City Council - Hourly Cost
- ☐ (PBW018)Public Works Director Action Harbor Development Permits to Harbor Commission - Hourly Cost
- ☐ (PBW018)Public Works Director Action on a Lease/Permit to the Harbor Commission - \$100
- ☐ Other - Specify decision-maker, appellate body, Municipal Code authority and fee: _____

Appellant Information:

Name(s): Mark S. Pollock
Address: 1827 Clay St. #300
City/State/Zip: Napa, CA 94559
Phone: 707 257-3089 Email: mPollock@PollockandJames.com

Appealing Application Regarding:

Name of Applicant(s): New Cingular Wireless, PC5, LLC Date of Final Decision: July 9, 2020
Project No.: SLC 0796 Activity No.: PA 2019-111

Application Site Address: North Western Corner of 30th St. and Balboa Blvd, Light Pole

Description of application: Application for a Minor Use Permit to install SLC 0796

Telecom equipment on a Public light pole in the ROW under an MLA.
Reason(s) for Appeal (attach a separate sheet if necessary): Licensee under MLA is not applicant for Permit. / AT&T is not the licensee. No Proof of Insurance under MLA. Permit granted to entity without MLA in violation of Title 20.49.080

Signature of Appellant: _____ Date: 7/10/2020

FOR OFFICE USE ONLY:

Date Appeal filed and Administrative Fee received: July 15, 20 20.

Barb Elin
City Clerk



cc: Department Director, Deputy Director, Staff

F:\Users\Clerk\Shared\Forms\Appeal Application
Updated 3/7/2019

Attachment F

Planning Commission Staff Report from
July 9, 2020



CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

July 9, 2020
Agenda Item No. 4

SUBJECT: AT&T Small Cell SLC0796 Appeal (PA2019-111)
▪ Minor Use Permit No. UP2019-030
▪ Coastal Development Permit No. CD2020-052

SITE LOCATION: Public right-of-way, City streetlight number SLC0796, at the northwestern corner of Balboa Boulevard and 30th Street

APPLICANT: New Cingular Wireless, LLC

OWNER: City of Newport Beach

PLANNER: Benjamin M. Zdeba, AICP, Senior Planner
949-644-3253, bzdeba@newportbeachca.gov

PROJECT SUMMARY

An appeal of the Zoning Administrator's decision on April 16, 2020, to approve a minor use permit allowing the installation of a small cell wireless facility on a City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on Balboa Boulevard and includes the following: (1) Removal and replacement of an existing City streetlight; (2) Installation of a small cell wireless facility that consists of four remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter antenna screening shroud at the top of the pole. The overall height of the facility would be 34 feet, 9 inches above the ground. Support equipment will be in an adjacent below-grade vault. Also included in the request is a coastal development permit to allow the installation within the coastal zone boundaries.

RECOMMENDATION

- 1) Conduct a public hearing;
- 2) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the State CEQA (California Environmental Quality Act) Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment and the exceptions to the Class 3 exemption under Section 15300.2 do not apply; and
- 3) Adopt Resolution No. PC2020-018 approving Coastal Development Permit No. CD2020-052 and affirming the decision of the Zoning Administrator approving Minor Use Permit No. UP2019-030 with the attached Findings and Conditions (Attachment No. PC 1).

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VICINITY MAP



GENERAL PLAN



ZONING



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	N/A (Public Right-of-Way)	N/A (Public Right-of-Way)	City Streetlight No. SLC0796
NORTH	Two-Unit Residential (RT)	Two-Unit Residential (R-2)	Single- and two-family residences
SOUTH	RT	R-2	Single- and two-family residences
EAST	Visitor Serving Commercial (CV) RT	Commercial Visitor-Serving (CV) R-2	Beach Coin Laundry w/ single- and two-family residences beyond
WEST	RT	R-2	Single- and two-family residences

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INTRODUCTION

Background

Over the last several decades, with the invention of new technologies like smartphones, tablets, and smartwatches, connectivity for wireless devices drove telecommunications companies to deploy new equipment to allow for the transmission of more data. Wireless data demand continues to grow, outpacing the capacity of the existing telecommunications infrastructure.

Small cell technology, like that proposed, is now being deployed across the country as a new solution to resolve increased data demand and to make coverage more reliable. In contrast to traditional macro wireless sites (i.e., cell towers), small cells advance a signal over a smaller radius by the means of minimal equipment on existing infrastructure. The result is more limited visual intrusion and enhanced wireless network capacity, which helps to meet the demands of residents, businesses, and visitors.

The City of Newport Beach's (City) regulatory review of wireless telecom siting is limited by three federal laws: (1) The Communications Act of 1934; (2) the Telecommunications Act of 1996 (Telecommunications Act); and (3) a provision of the Middle-Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). Together, these laws aim to facilitate wireless infrastructure development and restrict certain aspects of local authority in review and permitting of wireless telecommunications facilities. On January 14, 2019, Federal Communications Commission (FCC) Declaratory Ruling and Order FCC 18-133 (Order) became effective. This directive removed barriers to wireless infrastructure deployment and established accelerated timelines for processing wireless applications at the local level. It also limited the City's rights as a property owner, restricting the type and amount of fees that can be collected for private use of public property.

On February 12, 2019, the City Council authorized execution of a Master License Agreement (MLA) (Contract No. C-8584-1) with New Cingular Wireless PCS, LLC (AT&T). The MLA authorized non-exclusive use of City-owned streetlights to install telecommunications equipment for small cell facilities. The MLA approved conceptual designs, as well as fee and rent assessment. AT&T is responsible for all resultant construction, installation, maintenance, and repair of the small cell facilities, including all related costs and expenses. Further, AT&T is responsible for complying with all laws, statutes, ordinances, rules, and regulations that may be required for their projects.

As the local regulatory agency, the City assesses wireless service facilities under local permitting protocol and ensures sites adhere to responsible regulatory practices, including safety, accessibility, environmental impact, land use, and aesthetics. However, Section 332(c)(7)(B)(iv) of U.S. Code Title 47 (Telecommunications) reads, "no state or local government may regulate wireless telecommunication facilities on the basis of the perceived health effects of radio frequency (RF) emissions to the extent that the proposed facilities comply with FCC regulations concerning emissions." Submitted RF materials

from the Applicant demonstrate the proposal would conform with FCC Rules and Regulations. Condition of Approval No. 25 requires the Applicant to comply with all applicable provisions of U.S. Code Title 47 (Telecommunications) rules and regulations, including those related to radio frequency emissions.

Under the new FCC Order, wireless providers are not required to demonstrate a significant coverage gap, a qualification previously required by local jurisdictions in order to support an application. Pursuant to the Order, the City cannot "materially [inhibit] the introduction of new services or the improvement of existing services." Moreover, pursuant to Section 332(c)(7)(B)(i)(II) of U.S. Code Title 47 (Telecommunications), the City may "not regulate the placement, construction or modification of wireless service facilities in a manner that prohibits the provision of personal wireless services." Although not required, the Applicant produced a coverage map for the project (Attachment No. PC 9). This map indicates the proposed facility would boost the capacity and coverage in the vicinity.

Project Setting

The proposed project is located on Streetlight No. SLC0796, which is owned by the City of Newport Beach. City Streetlight No. SLC0796 is located within the public right-of-way on the northern side of Balboa Boulevard at the northwestern corner of the 30th Street intersection. It is immediately adjacent to an unusually large landscaped parkway that is approximately 20 feet wide. Beyond the parkway to the northeast is a block of two-unit residential development. All surrounding land uses are residential and vary in density from two- to single-unit residential. The only exception is a Commercial Visitor Serving (CV) zoned parcel across 30th Street from the site, which is presently developed with a laundromat (Beach Coin Laundry). As the streetlight is located within the public right-of-way, the site is not designated by the General Plan Land Use Element and, therefore, is not located within a zoning district.

Project Description

The Applicant seeks a minor use permit to allow the installation of telecommunications equipment for a small cell wireless facility on the City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on Balboa Boulevard and includes the following: (1) Removal and replacement of an existing City streetlight; (2) Installation of a small cell wireless facility that consists of four remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter equipment shroud. This equipment would be fixed to the top of the replaced streetlight pole for a maximum height of 34 feet, 9 inches; and (3) Establishment of new below-grade support equipment adjacent to the streetlight. The proposed facility is classified as a stealth facility under Newport Beach Municipal Code (NBMC) Section 20.49.030(N) and the project is designed to be as visually inconspicuous as possible with all equipment and antennas screened. The proposed location was selected by the Applicant as it has the necessary utility connections readily available, is feasible from a signal propagation perspective, is free of obstructions, and has a good line of sight to meet coverage objectives.



Figure 1, Existing photograph (top) with proposed rendering (bottom) showing the replaced streetlight pole, antenna, equipment shroud, and below-grade equipment handholes. The banner is only shown for reference and is not part of this proposal.

Construction of the proposed project will take approximately 30 days. All construction will be done in a manner that minimizes impact to residents and/or businesses in the area. Directional boring will be used if deemed appropriate to minimize open trenching for power and fiber connections. Maintenance of the unmanned facility is not expected to create any congestion, and maintenance activity is expected to be minimal. The telecom operator will be responsible for maintenance of the telecom facility including, but not limited to, any missing, discolored or damaged screening, promptly removing all graffiti, and keeping the facility clean and free of litter. Monitoring is typically done remotely and, if necessary, a site visit to change any radio equipment will be coordinated with the City, appropriately.

Decision and Appeal

On April 16, 2020, the Zoning Administrator conducted a public hearing and approved the Applicant's request. During the meeting, three members of the public spoke in opposition to the Minor Use Permit expressing concerns regarding health and general incompatibility with the neighborhood.

One member of the public, Mark Pollock, also spoke in opposition expressing concerns about the validity of the application and insurance requirements being satisfied as part of the MLA. As presented in the minutes for the meeting (Attachment No. PC 5), a staff member from the City Attorney's Office addressed Mr. Pollock's concerns as outlined in his March 25, 2020, letter at this hearing and noted that staff informed the City Attorney's Office that the insurance requirements were satisfied.

On April 28, 2020, Mr. Pollock filed an appeal of the decision of the Zoning Administrator for the purpose of bringing the item before the Planning Commission for review. The appeal again expresses concerns regarding proof of adequate insurance, as well as the ability for the Applicant to file an application under the MLA. The complete appeal application and its expanded brief have been attached as Attachment No. PC 3. It is notable that the appeal does not focus on the specific location of the proposed project, but rather it focuses on the compliance with the MLA.

The project was scheduled for a de novo public hearing by the Planning Commission for June 4, 2020 but was continued from that agenda to allow staff additional time to review the project. Of concern was whether the project also required a coastal development permit.

Upon finding that a coastal development permit should be required, staff prepared a revised public hearing notice including the Coastal Development Permit in accordance with NBMC Chapters 20.62 and 21.62.

Based on NBMC Subsections 20.64.030(C)(3) and 21.64.030(C)(3) (Conduct of Hearing), a public hearing on an appealed matter is conducted "de novo," meaning that it is a new hearing. The prior decision of the Zoning Administrator to approve Minor Use

Permit No. UP2019-030 has no force or effect. The Planning Commission is not bound by the Zoning Administrator's decision.

The Coastal Development Permit was not reviewed by the Zoning Administrator, as it was not identified as a requirement until after the Zoning Administrator had completed his review and action on the Minor Use Permit. Pursuant to NBMC Section 21.50.020 (Authority for Decisions), the Zoning Administrator may refer the review and action of a coastal development permit to the Planning Commission. In this case, the Zoning Administrator determined it is most appropriate for the Planning Commission to consider both the appeal of the Minor Use Permit and the Coastal Development Permit as a single project (Attachment No. PC 6).

Analysis

Pursuant to NBMC Chapters 20.49 and 21.49 (Wireless Telecommunications Facilities), the facility is defined as a Class 3 (Public Right-of-Way) Installation given that it will be located within the public right-of-way. Class 3 facilities require the approval of a minor use permit. NBMC Section 20.52.020 (Conditional Use Permits and Minor Use Permits) requires the review authority, in this case the Planning Commission due to the appeal, to make the following findings in order to approve a Use Permit:

- 1. The use is consistent with the General Plan and any applicable specific plan;*
- 2. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;*
- 3. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;*
- 4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*
- 5. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Additional findings specific to review of a use permit application for a wireless telecommunications facility are required in NBMC Section 20.49.060 (Permit Review Procedures). Those additional findings are as follows:

- a. The proposed telecom facility is visually compatible with the surrounding neighborhood.*
- b. The proposed telecom facility complies with height, location and design standards, as provided for in this chapter.*
- c. An alternative site(s) located further from a residential district, public park or public facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.*
- d. An alternative plan that would result in a higher preference facility class category for the proposed facility is not available or reasonably feasible and desirable under the circumstances.*

General Plan

Within the General Plan, there are multiple goals and policies that are applicable to the siting and development of a telecom facility.

General Plan Natural Resources Goal NR 21 recommends the “minimized visual impacts of signs and utilities.” The proposed design is consistent with NR 21 by introducing no new vertical obstructions in the Public Right-Of-Way (ROW), employing stealth elements like antenna screening, colorization (painting to match the streetlight pole), and installing the associated equipment below grade. Conditions of Approval No. 20 and 21 prohibit advertising signage or identifying logos on any telecom facility except for small identification, address, warning, and similar information plates. The City retains the right to install community banners as depicted in the visual simulation (Figure 1), but the Applicant would not. Facility identification signs required by State or Federal regulations would be allowed in its smallest permissible size to meet regulations.

General Plan Land Use Policy LU 6.1.3 promotes “architecture and planning that complements adjoining uses.” The proposed design is adjacent to residential uses and aligns with LU 6.1.3 by copying the size, shape, style, and design of the existing streetlight pole to decrease potential disruption of the visual environment. Adverse impact to circulation, aesthetics, sounds, or odor are not anticipated from project implementation due to the fully screened design.

General Plan Land Use Policy LU 4 calls for the “management of growth and change to protect and enhance the livability of neighborhoods and achieve distinct and economically vital business and employment districts, which are correlated with supporting infrastructure and public services and sustain Newport Beach’s natural setting.” The proposed small cell facility upholds the intent of LU 4 by providing infrastructure to add AT&T system coverage and capacity to enhance service for residents, visitors, and businesses of the area especially in regular and high demand periods. The location experiences high traffic in the summer months, given the proximity to convenient beach

access and nearby commercial uses. The facility is designed to adapt and accept future technologies, such as 5G, and will help meet future demands in the area.

General Plan Natural Resources Policy NR 20.3 (Public Views) encourages the protecting and enhancement of public view corridors. The facility will be visible from surrounding public and private property, but the location is not a protected public view corridor as identified by the General Plan or Local Coastal Program, and therefore, the project would not have any impact to public views.

Zoning Code

The project site is within the Public Right-of-Way, which is property held in trust by the City, and allows for the construction and maintenance of public roads, crosswalks, pedestrian walkways, electric transmission lines, oil or gas pipeline, water line, sanitary or storm sewer, or other similar uses. City Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property) governs procedures and locations for siting wireless telecommunications equipment in the ROW. Streetlights are eligible for telecom use, subject to entitlements (such as this minor use permit request), yearly rent, and a license agreement.

NBMC Sections 20.49.050 and 21.49.050 (General Development and Design Standards) require projects to be visually compatible with surrounding structures. All telecommunications equipment on top of the streetlight pole would be concealed within a painted-to-match 12-inch diameter shroud. The proposed small cell facility would rely on likeness with the streetlight pole through style, color, and material to help disguise its presence. Electrical and wiring components of the telecommunications equipment are designed to be fully contained within the new streetlight pole. Equipment not contained within the shroud on the streetlight pole would be out of sight, located below the ground in the adjacent ROW. Condition of Approval No. 32 requires approved design drawings from Southern California Edison (SCE) of the power supply to the facility before construction is to commence.

NBMC Chapters 20.49 and 21.49 (Wireless Telecommunication Facilities) outline State- and federally-compliant telecommunication facility development standards and details permit procedures based on facility "Class." Class of a wireless facility is characterized by its installation type and location. NBMC Subsections 20.49.040(A) and 21.49.040(A) (Preferred Locations) prioritize telecom facilities from most preferred (1) to least preferred (4) as follows: (1) collocation of a new facility at an existing facility; (2) Class 1 (Stealth/Screened); (3) Class 2 (Visible Antennas) and Class 3 (Public Right-of-Way); and (4) Class 4 (Freestanding Structure). Small cell facilities located on City-owned streetlights in the ROW is a Class 3 specification (Public Right-of-Way Installations). Although lower on the listing of priority facilities, the proposed facility consists of one small cell facility that is designed to not visually dominate the surrounding area and instead to blend into the existing block. The abutting residential zones do not allow wireless telecommunications facilities and the Applicant indicates they were not left with any other

viable options to meet their business objectives to provide enhanced coverage and capacity in this challenging area.

The maximum height allowed for telecom facilities per NBMC Subsection 20.49.050(C)(3) is 35 feet above finished grade. The total height of the replacement pole with the proposed equipment is 34 feet, 9 inches to the highest point above finished grade. The project conforms to the maximum height limitation.

Existing residential properties contiguous to the site are in the R-2 (Two-Unit Residential) Zoning District. R-2-zoned sites allow for structures up to 24 feet for flat roof elements and 29 feet to the ridge of a sloped roof. The height of existing Streetlight No. SLC0796 sits just above the maximum allowable height for residential structures. The streetlight is separated from the residences by a large 20-foot parkway that is landscaped with taller palm trees. The trees provide a visual buffer between the streetlight and the residences. They also provide a visual and vertical backdrop to help soften and screen the facility. Furthermore, keeping the luminaire the same height and design helps maintain the continuity of the streetlight system. Photographic visual simulations of the facility, depicting the existing and proposed conditions, have been prepared by the Applicant and are included as Attachment No. PC 9. In accordance with NBMC Section 20.30.100 (Public View Protection), the location is not located within a protected public view corridor and, therefore, would not have any impact to public views.

Local Coastal Program

The project site is located within the coastal zone boundaries and does not have any land use designations, as it is located within the public right-of-way.

Pursuant to Subsection 21.49.020(B) (Permit and Agreement Required) of the NBMC, the applicant shall obtain a coastal development permit prior to the installation of any wireless telecommunications facility unless said facility is exempted by Subsection 21.49.020(C) (Exempt Facilities). In this case, the Project does not meet any of the prescribed exemptions; therefore, a coastal development permit is required.

Section 21.52.015 (Coastal Development Permits, Findings and Decision) of the NBMC requires the review authority, in this case the Planning Commission due to the appeal and the Zoning Administrator's determination, to make the following findings in order to approve a Use Permit:

- a. *[The project c]onforms to all applicable sections of the certified Local Coastal Program; and*
- b. *Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

The proposed facility is considered a Class 3 (Public Right-of-Way) installation. Section 21.49.040 (Telecom Facility Preferences and Prohibited Locations) of the NBMC lists Class 3 Installations as third on the installation preference list. It is not proposed at a location that is prohibited by NBMC Subsection 21.49.040(B) (Prohibited Locations).

AT&T's analysis concluded that a more preferred location as defined by Subsection 21.49.040(A) (Preferred Locations) of the NBMC, such as a collocation or a Class 1 or 2 facility, would not be technically feasible from an RF or construction perspective. The analysis explained that small cell facilities are low powered and must be located at the precise location selected to serve the network traffic demands of the specific limited area. Further, this type of service cannot be accomplished with a traditional macro collocation or building-mounted site in the area. The abutting properties are zoned for residential use and, as such, a building mounted "stealth" facility would not be possible.

The project complies with Section 21.30.100 (Scenic and Visual Quality Protection) of the NBMC. It is not on a coastal bluff or canyon, not adjacent to or within the viewshed of a public view point, coastal view road, public park or beach, or public accessway, as identified on the Coastal Land Use Plan Map 4-3 (Coastal Views), and does not contain significant natural landforms or vegetation. The project scope involves the removal and replacement of an existing City streetlight in the same location with the same luminaire height. The shielded antennas will extend above the pole by approximately 5 feet, 6 inches while the antenna shroud will be visible from the immediate vicinity. The project has been designed to blend in within the existing streetscape. The replacement streetlight is consistent with the size, shape, style, and design of the existing pole. No above-ground mounted equipment is proposed and the support equipment is proposed to be placed in underground handholes. All transmission equipment, including remote radio units and the raycap disconnect switch, are fully concealed within a screening shroud. There will be no negative impacts on coastal views or coastal resources with the project's implementation.

SLC0796 is not located between the nearest public road and the sea or shoreline; therefore, the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities. Vertical access to the beach is provided by way of street-ends in the area, including 30th Street. Lateral access along the beach provided on the beach itself and along the Oceanfront Boardwalk. The equipment will be below grade and will not impact any public way.

In summary, the project will allow the installation of a small cell facility that complies with all applicable Local Coastal Program (LCP) development standards and maintains development attributes consistent with the existing and anticipated future surrounding neighborhood pattern of development. Therefore, the project does not have the potential to degrade public views within the Coastal Zone.

Alternative Sites Considered

Three nearby utility poles and two streetlights were identified and investigated by the Applicant as possible alternate locations for this small cell facility (see Figure 2 below).



Figure 2, On this aerial map, AT&T's proposed small cell location is designated by a red open-circle marker and the alternative sites are identified by yellow markers.

The Zoning Administrator considered five alternative streetlight locations that the Applicant found to be not viable (see Attachment No. PC 8). Ultimately AT&T's analysis concluded that a more preferred location as defined by NBMC Subsection 20.49.040(A) (Preferred Locations), such as a collocation or a Class 1 or 2 facility, would not be technically feasible from an RF or construction perspective. The analysis explained that small cell facilities are low powered and must be located at the precise location selected to serve the network traffic demands of a specific limited area. Further, this type of service cannot be accomplished with a traditional macro collocation or building mounted site in the area due to land use (zoning) constraints.

Alternative Site No. 1 is a wooden utility pole located approximately 100 feet north of the proposed streetlight (pictured right). This pole is located immediately in front of a two-unit residential structure that is oriented towards Balboa Boulevard within a narrower parkway area. Installation of small cell infrastructure at this location would require placement of a crossarm with exposed equipment on either side of the wooden pole and would not be as aesthetically compatible as the proposed location. Most importantly, the wooden utility pole is located within an approved underground assessment and utility district, which will aim to eventually eliminate such above-ground utilities in the area.



Alternative Site No. 2 at City Streetlight No. SLC0767 located approximately 160 feet northwest of the proposed streetlight on the opposite side of Balboa Boulevard (pictured left). This alternative location is in very close proximity to overhead powerlines, which would make additional height above the existing streetlight pole infeasible from a separation standpoint. Furthermore, the existing streetlight is located such that accessibility is limited and a thicker pole could not be accommodated without further constraining the sidewalk.

Alternative Site No. 3 is a wooden utility pole located approximately 78 feet west of the proposed streetlight (pictured right). This pole is located immediately adjacent to the front patio of an existing, single-story residence. Like Alternative Site No. 1, installation of small cell infrastructure at this location would require placement of a crossarm with exposed equipment on either side of the wooden pole and would not be as aesthetically compatible as the proposed location. Most importantly, the wooden utility pole is located within an approved underground assessment and utility district, which will aim to eventually eliminate such above-ground utilities in the area.



Alternative Site No. 4 at City Streetlight No. SLC0768 is located at the southwest corner of Balboa Boulevard and 30th Street approximately 100 feet from the proposed streetlight (pictured left). It is approximately 5 feet from the fence of the adjacent residence. Like Alternative Site No. 2, this alternative location is in very close proximity to overhead powerlines, which would make additional height above the existing streetlight pole infeasible. Accessibility is also limited here and a thicker pole cannot be accommodated without further constraining the sidewalk.

Alternative Site No. 5 at City Streetlight No. SLC0766 is located at the alleyway between 30th Street and 29th Street, approximately 175 feet southeast of the proposed streetlight (pictured right). It is approximately 4 feet from an existing residential structure. Like Alternative Site No. 2 and Alternative Site No. 4, accessibility is limited at this location and a thicker pole cannot be accommodated without further constraining the sidewalk.



Summary

The appeal filed by Mr. Pollock focuses on potential underlying issues with the City Council-authorized MLA, the authorized representatives who may pursue the sites, and insurance requirements. Nothing in the appeal discusses specific issues with this proposed location of this project and its appropriateness.

The streetlight serves as a part of the City's existing streetlight inventory. The replacement streetlight pole design is consistent with the size, shape, style, and design of that existing, including the attached light arm and luminaire. Maintaining the same luminaire height as the existing streetlight pole will help to ensure visual continuity on the streetscape corridor with respect to light standard design. The larger landscaped parkway with several palm trees serves to soften the facility's appearance and provides a mechanism of blending consistent with NBMC Chapters 20.49 and 21.49. The proposed location was ultimately found to best meet the Applicant's objectives and appears to be the best location among the alternative sites examined in staff's opinion. Staff believes sufficient facts exist in support of each finding required to grant the minor use permit and is recommending approval.

Alternatives

If the Planning Commission finds the facts do not support the findings required to grant approval of the Minor Use Permit application, the Planning Commission should adopt a resolution to deny the project, reversing the April 16, 2020, decision of the Zoning Administrator to approve the Minor Use Permit. The attached Resolution for Denial (Attachment No. PC 2) is provided to facilitate this action and would require additional information, facts, or findings that the Planning Commission may deem necessary or warranted.

Should the Commission believe an alternative site is more suitable for the proposed facility, then the Commission must deny the application without prejudice to allow the Applicant to pursue an identified alternative location. An alternative location cannot be approved at this meeting and a new application will need to be submitted in accordance with NBMC Section 20.54.080.

Environmental Review

This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. Class 2 consists of replacement or reconstruction of existing structures and facilities, where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Class 3 consists of construction and

location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another, where only minor modifications are made in the exterior of the structure.

In this case, the proposal includes the removal and replacement of an existing City streetlight pole to install a small telecommunications wireless facility, including below-grade accessory equipment.

The exceptions to the Class 3 categorical exemption under Section 15300.2 do not apply. This project does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

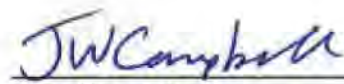
Public Notice

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

Prepared by:

Submitted by:


Benjamin M. Zdeba, AICP
Senior Planner


Jim Campbell
Deputy Community Development Director

ATTACHMENTS

- PC 1 Draft Resolution for Approval
- PC 2 Draft Resolution for Denial
- PC 3 Appeal Form
- PC 4 Adopted Zoning Administrator Resolution No. ZA2020-030
- PC 5 Minutes of Zoning Administrator Meeting of April 16, 2020
- PC 6 Zoning Administrator Referral Memo
- PC 7 Applicant's Project Description and Justification
- PC 8 Alternative Locations Studied and Rejected
- PC 9 Photographic Simulations, Project Plans, and Coverage Maps

01/12/18

Attachment No. PC 1

Draft Resolution for Approval

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RESOLUTION NO. PC2020-018

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-052 AND UPHOLDING THE DECISION OF THE ZONING ADMINISTRATOR APPROVING MINOR USE PERMIT NO. UP2019-030 FOR A SMALL CELL FACILITY LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY ON CITY STREETLIGHT NUMBER SLC0796, AT THE NORTHWESTERN CORNER OF BALBOA BOULEVARD AND 30TH STREET (PA2019-111)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by New Cingular Wireless, LLC ("Applicant"), with respect to City of Newport Beach Streetlight Number SLC0796 ("SLC0796"), located within the public right-of-way, at the northwestern corner of Balboa Boulevard and 30th Street, requesting approval of a minor use permit.
2. The Applicant proposes the installation of a small cell wireless facility on a City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on Balboa Boulevard and includes the following: (1) removal and replacement of an existing City streetlight; (2) installation of a small cell wireless facility that consists of four remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter equipment shroud, with the equipment being fixed to the top of the replaced streetlight pole for a maximum height of 34 feet, 9 inches, and (3) establishment of new below-grade support equipment adjacent to the streetlight. Also included is the review of a coastal development permit. (the "Project").
3. Since the SLC0796 streetlight is located within the public right-of-way. The proposal is regulated by Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property), as well as Chapter 20.49 (Wireless Telecommunication Facilities) of the Newport Beach Municipal Code ("NBMC").
4. A public hearing was held on April 16, 2020, in the Community Room located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act"), Chapter 20.62 and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this public hearing.
5. The Zoning Administrator adopted Resolution No. ZA2020-030 approving Minor Use Permit No. UP2019-030.

6. On April 28, 2020, attorney Mark Pollock filed an appeal of the Zoning Administrator's decision primarily citing concerns with the City's Master License Agreement and the Applicant's authority to file for this application.
7. The Project was scheduled for a de novo public hearing by the Planning Commission for June 4, 2020 but was continued from that agenda to allow staff additional time to review the Project. Of concern was whether the Project also required a coastal development permit.
8. The Project is located within the Coastal Zone. Subsection 21.49.020(B) (Permit and Agreement Required) of the NBMC requires a coastal development permit for a wireless telecommunication facility unless said facility is exempted by Subsection 21.49.020(C) (Exempt Facilities). In this case, the Project does not meet any of the prescribed exemptions; therefore, a coastal development permit is required.
9. Upon finding that a coastal development permit is required, the Zoning Administrator deferred action on Coastal Development Permit CD2020-052 and is referring it to the Planning Commission pursuant to Section 21.50.020 footnote (3) (Authority for Decisions) for consideration and final action along with Minor Use Permit No. UP2019-030. The Project was noticed for the Planning Commission's review. A de novo telephonic public hearing was held by the Planning Commission on July 9, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of this public meeting was given in accordance with the Ralph M. Brown Act, Chapter 20.62 and Chapter 21.62 of the NBMC. The Planning Commission considered evidence both written and oral at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Project is exempt from the California Environmental Quality Act ("CEQA") pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.
2. In this case, the Project includes the removal and replacement of an existing City streetlight pole to install a small telecommunications wireless facility, including below-grade accessory equipment.

3. The exceptions to the Class 3 categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

Minor Use Permit

In accordance with Subsection 20.52.020(F) (Conditional Use Permits and Minor Use Permits) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The use is consistent with the General Plan and any applicable specific plan.*

Facts in Support of Finding:

1. SLC0796 is designated as Public Right-of-Way ("ROW"), which is property held in trust by the City, and allows for the construction and maintenance of public roads, crosswalks, pedestrian walkways, electric transmission lines, oil or gas pipeline, water line, sanitary or storm sewer, or other similar uses. City Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property) governs procedures and locations for siting wireless telecommunications equipment in the ROW. Streetlights are eligible for telecom use, subject to entitlements (such as this minor use permit request), yearly rent, and a license agreement.
2. The City of Newport Beach General Plan ("General Plan") Natural Resources Goal NR 21 recommends the "minimized visual impacts of signs and utilities." The proposed design is consistent with NR 21 by introducing no new vertical obstructions in the ROW, employing stealth elements like colorization (painting to match the streetlight pole), and installing the associated equipment below grade. Conditions of Approval No. 20 and 21 prohibit advertising signage or identifying logos on the small cell facility except for small identification, address, warning, and similar information plates. Signage required by State or Federal regulations shall be allowed in its smallest permissible size.
3. General Plan Land Use Policy LU 6.1.3 promotes "architecture and planning that complements adjoining uses." The proposed design adjoins residential uses and aligns with LU 6.1.3 by copying the size, shape, style, and design of the existing streetlight pole to decrease potential disruption of the visual environment. Adverse impact to circulation, aesthetics, sounds, or odor are not anticipated from project implementation.
4. General Plan Land Use Policy LU 4 calls for the "management of growth and change to protect and enhance the livability of neighborhoods and achieve distinct and economically vital business and employment districts, which are correlated with

supporting infrastructure and public services and sustain Newport Beach's natural setting." The Project upholds the intent of LU 4 by providing infrastructure to add system capacity for service gaps that may occur for residents and businesses of the area in regular and high demand periods. It also benefits the community by improving the existing coverage and capacity to increase the voice and data system already in use by its customers. The small cell facility is designed to adapt and accept future technologies, such as 5G, and will help meet local demand and sustain the livability of the area.

5. SLC0796 is not located within a specific plan area

Finding:

- B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding:

1. See Fact in Support of Finding A.1.
2. Wireless telecommunication facilities are regulated by Chapter 20.49 (Wireless Telecommunication Facilities) of the NBMC. To site small cell equipment in the ROW assigns the project a Class 3 specification (Public Right-of-Way Installations) and requires the Applicant to obtain a minor use permit from the Zoning Administrator pursuant to Section 20.49.060 (Permit Review Procedures) of the NBMC. In this case, the Zoning Administrator's approval was appealed; therefore, the Planning Commission is the review authority.
3. Section 20.49.040(A) (Preferred Locations) of the NBMC, prioritizes telecom facilities from most preferred (1) to least preferred (4) as follows: (1) collocation of a new facility at an existing facility; (2) Class 1 (Stealth/Screened); (3) Class 2 (Visible Antennas) and Class 3 (Public Right-of-Way); and (4) Class 4 (Freestanding Structure). Although lower on the listing of priority facilities, the proposed facility consists of one (1) small cell facility that is designed to not visually dominate the surrounding area and instead to blend into the existing block.
4. Section 20.49.050 (General Development and Design Standards) of the NBMC, requires projects to be visually compatible with surrounding structures. In reviewing this application, the review authority shall consider the proposed facility's use of color blending, equipment screening, and the limited size of the equipment designed consistently with the aforementioned criteria. All telecommunications equipment on top of the streetlight pole would be concealed within a painted-to-match 12-inch diameter shroud. The Project would rely on likeness with the streetlight pole through style, color, and material to help disguise its presence. Engineering of the replacement streetlight pole accommodates and withstands the weight of the small cell equipment and has ability to display a future City banner, if needed. Electrical and wiring components of the telecommunications equipment are designed to be fully contained within the new streetlight pole. The overall height of 34 feet, 9 inches from finished grade to the top of

the proposed facility complies with the maximum allowed. Equipment not contained within the shroud on the streetlight pole would be out of sight, located below the ground in the adjacent ROW. Condition of Approval No. 32 requires approved design drawings from Southern California Edison ("SCE") of the power supply to the small cell facility before construction of the facility is to commence.

5. Existing residential properties contiguous to the Project are in the R-2 (Two-Unit Residential) Zoning District. R-2-zoned sites allow for structures up to 24 feet for flat roof elements and 29 feet to the ridge of a sloped roof. The height of the existing streetlight SLC0796 sits just above the maximum allowable height for residential structures. The streetlight is separated from the residences by a large 20-foot vegetated parkway that is landscaped with taller palm trees. Given this buffer between the streetlight and the residences, SLC0796 is softened and screened by the landscaping from the residential neighborhood beyond. Furthermore, keeping the luminaire the same height as the existing streetlight lessens visual obtrusion from the proposed small cell facility with the line of the existing development.
6. Submitted materials from the Applicant demonstrate the proposal would conform with Federal Communications Commission ("FCC") Rules and Regulations regarding safety and radio frequency emissions.
7. The Project will comply with applicable requirements of the NBMC with construction as shown on the plans and implementation of the conditions of approval.

Finding:

- C. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. City of Newport Beach Streetlight No. SLC0796 is located within the public right-of-way on the northern side of Balboa Boulevard at the northwestern corner of the 30th Street intersection. It is immediately adjacent to an unusually large vegetated parkway that is approximately 20 feet wide. Beyond the parkway to the northeast is a block of two-unit residential development. All surrounding land uses are residential and vary in density from two-unit residential to single-unit residential. The only exception is a CV (Commercial Visitor Serving) zoned parcel across 30th Street from the site, which is presently developed with a laundromat (Beach Coin Laundry).
2. Under the new FCC Order, wireless providers are not required to demonstrate a significant coverage gap, a qualification previously required by local jurisdictions in order to support an application. Pursuant to the Order, the City cannot "materially [inhibit] the introduction of new services or the improvement of existing services." Moreover, pursuant to Section 332(c)(7)(B)(i)(II) of U.S. Code Title 47 (Telecommunications), the City may "not regulate the placement, construction or modification of wireless service facilities in a manner that prohibits the provision of personal wireless services." Although

not required, the Applicant produced a coverage map for the Project. This map indicates the proposed facility would boost the supply of capacity and coverage in the vicinity.

3. SLC0796 serves as a part of the City's existing streetlight inventory. AT&T proposes to: (1) remove and replace SLC0796 with a new streetlight in the same location; (2) maintain the existing luminaire height of 29 feet, 9 inches; (3) install telecommunications equipment for a small cell wireless facility on top of the new streetlight pole resulting in an overall height of 34 feet, 9 inches; and (4) establish new below-grade support equipment adjacent to the streetlight, within the public right-of-way.
4. The replacement streetlight pole design is consistent with the size, shape, style, and design of that existing, including the attached light arm and luminaire. For safety and circulation of the area during construction, Condition of Approval No. 40 requires traffic control plans illustrating compliance with the 2016 WATCHbook to be reviewed and approved by the Public Works Department prior to the issuance of any building permit.
5. The Project is anticipated to enhance coverage and capacity for residents, visitors and businesses in the neighborhood by providing wireless access to voice and data transmission services. The proposed telecom facility is not expected to result in any material changes to the character of the local community.
6. See Facts in Support of Finding B.4, B.5, and B.6.
7. The Project will be unmanned, will have no impact on the circulation system, and, as conditioned, will not generate noise, odor, smoke, or any other adverse impacts to adjacent land uses.

Finding:

- D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

1. Adequate public and emergency vehicle access, public services, and utilities are provided to and around the subject site and the proposed use will not change this.
2. The Project will be unmanned and will have no permanent impact on the circulation system and adjacent land uses due to its location in the parkway, outside of existing vehicle or pedestrian circulation areas.
3. The Public Works Department and Utilities Department have reviewed the project proposal and do not have any concerns regarding access, public services, or utilities provided to the existing neighborhood and surrounding area.

Finding:

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The Project will only require periodic maintenance and will not generate any type of significant adverse impacts to the environment, such as noise, odor, smoke, etc.
2. The Project must and will comply with the applicable Federal and State rules, regulations and standards thus, ensuring public health and safety.
3. See Facts in Support of Finding B.4, B.5, B.6, and B.7.
4. The Project will be effectively blended based upon the design and location with the incorporation of the conditions of approval to the greatest extent feasible. As a result, the proposed facility at this location is not expected to result in conditions that are materially detrimental to nearby property owners, residents, and businesses, nor to public health or safety.

Wireless Telecommunications Facility

In accordance with Subsection 20.49.060(H)(1) (General Findings for Telecom Facilities) of the NBMC, the following additional findings and facts in support of such findings are set forth:

Finding:

F. The proposed telecom facility is visually compatible with the surrounding neighborhood.

Facts in Support of Finding:

1. See Facts in Support of Finding B.4, B.5, and B.6.
2. The closest residentially zoned property is located approximately 20 feet northeast of SLC0796 and is buffered by a large 20-foot-wide parkway area with vegetation of varying heights. SLC0796 is located along the inland side of a well-traveled street and will blend in with the surrounding streetscape. There are no public parks near the Project. The Project and below-grade accessory equipment meets the City's design parameters approved by the City's Master License Agreement, which emphasizes stealth techniques and best practices to not be materially detrimental to the surrounding area.

Finding:

G. The proposed telecom facility complies with height, location and design standards, as provided for in this chapter.

Facts in Support of Finding:

1. The 34-foot, 9-inch tall small cell facility would comply with the maximum height limit of 35 feet for telecom facilities installed on streetlights within the public right-of-way.
2. See Facts in Support of Finding B in its entirety.
3. The application includes documentation indicating the need to provide and improve coverage to the residential areas within the City. Moreover, the additional system capacity provided by the Project will address service gaps that occur during high demand periods, as well as service gaps that exist at all demand periods to the surrounding area. SLC0796 will help AT&T to meet its coverage objectives and improve coverage to nearby areas that are currently marginal.

Finding:

H. An alternative site(s) located further from a residential district, public park or public facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.
2. Five nearby streetlights were identified and investigated by the Applicant as possible alternate locations for this small cell facility; however, all sites were found by the applicant to be not viable.
3. Alternative Site #1 is a wooden utility pole located approximately 100 feet north of the proposed streetlight. This pole is located immediately in front of a two-unit residential structure that is oriented towards Balboa Boulevard within a narrower parkway area. Installation of small cell infrastructure at this location would require placement of a crossarm with exposed equipment on either side of the wooden pole and would not be as aesthetically compatible as the proposed location. Most importantly, the wooden utility pole is located within an approved underground assessment and utility district, which will aim to eventually eliminate such above-ground utilities in the area.
4. Alternative Site #2 at City Streetlight No. SLC0767 located approximately 160 feet northwest of the proposed streetlight on the opposite side of Balboa Boulevard. This alternative location is in very close proximity to overhead powerlines, which would make additional height above the existing streetlight pole infeasible. Furthermore, the existing streetlight is located such that accessibility is limited and a girthier pole could not be accommodated without further constraining the sidewalk.

5. Alternative Site #3 is a wooden utility pole located approximately 78 feet west of the proposed streetlight. This pole is located immediately adjacent to the front patio of an existing, single-story residence. Like Alternative Site #1, installation of small cell infrastructure at this location would require placement of a crossarm with exposed equipment on either side of the wooden pole and would not be as aesthetically compatible as the proposed location. Most importantly, the wooden utility pole is located within an approved underground assessment and utility district, which will aim to eventually eliminate such above-ground utilities in the area.
6. Alternative Site #4 at City Streetlight No. SLC0768 is located at the southwest corner of Balboa Boulevard and 30th Street approximately 100 feet from the proposed streetlight. Like Alternative Site #2, this alternative location is in very close proximity to overhead powerlines, which would make additional height above the existing streetlight pole infeasible. Accessibility is also limited here and a girthier pole cannot be accommodated without further constraining the sidewalk.
7. Alternative Site #5 at City Streetlight No. SLC0766 is located at the alleyway between 30th Street and 29th Street, approximately 175 feet southeast of the proposed streetlight. Like Alternative Site #2 and Alternative Site #4, accessibility is limited at this location and a girthier pole cannot be accommodated without further constraining the sidewalk.

Finding:

- I. *An alternative plan that would result in a higher preference facility class category for the proposed facility is not available or reasonably feasible and desirable under the circumstances.*

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.
2. AT&T's analysis concluded that a more preferred location as defined by Subsection 20.49.040(A) (Preferred Locations) of the NBMC, such as a collocation or a Class 1 or 2 facility, would not be technically feasible from an RF or construction perspective. The analysis explained that small cell facilities are low powered and must be located at the precise location selected to serve the network traffic demands of the specific limited area. Further, this type of service cannot be accomplished with a traditional macro collocation or building mounted site in the area. The abutting properties are zoned for residential use and, as such, a building mounted "stealth" facility would not be possible.

Coastal Development Permit

In accordance with Subsection 21.52.015(F) (Coastal Development Permits, Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

J. Conforms to all applicable sections of the certified Local Coastal Program.

Facts in Support of Finding:

1. The Project is considered a Class 3 (Public Right-of-Way) installation. Section 21.49.040 (Telecom Facility Preferences and Prohibited Locations) of the NBMC lists Class 3 Installations as third on the installation preference list. It is not proposed at a location that is prohibited by NBMC Subsection 21.49.040(B) (Prohibited Locations).
2. See Fact in Support of Finding I.2.
3. The Project complies with Section 21.30.100 (Scenic and Visual Quality Protection) of the NBMC. It is not on a coastal bluff or canyon, not adjacent to or within the viewshed of a public view point, coastal view road, public park or beach, or public accessway, as identified on the Coastal Land Use Plan Map 4-3 (Coastal Views), and does not contain significant natural landforms or vegetation. The Project scope involves the removal and replacement of an existing City streetlight in the same location with the same luminaire height. The shielded antennas will extend above the pole by approximately 5 feet, 6 inches while the antenna shroud will be visible from the immediate vicinity. The Project has been designed to blend in within the existing streetscape. The replacement streetlight is consistent with the size, shape, style, and design of the existing pole. No above-ground mounted equipment is proposed and the support equipment is proposed to be placed in underground handholes. All transmission equipment, including remote radio units and the raycap disconnect switch, are fully concealed within a screening shroud. There will be no negative impacts on coastal views or coastal resources with the Project's implementation.
4. The proposed replacement streetlight and antenna structure will comply with the maximum allowable height limit of 35 feet from existing finished grade.

Finding:

K. Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.

Facts in Support of Finding:

1. SLC0796 is not located between the nearest public road and the sea or shoreline; therefore, the Project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities. Vertical access to the beach is provided by way of street-ends in the area, including 30th Street. Lateral access along the beach provided on the beach itself and along the Oceanfront Boardwalk. The equipment will be below grade and will not impact any public way.

2. The Project will allow the installation of a small cell facility that complies with all applicable Local Coastal Program (LCP) development standards and maintains development attributes consistent with the existing and anticipated future surrounding neighborhood pattern of development. Therefore, the Project does not have the potential to degrade public views within the Coastal Zone.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. This Project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to the Class 3 exemption do not apply.
2. The Planning Commission of the City of Newport Beach hereby approves Coastal Development Permit No. CD2020-052 and upholds the Zoning Administrator's decision approving Minor Use Permit No. UP2019-030, subject to the conditions set forth in "Exhibit A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Office of the City Clerk in accordance with Title 21 (Local Coastal Program Implementation Plan) of the NBMC. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeals to the Coastal Commission) of the NBMC, California Code of Regulations Title 14, Division 5.5, Chapter 5, Subchapter 2, Sections 13111 through 13120, and Section 30603 of the California Public Resources Code.

PASSED, APPROVED, AND ADOPTED THIS 9TH DAY OF JULY, 2020.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Chairman

BY: _____
Secretary

EXHIBIT "A"**CONDITIONS OF APPROVAL**Planning Division

1. The development shall be in substantial conformance with the plans, including elevation exhibits and visual simulations, stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this approval.
4. The Project approved by this permit shall comply with all applicable Federal and State rules, regulations, and standards.
5. The replacement pole shall be reconstructed in the exact location of the existing streetlight pole.
6. The reconstructed streetlight pole design shall be consistent with the size (including diameter), shape, style, and design of the existing streetlight pole to the greatest extent feasible, including the attached light arm and luminaire. All mounted equipment shall be painted to match the color and style of the replacement streetlight pole.
7. All accessory support equipment of this Project shall be installed underground.
8. All electrical and antenna wiring shall be fully encased within the reconstructed streetlight pole.
9. The Project approved by the use permit shall comply with any easements, covenants, conditions, or restrictions on the underlying City-trust property upon which the Project is located.
10. Anything not specifically approved by this permit is not permitted and must be addressed in a separate and subsequent review.
11. Prior to building permit final, a Height Certification Inspection shall be required. The small cell facility and base streetlight pole approved by this permit shall not exceed a total of 34 feet, 9 inches in height from existing grade (maximum elevation height of 43.57 feet above mean sea level using the North American Vertical Datum of 1988 [NAVD88]).

12. Prior to building permit issuance, all contractors and subcontractors shall have a valid City of Newport Beach business license.
13. The Applicant shall continually maintain the Project so that it retains its original appearance at the time the building permit is finalized by the City of Newport Beach.
14. On an annual basis, the Applicant shall conduct maintenance inspections of the wireless telecom facility, including the small cell facility and below-grade equipment areas, and make all necessary repairs. The Community Development Director may require additional inspections and/or maintenance activities at his/her discretion.
15. The Applicant shall not prevent the City of Newport Beach from having adequate spectrum capacity on the City's 800 MHz radio frequencies at any time.
16. The Project shall transmit at the approved frequency ranges established by the FCC. The Applicant shall inform the City in writing of any proposed changes to the frequency range in order to prevent interference with the City's Public Safety radio equipment.
17. The Project shall at no time interfere with the frequencies used by the City of Newport Beach for public safety. "Comprehensive advanced planning and frequency coordination" engineering measures shall prevent interference, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the "Best Practices Guide" published by the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), and as endorsed by the FCC.
18. Should interference with the City's Public Safety radio equipment occur, use of the Project authorized by this permit may be suspended until the radio frequency interference is corrected and verification of the compliance is reported.
19. The Applicant shall provide a "single point of contact" for carriers in its Engineering and Maintenance Departments that is monitored 24 hours per day to ensure continuity on all interference issues, and to which interference problems may be reported. The name, telephone number, fax number, and email address of that person shall be provided to the Community Development Department and Newport Beach Police Department's Support Services Commander prior to activation of the facility. If the point of contact changes, the City shall be immediately alerted and updated.
20. No advertising signage or identifying logos shall be displayed on the Project except for small identification, address, warning, and similar information plates. A detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.
21. Appropriate information warning signs or plates shall be posted on the base streetlight pole of the transmitting antenna. In addition, contact information (e.g., a telephone number) shall be provided on the warning signs or plates. The location of the information warning signs or plates shall be depicted on the plans submitted for construction permits.

Signage required by State or federal regulations shall be allowed in its smallest permissible size.

22. Prior to the final of building permits, the Applicant shall schedule an evening inspection by the Code Enforcement Division to confirm compliance with lighting. The telecom facility shall be lighted to the extent deemed necessary by the Newport Beach Police and Utilities Departments for security lighting and consistency with other streetlights in the area.
23. The Applicant shall maintain the Project in good repair, such that it is always consistent with this approval.
24. The Applicant shall ensure that its Project complies with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The Applicant shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. This information shall be made available by the Applicant upon request of the Community Development Director.
25. The Project shall comply with all applicable provisions of U.S. Code Title 47 (Telecommunications) rules and regulations, including those related to FCC Radio Frequency safety.
26. Prior to final of building permits, the Applicant shall schedule an inspection by the Planning Division to ensure materials and colors match existing architecture as illustrated in the approved photographic simulations and in conformance with NBMC Section 20.49.050.
27. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Division by certified mail no less than thirty (30) days prior to such action. The operator shall have ninety (90) days from the date of abandonment or discontinuance to reactivate use of the facility or remove the telecom facility and restore the site.
28. The City reserves the right and jurisdiction to review and modify any permit approved pursuant to NBMC Chapters 20.49 and 21.49, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Division of any proposal to change the height or size of the facility; increase the size, shape, or number of antennas; change the facility's color or materials or location on the site; or increase the signal output above the maximum permissible exposure ("MPE") limits imposed by the radio frequency emissions guidelines of the FCC. Any changed circumstance shall require the operator to apply for a review of the modification, and possible amendment to the use permit, prior to implementing any change.
29. Coastal Development Permit No. CD2020-052 and Minor Use Permit No. UP2019-030 shall expire unless exercised within 24 months from the date of approval as specified in

Sections 20.54.060 and 21.54.060 (Time Limits and Extensions) of the NBMC, unless an extension is otherwise granted.

30. Construction activities shall comply with Section 10.28.040 of the NBMC, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or holidays.
31. This approval may be modified or revoked by the Planning Commission if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
32. A copy of the Resolution, including conditions of approval Exhibit "A," and approved drawings from Southern California Edison (SCE) for the power supply and design, shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
33. The Applicant shall promptly notify the City if the landscaped parkway of the subject streetlight pole is negatively affected or otherwise damaged by project implementation.
34. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of AT&T Small Cell on SLC0796, including, but not limited to, Minor Use Permit No. UP2019-030 and Coastal Development Permit No. CD2020-052 (PA2019-111). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Public Works Department

35. Prior to the issuance of a building permit, an encroachment permit shall be required.
36. Prior to the issuance of a building permit, traffic control plans illustrating compliance with the 2016 WATCHbook requirements shall be reviewed and approved by the Public Works Department before their implementation. Large construction vehicles shall not be permitted to travel narrow streets as determined by the Public Works Department.

Disruption caused by construction work along roadways and by movement of construction vehicles shall be minimized by proper use of traffic control equipment and flagman.

Additional Conditions of Approval

37. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds pursuant to MBTA:
- A. The Project area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.

Attachment No. PC 2

Draft Resolution for Denial

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RESOLUTION NO. PC2020-018

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, DENYING COASTAL DEVELOPMENT PERMIT NO. CD2020-052 AND REVERSING THE DECISION OF THE ZONING ADMINISTRATOR DENYING MINOR USE PERMIT NO. UP2019-030 FOR A SMALL CELL FACILITY LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY ON CITY STREETLIGHT NUMBER SLC0796, AT THE NORTHWESTERN CORNER OF BALBOA BOULEVARD AND 30TH STREET (PA2019-111)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by New Cingular Wireless, LLC ("Applicant"), with respect to City of Newport Beach Streetlight Number SLC0796 ("SLC0796"), located within the public right-of-way, at the northwestern corner of Balboa Boulevard and 30th Street, requesting approval of a minor use permit.
2. The Applicant proposes the installation of a small cell wireless facility on a City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on Balboa Boulevard and includes the following: (1) removal and replacement of an existing City streetlight; (2) installation of a small cell wireless facility that consists of four remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter equipment shroud, with the equipment being fixed to the top of the replaced streetlight pole for a maximum height of 34 feet, 9 inches, and (3) establishment of new below-grade support equipment adjacent to the streetlight. Also included is the review of a coastal development permit. (the "Project").
3. Since the SLC0796 streetlight is located within the public right-of-way. The proposal is regulated by Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property), as well as Chapter 20.49 (Wireless Telecommunication Facilities) of the Newport Beach Municipal Code ("NBMC").
4. A public hearing was held on April 16, 2020, in the Community Room located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act"), Chapter 20.62 and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this public hearing.
5. The Zoning Administrator adopted Resolution No. ZA2020-030 approving Minor Use Permit No. UP2019-030.

6. On April 28, 2020, attorney Mark Pollock filed an appeal of the Zoning Administrator's decision primarily citing concerns with the City's Master License Agreement and the Applicant's authority to file for this application.
7. The Project was scheduled for a de novo public hearing by the Planning Commission for June 4, 2020 but was continued from that agenda to allow staff additional time to review the Project. Of concern was whether the Project also required a coastal development permit.
8. The Project is located within the Coastal Zone. Subsection 21.49.020(B) (Permit and Agreement Required) of the NBMC requires a coastal development permit for a wireless telecommunication facility unless said facility is exempted by Subsection 21.49.020(C) (Exempt Facilities). In this case, the Project does not meet any of the prescribed exemptions; therefore, a coastal development permit is required.
9. Upon finding that a coastal development permit is required, the Zoning Administrator deferred action on Coastal Development Permit CD2020-052 and is referring it to the Planning Commission pursuant to Section 21.50.020 footnote (3) (Authority for Decisions) for consideration and final action along with Minor Use Permit No. UP2019-030. The Project was noticed for the Planning Commission's review. A de novo telephonic public hearing was held by the Planning Commission on July 9, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of this public meeting was given in accordance with the Ralph M. Brown Act, Chapter 20.62 and Chapter 21.62 of the NBMC. The Planning Commission considered evidence both written and oral at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

Pursuant to Section 15270 of the California Environmental Quality Act ("CEQA") Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, projects which a public agency rejects or disapproves are not subject to CEQA review.

SECTION 3. REQUIRED FINDINGS.

The Planning Commission may approve a use permit only after making each of the required findings set forth in Section 20.52.020 (Conditional Use Permit and Minor Use Permits), as well as those in Subsection 20.49.060(H)(1) of the NBMC and Subsection 21.52.015(F) (Coastal Development Permits, Findings and Decision) of the NBMC. In this case, the Planning Commission was unable to make the required findings based upon the following:

\\
 \\
 \\
 \\
 \\

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. Pursuant to Section 15270 of the California Environmental Quality Act ("CEQA") Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, projects which a public agency rejects or disapproves are not subject to CEQA review.
2. The Planning Commission of the City of Newport Beach hereby denies Coastal Development Permit No. CD2020-052 and reverses the Zoning Administrator's decision and denies Minor Use Permit No. UP2019-030.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the City Clerk in accordance with the provisions of NBMC Title 20 Planning and Zoning and Title 21 Local Coastal Program Implementation Plan.

PASSED, APPROVED, AND ADOPTED THIS 9TH DAY OF JULY, 2020.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Chairman

BY: _____
Secretary

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Attachment No. PC 3

Appeal Form

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Appeal Application

City Clerk's Office
100 Civic Center Drive / P.O. Box 1768
Newport Beach, CA 92658-8915
949-644-3005

Clerk's Date & Time Stamp

RECEIVED

2020 APR 28 AM 7:06

Appeals are time sensitive and must be received by the City Clerk specified time period from a decision or final action by a decision-maker. It is advisable to consult with the Department managing the issue if there is question with regards to appealing an action. This is an appeal of the:

- ☐ (CDD222)Community Development Director Action to the Planning Commission - \$1,692
☒ (CDD222)Zoning Administrator Action to the Planning Commission - \$1,692
☐ (CDD222)Planning Commission Action to the City Council - \$1,692
☐ (CDD222)Hearing Officer Action to the City Council - \$1,692
☐ (CDD223)Building Official/Fire Marshal Action to the Building/Fire Board of Appeals - \$1,692
☐ (CDD224)Chief of Police Action on an Operator License to the City Manager - \$757
☐ (RSS073)City Manager Action on a Special Events Permit to the City Council - \$1,747
☐ (HBR001)Harbormaster Action on a Lease/Permit to the Harbor Commission - \$100
☐ (HBR001)Harbormaster Action to the Harbor Commission - Hourly Cost
☐ (HBR001)Harbor Commission Action to the City Council - Hourly Cost
☐ (PBW018)Public Works Director Action Harbor Development Permits to Harbor Commission - Hourly Cost
☐ (PBW018)Public Works Director Action on a Lease/Permit to the Harbor Commission - \$100
☐ Other - Specify decision-maker, appellate body, Municipal Code authority and fee: _____

Appellant Information:

Name(s): MARK S. Pollock
Address: 1827 Clay St. #300
City/State/Zip: NAPA, CA 94559
Phone: 707 257-3089 Email: mPollock@PollockandJames.com

Appealing Application Regarding:

Name of Applicant(s): New Cingular Wireless, LLC Date of Final Decision: 04/16/2020
Project No.: Item 3, small cell SL C0796 Activity No. MUP 2019-030 (PA 2019-111)
Application Site Address: NORTH Eastern corner of Balboa Blvd & 30th St., Street light # SL C0796
Description of application: Application for a minor use Permit to install Telecommunications equipment on a light pole in the public right of way under a master license agreement.
Reason(s) for Appeal (attach a separate sheet if necessary): Licensee under Master license Agreement is in breach for failure to provide proof of insurance. AT&T is not a licensee and may not be permitted in violation of Municipal Code section 20.49.080. / Licensee is in breach for failure to have General liability coverage which does not exclude EMF caused illnesses.

Signature of Appellant: _____ Date: 4/24/2020

FOR OFFICE USE ONLY:

Date Appeal filed and Administrative Fee received: APRIL 28, 2020

Michael Brown
City Clerk



cc: Department Director, Deputy Director, Staff, File

POLLOCK & JAMES, LLP

ATTORNEYS AT LAW
ENVIRONMENTAL LAW

May 26, 2020

Appellate Brief

Planning Commission
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Re: Appeal of Minor Use Permit #UP2019-030 Zoning Administrator Decision

Our law firm represents a citizen of Newport Beach on who's behalf we are filing this Appeal.

This is an appeal from the decision of the Zoning Administrator for the City of Newport Beach, on or about April 16, 2020, approving minor use permit # UP2019-030 for a small cell facility located within the public right of way, on City streetlight number SLC0796, at the northwestern corner of Balboa Blvd. and 30th Street (PA2019-111).

Newport Beach Municipal Code section 20.49.080 requires a Telecom Company to enter into a Master License Agreement with the City prior to placement of technology hardware onto City property. Only a licensee under such agreement may be permitted, by the Zoning Administrator, to deploy the small cell technology.

Title 20.49.080 states:

Agreement for Use of City-Owned or City-Held Trust Property.

In applying for a permit pursuant to this chapter, all telecom facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions of the Municipal Code and any applicable provisions of the City Council Policy Manual.

Prior to City approval of a license agreement, the applicant shall obtain a MUP, CUP, LTP or ZC. Upon the issuance of a MUP, CUP, LTP or ZC, as required, and with an approved license agreement, the applicant shall obtain any and all necessary ministerial permits, including encroachment permits for work to be completed in the public right-of-way and building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements. (Ord. 2014-1 § 10 (part), 2014)

On or about February 12, 2019, New Cingular Wireless PCS, LLC a Delaware Limited Liability Company, entered into a Master License Agreement with the City of Newport Beach, pursuant to the above municipal code section. (Attached as Exhibit A is page 1 of that Agreement.)

The Master Lease Agreement requires indemnity by the licensee of the City, and a General Liability policy of Insurance naming the City as an additional insured. Attached as Exhibit B is a copy of the Statement of Information filed by New Cingular Wireless PCS, LLC, with the California Secretary of State. Exhibit B at Item 5, shows "AT&T Mobility Corporation" as the manager of New Cingular Wireless PCS, LLC.

AT&T Mobility Corporation is not the licensee under the Master License Agreement. AT&T Mobility Corporation is also not registered to do business in California.

Exhibit C which is the Statement of Information from the California Secretary of State for an entity registered as AT&T Mobility Wireless Operations Holdings, Inc. AT&T Mobility Wireless Operations Holdings Inc. **may** be registered to do business in California, but it is not the licensee under the Master License Agreement, nor is it the manager of New Cingular Wireless PCS, LLC, which is the licensee.

The Certificate of Insurance List, attached hereto as Exhibit D, provided for New Cingular Wireless PCS, LLC shows the insured as "AT&T". However, AT&T is not a registered entity in California nor is it the Licensee. **New Cingular Wireless PCS, LLC is in material breach of the Master License Agreement for failure to show proof that it is insured.**

Furthermore, the Certificate of Insurance List which was provided does not show which AT&T entity even has insurance.

The Zoning Administrator, at the April 16, 2020 hearing, issued a permit to New Cingular Wireless, LLC d.b.a. AT&T Mobility (Applicant). See Exhibit E. This permit was issued even though AT&T is not a "dba". Further it was issued even though New Cingular Wireless PCS, LLC is in breach of the Master License Agreement by not having proof that it is insured, on file with the City. The City has no legal authority to issue a permit to AT&T Mobility, since it is not a licensee, nor is it a legal entity doing business in California as AT&T Mobility.

The permit issued by the Zoning Administrator at the April 16, 2020 hearing was issued to a non-existent entity, without a Master License Agreement, and without liability insurance.

THE POLICY OF INSURANCE DOES NOT AFFORD FULL COVERAGE

The permit issued by the Zoning Administrator is to deploy and place an antenna and supporting

equipment which will emanate electromagnetic radiation. This carries with it the risk of negligent or unintentional exceedence of Federally mandated maximum levels. This risk **must** be insured against.

By reference to the Certificate of Insurance List, Exhibit D on page 2 under Additional Coverages section V, Pollution Liability is marked "N/A". This means the insurance policy does not carry any pollution insurance. Electro Magnetic Fields (EMF) are listed as a pollutant under the insurance company pollution exclusion of coverage. That means this policy will not cover EMF/RF generated illnesses. Below is exclusion language from General Liability Policies of Zurich, Sun, Hartford and CFC Underwriting for Lloyds.

Updated Zurich Community Care Liability Insurance

"We will not pay anything under this policy, including claim expenses, in respect of: Electromagnetic fields any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from electromagnetic fields (EMF) or electromagnetic interference (EMI)"

SUN General Insurance

"This policy does not cover any liability, loss, cost or expense directly or indirectly arising out of, resulting from, caused or contributed to by exposure to magnetic electric or electromagnetic fields or radiation however caused or generated."

The Hartford, "EXCLUSION – ELECTROMAGNETIC HAZARD"

"The following exclusion is added: This insurance does not apply to: Electromagnetic Hazard...."

CFC Underwriting LTD in London, the UK agent for Lloyds

"The Electromagnetic Fields Exclusion (Exclusion 32) is a General Insurance Exclusion and is applied across the market as standard. The purpose of the exclusion is to exclude illnesses caused by continuous exposure to non-ionizing radiation exposure..."

The Certificate of Insurance List, Exhibit D, for AT&T shows "N/A" for Pollution Liability under paragraph V. In fact, EMFs are classified as "pollutants" alongside smoke, chemicals, and asbestos. If a company wants insurance for EMF exposure it must purchase additional Pollution Liability Coverage. Proof of such coverage has not been provided to the City by New Cingular Wireless PCS, LLC, the Licensee.

There is, in the public record, no proof of financial responsibility or accounting to establish adequate liquidity of the licensee for the indemnification provisions of paragraph 28 of the Master License Agreement.

REMEDIES

The Commission should grant the appeal and revoke the permit issued by the Zoning Administrator until:

- a) Licensee provides Proof of Insurance with the Licensee as a named Insured;
- b) Licensee provides proof of Pollution Liability Coverage for EMF related exposures and illnesses; and
- c) Licensee provides audited financials for purposes of indemnification.

Once the above compliance is established, and all three criterion have been provided, then the permit may re-issue, but only in the name of the licensee or in the name of some other entity registered to do business in California which also has signed a Master License Agreement required by Title 3 section 2.49.080 of the Newport Beach Municipal Code.

Respectfully submitted,

POLLOCK & JAMES, LLP



Mark S. Pollock

attachments

C-8584-1

**MASTER LICENSE AGREEMENT BETWEEN THE
CITY OF NEWPORT BEACH AND NEW CINGULAR WIRELESS PCS, LLC
FOR THE USE OF CITY-OWNED STREETLIGHTS FOR
TELECOMMUNICATION FACILITIES**

This MASTER LICENSE AGREEMENT ("Master License") is entered into between the City of Newport Beach, a California municipal corporation and charter city ("City"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("Licensee") on this 12th day of February, 2019 ("Effective Date"). City and Licensee are each a "Party" and together the "Parties" to this Master License.

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 City Charter;
- B. City is the fee title owner of certain Streetlight(s) located within the Public Right-of-Way in the City of Newport Beach, California;
- C. Licensee desires to license from City, on a non-exclusive basis, the right to attach, install, operate, maintain, and remove certain Telecommunication Facilities on certain City-owned Streetlights located within certain areas of the Public Right-of-Way (collectively, the "License Area");
- D. The Parties anticipate amending this Master License from time-to-time by attaching and incorporating herein the specific License Area(s) to this Master License to include additional City-owned Streetlights to allow for the attachment, installation, operation, maintenance, and removal of additional Telecommunication Facilities as permits are obtained from the City;
- E. Pursuant to the Newport Beach Municipal Code ("NBMC") and City Council Policy L-23, City sought the assistance of an appraiser to determine the maximum or fair market value rent for the License Area; and
- F. City is willing to make the License Area available to Licensee, subject to the covenants and conditions set forth in this Master License on a non-exclusive basis, to facilitate the efficient and orderly deployment of communications facilities in the City of Newport Beach.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

1.1 "Amendment" means that document prepared by City in substantially the form attached hereto as Exhibit "A" itemizing the City-owned Streetlight(s) and describing and depicting the License Area(s) on which Licensee is authorized to install a Telecommunication Facility.



Secretary of State
Statement of Information
(Limited Liability Company)

LLC-12

19-D29697

FILED

In the office of the Secretary of State
of the State of California

AUG 29, 2019

This Space For Office Use Only

IMPORTANT — Read instructions **before** completing this form.

Filing Fee — \$20.00

Copy Fees — First page \$1.00; each attachment page \$0.50;
Certification Fee — \$5.00 plus copy fees

1. Limited Liability Company Name (Enter the exact name of the LLC. If you registered in California using an alternate name, see instructions.)

NEW CINGULAR WIRELESS PCS, LLC

2. 12-Digit Secretary of State File Number

199930110028

3. State, Foreign Country or Place of Organization (only if formed outside of California)

DELAWARE

4. Business Addresses

a. Street Address of Principal Office — Do not list a P.O. Box

1025 Lenox Park Blvd NE

City (no abbreviations)

Atlanta

State

GA

Zip Code

30319

b. Mailing Address of LLC, if different than item 4a

675 W. Peachtree St., N.W., Suite 2756

City (no abbreviations)

Atlanta

State

GA

Zip Code

30308

c. Street Address of California Office, if item 4a is not in California — Do not list a P.O. Box

City (no abbreviations)

State

CA

Zip Code

5. Manager(s) or Member(s)

If no managers have been appointed or elected, provide the name and address of each member. At least one name and address must be listed. If the manager/member is an individual, complete items 5a and 5c (leave item 5b blank). If the manager/member is an entity, complete items 5b and 5c (leave item 5a blank). Note: The LLC cannot serve as its own manager or member. If the LLC has additional managers/members, enter the name(s) and addresses on Form LLC-12A (see instructions).

a. First Name, if an individual — Do not complete item 5b

Middle Name

Last Name

Suffix

b. Entity Name — Do not complete item 5a

AT&T Mobility Corporation

c. Address

1025 Lenox Park Blvd NE

City (no abbreviations)

Atlanta

State

GA

Zip Code

30319

6. Service of Process (Must provide either Individual OR Corporation.)

INDIVIDUAL — Complete items 6a and 6b only. Must include agent's full name and California street address.

a. California Agent's First Name (if agent is not a corporation)

Middle Name

Last Name

Suffix

b. Street Address (if agent is not a corporation) — Do not enter a P.O. Box

City (no abbreviations)

State

CA

Zip Code

CORPORATION — Complete item 6c only. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) — Do not complete item 6a or 6b

C T CORPORATION SYSTEM (C0168406)

7. Type of Business

a. Describe the type of business or services of the Limited Liability Company

Provide wireless services and products.

8. Chief Executive Officer, if elected or appointed

a. First Name

Middle Name

Last Name

Suffix

b. Address

City (no abbreviations)

State

Zip Code

9. The information contained herein, including any attachments, is true and correct.

08/29/2019

Kelly Lettmann

Power of Attorney

Date

Type or Print Name of Person Completing the Form

Title

Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address. This information will become public when filed. SEE INSTRUCTIONS BEFORE COMPLETING.)

Name:

Company:

Address:

City/State/Zip:

EXHIBIT "B"



**State of California
Secretary of State**

**Statement of Information
(Foreign Corporation)**

FEES (Filing and Disclosure): \$25.00.

If this is an amendment, see instructions.

IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

F

G773979

FILED

**In the office of the Secretary of State
of the State of California**

JUL-05 2019

1. CORPORATE NAME

AT&T MOBILITY WIRELESS OPERATIONS HOLDINGS INC.

2. CALIFORNIA CORPORATE NUMBER

C3304414

This Space for Filing Use Only

No Change Statement (Not applicable if agent address of record is a P.O. Box address. See instructions.)

3. If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety.

☐ If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed to Item 13.

Complete Addresses for the Following (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)

4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE CITY STATE ZIP CODE
1025 LENOX PARK BLVD NE, ATLANTA, GA 30319

5. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY CITY STATE ZIP CODE

6. MAILING ADDRESS OF THE CORPORATION, IF DIFFERENT THAN ITEM 4 CITY STATE ZIP CODE
675 W. PEACHTREE ST., N.W. SUITE 2756, ATLANTA, GA 30319

Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

7. CHIEF EXECUTIVE OFFICER/ ADDRESS CITY STATE ZIP CODE
JAMES LACY 1025 LENOX PARK BLVD NE, ATLANTA, GA 30319

8. SECRETARY ADDRESS CITY STATE ZIP CODE
JACKIE A. BEGUE 1025 LENOX PARK BLVD NE, ATLANTA, GA 30319

9. CHIEF FINANCIAL OFFICER/ ADDRESS CITY STATE ZIP CODE
CHAD WALKER 1025 LENOX PARK BLVD NE, ATLANTA, GA 30319

Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 11 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 11 must be left blank.

10. NAME OF AGENT FOR SERVICE OF PROCESS

C T CORPORATION SYSTEM

11. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL CITY STATE ZIP CODE

Type of Business

12. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION
TELECOMMUNICATIONS

13. THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

07/05/2019

KELLY LETTMANN

POWER OF ATTORNEY

DATE

TYPE/PRINT NAME OF PERSON COMPLETING FORM

TITLE

SIGNATURE

SI-350 (REV 01/2013)

APPROVED BY SECRETARY OF STATE

EXHIBIT *hcn*

CERTIFICATE OF INSURANCE CHECKLIST

City of Newport Beach

This checklist is comprised of requirements as outlined by the City of Newport Beach. *

Date Received: 2/15/19 Dept./Contact Received From: Sunny
 Date Completed: 3/11/19 Sent to: Sunny By: Jan
 Company/Person required to have certificate: AT&T
 Type of contract: Other

I. GENERAL LIABILITY

EFFECTIVE/EXPIRATION DATE: 6/1/18 - 6/1/19

A. INSURANCE COMPANY: Old Republic Insurance Company

B. AM BEST RATING (A- : VII or greater): A+ / XII

C. ADMITTED Company (Must be California Admitted):
 Is Company admitted in California? ☒ Yes ☐ No

D. LIMITS (Must be \$1M or greater): What is limit provided? \$1M/\$10M

E. ADDITIONAL INSURED ENDORSEMENT - please attach ☒ Yes ☐ No

F. PRODUCTS AND COMPLETED OPERATIONS (Must include): Is it included? (completed Operations status does not apply to Waste Haulers or Recreation) ☒ Yes ☐ No

G. ADDITIONAL INSURED FOR PRODUCTS AND COMPLETED OPERATIONS ENDORSEMENT (completed Operations status does not apply to Waste Haulers) ☒ Yes ☐ No

H. ADDITIONAL INSURED WORDING TO INCLUDE (The City its officers, officials, employees and volunteers): Is it included? ☒ Yes ☐ No

I. PRIMARY & NON-CONTRIBUTORY WORDING (Must be included): Is it included? ☒ Yes ☐ No

J. CAUTION! (Confirm that loss or liability of the named insured is not limited solely by their negligence) Does endorsement include "solely by negligence" wording? ☐ Yes ☒ No

K. ELECTED SCMAF COVERAGE (RECREATION ONLY): ☒ N/A ☐ Yes ☐ No

L. NOTICE OF CANCELLATION: ☐ N/A ☒ Yes ☐ No

II. AUTOMOBILE LIABILITY

EFFECTIVE/EXPIRATION DATE: 6/1/18 - 6/1/19

A. INSURANCE COMPANY: Old Republic Insurance Company

B. AM BEST RATING (A- : VII or greater) A+ / XII

C. ADMITTED COMPANY (Must be California Admitted):
 Is Company admitted in California? ☒ Yes ☐ No

D. LIMITS - If Employees (Must be \$1M min. BI & PD and \$500,000 UM, \$2M min for Waste Haulers): What is limits provided? \$1,000,000

E. LIMITS Waiver of Auto Insurance / Proof of coverage (# individual) (What is limits provided?) N/A

F. ADDITIONAL INSURED WORDING: ☐ N/A ☒ Yes ☐ No

G. PRIMARY & NON-CONTRIBUTORY WORDING: ☐ N/A ☒ Yes ☐ No

H. HIRED AND NON-OWNED AUTO ONLY: ☐ N/A ☐ Yes ☐ No

I. NOTICE OF CANCELLATION: ☐ N/A ☒ Yes ☐ No

EXHIBIT "D"

III. WORKERS' COMPENSATION

EFFECTIVE/EXPIRATION DATE: 6/1/18 - 6/1/19

- A. INSURANCE COMPANY: Old Republic Insurance Company
- B. AM BEST RATING (A- : VII or greater): A+ / XII
- C. ADMITTED Company (Must be California Admitted): ☒ Yes ☐ No
- D. WORKERS' COMPENSATION LIMIT: Statutory ☒ Yes ☐ No
- E. EMPLOYERS' LIABILITY LIMIT (Must be \$1M or greater) \$1,000,000
- F. WAIVER OF SUBROGATION (To include): Is it included? ☒ Yes ☐ No
- G. SIGNED WORKERS' COMPENSATION EXEMPTION FORM: ☒ N/A ☐ Yes ☐ No
- H. NOTICE OF CANCELLATION: ☐ N/A ☒ Yes ☐ No

ADDITIONAL COVERAGE'S THAT MAYBE REQUIRED

IV. PROFESSIONAL LIABILITY

☒ N/A ☐ Yes ☐ No

V. POLLUTION LIABILITY

☒ N/A ☐ Yes ☐ No

VI. BUILDERS RISK OR INSTALLATION FLOATER - 2/22/19-3/1/20

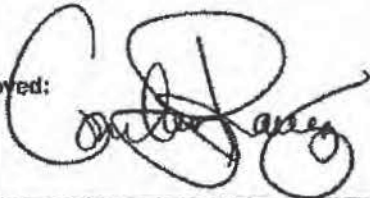
SELF INSURED

☐ N/A ☒ Yes ☐ No

HAVE ALL ABOVE REQUIREMENTS BEEN MET?
IF NO, WHICH ITEMS NEED TO BE COMPLETED?

☒ Yes ☐ No

Approved:



3/11/18

Agent of Alliant Insurance Services
 Broker of record for the City of Newport Beach

Date

RISK MANAGEMENT APPROVAL REQUIRED (Non-admitted carrier rated less than _____;
 Self Insured Retention or Deductible greater than \$ _____)

☐ N/A ☐ Yes ☐ No

Reason for Risk Management approval/exception/waiver:

Risk Management approval required for Self Insurance by vendor for Construction in Process exposure.

3/7/19 RM approved self insurance on Builders Risk/Construction in Process exposure.

Approved:

Risk Management

Date

* Subject to the terms of the contract.

RESOLUTION NO. ZA2020-030

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2019-030 FOR A SMALL CELL FACILITY LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY ON CITY STREETLIGHT NUMBER SLC0796, AT THE NORTHWESTERN CORNER OF BALBOA BOULEVARD AND 30TH STREET (PA2019-111)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by New Cingular Wireless, LLC d.b.a. AT&T Mobility (Applicant), with respect to City of Newport Beach Streetlight Number SLC0796, located within the public right-of-way, at the northwestern corner of Balboa Boulevard and 30th Street, requesting approval of a minor use permit.
2. The Applicant proposes the installation of a small cell wireless facility on a City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on Balboa Boulevard and includes the following: (1) Removal and replacement of an existing City streetlight; (2) Installation of a small cell wireless facility that consists of four remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter equipment shroud. This equipment would be fixed to the top of the replaced streetlight pole for a maximum height of 34 feet, 9 inches, and (3) Establishment of new below-grade support equipment adjacent to the streetlight.
3. The streetlight is located within the public right-of-way. The proposal is regulated by Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property), as well as Newport Beach Municipal Code (NBMC) Chapter 20.49 (Wireless Telecommunication Facilities).
4. The project site is located within the coastal zone. It is not located between the first public roadway paralleling the sea and the sea. The removal and installation of an existing streetlight pole is exempt from the requirements of a coastal development permit pursuant to Section 21.50.035(C)(4) (Repair and Maintenance) of the NBMC. In consultation with Coastal Commission staff, the modification of a streetlight for a small cell facility remains exempt, provided there is no visual resource impact. The project was reviewed for consistency with the Public View Protection regulations of Section 21.49.050(B) (Public View Protection) of the NBMC. It is not on a coastal bluff or canyon, not adjacent to or within the viewshed of a public view point, coastal view road, public park or beach, or public accessway, as identified on the Coastal Land Use Plan Map 4-3 (Coastal Views), and does not contain significant natural landforms or vegetation. The project scope involves the removal and replacement of an existing City streetlight in the same location with the same luminaire height. The project has been designed to blend in within the existing streetscape. The replacement streetlight is consistent with the size,

EXHIBIT "E"

shape, style, and design of the existing pole. No above ground mounted equipment is proposed and the support equipment is proposed to be placed in underground handholes. All transmission equipment, including remote radio units and the raycap disconnect switch, are fully concealed within a screening shroud. The installation of a small cell wireless facility will not have a negative impact on coastal views or coastal resources; therefore, a coastal development permit is not required.

5. A public hearing was held on April 16, 2020, in the Community Room at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.
2. In this case, the proposal includes the removal and replacement of an existing City streetlight pole to install a small telecommunications wireless facility, including below-grade accessory equipment.
3. The exceptions to the Class 3 categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

Minor Use Permit

In accordance with NBMC Subsection 20.52.020(F) (Conditional Use Permits and Minor Use Permits), the following findings and facts in support of such findings are set forth:

Finding:

A. *The use is consistent with the General Plan and any applicable specific plan.*

Facts in Support of Finding:

1. The project site is designated as Public Right-of-Way (ROW), which is property held in trust by the City, and allows for the construction and maintenance of public roads, crosswalks, pedestrian walkways, electric transmission lines, oil or gas pipeline, water line, sanitary or storm sewer, or other similar uses. City Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property) governs procedures and locations for siting wireless telecommunications equipment in the ROW. Streetlights are eligible for telecom use, subject to entitlements (such as this minor use permit request), yearly rent, and a license agreement.
2. General Plan Natural Resources Goal NR 21 recommends the "minimized visual impacts of signs and utilities." The proposed design is consistent with NR 21 by introducing no new vertical obstructions in the ROW, employing stealth elements like colorization (painting to match the streetlight pole), and installing the associated equipment below grade. Conditions of Approval No. 20 and 21 prohibit advertising signage or identifying logos on any telecom facility except for small identification, address, warning, and similar information plates. Signage required by State or Federal regulations shall be allowed in its smallest permissible size.
3. General Plan Land Use Policy LU 6.1.3 promotes "architecture and planning that complements adjoining uses." The proposed design adjoins residential uses and aligns with LU 6.1.3 by copying the size, shape, style, and design of the existing streetlight pole to decrease potential disruption of the visual environment. Adverse impact to circulation, aesthetics, sounds, or odor are not anticipated from project implementation.
4. General Plan Land Use Policy LU 4 calls for the "management of growth and change to protect and enhance the livability of neighborhoods and achieve distinct and economically vital business and employment districts, which are correlated with supporting infrastructure and public services and sustain Newport Beach's natural setting." The proposed small cell facility upholds the intent of LU 4 by providing infrastructure to add system capacity for service gaps that may occur for residents and businesses of the area in regular and high demand periods. It also benefits the community by improving the existing coverage and capacity to increase the voice and data system already in use by its customers. The facility is designed to adapt and accept future technologies, such as 5G, and will help meet local demand and sustain the livability of the area.
5. The project site is not located within a specific plan area

Finding:

- B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding:

1. See Fact in Support of Finding A.1.
2. Wireless telecommunication facilities are regulated by NBMC Chapter 20.49 (Wireless Telecommunication Facilities). To site small cell equipment in the ROW assigns the project a Class 3 specification (Public Right-of-Way Installations) and requires the Applicant to obtain a minor use permit from the Zoning Administrator (NBMC Section 20.49.060 [Permit Review Procedures]).
3. NBMC Subsection 20.49.040(A) (Preferred Locations) prioritizes telecom facilities from most preferred (1) to least preferred (4) as follows: (1) collocation of a new facility at an existing facility; (2) Class 1 Stealth/Screened; (3) Class 2 (Visible Antennas), Class 3 (Public Right-of-Way); and (4) Class 4 (Freestanding Structure). Although lower on the listing of priority facilities, the proposed facility consists of one (1) small cell facility that is designed to not visually dominate the surrounding area and instead to blend into the existing block.
4. NBMC Section 20.49.050 (General Development and Design Standards) requires projects to be visually compatible with surrounding structures. In reviewing this application, the Zoning Administrator shall consider the proposed facility's use of color blending, equipment screening, and the limited size of the equipment designed consistently with the aforementioned criteria. All telecommunications equipment on top of the streetlight pole would be concealed within a painted-to-match 12-inch diameter shroud. The proposed small cell facility would rely on likeness with the streetlight pole through style, color, and material to help disguise its presence. Engineering of the replacement streetlight pole accommodates and withstands the weight of the small cell equipment and has ability to display a future City banner, if needed. Electrical and wiring components of the telecommunications equipment are designed to be fully contained within the new streetlight pole. The overall height of 34 feet, 9 inches from finished grade to the top of the proposed facility complies with the maximum allowed. Equipment not contained within the shroud on the streetlight pole would be out of sight, located below the ground in the adjacent ROW. Condition of Approval No. 32 requires approved design drawings from Southern California Edison (SCE) of the power supply to the small cell facility before construction of the facility is to commence.
5. Existing residential properties contiguous to the site are in the R-2 (Two-Unit Residential) Zoning District. R-2-zoned sites allow for structures up to 24 feet for flat roof elements and 29 feet to the ridge of a sloped roof. The height of the existing streetlight SLC0796 sits just above the maximum allowable height for residential structures. The streetlight is separated from the residences by a large 20-foot vegetated parkway that is landscaped with taller palm trees. Given this buffer between the streetlight and the

residences, the streetlight is softened and screened by the landscaping from the residential neighborhood beyond. Furthermore, keeping the luminaire the same height as the existing streetlight lessens visual obstruction from the proposed small cell facility with the line of the existing development.

6. Submitted materials from the Applicant demonstrate the proposal would conform with Federal Communications Commission (FCC) Rules and Regulations regarding safety and radio frequency emissions.
7. The proposed telecom facility will comply with applicable requirements of the NBMC with construction as shown on the plans and implementation of the conditions of approval.

Finding:

- C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. City of Newport Beach Streetlight No. SLC0796 is located within the public right-of-way on the northern side of Balboa Boulevard at the northwestern corner of the 30th Street intersection. It is immediately adjacent to an unusually large vegetated parkway that is approximately 20 feet wide. Beyond the parkway to the northeast is a block of two-unit residential development (Attachment No. ZA 2). All surrounding land uses are residential and vary in density from two-unit residential to single-unit residential. The only exception is a Commercial Visitor Serving (CV) zoned parcel across 30th Street from the site, which is presently developed with a laundromat (Beach Coin Laundry).
2. Under the new FCC Order, wireless providers are not required to demonstrate a significant coverage gap, a qualification previously required by local jurisdictions in order to support an application. Pursuant to the Order, the City cannot "materially [inhibit] the introduction of new services or the improvement of existing services." Moreover, pursuant to Section 332(c)(7)(B)(i)(II) of U.S. Code Title 47 (Telecommunications), the City may "not regulate the placement, construction or modification of wireless service facilities in a manner that prohibits the provision of personal wireless services." Although not required, the Applicant produced a coverage map for the project. This map indicates the proposed facility would boost the supply of capacity and coverage in the vicinity.
3. SLC0796 serves as a part of the City's existing streetlight inventory. AT&T proposes to: (1) remove and replace SLC0796 with a new streetlight in the same location; (2) maintain the existing luminaire height of 29 feet, 9 inches; (3) install telecommunications equipment for a small cell wireless facility on top of the new streetlight pole resulting in an overall height of 34 feet, 9 inches; and (4) establish new below-grade support equipment adjacent to the streetlight, within the public right-of-way.

4. The replacement streetlight pole design is consistent with the size, shape, style, and design of that existing, including the attached light arm and luminaire. For safety and circulation of the area during construction, Condition of Approval No. 40 requires traffic control plans illustrating compliance with the 2016 watchbook to be reviewed and approved by the Public Works Department prior to the issuance of any building permit.
5. The proposed telecom facility is anticipated to enhance coverage and capacity for residents, visitors and businesses in the neighborhood by providing wireless access to voice and data transmission services. The proposed telecom facility is not expected to result in any material changes to the character of the local community.
6. See Facts in Support of Finding B.4, B.5, and B.6.
7. The proposed facility will be unmanned, will have no impact on the circulation system, and, as conditioned, will not generate noise, odor, smoke, or any other adverse impacts to adjacent land uses.

Finding:

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding:

1. Adequate public and emergency vehicle access, public services, and utilities are provided to and around the subject site and the proposed use will not change this.
2. The proposed facility will be unmanned and will have no permanent impact on the circulation system and adjacent land uses due to its location in the parkway, outside of existing vehicle or pedestrian circulation areas.
3. The Public Works Department and Utilities Department have reviewed the project proposal and do not have any concerns regarding access, public services, or utilities provided to the existing neighborhood and surrounding area.

Finding:

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The proposed facility will only require periodic maintenance and will not generate any type of significant adverse impacts to the environment, such as noise, odor, smoke, etc.

2. The proposed facility must and will comply with the applicable Federal and State rules, regulations and standards thus, ensuring public health and safety.
3. See Facts in Support of Finding B.4, B.5, B.6, B.7, and B.8.
4. The proposed telecom facility will be effectively blended based upon the design and location with the incorporation of the conditions of approval to the greatest extent feasible. As a result, the proposed facility at this location is not expected to result in conditions that are materially detrimental to nearby property owners, residents, and businesses, nor to public health or safety.

Wireless Telecommunications Facility

In accordance with NBMC Subsection 20.49.060(H)(1) (General Findings for Telecom Facilities), the following additional findings and facts in support of such findings are set forth:

Finding:

F. The proposed telecom facility is visually compatible with the surrounding neighborhood.

Facts in Support of Finding:

1. See Facts in Support of Finding B.4, B.5, and B.6.
2. The closest residentially zoned property is located approximately 20 feet northeast of the project site and is buffered by a large 20-foot-wide parkway area with vegetation of varying heights. The proposed streetlight is located along the inland side of a well-traveled street and will blend in with the surrounding streetscape. There are no public parks near the proposed project. The proposed facility and below-grade accessory equipment meets the City's design parameters approved by the City's Master License Agreement, which emphasizes stealth techniques and best practices to not be materially detrimental to the surrounding area.

Finding:

G. The proposed telecom facility complies with height, location and design standards, as provided for in this chapter.

Facts in Support of Finding:

1. The 34-foot, 9-inch tall small cell facility would comply with the maximum height limit of 35 feet for telecom facilities installed on streetlights within the public right-of-way.
2. See Facts in Support of Finding B in its entirety.
3. The application includes documentation indicating the need to provide and improve coverage to the residential areas within the City of Newport Beach. Moreover, the

additional system capacity provided by the proposed facility will address service gaps that occur during high demand periods, as well as service gaps that exist at all demand periods to the surrounding area. The proposed small cell site will help AT&T to meet its coverage objectives and improve coverage to nearby areas that are currently marginal.

Finding:

H. An alternative site(s) located further from a residential district, public park or public facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.
2. Five nearby streetlights were identified and investigated by the Applicant as possible alternate locations for this small cell facility; however, all sites were found by the applicant to be not viable (see Attachment No. ZA 3).
3. Alternative Site #1 is a wooden utility pole located approximately 100 feet north of the proposed streetlight. This pole is located immediately in front of a two-unit residential structure that is oriented towards Balboa Boulevard within a narrower parkway area. Installation of small cell infrastructure at this location would require placement of a crossarm with exposed equipment on either side of the wooden pole and would not be as aesthetically compatible as the proposed location. Most importantly, the wooden utility pole is located within an approved underground assessment and utility district, which will aim to eventually eliminate such above-ground utilities in the area.
4. Alternative Site #2 at City Streetlight No. SLC0767 located approximately 160 feet northwest of the proposed streetlight on the opposite side of Balboa Boulevard. This alternative location is in very close proximity to overhead powerlines, which would make additional height above the existing streetlight pole infeasible. Furthermore, the existing streetlight is located such that accessibility is limited and a girthier pole could not be accommodated without further constraining the sidewalk.
5. Alternative Site #3 is a wooden utility pole located approximately 78 feet west of the proposed streetlight. This pole is located immediately adjacent to the front patio of an existing, single-story residence. Like Alternative Site #1, installation of small cell infrastructure at this location would require placement of a crossarm with exposed equipment on either side of the wooden pole and would not be as aesthetically compatible as the proposed location. Most importantly, the wooden utility pole is located within an approved underground assessment and utility district, which will aim to eventually eliminate such above-ground utilities in the area.
6. Alternative Site #4 at City Streetlight No. SLC0768 is located at the southwest corner of Balboa Boulevard and 30th Street approximately 100 feet from the proposed streetlight. Like Alternative Site #2, this alternative location is in very close proximity to overhead powerlines, which would make additional height above the existing streetlight pole

infeasible. Accessibility is also limited here and a girther pole cannot be accommodated without further constraining the sidewalk.

7. Alternative Site #5 at City Streetlight No. SLC0766 is located at the alleyway between 30th Street and 29th Street, approximately 175 feet southeast of the proposed streetlight. Like Alternative Site #2 and Alternative Site #4, accessibility is limited at this location and a girther pole cannot be accommodated without further constraining the sidewalk.

Finding:

1. *An alternative plan that would result in a higher preference facility class category for the proposed facility is not available or reasonably feasible and desirable under the circumstances.*

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.
2. AT&T's analysis concluded that a more preferred location as defined by NBMC Subsection 20.49.040(A) (Preferred Locations), such as a collocation or a Class 1 or 2 facility, would not be technically feasible from an RF or construction perspective. The analysis explained that small cell facilities are low powered and must be located at the precise location selected to serve the network traffic demands of the specific limited area. Further, this type of service cannot be accomplished with a traditional macro collocation or building mounted site in the area.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, 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. The exceptions to the Class 3 exemption do not apply.
2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2019-030, subject to the conditions set forth in "Exhibit A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of NBMC Title 20 Planning and Zoning.

PASSED, APPROVED, AND ADOPTED THIS 16TH DAY OF APRIL, 2020.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL****Planning Division**

1. The development shall be in substantial conformance with the plans, including elevation exhibits and visual simulations, stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. The telecom facility approved by this permit shall comply with all applicable Federal and State rules, regulations, and standards.
5. The replacement pole shall be reconstructed in the exact location of the existing streetlight pole.
6. The reconstructed streetlight pole design shall be consistent with the size (including diameter), shape, style, and design of the existing streetlight pole to the greatest extent feasible, including the attached light arm and luminaire. All mounted equipment shall be painted to match the color and style of the replacement streetlight pole.
7. All accessory support equipment of this facility shall be installed underground.
8. All electrical and antenna wiring shall be fully encased within the reconstructed streetlight pole.
9. The telecom facility approved by the use permit shall comply with any easements, covenants, conditions, or restrictions on the underlying City-trust property upon which the facility is located.
10. Anything not specifically approved by this permit is not permitted and must be addressed in a separate and subsequent review.
11. Prior to building permit final, a Height Certification Inspection shall be required prior to final of building permits. The small cell facility and base streetlight pole approved by this permit shall not exceed a total of 34 feet, 9 inches in height from existing grade (maximum elevation height of 43.57 feet above mean sea level using the North American Vertical Datum of 1988 [NAVD88]).

12. Prior to building permit issuance, all contractors and subcontractors shall have a valid City of Newport Beach business license.
13. The Applicant shall continually maintain the wireless telecom facility so that it retains its original appearance at the time the building permit is finalized by the City of Newport Beach.
14. On an annual basis, the Applicant shall conduct maintenance inspections of the wireless telecom facility, including the small cell facility and below-grade equipment areas, and make all necessary repairs. The Community Development Director may require additional inspections and/or maintenance activities at his/her discretion.
15. The Applicant shall not prevent the City of Newport Beach from having adequate spectrum capacity on the City's 800 MHz radio frequencies at any time.
16. The facility shall transmit at the approved frequency ranges established by the FCC. The Applicant shall inform the City in writing of any proposed changes to the frequency range in order to prevent interference with the City's Public Safety radio equipment.
17. The telecommunications facility shall at no time interfere with the frequencies used by the City of Newport Beach for public safety. "Comprehensive advanced planning and frequency coordination" engineering measures shall prevent interference, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the "Best Practices Guide" published by the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), and as endorsed by the FCC.
18. Should interference with the City's Public Safety radio equipment occur, use of the telecom facility authorized by this permit may be suspended until the radio frequency interference is corrected and verification of the compliance is reported.
19. The Applicant shall provide a "single point of contact" for carriers in its Engineering and Maintenance Departments that is monitored 24 hours per day to ensure continuity on all interference issues, and to which interference problems may be reported. The name, telephone number, fax number, and email address of that person shall be provided to the Community Development Department and Newport Beach Police Department's Support Services Commander prior to activation of the facility. If the point of contact changes, the City shall be immediately alerted and updated.
20. No advertising signage or identifying logos shall be displayed on the telecom facility except for small identification, address, warning, and similar information plates. A detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.
21. Appropriate information warning signs or plates shall be posted on the base streetlight pole of the transmitting antenna. In addition, contact information (e.g., a telephone number) shall be provided on the warning signs or plates. The location of the information warning signs or plates shall be depicted on the plans submitted for construction permits.

Signage required by State or federal regulations shall be allowed in its smallest permissible size.

22. Prior to the final of building permits, the Applicant shall schedule an evening inspection by the Code Enforcement Division to confirm compliance with lighting. The telecom facility shall be lighted to the extent deemed necessary by the Newport Beach Police and Utilities Departments for security lighting and consistency with other streetlights in the area.
23. The Applicant shall maintain the telecom facility in a manner consistent with this approval.
24. The Applicant shall ensure that its telecom facility complies with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The Applicant shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. This information shall be made available by the Applicant upon request of the Community Development Director.
25. The facility shall comply with all applicable provisions of U.S. Code Title 47 (Telecommunications) rules and regulations, including those related to FCC Radio Frequency safety.
26. Prior to final of building permits, the Applicant shall schedule an inspection by the Planning Division to ensure materials and colors match existing architecture as illustrated in the approved photographic simulations and in conformance with NBMC Section 20.49.050.
27. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Division by certified mail no less than thirty (30) days prior to such action. The operator shall have ninety (90) days from the date of abandonment or discontinuance to reactivate use of the facility, or remove the telecom facility and restore the site.
28. The City reserves the right and jurisdiction to review and modify any permit approved pursuant to NBMC Chapter 20.49, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Division of any proposal to change the height or size of the facility; increase the size, shape, or number of antennas; change the facility's color or materials or location on the site; or increase the signal output above the maximum permissible exposure ("MPE") limits imposed by the radio frequency emissions guidelines of the FCC. Any changed circumstance shall require the operator to apply for a review of the modification, and possible amendment to the use permit, prior to implementing any change.
29. Use Permit No. UP2019-030 shall expire unless exercised within 24 months from the date of approval as specified in NBMC Section 20.54.060 (Time Limits and Extensions), unless an extension is otherwise granted.

30. Construction activities shall comply with NBMC Section 10.28.040, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday and 8 a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or holidays.
31. This Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
32. A copy of the Resolution, including conditions of approval Exhibit "A," and approved drawings from Southern California Edison (SCE) for the power supply and design, shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
33. The Applicant shall promptly notify the City if the landscaped parkway of the subject streetlight pole is negatively affected or otherwise damaged by project implementation.
34. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of AT&T Small Cell on SLC0796, including, but not limited to, Minor Use Permit No. UP2019-030 (PA2019-111). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Public Works Department

35. Prior to the issuance of a building permit, an encroachment permit shall be required.
36. Prior to the issuance of a building permit, traffic control plans illustrating compliance with the 2016 watchbook requirements shall be reviewed and approved by the Public Works Department before their implementation. Large construction vehicles shall not be permitted to travel narrow streets as determined by the Public Works Department. Disruption caused by construction work along roadways and by movement of

construction vehicles shall be minimized by proper use of traffic control equipment and flagman.

Additional Conditions of Approval

37. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds pursuant to MBTA:
- A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.

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Attachment No. PC 4

Adopted Zoning Administrator Resolution
No. ZA2020-030

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RESOLUTION NO. ZA2020-030

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2019-030 FOR A SMALL CELL FACILITY LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY ON CITY STREETLIGHT NUMBER SLC0796, AT THE NORTHWESTERN CORNER OF BALBOA BOULEVARD AND 30TH STREET (PA2019-111)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by New Cingular Wireless, LLC d.b.a. AT&T Mobility (Applicant), with respect to City of Newport Beach Streetlight Number SLC0796, located within the public right-of-way, at the northwestern corner of Balboa Boulevard and 30th Street, requesting approval of a minor use permit.
2. The Applicant proposes the installation of a small cell wireless facility on a City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on Balboa Boulevard and includes the following: (1) Removal and replacement of an existing City streetlight; (2) Installation of a small cell wireless facility that consists of four remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter equipment shroud. This equipment would be fixed to the top of the replaced streetlight pole for a maximum height of 34 feet, 9 inches, and (3) Establishment of new below-grade support equipment adjacent to the streetlight.
3. The streetlight is located within the public right-of-way. The proposal is regulated by Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property), as well as Newport Beach Municipal Code (NBMC) Chapter 20.49 (Wireless Telecommunication Facilities).
4. The project site is located within the coastal zone. It is not located between the first public roadway paralleling the sea and the sea. The removal and installation of an existing streetlight pole is exempt from the requirements of a coastal development permit pursuant to Section 21.50.035(C)(4) (Repair and Maintenance) of the NBMC. In consultation with Coastal Commission staff, the modification of a streetlight for a small cell facility remains exempt, provided there is no visual resource impact. The project was reviewed for consistency with the Public View Protection regulations of Section 21.49.050(B) (Public View Protection) of the NBMC. It is not on a coastal bluff or canyon, not adjacent to or within the viewshed of a public view point, coastal view road, public park or beach, or public accessway, as identified on the Coastal Land Use Plan Map 4-3 (Coastal Views), and does not contain significant natural landforms or vegetation. The project scope involves the removal and replacement of an existing City streetlight in the same location with the same luminaire height. The project has been designed to blend in within the existing streetscape. The replacement streetlight is consistent with the size,

shape, style, and design of the existing pole. No above ground mounted equipment is proposed and the support equipment is proposed to be placed in underground handholes. All transmission equipment, including remote radio units and the raycap disconnect switch, are fully concealed within a screening shroud. The installation of a small cell wireless facility will not have a negative impact on coastal views or coastal resources; therefore, a coastal development permit is not required.

5. A public hearing was held on April 16, 2020, in the Community Room at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.
2. In this case, the proposal includes the removal and replacement of an existing City streetlight pole to install a small telecommunications wireless facility, including below-grade accessory equipment.
3. The exceptions to the Class 3 categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

Minor Use Permit

In accordance with NBMC Subsection 20.52.020(F) (Conditional Use Permits and Minor Use Permits), the following findings and facts in support of such findings are set forth:

Finding:

A. *The use is consistent with the General Plan and any applicable specific plan.*

Facts in Support of Finding:

1. The project site is designated as Public Right-of-Way (ROW), which is property held in trust by the City, and allows for the construction and maintenance of public roads, crosswalks, pedestrian walkways, electric transmission lines, oil or gas pipeline, water line, sanitary or storm sewer, or other similar uses. City Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property) governs procedures and locations for siting wireless telecommunications equipment in the ROW. Streetlights are eligible for telecom use, subject to entitlements (such as this minor use permit request), yearly rent, and a license agreement.
2. General Plan Natural Resources Goal NR 21 recommends the “minimized visual impacts of signs and utilities.” The proposed design is consistent with NR 21 by introducing no new vertical obstructions in the ROW, employing stealth elements like colorization (painting to match the streetlight pole), and installing the associated equipment below grade. Conditions of Approval No. 20 and 21 prohibit advertising signage or identifying logos on any telecom facility except for small identification, address, warning, and similar information plates. Signage required by State or Federal regulations shall be allowed in its smallest permissible size.
3. General Plan Land Use Policy LU 6.1.3 promotes “architecture and planning that complements adjoining uses.” The proposed design adjoins residential uses and aligns with LU 6.1.3 by copying the size, shape, style, and design of the existing streetlight pole to decrease potential disruption of the visual environment. Adverse impact to circulation, aesthetics, sounds, or odor are not anticipated from project implementation.
4. General Plan Land Use Policy LU 4 calls for the “management of growth and change to protect and enhance the livability of neighborhoods and achieve distinct and economically vital business and employment districts, which are correlated with supporting infrastructure and public services and sustain Newport Beach’s natural setting.” The proposed small cell facility upholds the intent of LU 4 by providing infrastructure to add system capacity for service gaps that may occur for residents and businesses of the area in regular and high demand periods. It also benefits the community by improving the existing coverage and capacity to increase the voice and data system already in use by its customers. The facility is designed to adapt and accept future technologies, such as 5G, and will help meet local demand and sustain the livability of the area.
5. The project site is not located within a specific plan area

Finding:

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding:

1. See Fact in Support of Finding A.1.
2. Wireless telecommunication facilities are regulated by NBMC Chapter 20.49 (Wireless Telecommunication Facilities). To site small cell equipment in the ROW assigns the project a Class 3 specification (Public Right-of-Way Installations) and requires the Applicant to obtain a minor use permit from the Zoning Administrator (NBMC Section 20.49.060 [Permit Review Procedures]).
3. NBMC Subsection 20.49.040(A) (Preferred Locations) prioritizes telecom facilities from most preferred (1) to least preferred (4) as follows: (1) collocation of a new facility at an existing facility; (2) Class 1 Stealth/Screened); (3) Class 2 (Visible Antennas), Class 3 (Public Right-of-Way); and (4) Class 4 (Freestanding Structure). Although lower on the listing of priority facilities, the proposed facility consists of one (1) small cell facility that is designed to not visually dominate the surrounding area and instead to blend into the existing block.
4. NBMC Section 20.49.050 (General Development and Design Standards) requires projects to be visually compatible with surrounding structures. In reviewing this application, the Zoning Administrator shall consider the proposed facility's use of color blending, equipment screening, and the limited size of the equipment designed consistently with the aforementioned criteria. All telecommunications equipment on top of the streetlight pole would be concealed within a painted-to-match 12-inch diameter shroud. The proposed small cell facility would rely on likeness with the streetlight pole through style, color, and material to help disguise its presence. Engineering of the replacement streetlight pole accommodates and withstands the weight of the small cell equipment and has ability to display a future City banner, if needed. Electrical and wiring components of the telecommunications equipment are designed to be fully contained within the new streetlight pole. The overall height of 34 feet, 9 inches from finished grade to the top of the proposed facility complies with the maximum allowed. Equipment not contained within the shroud on the streetlight pole would be out of sight, located below the ground in the adjacent ROW. Condition of Approval No. 32 requires approved design drawings from Southern California Edison (SCE) of the power supply to the small cell facility before construction of the facility is to commence.
5. Existing residential properties contiguous to the site are in the R-2 (Two-Unit Residential) Zoning District. R-2-zoned sites allow for structures up to 24 feet for flat roof elements and 29 feet to the ridge of a sloped roof. The height of the existing streetlight SLC0796 sits just above the maximum allowable height for residential structures. The streetlight is separated from the residences by a large 20-foot vegetated parkway that is landscaped with taller palm trees. Given this buffer between the streetlight and the

residences, the streetlight is softened and screened by the landscaping from the residential neighborhood beyond. Furthermore, keeping the luminaire the same height as the existing streetlight lessens visual obtrusion from the proposed small cell facility with the line of the existing development.

6. Submitted materials from the Applicant demonstrate the proposal would conform with Federal Communications Commission (FCC) Rules and Regulations regarding safety and radio frequency emissions.
7. The proposed telecom facility will comply with applicable requirements of the NBMC with construction as shown on the plans and implementation of the conditions of approval.

Finding:

- C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. City of Newport Beach Streetlight No. SLC0796 is located within the public right-of-way on the northern side of Balboa Boulevard at the northwestern corner of the 30th Street intersection. It is immediately adjacent to an unusually large vegetated parkway that is approximately 20 feet wide. Beyond the parkway to the northeast is a block of two-unit residential development (Attachment No. ZA 2). All surrounding land uses are residential and vary in density from two-unit residential to single-unit residential. The only exception is a Commercial Visitor Serving (CV) zoned parcel across 30th Street from the site, which is presently developed with a laundromat (Beach Coin Laundry).
2. Under the new FCC Order, wireless providers are not required to demonstrate a significant coverage gap, a qualification previously required by local jurisdictions in order to support an application. Pursuant to the Order, the City cannot "materially [inhibit] the introduction of new services or the improvement of existing services." Moreover, pursuant to Section 332(c)(7)(B)(i)(II) of U.S. Code Title 47 (Telecommunications), the City may "not regulate the placement, construction or modification of wireless service facilities in a manner that prohibits the provision of personal wireless services." Although not required, the Applicant produced a coverage map for the project. This map indicates the proposed facility would boost the supply of capacity and coverage in the vicinity.
3. SLC0796 serves as a part of the City's existing streetlight inventory. AT&T proposes to: (1) remove and replace SLC0796 with a new streetlight in the same location; (2) maintain the existing luminaire height of 29 feet, 9 inches; (3) install telecommunications equipment for a small cell wireless facility on top of the new streetlight pole resulting in an overall height of 34 feet, 9 inches; and (4) establish new below-grade support equipment adjacent to the streetlight, within the public right-of-way.

4. The replacement streetlight pole design is consistent with the size, shape, style, and design of that existing, including the attached light arm and luminaire. For safety and circulation of the area during construction, Condition of Approval No. 40 requires traffic control plans illustrating compliance with the 2016 watchbook to be reviewed and approved by the Public Works Department prior to the issuance of any building permit.
5. The proposed telecom facility is anticipated to enhance coverage and capacity for residents, visitors and businesses in the neighborhood by providing wireless access to voice and data transmission services. The proposed telecom facility is not expected to result in any material changes to the character of the local community.
6. See Facts in Support of Finding B.4, B.5, and B.6.
7. The proposed facility will be unmanned, will have no impact on the circulation system, and, as conditioned, will not generate noise, odor, smoke, or any other adverse impacts to adjacent land uses.

Finding:

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding:

1. Adequate public and emergency vehicle access, public services, and utilities are provided to and around the subject site and the proposed use will not change this.
2. The proposed facility will be unmanned and will have no permanent impact on the circulation system and adjacent land uses due to its location in the parkway, outside of existing vehicle or pedestrian circulation areas.
3. The Public Works Department and Utilities Department have reviewed the project proposal and do not have any concerns regarding access, public services, or utilities provided to the existing neighborhood and surrounding area.

Finding:

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The proposed facility will only require periodic maintenance and will not generate any type of significant adverse impacts to the environment, such as noise, odor, smoke, etc.

2. The proposed facility must and will comply with the applicable Federal and State rules, regulations and standards thus, ensuring public health and safety.
3. See Facts in Support of Finding B.4, B.5, B.6, B.7, and B.8.
4. The proposed telecom facility will be effectively blended based upon the design and location with the incorporation of the conditions of approval to the greatest extent feasible. As a result, the proposed facility at this location is not expected to result in conditions that are materially detrimental to nearby property owners, residents, and businesses, nor to public health or safety.

Wireless Telecommunications Facility

In accordance with NBMC Subsection 20.49.060(H)(1) (General Findings for Telecom Facilities), the following additional findings and facts in support of such findings are set forth:

Finding:

F. The proposed telecom facility is visually compatible with the surrounding neighborhood.

Facts in Support of Finding:

1. See Facts in Support of Finding B.4, B.5, and B.6.
2. The closest residentially zoned property is located approximately 20 feet northeast of the project site and is buffered by a large 20-foot-wide parkway area with vegetation of varying heights. The proposed streetlight is located along the inland side of a well-traveled street and will blend in with the surrounding streetscape. There are no public parks near the proposed project. The proposed facility and below-grade accessory equipment meets the City's design parameters approved by the City's Master License Agreement, which emphasizes stealth techniques and best practices to not be materially detrimental to the surrounding area.

Finding:

G. The proposed telecom facility complies with height, location and design standards, as provided for in this chapter.

Facts in Support of Finding:

1. The 34-foot, 9-inch tall small cell facility would comply with the maximum height limit of 35 feet for telecom facilities installed on streetlights within the public right-of-way.
2. See Facts in Support of Finding B in its entirety.
3. The application includes documentation indicating the need to provide and improve coverage to the residential areas within the City of Newport Beach. Moreover, the

additional system capacity provided by the proposed facility will address service gaps that occur during high demand periods, as well as service gaps that exist at all demand periods to the surrounding area. The proposed small cell site will help AT&T to meet its coverage objectives and improve coverage to nearby areas that are currently marginal.

Finding:

H. An alternative site(s) located further from a residential district, public park or public facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.
2. Five nearby streetlights were identified and investigated by the Applicant as possible alternate locations for this small cell facility; however, all sites were found by the applicant to be not viable (see Attachment No. ZA 3).
3. Alternative Site #1 is a wooden utility pole located approximately 100 feet north of the proposed streetlight. This pole is located immediately in front of a two-unit residential structure that is oriented towards Balboa Boulevard within a narrower parkway area. Installation of small cell infrastructure at this location would require placement of a crossarm with exposed equipment on either side of the wooden pole and would not be as aesthetically compatible as the proposed location. Most importantly, the wooden utility pole is located within an approved underground assessment and utility district, which will aim to eventually eliminate such above-ground utilities in the area.
4. Alternative Site #2 at City Streetlight No. SLC0767 located approximately 160 feet northwest of the proposed streetlight on the opposite side of Balboa Boulevard. This alternative location is in very close proximity to overhead powerlines, which would make additional height above the existing streetlight pole infeasible. Furthermore, the existing streetlight is located such that accessibility is limited and a girthier pole could not be accommodated without further constraining the sidewalk.
5. Alternative Site #3 is a wooden utility pole located approximately 78 feet west of the proposed streetlight. This pole is located immediately adjacent to the front patio of an existing, single-story residence. Like Alternative Site #1, installation of small cell infrastructure at this location would require placement of a crossarm with exposed equipment on either side of the wooden pole and would not be as aesthetically compatible as the proposed location. Most importantly, the wooden utility pole is located within an approved underground assessment and utility district, which will aim to eventually eliminate such above-ground utilities in the area.
6. Alternative Site #4 at City Streetlight No. SLC0768 is located at the southwest corner of Balboa Boulevard and 30th Street approximately 100 feet from the proposed streetlight. Like Alternative Site #2, this alternative location is in very close proximity to overhead powerlines, which would make additional height above the existing streetlight pole

infeasible. Accessibility is also limited here and a girther pole cannot be accommodated without further constraining the sidewalk.

7. Alternative Site #5 at City Streetlight No. SLC0766 is located at the alleyway between 30th Street and 29th Street, approximately 175 feet southeast of the proposed streetlight. Like Alternative Site #2 and Alternative Site #4, accessibility is limited at this location and a girther pole cannot be accommodated without further constraining the sidewalk.

Finding:

- 1. An alternative plan that would result in a higher preference facility class category for the proposed facility is not available or reasonably feasible and desirable under the circumstances.*

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.
2. AT&T's analysis concluded that a more preferred location as defined by NBMC Subsection 20.49.040(A) (Preferred Locations), such as a collocation or a Class 1 or 2 facility, would not be technically feasible from an RF or construction perspective. The analysis explained that small cell facilities are low powered and must be located at the precise location selected to serve the network traffic demands of the specific limited area. Further, this type of service cannot be accomplished with a traditional macro collocation or building mounted site in the area.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, 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. The exceptions to the Class 3 exemption do not apply.
2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2019-030, subject to the conditions set forth in "Exhibit A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of NBMC Title 20 Planning and Zoning.

PASSED, APPROVED, AND ADOPTED THIS 16TH DAY OF APRIL, 2020.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning Division

1. The development shall be in substantial conformance with the plans, including elevation exhibits and visual simulations, stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. The telecom facility approved by this permit shall comply with all applicable Federal and State rules, regulations, and standards.
5. The replacement pole shall be reconstructed in the exact location of the existing streetlight pole.
6. The reconstructed streetlight pole design shall be consistent with the size (including diameter), shape, style, and design of the existing streetlight pole to the greatest extent feasible, including the attached light arm and luminaire. All mounted equipment shall be painted to match the color and style of the replacement streetlight pole.
7. All accessory support equipment of this facility shall be installed underground.
8. All electrical and antenna wiring shall be fully encased within the reconstructed streetlight pole.
9. The telecom facility approved by the use permit shall comply with any easements, covenants, conditions, or restrictions on the underlying City-trust property upon which the facility is located.
10. Anything not specifically approved by this permit is not permitted and must be addressed in a separate and subsequent review.
11. Prior to building permit final, a Height Certification Inspection shall be required prior to final of building permits. The small cell facility and base streetlight pole approved by this permit shall not exceed a total of 34 feet, 9 inches in height from existing grade (maximum elevation height of 43.57 feet above mean sea level using the North American Vertical Datum of 1988 [NAVD88]).

12. Prior to building permit issuance, all contractors and subcontractors shall have a valid City of Newport Beach business license.
13. The Applicant shall continually maintain the wireless telecom facility so that it retains its original appearance at the time the building permit is finalized by the City of Newport Beach.
14. On an annual basis, the Applicant shall conduct maintenance inspections of the wireless telecom facility, including the small cell facility and below-grade equipment areas, and make all necessary repairs. The Community Development Director may require additional inspections and/or maintenance activities at his/her discretion.
15. The Applicant shall not prevent the City of Newport Beach from having adequate spectrum capacity on the City's 800 MHz radio frequencies at any time.
16. The facility shall transmit at the approved frequency ranges established by the FCC. The Applicant shall inform the City in writing of any proposed changes to the frequency range in order to prevent interference with the City's Public Safety radio equipment.
17. The telecommunications facility shall at no time interfere with the frequencies used by the City of Newport Beach for public safety. "Comprehensive advanced planning and frequency coordination" engineering measures shall prevent interference, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the "Best Practices Guide" published by the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), and as endorsed by the FCC.
18. Should interference with the City's Public Safety radio equipment occur, use of the telecom facility authorized by this permit may be suspended until the radio frequency interference is corrected and verification of the compliance is reported.
19. The Applicant shall provide a "single point of contact" for carriers in its Engineering and Maintenance Departments that is monitored 24 hours per day to ensure continuity on all interference issues, and to which interference problems may be reported. The name, telephone number, fax number, and email address of that person shall be provided to the Community Development Department and Newport Beach Police Department's Support Services Commander prior to activation of the facility. If the point of contact changes, the City shall be immediately alerted and updated.
20. No advertising signage or identifying logos shall be displayed on the telecom facility except for small identification, address, warning, and similar information plates. A detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.
21. Appropriate information warning signs or plates shall be posted on the base streetlight pole of the transmitting antenna. In addition, contact information (e.g., a telephone number) shall be provided on the warning signs or plates. The location of the information warning signs or plates shall be depicted on the plans submitted for construction permits.

Signage required by State or federal regulations shall be allowed in its smallest permissible size.

22. Prior to the final of building permits, the Applicant shall schedule an evening inspection by the Code Enforcement Division to confirm compliance with lighting. The telecom facility shall be lighted to the extent deemed necessary by the Newport Beach Police and Utilities Departments for security lighting and consistency with other streetlights in the area.
23. The Applicant shall maintain the telecom facility in a manner consistent with this approval.
24. The Applicant shall ensure that its telecom facility complies with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The Applicant shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. This information shall be made available by the Applicant upon request of the Community Development Director.
25. The facility shall comply with all applicable provisions of U.S. Code Title 47 (Telecommunications) rules and regulations, including those related to FCC Radio Frequency safety.
26. Prior to final of building permits, the Applicant shall schedule an inspection by the Planning Division to ensure materials and colors match existing architecture as illustrated in the approved photographic simulations and in conformance with NBMC Section 20.49.050.
27. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Division by certified mail no less than thirty (30) days prior to such action. The operator shall have ninety (90) days from the date of abandonment or discontinuance to reactivate use of the facility, or remove the telecom facility and restore the site.
28. The City reserves the right and jurisdiction to review and modify any permit approved pursuant to NBMC Chapter 20.49, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Division of any proposal to change the height or size of the facility; increase the size, shape, or number of antennas; change the facility's color or materials or location on the site; or increase the signal output above the maximum permissible exposure ("MPE") limits imposed by the radio frequency emissions guidelines of the FCC. Any changed circumstance shall require the operator to apply for a review of the modification, and possible amendment to the use permit, prior to implementing any change.
29. Use Permit No. UP2019-030 shall expire unless exercised within 24 months from the date of approval as specified in NBMC Section 20.54.060 (Time Limits and Extensions), unless an extension is otherwise granted.

30. Construction activities shall comply with NBMC Section 10.28.040, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday and 8 a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or holidays.
31. This Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
32. A copy of the Resolution, including conditions of approval Exhibit "A," and approved drawings from Southern California Edison (SCE) for the power supply and design, shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
33. The Applicant shall promptly notify the City if the landscaped parkway of the subject streetlight pole is negatively affected or otherwise damaged by project implementation.
34. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of AT&T Small Cell on SLC0796, including, but not limited to, Minor Use Permit No. UP2019-030 (PA2019-111). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Public Works Department

35. Prior to the issuance of a building permit, an encroachment permit shall be required.
36. Prior to the issuance of a building permit, traffic control plans illustrating compliance with the 2016 watchbook requirements shall be reviewed and approved by the Public Works Department before their implementation. Large construction vehicles shall not be permitted to travel narrow streets as determined by the Public Works Department. Disruption caused by construction work along roadways and by movement of

construction vehicles shall be minimized by proper use of traffic control equipment and flagman.

Additional Conditions of Approval

37. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds pursuant to MBTA:
- A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.

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Attachment No. PC 5

Minutes of Zoning Administrator Meeting
of April 16, 2020

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**NEWPORT BEACH ZONING ADMINISTRATOR MINUTES
100 CIVIC CENTER DRIVE, NEWPORT BEACH
COMMUNITY ROOM**

**THURSDAY, APRIL 16, 2020
REGULAR MEETING – 3:00 P.M.**

I. CALL TO ORDER – The meeting was called to order at 3:00 p.m.

Staff Present: Jaime Murillo, Zoning Administrator
Armeen Komeili, Deputy City Attorney
Benjamin Zdeba, Senior Planner
Chelsea Crager, Associate Planner
Patrick Achis, Assistant Planner
Joselyn Perez, Assistant Planner
Melinda Whelan, Assistant Planner
Liane Schuller, Planning Consultant

II. REQUEST FOR CONTINUANCES

Staff requested Item Number 9 be continued to April 30, 2020. The item will be re-noticed.

III. APPROVAL OF MINUTES

ITEM NO. 1 MINUTES OF MARCH 12, 2020

Action: Approved as Amended

IV. PUBLIC HEARING ITEMS

ITEM NO. 2 716 Heliotrope, LLC Condominiums Tentative Parcel Map No. NP2019-017 (PA2019-262)
Site Location: 716 Heliotrope Avenue Council District 6

The Zoning Administrator introduced the item with no need for a staff presentation due to the simplicity of the request. He explained the map will allow the duplex to sell each unit as a condominium and the map has been conditioned to assess a park fee and remove the non-permitted improvements in the right-of-way along Heliotrope Avenue.

Melinda Whelan, Assistant Planner confirmed presence on the conference call and confirmed that she had received correspondence confirming that the applicant had reviewed and accepted all of the conditions.

The Zoning Administrator explained that written correspondence was received from resident, Jim Mosher regarding combining repetitive conditions, and confirmed that this correction would be made to the resolution.

The Zoning Administrator opened the public hearing in the room and on the phone. Seeing that no one from the public wished to comment, the public hearing was closed.

Action: Approved as Amended

ITEM NO. 3 AT&T Small Cell SLC0796 Minor Use Permit No. UP2019-030 (PA2019-111)
Site Location: Public right-of-way, City streetlight number SLC0796, at the northwestern corner of Balboa Boulevard and 30th Street Council District 1

Page 1 of 8

Benjamin Zdeba, Senior Planner, started by providing context and background on small cell wireless facilities. He noted they are being widely deployed throughout the country as a leading solution to solving coverage gaps and increased data demands. They are also intended to work in conjunction with the larger, macro facilities on a carrier's network and service a smaller area. He stressed that the City's review of these, and all wireless facilities, is largely limited by federal law and is narrowed to focus primarily on land use compatibility, aesthetics, and environmental impacts. The Federal Communications Commission (FCC) exclusively sets standards for radio frequency or "RF" emissions. As such, the City is not able to base any recommendation on potential health and safety impacts. He added that on February 12, 2019, the Newport Beach City Council authorized the execution of a Master License Agreement with AT&T, authorizing non-exclusive use of City-owned streetlights to install wireless telecommunications facilities and included approved designs, fee and rent assessments.

Senior Planner Zdeba then continued to provide a brief project description noting that AT&T is requesting to remove and replace City Streetlight No. SLC0796, which is located within the public right-of-way adjacent to the northwestern corner of the Balboa Boulevard and 30th Street intersection. All surrounding land uses are residential and vary in density. This location is unique in that there is an approximately 20-foot wide landscaped parkway area buffering it from the nearest residence. This project requires the approval of a minor use permit.

Senior Planner Zdeba continued that staff analyzed the project for consistency with the Coastal Act and determined it does not negatively impact any designated public view corridors nor does it negatively impact coastal access and resources. In consultation with Coastal Commission staff, it was determined the proposed replacement streetlight pole and small cell installation does not require the issuance of a coastal development permit. Furthermore, the streetlight pole is not located between the first public road paralleling the sea and the sea and the project is consistent with Section 21.49.050(B) of Title 21 (Local Coastal Program Implementation Plan), which aims to protect and enhance scenic resources.

Mr. Zdeba stated that the replacement streetlight pole will be purposed with maintaining the intent of the City's streetlight inventory. It will maintain the same exact luminaire height as the current streetlight pole. However, the new equipment will extend up to an overall height of 34 feet, 9 inches from grade. All equipment and supporting equipment will either be contained within the pole itself, behind a shroud/screen, or underground in a vaulted area.

From a Municipal Code perspective, Mr. Zdeba stated that this type of facility is considered a Class 3 (Public Right-of-Way) installation and falls lower on the preferential list of installation types. The first two classes are stealth facilities, which are often housed on top of existing commercial and multi-family residential structures, and visible facilities, which are exposed antennas on existing commercial and multi-family residential structures. Given the lack of taller commercial buildings in the area, these more-preferred classes were determined to be unviable.

Senior Planner Zdeba explained that although it does fall lower on the priority list, this facility is designed to blend into the streetscape without visually dominating the area. Maintaining the same luminaire height as the current pole will help to maintain consistency with the surrounding streetlights in the area. Furthermore, the Code discusses development standards including blending and screening. The proposed facility is located adjacent to a wide parkway area that is one of the largest in the area. It is planted with taller landscaping, including palm trees, which will serve as a softening buffer between the residential structures beyond. With respect to heights in the area, the maximum allowable height for the abutting residential zoning districts is 29 feet to the ridge of a sloping roof. The current streetlight pole sits just above the allowed height at 29 feet, 9 inches. The proposed streetlight pole with the proposed equipment on top would extend to an overall height of 34 feet, 9 inches and would not appear out of scale with the structures in the area. It is also notable that in many other areas, there are taller wooden utility poles.

Mr. Zdeba added that another component of staff's review is alternative sites in the area that may be better-suited for the proposed facility. The applicant provided analysis for five other sites in the vicinity. Attachment No. ZA 3 to the staff report goes into each alternative site in more detail and provides photographs as well. Each of the five alternative sites were determined to be unviable due to limited accessibility around a slightly

wider pole, proximity to overhead powerlines, and location within an approved underground assessment district.

Lastly, Senior Planner Zdeba stated that one piece of written correspondence was received prior to the staff report being published citing concerns related to health and safety impacts. Three additional pieces of written correspondence were received, two from an attorney, Mark Pollock, representing a resident and one from Jim Mosher.

Mr. Zdeba concluded that staff believed all required findings can be made and recommended approval of this project.

Zoning Administrator Murillo requested clarification as to why all the alternative sites were in such close proximity to one another. In response, Mr. Zdeba stated that the small cell wireless facilities are considered "micro" sites and have a smaller radius of transmission. They are intended to work in conjunction with larger macro sites. He also added that, although not required, the applicant provided coverage maps to identify the present gap in coverage that exists without the proposed site.

Zoning Administrator Murillo stated that there are taller, mature palm trees adjacent to the site and that there should be a condition of approval added about compliance with the Migratory Bird Treaty Act. Mr. Zdeba indicated that condition would be added, if approved.

In response to the correspondence received from Mr. Mosher, Zoning Administrator Murillo also requested additional information as to why the project was exempted from a coastal development permit. Mr. Zdeba stated that NBMC Section 21.52.035(c)(4) (Repair and Maintenance) is the operative section that was identified as being appropriate for the replacement of a streetlight with a small cell facility installation in consultation with Coastal Commission staff.

Applicant Franklin Orozco, on behalf of the AT&T Mobility, stated that he had reviewed the draft resolution and agrees with all the required conditions. He also clarified that the site is a "pico" small-cell site, which does not have as wide of a range as macro sites. The range of a pico cell site is approximately 750 to 1,000 feet, which is why they typically only look at alternative locations within 250 feet of the targeted site. He also explained why a macro site was not feasible in this particular area and indicated that there will be several applications for similar projects coming forward.

The Zoning Administrator opened the public hearing in the room and on the phone.

Matthew Tanner, a resident at 209 30th Street, stated that everyone in his area was opposed to the project and expressed concerns about the potential health and safety impacts of the proposal. He submitted his written comments for the record.

Denise Fenton, owner of the Beach Coin Laundry, also expressed concerns about the potential health and safety impacts of the proposal. She further added that the proposal is not aesthetically pleasing.

Mark Pollock, attorney, referenced his submitted written correspondence and stated his disagreement that the Zoning Administrator has the authority to act on this application and that for the subsequent Item No. 4, under NBMC Section 20.49.080. He further expressed concerns with the applicant entity and its validity under the executed Master License Agreement with the City. He also expressed concern with the insurance requirements.

Brenda Martin, a resident at 206 ½ 30th Street, cited health concerns and expressed opposition to the project. She submitted her written comments into the record.

The Zoning Administrator closed the public hearing.

Zoning Administrator Murillo acknowledged the stated health and safety concerns brought forward during the public comments section, but reiterated that the City does not have authority to restrict emissions or operation of the facility. Furthermore, he indicated that a decision cannot be rendered on account of the same concerns.

Lastly, he noted that the City's review is limited to aesthetics and land use compatibility, and that a more recent Federal Communications Commission ruling requires the City to accommodate such facilities within the public rights-of-way.

In response to Mr. Pollock's comments from his March 25, 2020, letter, Deputy City Attorney Armeen Komeili, stated that staff reviewed the two license agreements referenced in Mr. Pollock's letter and the insurance requirements and has confirmed said insurance requirements have been met and certified by the correct entity. With respect to pollution liability, neither agreement has a pollution liability clause; therefore, it is not required. With respect to Mr. Pollock's contention that the City has the ability to restrict or regulate the operation of these facilities, Deputy City Attorney Komeili stated that the Ninth Circuit has not yet opined on this matter, but the Second Circuit has stated that local governments are limited to regulating location, placement and modification, and cannot regulate the operation. As such, the City Attorney's Office recommends against using the Minor Use Permit as a mechanism to restrict the operation of the facility.

Zoning Administrator Murillo recapped the project and noted the change to the streetscape is very nominal and that the applicant's design had accomplished blending and screening through maintaining similar attributes to the current streetlight pole. He further stated his agreement that this is the best location when considering all five alternative locations. Finally, he provided additional language under statement number four of "Section 1 Statement of Facts" with respect to the Coastal Development Permit exemption.

The Zoning Administrator approved the project and found it exempt from the requirements of the California Environmental Quality Act under the Class 2 and 3 exemptions.

Action: Approved as Amended

ITEM NO. 4 AT&T Small Cell SLC4653 Minor Use Permit No. UP2019-034 (PA2019-115)
Site Location: Public right-of-way, City streetlight number SLC4653, on the north side of Bayside Drive, approximately 900 feet northwest of El Paseo Drive
Council District 5

Joselyn Perez, Assistant Planner, provided a brief project description stating that the applicant is requesting a minor use permit to allow the replacement of a City streetlight and the subsequent installation of telecom equipment for a small cell wireless facility. The streetlight proposed for the project, City Streetlight Number SLC4653, is located on the northeast side of Bayside Drive, approximately 900 feet northwest of El Paseo Drive. This streetlight is within the coastal zone and therefore initially evaluated in accordance with Newport Beach Municipal Code Section 21.30.100 Scenic and Visual Quality Protection. The project was found to not have one or more of the characteristics listed in subsection (B) of the aforementioned code section as the site is not located between the first public road and the sea, is not on a coastal bluff or canyon, and it is not adjacent to or within the viewshed of a public view point, a coastal view road, a public park or beach, or a public accessway, as identified on the Coastal Land Use Plan Map 4-3 Coastal Views, and does not contain significant natural landforms or vegetation.

Assistant Planner Perez stated that the surrounding land uses are residential and vary in density from R-1 (Single-Unit Residential), immediately adjacent to the project site, to RM (Multiple Residential) across the street. The streetlight is separated from the R-1 residences by a steep landscaped downslope. Given the grade differential, the lower setting of the streetlight lessens any visual obstruction from the proposed small cell facility and prevents the equipment from being within the line of sight for the existing R-1 development. The steep, landscaped hillside provides visual masking of the small cell facility as the streetlight is not isolated or the only visible feature within the general area. There are many streetlights along this stretch of Bayside Drive and the proposed project will blend in with the surrounding streetscape and existing streetlights. The overall height of the replacement pole and equipment is 27 feet, 5 inches and is approximately 7 feet taller than the existing streetlight pole. The existing pole is approximately 19 feet high; however, its luminaire height is 20 feet 6 inches. The proposed streetlight with small cell equipment is under maximum allowed height of 35 feet for telecom facilities and is consistent with the Zoning Code.

Attachment No. PC 6

Zoning Administrator Referral Memo

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**CITY OF NEWPORT BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

100 Civic Center Drive
Newport Beach, California 92660

949 644-3200
newportbeachca.gov/communitydevelopment

Memorandum

To: Chairman Peter Koetting and Planning Commissioners
From: Jaime Murillo, Zoning Administrator
Date: June 29, 2020
Re: Referral of Coastal Development Permit No. CD2020-052 for a new small cell wireless telecommunications facility proposed on City Streetlight No. SLC0796 (PA2019-111)

At the April 16, 2020, Zoning Administrator meeting, the captioned project came before me for review and decision on Minor Use Permit No. UP2019-030. At the time, it was determined there was no requirement for a coastal development permit and approval was granted for UP2019-030, as submitted.

On April 28, 2020, an appeal of UP2019-030 was filed by Mark Pollock citing concerns with the Master License Agreement to allow installation of these types of facilities within the public right-of-way on City-owned structures.

It is my understanding that, since the appeal was filed, the project has been evaluated more closely against the City's certified Local Coastal Program and it was determined a coastal development permit is in fact required.

Given the appeal of UP2019-030 is being reviewed by the Planning Commission, it is my decision to refer the required coastal development permit to the Planning Commission for concurrent review as a single project pursuant to Municipal Code Section 21.50.020 (Authority for Decisions).

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Attachment No. PC 7

Applicant's Project Description and
Justification

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New Cingular Wireless PCS, LLC d/b/a AT&T Mobility

AT&T Site ID: CSTAM_003 and FA#14823072

Project location: City Streetlight No. SCL0796 at the northwestern corner of West Balboa Boulevard and 30th Street, Newport Beach.

Project Narrative

New Cingular Wireless PCS, LLC d/b/a AT&T Mobility ("AT&T") is proposing to install new small cell wireless telecommunications facility to serve residents and businesses in this portion of the community. Small cells are low-power, low-profile wireless communications facilities that improve signal quality and capacity within AT&T's existing wireless network. The proposed small cell facility will help AT&T provide and improve critical wireless services in this area.

AT&T estimates that since the introduction of the iPhone in 2007, mobile data usage has increased 470,000% on its network. AT&T customers' growing demand for mobile data services will continue to increase. Customer needs require AT&T to design and maintain its network to provide and improve wireless signal quality and to increase data rates sufficient to stream video. Areas that do not meet this minimal standard, or where wireless service is otherwise compromised, represent service issues that must be addressed.

Specifically, this proposed small cell facility will improve AT&T's wireless services by offloading network traffic carried by existing macro facilities in the area. In addition, faster data rates allow customers to get on and off the network quickly, which produces more efficient use of AT&T's limited spectrum. By placing the small cell facility in areas where AT&T's existing wireless telecommunications facilities are constrained and where AT&T experiences especially high network traffic, AT&T can address the existing and forecasted demand and support 5G speeds in the near future.

Improving signal quality and Increasing data speed is critical to providing the mobile experience customers demand and to manage the unprecedented increase in mobile data usage on AT&T's network. The Center for Disease Control and Prevention (CDC) tracks the rates at which American households are shifting from landlines to wireless telecommunications. According to the CDC's latest Wireless Substitution Report, more than 70 percent of Americans rely exclusively or primarily on wireless communications in their homes.¹ In addition, the FCC estimates that 70 percent of all 911 calls are made from wireless devices.² And with AT&T's selection by FirstNet as the wireless service provider to build and manage the nationwide first responder wireless network, each new or modified facility will help strengthen first responder communications.

Description of Service and Site Type

AT&T selected the proposed facility as the best available means to address its service objectives in this portion of the city. The proposed small cell facility will be located in the public right-of-way, where AT&T has a right to place its equipment pursuant to Section 7901 of the California Public Utilities Code. The proposed node is a Pico cell site and will provide 4G services to the surrounding area. The project will involve the placement of a small antenna and associated small cell equipment enclosed within a replacement streetlight. For this small cell, AT&T proposes to install a 10-inch diameter omni-directional antenna and radios at the

¹ See *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January-June 2018*, available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201812.pdf>.

² See *911 Wireless Services*, available at <https://www.fcc.gov/consumers/guides/911-wireless-services>.

top of a replacement streetlight, fully concealed within a 12-inch diameter shroud. The facility will not obstruct pedestrian or vehicular traffic. It will not adversely affect the surrounding properties and will have a minimal physical and aesthetic footprint in this area. In addition, the proposed facility fully complies with applicable design criteria. Therefore, the City can easily make the necessary findings for approval for this small cell facility.

The project scope will consist of the following:

- Removal and replacement of a streetlight.
- Installation of a single omni-directional antenna.
- Installation of four remote radio units and raycap disconnect switch within a shroud.
- Installation of below grade power and fiber handholds.

Conformance with FCC Regulations

The proposed low powered antenna installation attached to the utility pole is considered categorical excluded by the FCC based on the analysis included in the FCC Optional Checklist for Determination of the Local Official's Guide to RF (attached). Installations that are categorically excluded are considered to meet or exceed the FCC standards for RF Emissions.

Construction, Maintenance and Monitoring

Construction of the proposed project will take approximately 30-days. All construction will be done in a manner that minimizes impact to residents and/or businesses in the area. Existing underground or overhead power and fiber connections will be used with minimal trenching. Directional boring will be used when deemed appropriate for each specific location.

Maintenance of the subject facility is minimal. The telecom operator will be responsible for maintenance of the telecom facility including, but not limited to, any missing, discolored or damaged screening, all graffiti will be removed promptly, and the facility kept clean and free of litter. Monitoring is typically done from AT&T's switching offices. If needed, a site visit to change any radio equipment will be coordinated with the city through the appropriate process.

Site Preferred Location and Alternative Analysis

The City of Newport Beach Code Section 20.49.040 lists the preferred locations for telecommunication facilities to limit adverse visual effects and the proliferation of new or individual telecom facilities in the City. Class 3 is defined as public right-of-way installations where the facility can be installed on a structure located in the public right-of-way. The proposed AT&T small cell facility falls under this category and is the third on the list of preferred locations. The proposed installation is consistent with the approved city designs under the master agreement between AT&T and the City. Due to the slim design, camouflaged antenna, use of existing city structures within the right-of-way, AT&T believes that the changes to the existing streetlights are non-material or aesthetic changes that would not impact the surrounding development of this area. The other preferred locations as listed by code relate to the use of existing non-residential buildings or other structures, which are stealth and fully screened and not visible to the general public. These types of locations or structures are not feasible designs for small cells located within the public right-of-way.

AT&T is committed to providing wireless telecommunications services and faster data rates throughout the City of Newport Beach and is doing so by installing the least intrusive technology, with the least intrusive design at the least intrusive locations. Rather than construct traditional tower facilities in or near residential

neighborhoods, AT&T is choosing to deploy very small facilities, called "small cells," that can be installed on utility infrastructure in the public right-of-way.

A small cell is a low-powered cell site, which, when grouped with other small cells, can provide coverage in areas where traditional macro wireless facilities are not feasible. Although the signal from each small cell antenna covers a shorter range than a conventional tower site, small cells can be effective tools to help close significant gaps in service coverage or offload capacity with a minimal visual impact. Node CSTAM_003 will help AT&T close a significant gap in this area of the City by the least intrusive means, see attached coverage maps.

AT&T evaluated several other locations for this project in the immediate vicinity of the proposed node. Attached is the alternative site analysis with detailed description of each alternative location evaluated.

Statement of Code Compliance

The overall site location and design complies with applicable code provisions, the General Plan, and other published siting guidelines. For further analysis regarding the applicable code, please see the attached Statement of Code Compliance.

Statement of Code Compliance with Newport Beach Municipal Code ("NBMC") Chapter 20.49 and Chapter 13.20

Below, we identify the applicable code criteria and demonstrate our compliance or acknowledgement of each provision.

20.49.040 Telecom Facility Preferences and Prohibited Locations.

A. Preferred Locations. To limit the adverse visual effects of and proliferation of new or individual telecom facilities in the City, the following list establishes the order of preference of facilities, from the most preferred (1) to least preferred (4).

1. Collocation of a new facility at an existing facility.
2. Class 1.
3. Class 2 and Class 3.
4. Class 4.

B. Prohibited Locations. Telecom facilities are prohibited in the following locations:

Applicant Response: AT&T is proposing a Class 3 facility that replaces an existing concrete designed streetlight with a new similar concrete designed replacement pole. The design is consistent with the design of the existing pole and the type of infrastructure currently in the right of way. The design is consistent with the designs depicted and allowed pursuant to the Master License Agreement Between the City of Newport Beach and New Cingular Wireless PCS, LLC for the Use of City-Owned Streetlights for Telecommunication Facilities ("MLA"). As explained in the previous Alternative Analysis, a collocation or Class 1 or 2 facility would not be technically feasible in this location from an RF or construction perspective. Small cells are low power and must be located at the precise location selected to serve the network traffic demands of that specific and limited area. This type of service enhancement cannot be accomplished with a traditional macro collocation or building mounted site in this area. The site is not located in any of the locations prohibited by NBMC §20.49.040.B.1-4.

20.49.050 General Development and Design Standards.

A. General Criteria. All telecom facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least visually intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the facility as visually inconspicuous as practicable. To the greatest extent feasible, facilities shall be designed to minimize the visual impact of the facility by means of location, placement, height, screening, landscaping, and shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area.

Applicant Response: The Applicant has selected a design that minimizes visual impacts and is appropriately screened to result in the least visually intrusive means of providing service. The site will be placed in the right-of-way and will be virtually unnoticeable as this is the type of infrastructure one would expect to see in the

right-of-way. The facility is compatible with the architectural design of existing right-of-way infrastructure with respect to color, materials, scale and compatibility with the surrounding area. It matches the existing pole in scale and design and will not result in any net add of right-of-way infrastructure. Utilities are placed below grade and are not visible.

In addition to the other design standards of this section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP, LTP, or ZC for a telecom facility:

1. Blending. The extent to which the proposed telecom facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.

Applicant Response: The facility blends into the surrounding environment and is compatible and integrated into the replacement structure. It matches the existing pole in terms of scale, color and materials and is consistent with expected infrastructure that exists in the right-of-way.

2. Screening. The extent to which the proposed telecom facility is concealed or screened by existing or proposed new topography, vegetation, buildings or other structures.

Applicant Response: The site is screened to the extent that it matches and is concealed within a streetlight replacement pole.

3. Size. The total size of the proposed telecom facility, particularly in relation to surrounding and supporting structures.

Applicant Response: The scale and total size of the proposed facility is consistent with existing right-of-way infrastructure. The new luminaire is consistent with the size, location and functioning of the luminaire being replaced. The 10" diameter of the new pole is consistent with and substantially similar to the diameter of the existing pole which is 9" at the location being measured. The pole height is almost identical except for the antenna enclosure at the top, which is also consistent with the design in terms of scale and width. The presence of communication equipment at this site will be virtually unnoticeable to the casual passerby.

4. Location. Proposed telecom facilities shall be located so as to utilize existing natural or manmade features in the vicinity of the facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.

Applicant Response: The location in the right-of-way is appropriate as it is consistent with infrastructure expected to be located in the right-of-way. One of the purposes of the right-of-way is to accommodate infrastructure that will serve the needs of the community, so it is the appropriate place for this type of facility.

5. Collocation. In evaluating whether the collocation of a telecom facility is feasible, the criteria listed in subsections (A)(1) through (4) of this section shall be used to evaluate the visual effect of the combined number of facilities at the proposed location.

Applicant Response: Collocation on this facility is not technically feasible from an RF and construction standpoint. Requiring a collocation on this facility would increase the visual impact and scale of this site.

B. Public View Protection. All new or modified telecom facilities, whether approved by administrative or discretionary review, shall comply with Section 20.30.100 (Public View Protection). Additionally, potential impacts from a new or modified telecom facility to public views that are not identified by General Plan Policy NR 20.3 shall be evaluated to determine if inclusion in Policy NR 20.3 would be appropriate. If deemed appropriate for inclusion, the potential impacts to such public views shall be considered.

Applicant Response: This section is not applicable to this facility as it is not in an area that is subject to Public View Protection.

C. Height.

1. The Planning Commission or City Council may approve or conditionally approve a CUP for a telecom facility that exceeds the maximum height limit for the zoning district in which the facility is located; provided, it does not exceed the maximum height limit by fifteen (15) feet, only after making all of the required findings in Section 20.49.060(H) (Required Findings for Telecom Facilities).

Applicant Response: The height limitation for facilities located in the public right-of-way is 35 feet. NBMC §20.49.050.C.3. The facility complies with this standard as it does not exceed 35 feet.

2. All telecom facilities shall comply with height restrictions or conditions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060(E) (Airport Environs Land Use Plan for John Wayne Airport and Airport Land Use Commission Review Requirements) as may be in force at the time the telecom facility is permitted or modified.

Applicant Response: This provision is not applicable to this facility.

3. Telecom facilities installed on streetlights, utility poles, utility towers or other similar structures within the public right-of-way shall not exceed thirty-five (35) feet in height above the finished grade.

Applicant Response: The facility complies with this standard as it does not exceed 35 feet.

4. Telecom facilities may be installed on existing utility poles or utility towers that exceed thirty-five (35) feet above the finished grade where the purposes of the existing utility pole or utility tower is to carry electricity or provide other wireless data transmission; provided, that the top of the proposed antennas do not extend above the top of the utility pole or utility tower.

Applicant Response: This provision is not applicable to this facility.

5. Telecom facilities disguised as flagpoles may be installed provided they meet applicable height limits for flagpoles provided in Section 20.30.060.

Applicant Response: This provision is not applicable to this facility.

D. Setbacks. Proposed telecom facilities shall comply with the required setback established by the development standards for the zoning district in which the facility is proposed to be located. Setbacks shall be measured from the part of the facility closest to the applicable lot line or structure.

Applicant Response: This provision is not applicable as the facility is located in the right-of-way and replaces an existing structure. Also, the code specifically provides for a setback exception for light standards. NBMC § 20.30.110.D.11.

E. Design Techniques. Design techniques shall result in the installation of a telecom facility that is in harmony and scale with the surrounding area, screens the installation from view, and prevents the facility from visually dominating the surrounding area. Design techniques may include the following:

Applicant Response: The facility is in harmony and scale with the surrounding area. The new concrete designed pole is substantially similar in size and scale to the existing pole and the materials, design and color match. The facility is compatible with infrastructure that exists in the right-of-way and will be installed in the same location as the pole that is being replaced. The facility will not visually dominate the surrounding area.

1. Screening elements to disguise, or otherwise hide the telecom facility from view from surrounding uses.

Applicant Response: The facility is a combination light pole and wireless facility and the antennas and other equipment components will be concealed within the pole.

2. Painting and/or coloring the telecom facility to blend into the predominant visual backdrop.

Applicant Response: The facility will be concealed within a light pole and will be the same color and finish as the pole being replaced.

3. Siting the telecom facility to utilize existing features (such as buildings, topography, vegetation, etc.) to screen or hide the facility.

Applicant Response: The facility is being sited in the right-of-way and will be installed in the same location as the pole being replaced and will have the same color and finish.

4. Utilizing simulated natural features (trees, rocks, etc.) to screen or hide the telecom facility.

Applicant Response: The facility is a light pole replacement, a structure that is expected to be located in the right-of-way, will be installed in the same location as the pole being replaced, and will have the same color and finish.

5. Providing telecom facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the facility would create greater visual impacts than the facility itself.

Applicant Response: The facility is not visually obtrusive and is consistent with the size, scale, color and appearance of existing right-of-way infrastructure.

6. To the greatest extent practicable, new Class 4 facilities shall be designed and sited to facilitate the collocation of one additional telecom operator.

Applicant Response: This criterion is not applicable as this facility is not a Class 4.

F. Screening Standards. For collocation installations, the screening method shall be materially similar to those used on the existing telecom facility, and shall not diminish the screening of the facility. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the antennas and support equipment from public view. The following is a non-exclusive list of potential design and screening techniques that must be considered for all facility installations:

Applicant Response: This criterion is not applicable as this facility is not a collocation.

3. For Class 3 (Public Right-of-Way) Installations.

a. Whenever feasible, new antennas proposed to be installed in the public right-of-way shall be placed on existing utility structures, streetlights, or other existing vertical structures. Antenna installations on existing or replacement streetlight poles or utility poles shall be screened by means of canisters, radomes, shrouds or other screening measures whenever feasible, and treated with exterior coatings of a color and texture to match the existing pole.

Applicant Response: The facility design meets this criterion. The antenna is screened behind a cannister that is on top of the pole. It will be the same color and texture as the existing pole.

b. New or replacement vertical structures may be allowed when authorized by the Municipal Code and approved by the Public Works Department. Replacement poles or streetlights shall be consistent with the size, shape, style, and design of the existing pole, including any attached light arms. New poles or streetlights may be installed, provided they match existing or planned poles within the area.

Applicant Response: The facility design meets this criterion and is allowed pursuant to the NBMC and the MLA. This replacement pole is substantially the same size, shape, style and design of the existing pole. It also has a luminaire that is the same height and brightness as the existing pole.

c. If antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the pole.

Applicant Response: This provision is not applicable as the antennas will be screened.

6. Support Equipment. All support equipment associated with the operation of any telecom facility shall be placed or mounted in the least visually obtrusive location practicable, and shall be screened from view.

Applicant Response: Support equipment is either concealed or installed below grade and has no visual impact.

b. Installations in a Public Right-of-Way. The following is a non-exclusive list of potential screening techniques for telecom facilities located in a public right-of-way:

i. Where existing utilities services (e.g., telephone, power, cable TV) are located underground, the support equipment shall be placed underground if required by other provisions of the Municipal Code. Flush-to-grade underground vault enclosures, including flush-to-grade vents, or vents that extend no more than twenty-four (24) inches above the finished grade and are screened from public view may be incorporated. Electrical meters required for the purpose of providing power for the proposed telecom facility may be installed above ground on a pedestal in a public right-of-way provided they meet applicable standards of Title 13 unless otherwise precluded by the Municipal Code.

Applicant Response: The utilities serving this facility are either installed below grade or are concealed within the replacement pole. No above ground pedestals are proposed.

ii. Support equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.

Applicant Response: This provision is not applicable as no above ground support equipment is proposed.

iii. All transmission or amplification equipment such as remote radio units, tower mounted amplifiers, and surge suppressors shall be mounted inside the utility or streetlight pole without materially increasing the pole diameter or shall be installed in the vault enclosure supporting the facility.

Applicant Response: The transmission equipment is concealed within the pole.

G. Night Lighting. Telecom facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be recommended by the United States Flag Code (4 U.S.C. Section 1 et seq.). Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for facilities on a case-by-case basis.

Applicant Response: No lighting is proposed other than the replacement luminaire which is being installed at substantially the same height and is the same brightness as the existing pole.

H. Signs and Advertising. No advertising signage or identifying logos shall be displayed on any telecom facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by State or Federal regulations shall be allowed in its smallest permissible size.

Applicant Response: The facility complies with this criterion. The only signage proposed is the required notice signage, facility owner information and signage and banners required to be installed by the City.

I. Nonconformities. A proposed or modified telecom facility shall not create any new or increased nonconformity as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones unless relief is sought pursuant to applicable zoning code procedures.

Applicant Response: The facility complies with the code and will not create a zoning code nonconformity.

J. Maintenance. The telecom operator shall be responsible for maintenance of the telecom facility in a manner consistent with the original approval of the facility, including but not limited to the following:

1. Any missing, discolored, or damaged screening shall be restored to its original permitted condition.

Applicant Response: The Applicant acknowledges that it is responsible for maintaining the site consistent with its original permitted condition.

2. All graffiti on any components of the telecom facility shall be removed promptly in accordance with the Municipal Code.

Applicant Response: The Applicant acknowledges this requirement.

3. All landscaping required for the telecom facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead, dying, or damaged.

Applicant Response: No landscaping is proposed for this installation.

4. All telecom facilities shall be kept clean and free of litter.

Applicant Response: The Applicant acknowledges this requirement.

5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the telecom operator.

Applicant Response: The Applicant is not proposing equipment cabinets.

6. If a flagpole is used for a telecom facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code (4 U.S.C. Section 1 et seq.). (Ord. 2014-1 § 10 (part), 2014)

Applicant Response: The Applicant is not proposing a flagpole.

20.49.060 Permit Review Procedures.

H. Required Findings for Telecom Facilities. The following findings shall apply to all facilities requiring discretionary review:

1. General. The review authority may approve or conditionally approve an application for a telecom facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following findings:

- a. The proposed telecom facility is visually compatible with the surrounding neighborhood.

Applicant Response: The facility is visually compatible with the surrounding area. The facility design is allowed pursuant to the MLA and applicable code and is substantially similar in design, shape, size, color and texture as the existing pole. All related equipment is either installed below grade or is concealed within the interior of the replacement light pole.

b. The proposed telecom facility complies with height, location and design standards, as provided for in this chapter.

Applicant Response: The 35-foot-tall facility complies with the height, location and design standards. It is a Class 3 facility located in the right-of-way and meets the City approved design standards per the code and the MLA.

c. An alternative site(s) located further from a residential district, public park or public facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.

Applicant Response: The Applicant has provided an alternative analysis that addresses this criterion. No alternative site locations would fulfill the network needs that are fulfilled by this installation at this proposed specific location.

d. An alternative plan that would result in a higher preference facility class category for the proposed facility is not available or reasonably feasible and desirable under the circumstances.

Applicant Response: As explained previously, small cells are designed to enhance network capacity and must be precisely located in a specific area to properly function due to their low power and limited range. A higher preference class facility would not be technically feasible and would not fulfill this specific network need.

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Attachment No. PC 8

Alternative Locations Studied and
Rejected

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AT&T Small Cell Node

Site ID: CRAN_RLOS_CSTAM_003

Alternative Sites Analysis

City streetlight No. SCL0796 located at the northwest corner of West Balboa Boulevard and 30th Street, Newport Beach.

March 12, 2020

Map of Small Cell Node CRAN_RLOS_CSTAM_003 and Alternative Sites



On this aerial map, AT&T's proposed Small Cell Node CSTAM_003 is designated by a red marker and the alternative sites are identified by yellow markers.

Proposed Small Cell Node CRAN_RLOS_CSTAM_003

- AT&T is committed to providing and improving wireless telecommunications services and faster data rates throughout the City of Newport Beach.
- Rather than construct traditional macro facilities, AT&T is choosing to deploy very small facilities, called “small cells,” that can be installed on utility infrastructure in the public right-of-way.
- A small cell is a low-powered cell site, which, when grouped with other small cells, can provide coverage in areas where traditional macro wireless facilities are discouraged.
- Small cells are effective tools to provide and improve critical wireless services with a minimal impact. By placing small cells in areas where AT&T’s existing facilities are constrained and where AT&T experiences high network traffic, AT&T can address existing and forecasted demands.
- Small Cell Node CRAN_RLOS_CSTAM_003 will improve signal quality and capacity within AT&T’s wireless network in this portion of Newport Beach.

Small Cell Node CRAN_RLOS_CSTAM_003 - Proposed Location

City streetlight No. SCL0697 located at the northwestern corner of West Balboa Boulevards and 30th Street.



- Photo Simulation of Proposed Small Cell

- AT&T proposes to place a Small Cell Node on a replacement streetlight pole in the public right-of-way. (Lat/Long 33.613872, -117.931656). The proposed node is located on the East side of West Balboa Boulevard and north of 30th Street.
- AT&T proposed node is a stealth facility under City Code §20.49.030(N) and is designed to be as visually inconspicuous as possible.
- A large planter area with mature palm trees is located between the proposed node and the adjacent residential development. This planter will provide a visual screening from nearby residences.
- AT&T determined that this location is viable in that necessary utilities are available and this location is feasible from a radio frequency perspective. The location is free of obstructions and has good line of site to meet coverage objectives. AT&T will need to replace the existing streetlight to accommodate a Small Cell.

Small Cell Node CRAN_RLOS_CSTAM_003 – Alternative Site #1

Wood utility pole located at alley east of West Balboa Boulevard, approximately 130 feet north side of 30th Street.



- Alternative Site #1, is a wood utility pole with primary power and communication lines. It is approximately 92 northwest of the proposed node within an alley and adjacent to a three-story residential home.
- The pole is located adjacent to a short fence of the residential home.
- Design of this facility would require placement of a cross arm with exposed radios and antenna on opposite sides of the pole. This design could not be screened as required by City Code §20.49.050(F)(3).
- The subject utility pole is also located within an approved underground assessment and utility district.
- A small cell at this alternative site would be more visually conspicuous and more intrusive than the proposed node.

Small Cell Node CRAN_RLOS_CSTAM_003 – Alternative Site #2

City streetlight No. SCL0767 located on the west side of West Balboa Boulevard, approximately 80 feet south of 31st Street.



- Alternative Site #2 is a city streetlight in the public right-of-way. The site is located approximately 147 feet northwest of the proposed node. The light has primary electrical lines directly above and secondary lines below.
- Proximity of electrical lines at this location makes it infeasible to use this location due to GO95 space and separation requirements.
- This streetlight is also within 5 feet from the adjacent residential building and has limited sidewalk width to meet ADA requirements.
- A small cell at this alternative location is infeasible.

Small Cell Node CRAN_RLOS_CSTAM_003 – Alternative Site #3

Wood utility pole located at the northwest corner of Balboa Boulevard and 30th Street.



- Alternative Site #3, is a wood utility pole with primary and secondary power and communication lines. It is approximately 78 feet west of the proposed node adjacent to a single-story residential home.
- The utility pole is located within 4 feet from a short fence of the residential home.
- Design of this facility would require placement of a cross arm with exposed radios and antenna on opposite sides of the pole. This design could not be screened as required by City Code §20.49.050(F)(3).
- The subject utility pole is also located within an approved underground assessment and utility district.
- A small cell at this alternative site would be more visually conspicuous and more intrusive than the proposed node.

Small Cell Node CRAN_RLOS_CSTAM_003 – Alternative Site #4

City streetlight No. SCL0768 located at the southwest corner of West Balboa Boulevard and 30th Street.



- Alternative Site #4 is a city streetlight in the public right-of-way. The site is located approximately 104 feet south of the proposed node. The light has primary electrical lines directly above and secondary lines below.
- Proximity of electrical lines at this location makes it infeasible to use this location due to GO95 space and separation requirements.
- This streetlight is also within 5 feet from the adjacent residential building and has limited sidewalk space to meet ADA requirements.
- A small cell at this alternative location is infeasible.

Small Cell Node CRAN_RLOS_CSTAM_003 – Alternative Site #5

City streetlight No. SCL0766 located on the east side of West Balboa Boulevard, approximately 135 feet south of 30th Street.



- Alternative Site #5 is a city streetlight in the public right-of-way. The site is located approximately 175 feet southeast of the proposed node.
- This streetlight is located within a narrow sidewalk, approximately 6 feet from the adjacent residential property and has limited sidewalk space to meet ADA requirements.
- The narrow sidewalk space limits replacement of the streetlight to meet ADA requirements.
- A small cell at this alternative location is infeasible.

Proposed Small Cell Node CRAN_RLOS_CSTAM_003

Conclusion

- The proposed small cell node CRAN_RLOS_CSTAM_003 is an integral part of an overall small cell solution to help close AT&T's significant service coverage gap in this portion of Newport Beach.
- The proposed small cell will provide wireless telecommunications service and faster data rates to the area businesses, residents & visitors.
- The proposed small cell is the best available and least intrusive means to help AT&T provide and improve critical wireless services in the surrounding areas, adding low-power, low-profile equipment to utility infrastructure in the public right-of-way.
- The use of a replacement streetlight allows a stealth design for the proposed equipment and antenna.
- The proposed installation will enhance wireless communication with the least visual impact to the community.



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Attachment No. PC 9

Photographic Simulations, Project Plans,
and Coverage Maps

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SITE NAME: CSTAM_003A
 SITE NUMBER: CRAN_RLOS_CSTAM_003
 PROJECT: CRAN/ SMALL CELL/ PICO
 USID: 213735 / FA: 14823072
 PACE: MRLOS051977



POLE TYPE: (N) CONCRETE LIGHT POLE
 POLE ID #: SLC0796

LATITUDE/LONGITUDE: 33.613872/ -117.931656
 SITE ADDRESS: CITY STREETLIGHT NO. SCL0796 AT
 THE NW CORNER OF W. BALBOA BLVD. AND 30TH
 STREET, NEWPORT BEACH, CA 92663

ALL WORK AND MATERIALS SHALL BE PERFORMED AND INSTALLED IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE FOLLOWING CODES AS ADOPTED BY THE LOCAL GOVERNING AUTHORITIES. NOTHING IN THESE PLANS IS TO BE CONSIDERED TO PREVENT WORK NOT CONFORMING TO THESE CODES:

1. 2014 CALIFORNIA ADMINISTRATIVE CODE
2. 2014 CALIFORNIA BUILDING CODE
3. 2014 CALIFORNIA ELECTRICAL CODE
4. 2014 CALIFORNIA MECHANICAL CODE
5. 2014 CALIFORNIA PLUMBING CODE
6. 2014 CALIFORNIA FIRE CODE
7. ANY LOCAL BUILDING CODE AMENDMENTS TO THE ABOVE
8. CITY/COUNTY ORDINANCES
9. NEC NATIONAL ELECTRICAL CODE
10. CALIFORNIA TRAFFIC CONTROL LANE CLOSURE MUTCD

WARRANTY REQUIREMENTS:
 FACILITY IS UNWARRANTED AND NOT FOR HUMAN HABITATION. UNDISCLOSED ACCESS NOT REQUIRED IN ACCORDANCE WITH CALIFORNIA ADMINISTRATIVE CODE PART 8, TITLE 24, CHAPTER 11B, SECTION 110.6.

CODE COMPLIANCE

THE FACILITY IS UNWARRANTED AND NOT FOR HUMAN HABITATION. A TELEPHONE WILL NOT BE USED AS A REQUIREMENT FOR ROUTINE MAINTENANCE. THE PROJECT WILL NOT BE AFFECTED BY ANY SIGNIFICANT DISTURBANCE OR EFFECT ON DAMAGE. NO SIGNIFICANT SEWER SERVICE, POTENTIAL WATER OR TRASH DISPOSAL IS REQUIRED AND NO COMMERCIAL, RESIDENTIAL OR NEW.

GENERAL NOTES



Dig Alert
 811 / 800-422-4133
 Call before you dig

DIG ALERT

PUBLIC COMMENTS:
 NONE
 APPLICANT:
 ADDRESS:
 (LATITUDE, AND/OR)
 (LONGITUDE, AND/OR)
 LATTITUDE TYPE:
 (COORDINATE, AND/OR)
 CURRENT ZONING:
 PROPOSED USE:
 POWER COMPANY:
 ADDRESS:

PUBLIC RIGHT-OF-WAY:
 CITY STREETLIGHT NO. SCL0796 AT THE NW CORNER OF W. BALBOA BLVD. AND 30TH STREET, NEWPORT BEACH, CA 92663
 AT&T
 1452 EDINGER AVE.
 TUSTIN, CA 92780
 513-8187
 (117.931656, 33.613872)
 1452 EDINGER AVE.
 TUSTIN, CA 92780
 513-8187
 (117.931656, 33.613872)
 PUBLIC RIGHT OF WAY
 UNWARRANTED TELECOMMUNICATIONS
 SCE
 1 MAGNOLIA WAY
 POMONA, CA 91766

PROJECT SITE INFORMATION

PROJECT MANAGER:
 M. SQUARED WIRELESS
 1887 CALLE AVANZADO
 SAN CLEMENTE, CA 92673
 SQUARED WIRELESS
 1887 CALLE AVANZADO
 SAN CLEMENTE, CA 92673
 REVISIONS:
 H. EDINGER AVE.
 TUSTIN, CA 92780
 CONTACT: KAREL DAVILA@AT&T.COM
 EMAIL: KDS@AT&T.COM

ENGINEER:
 M. SQUARED WIRELESS
 1887 CALLE AVANZADO
 SAN CLEMENTE, CA 92673
 AT&T
 1452 EDINGER AVE.
 TUSTIN, CA 92780
 513-8187
 (117.931656, 33.613872)
 PUBLIC RIGHT OF WAY
 UNWARRANTED TELECOMMUNICATIONS
 SCE
 1 MAGNOLIA WAY
 POMONA, CA 91766

PROJECT TEAM

AREA MAPS



VICINITY MAP

LOCATION MAP

DIRECTION FROM AREA MAPS

1. TURN LEFT ONTO EDINGER AVE.
2. TURN LEFT ONTO 30TH STREET, W. BALBOA BLVD.
3. TURN LEFT ONTO 30TH STREET, W. BALBOA BLVD.
4. TURN LEFT ONTO 30TH STREET, W. BALBOA BLVD.
5. TURN LEFT ONTO 30TH STREET, W. BALBOA BLVD.
6. TURN LEFT ONTO 30TH STREET, W. BALBOA BLVD.

DIRECTION WILL BE ON THE LEFT

CITY STREETLIGHT NO. SCL0796 AT THE NW CORNER OF W. BALBOA BLVD. AND 30TH STREET, NEWPORT BEACH, CA 92663

DRIVING DIRECTIONS

CITY NOTE

TRAFFIC CONTROL PLANS ARE NOT TO BE USED FOR CONSTRUCTION AND NEW TCM WILL BE SUBMITTED AND APPROVED AS PART OF THE ENCLOSURE/PROJECT APPLICATION.

SPECIAL INSPECTION

CONCRETE FOUNDATION CONTINUOUS INSPECTION

CONSTRUCTION DRAWING

THE FOLLOWING PARTIES HEREBY APPROVE AND ACCEPT THESE DOCUMENTS & AUTHORIZED THE SUBCONTRACTOR TO PROCEED WITH THE CONSTRUCTION DESCRIBED HEREIN. ALL DOCUMENTS ARE SUBJECT TO REVIEW BY THE LOCAL BUILDING DEPARTMENT & MAY BE REQUIRED TO BE CHANGED OR MODIFIED.

APPROVED BY:	INITIALS:	DATE:
AT&T BY ENGINEER:		
AT&T OPERATIONS:		
SITE ACQUISITION MANAGER:		
PROJECT MANAGER:		
CONCRETE MANAGER:		
CONSTRUCTION MANAGER:		
ALL MANAGER:		
PROPERTY OWNER:		
UTILITY MANAGER:		

APPROVALS

AT&T PROPOSES TO INSTALL A NEW WIRELESS INSTALLATION LOCATED IN THE PUBLIC RIGHT-OF-WAY AT THE NW CORNER OF W. BALBOA BLVD. AND 30TH STREET, NEWPORT BEACH, CA 92663.

THE SCOPE WILL CONSIST OF THE FOLLOWING:

- 1. AT&T TO PROVIDE: (1) EXISTING CONCRETE STREETLIGHT
- 2. AT&T TO INSTALL: (2) 22' CONCRETE STREETLIGHT
- 3. AT&T TO INSTALL: (3) NEW AT&T OMNI-DIRECTIONAL ANTENNA
- 4. AT&T TO INSTALL: (4) NEW AT&T EQUIPMENT MOUNT
- 5. AT&T TO INSTALL: (5) NEW WATGAP DISCONNECT
- 6. AT&T TO INSTALL: (6) NEW HANDICAP

PROJECT DESCRIPTION

SHEET NO.	SHEET TITLE	SHEET NO.	SHEET TITLE
1-1	TITLE SHEET	201-1	SCF FINAL DESIGN
1-2	1-1 ACCURACY CERTIFICATION	201-2	SCF FINAL DESIGN
201-1	GENERAL NOTES	201-3	SCF FINAL DESIGN
201-2	TRAFFIC CONTROL SURVEY	201-4	SCF FINAL DESIGN
201-3	SITE PLAN	201-5	SCF FINAL DESIGN
201-4	ELEVATIONS	201-6	SCF FINAL DESIGN
201-5	ELEVATIONS	201-7	SCF FINAL DESIGN
201-6	SCF FINAL DESIGN	201-8	SCF FINAL DESIGN
201-7	SCF FINAL DESIGN	201-9	SCF FINAL DESIGN
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201-171	SCF FINAL DESIGN	201-173	SCF FINAL DESIGN
201-172	SCF FINAL DESIGN	201-174	SCF FINAL DESIGN
201-173	SCF FINAL DESIGN	201-175	SCF FINAL DESIGN
201-174	SCF FINAL DESIGN	201-176	SCF FINAL DESIGN
201-175	SCF FINAL DESIGN	201-177	SCF FINAL DESIGN
201-176	SCF FINAL DESIGN	201-178	SCF FINAL DESIGN
201-177	SCF FINAL DESIGN	201-179	SCF FINAL DESIGN
201-178	SCF FINAL DESIGN	201-180	SCF FINAL DESIGN
201-179	SCF FINAL DESIGN	201-181	SCF FINAL DESIGN
201-180	SCF FINAL DESIGN	201-182	SCF FINAL DESIGN
201-181	SCF FINAL DESIGN	201-183	SCF FINAL DESIGN
201-182	SCF FINAL DESIGN	201-184	SCF FINAL DESIGN
201-183	SCF FINAL DESIGN	201-185	SCF FINAL DESIGN

NATIONWIDE SURVEYING INC.

NOVEMBER 18, 2019

1-A ACCURACY CERTIFICATION
AT&T CRAN_RLOS_CSTAM_003

DATE OF SURVEY: NOVEMBER 15, 2019
 SITE NAME: CRAN_RLOS_CSTAM_003
 TYPE: STREET LIGHT
 SITE ADDRESS: CITY STREETLIGHT No.SCL0796
 AT THE NORTHWESTERN CORNER
 OF WEST BALBOA BOULEVARD
 AND 30TH STREET

I hereby certify that the latitude and longitude of the following areas are as follows:

GEOGRAPHIC COORDINATES:
(NORTH AMERICAN DATUM 1983)

	LATITUDE	LONGITUDE	
EXISTING STREET LIGHT POLE:	33° 36' 49.94" N	117° 55' 53.96" W	(NAD 83)
	33.613872	-117.931656	(NAD 83)

I further certify that the elevations shown hereon are Above Mean Sea Level, North American Vertical Datum 1988 (NAVD 88)

ELEVATIONS (NAVD 88)

GROUND ELEVATION @ EXISTING STREET LIGHT POLE LOCATION = 8.82 FEET A.M.S.L.
 TOP ELEVATION OF EXISTING STREET LIGHT POLE = 36.10 FEET A.M.S.L.
 TOP ELEVATION OF EXISTING STREET LIGHT SENSOR (HIGHEST POINT) = 38.98 FEET A.M.S.L.

MEASURE HEIGHTS

HEIGHT OF EXISTING STREET LIGHT POLE = 27'-3" A.G.L.
 HEIGHT OF EXISTING STREET LIGHT SENSOR (HIGHEST POINT) = 30'-2" A.G.L.

The horizontal accuracy for the Latitude and Longitude is ± 5 feet.The vertical accuracy for the Elevation is ± 1 feet.The measured height of the features located is ± 1 foot.

The Geographic Coordinates are based upon the State Plane Coordinate System of 1983 (NAD 83), California Zone 6 and were established by static GPS Post Processing method, utilizing NGS GPS Monuments.

The Smartnet North America C.O.R.S. "CALK"

Elevation = 366.53 Feet (NAVD 88).




 CHARLES L. SCOTT III, PLS
 LS 8742 EXP. 12/31/2020



NATIONWIDE SURVEYING INC. 15520 WARREN ROAD RIVERSIDE CALIFORNIA 92508 909.841.4235

1-A ACCURACY CERTIFICATION

1452 EDINGER AVE.
TUSTIN, CA 92780ERICSSON
330 COMMERCE, STE. 200
IRVINE, CA 926021887 CALLE AVANZADO
SAN JOSE, CA 95128 (408) 940-8600

DRAWN BY:  JJ
 CHECKED BY:  JJ

REV	DATE	DESCRIPTION
1	02/01/2020	FINAL CONSTRUCTION
2	12/02/2019	ISSUE FINAL/CONSTRUCTION
3	10/13/2019	ISSUE CONSTRUCTION
4	09/02/2019	ISSUE CONSTRUCTION
5	08/01/2019	ISSUE CONSTRUCTION
6	07/11/2019	ISSUE CONSTRUCTION

1-A ACCURACY CERTIFICATION
 AT&T CRAN_RLOS_CSTAM_003

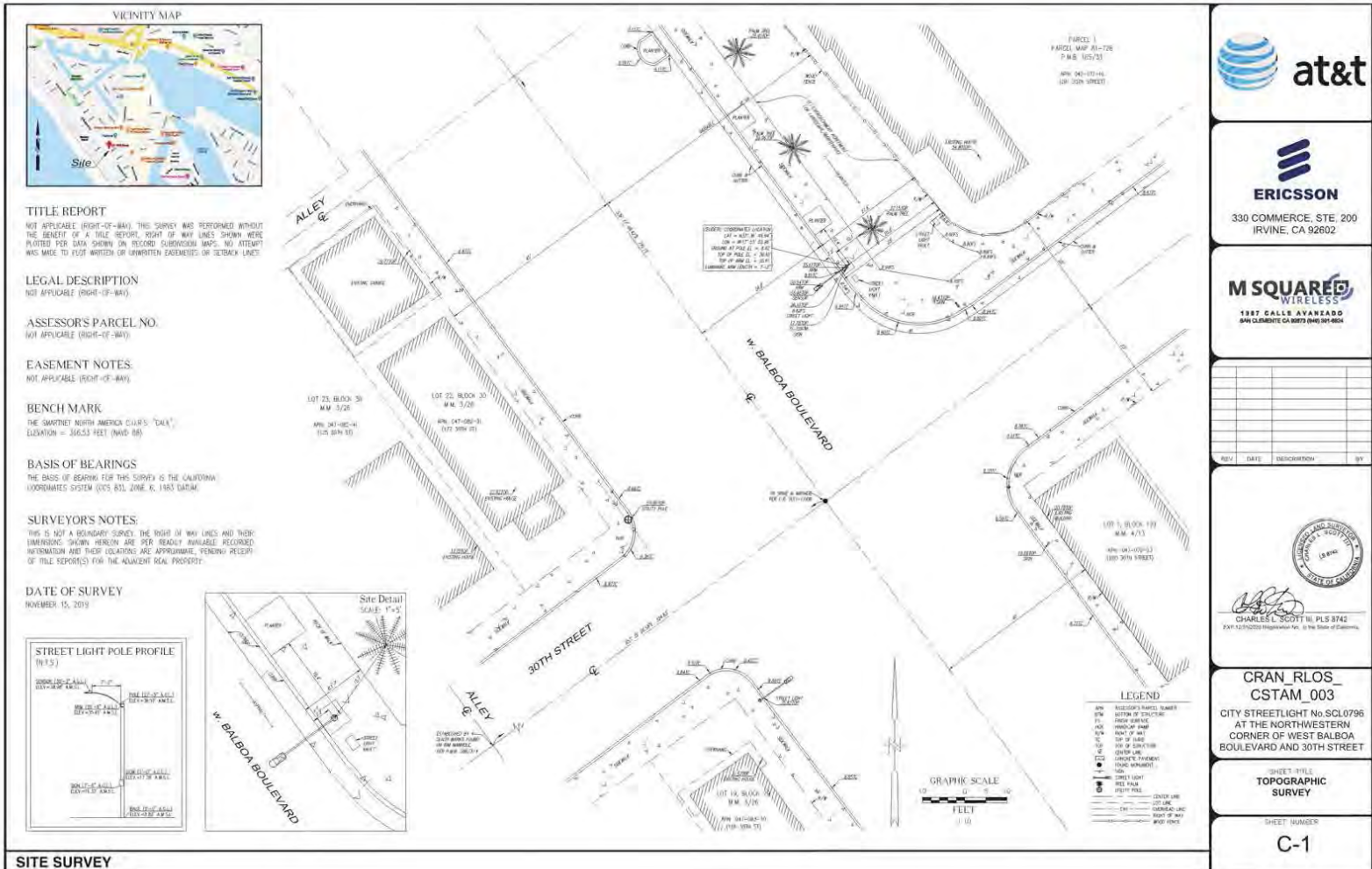
SITE ID: CSTAM_003A
 CITY STREETLIGHT NO. SCL0796
 AT THE NW CORNER OF W
 BALBOA BLVD. AND 30TH STREET
 NEWPORT BEACH, CA 92663

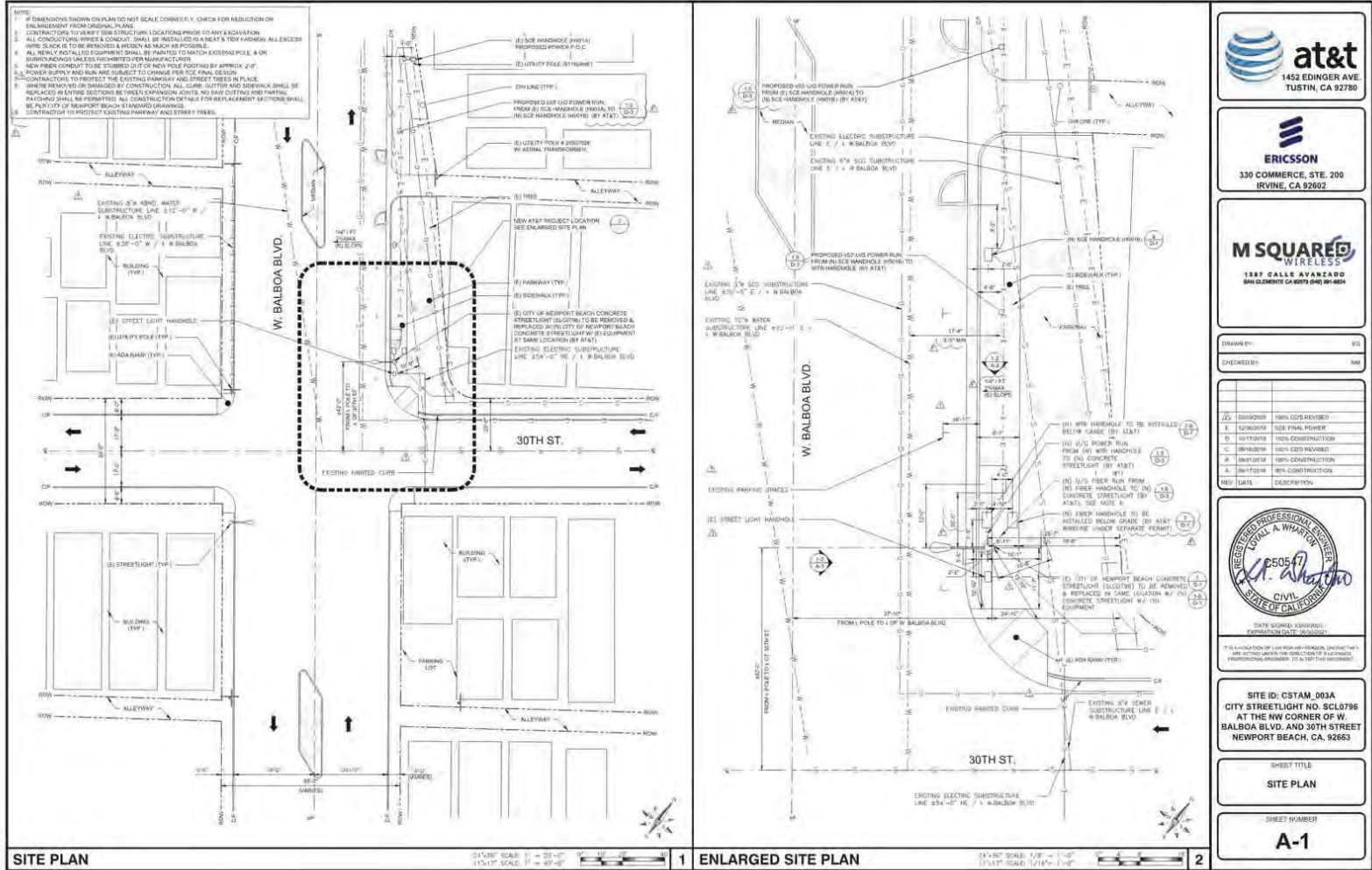
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 1-A ACCURACY
 CERTIFICATION

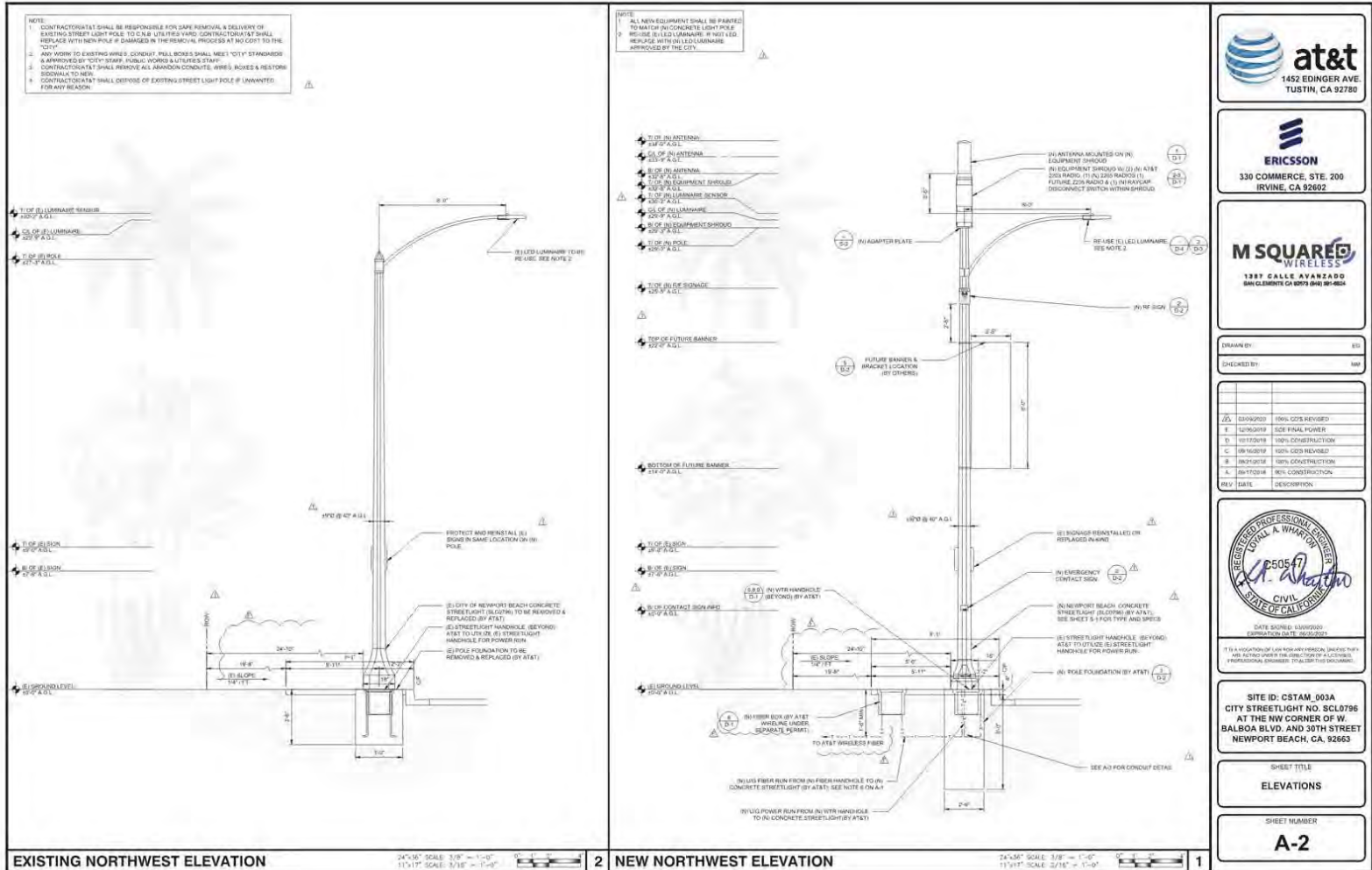
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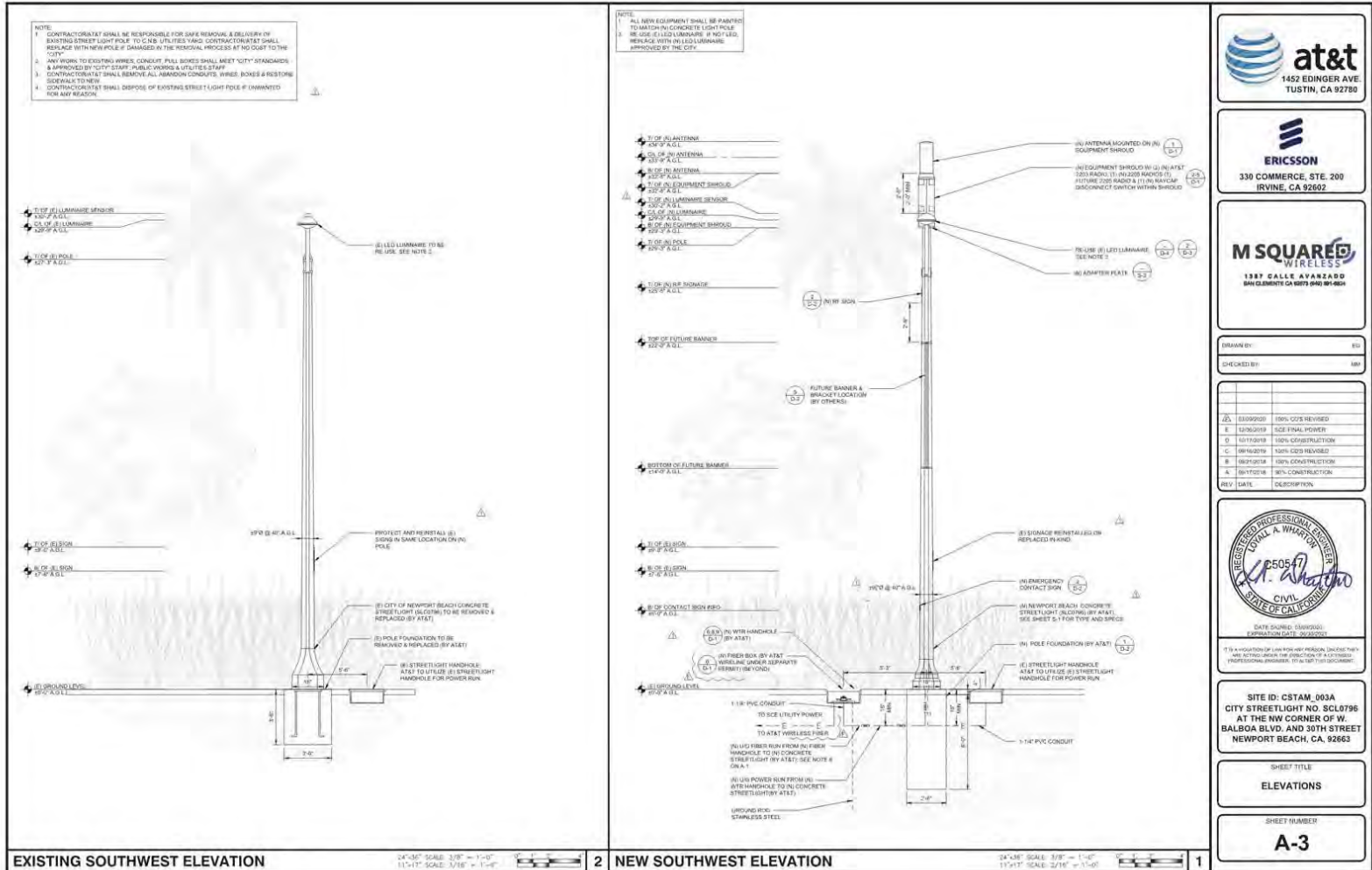
T-2

SHEET NUMBER
GN-1











PROPOSED SITE LOCATION LOOKING NORTHWEST

24"x36" SCALE: NTS
11"x17" SCALE: NTS

1452 EDINGER AVE.
TUSTIN, CA 92780

330 COMMERCE, STE. 200
IRVINE, CA 92602

1587 CALLE AVANZADO
SAN CLEMENTE CA 95051 (PH) 857-8824

DRAWN BY:

EG

CHECKED BY:

MS

REV	DATE	DESCRIPTION
A	03/09/2020	100% CDS REVISED
B	12/06/2019	SCE FINAL POWER
D	10/17/2019	100% CONSTRUCTION
C	09/16/2019	100% CDS REVISED
B	08/21/2018	100% CONSTRUCTION
A	08/17/2018	100% CONSTRUCTION

IT IS A VIOLATION OF LAW FOR ANY PERSON, UNLESS THEY ARE LICENSED UNDER THE JURISDICTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

SITE ID: CSTAM_003A
CITY STREETLIGHT NO. SCL0796
AT THE NW CORNER OF W
BALBOA BLVD. AND 30TH STREET
NEWPORT BEACH, CA. 92663

SHEET TITLE
SITE IMAGE

SHEET NUMBER
A-4

137 17-190



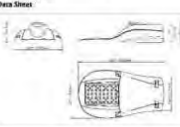
SHEET NUMBER

D-3

FOR REFERENCE ONLY

LEOTEK
GreenCobra™ Midsize LED Street Light
GCM H-Series Specification Data Sheet

Luminaire Data
Height: 12' (3.66 m)
Width: 24" (610 mm)



Ordering Information

Product	LED Code	Height	Width	Color Temperature	Beam Spread	Footcandle	Watts	Efficiency	Notes
1200	1200	12' (3.66 m)	24" (610 mm)	4000K	120°	100	100	100	Standard luminaire
1200	1200	12' (3.66 m)	24" (610 mm)	4000K	120°	100	100	100	Standard luminaire

Notes:

1. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.
2. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.
3. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.
4. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.
5. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.
6. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.
7. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.
8. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.
9. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.
10. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.

Accessories:

- 1. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.
- 2. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.
- 3. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.
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- 10. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.

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LEOTEK
GreenCobra™ Midsize LED Street Light
GCM H-Series Specification Data Sheet

Performance Data: 1200 (1200)

Product	LED Code	Height	Width	Color Temperature	Beam Spread	Footcandle	Watts	Efficiency	Notes
1200	1200	12' (3.66 m)	24" (610 mm)	4000K	120°	100	100	100	Standard luminaire
1200	1200	12' (3.66 m)	24" (610 mm)	4000K	120°	100	100	100	Standard luminaire

Performance Data: 1200 (1200) and 1200 (1200)

Product	LED Code	Height	Width	Color Temperature	Beam Spread	Footcandle	Watts	Efficiency	Notes
1200	1200	12' (3.66 m)	24" (610 mm)	4000K	120°	100	100	100	Standard luminaire
1200	1200	12' (3.66 m)	24" (610 mm)	4000K	120°	100	100	100	Standard luminaire

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LEOTEK
GreenCobra™ Midsize LED Street Light
GCM H-Series Specification Data Sheet

Luminaire Specifications

Height: 12' (3.66 m)
Width: 24" (610 mm)
Color Temperature: 4000K
Beam Spread: 120°
Footcandle: 100
Watts: 100
Efficiency: 100

Notes:

1. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.
2. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.
3. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.
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Accessories:

- 1. Luminaire is designed for use in conjunction with the GreenCobra™ Midsize LED Street Light.
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LEOTEK
GreenCobra™ Midsize LED Street Light
GCM H-Series Specification Data Sheet

Performance Data: 1200 (1200)

Product	LED Code	Height	Width	Color Temperature	Beam Spread	Footcandle	Watts	Efficiency	Notes
1200	1200	12' (3.66 m)	24" (610 mm)	4000K	120°	100	100	100	Standard luminaire
1200	1200	12' (3.66 m)	24" (610 mm)	4000K	120°	100	100	100	Standard luminaire

Performance Data: 1200 (1200) and 1200 (1200)

Product	LED Code	Height	Width	Color Temperature	Beam Spread	Footcandle	Watts	Efficiency	Notes
1200	1200	12' (3.66 m)	24" (610 mm)	4000K	120°	100	100	100	Standard luminaire
1200	1200	12' (3.66 m)	24" (610 mm)	4000K	120°	100	100	100	Standard luminaire

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DRAWN BY:	ED
CHECKED BY:	MD
DATE:	12/06/2019
REVISION:	100% 100% REVISION
REVISION:	100% 100% REVISION
REVISION:	100% 100% REVISION
REVISION:	100% 100% REVISION
REVISION:	100% 100% REVISION
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REVISION:	100% 100% REVISION
REVISION:	100% 100% REVISION

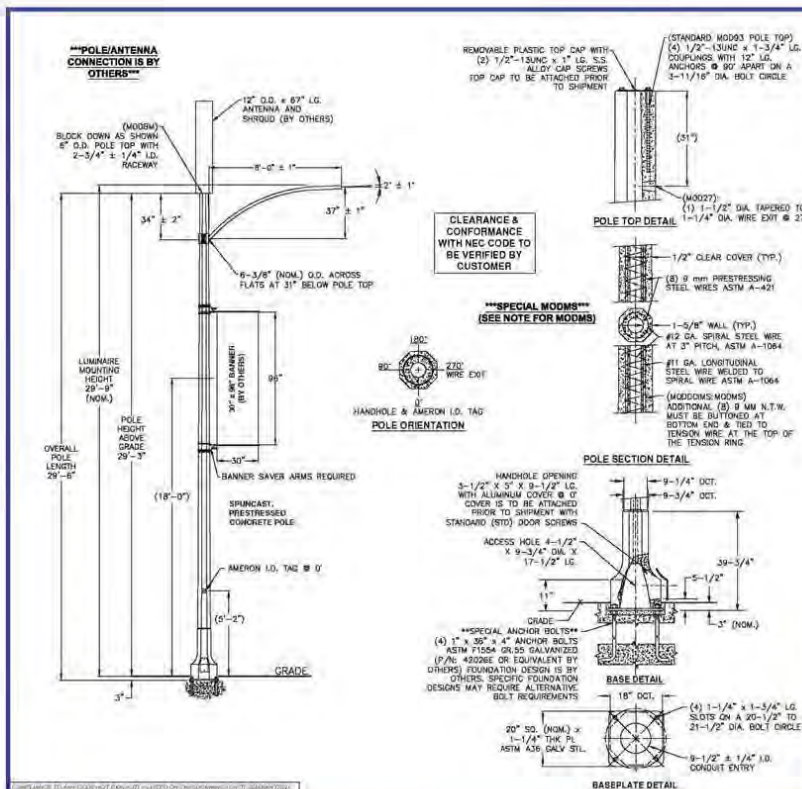
1. LUMINAIRE IS DESIGNED FOR USE IN CONJUNCTION WITH THE GREENCOBRA™ MIDSIZE LED STREET LIGHT.

SITE ID: CSTAM_003A
CITY STREETLIGHT NO. SCL0796
AT THE NW CORNER OF W
BALBOA BLVD. AND 30TH STREET
NEWPORT BEACH, CA, 92663

SHEET TITLE
LUMINAIRE SPECS

SHEET NUMBER
D-4

FOR REFERENCE ONLY



REV.	DATE	DESCRIPTION	DRN.	APPR.
------	------	-------------	------	-------

"F" LEVEL CONFIG CODES		"F" LEVEL CONFIG CODES	
OPTION CLASS	ENTRY	OPTION CLASS	ENTRY
COATING	1	FINISH	81
HM COVER	43014	COLLAR	NONE
DOOR SCRS	STD	BASEPLATE	53420E
MISC. MOD	MODFE NOTE 7	POLE TOP CON.	MOD93
		CAST IN MOD	MOD27
		STRUC. MOD	MOD93MS NOTE B
		SPL POLE LG.	MOD9M

POLE DESIGNATION	POLE HEIGHT ABOVE GRADE	OVERALL POLE LENGTH	BOLT CIRCLE	BASE O.D.	ULTIMATE G.L. MOMENT (ft. lbs.)	POLE WEIGHT (lbs.)
290609 SPL	29'-3"	29'-6"	21"	18"	43,600	1,650

DECORATIVE BASE PLATE OCTAGONAL POLE

(1) POLES REQUIRED, (P/N: TBD) EACH WITH:

(1) SINGLE 8" STEEL CLAMP ON ARM ASSEMBLY (P/N: TBD)

(1) PLASTIC TOP CAP (P/N: 43006A)

(2) 5.5 BANDS BANNER ARM ASSEMBLY (P/N: BASP130P04)

(4) 1" x 3/8" x 4" GR. 65 ANCHOR BOLTS (P/N: 42088)

NOTES:

- MAX. (113): BLACK & WHITE, EXPOSED AGGREGATE FINISH WITH AMERSHIELD ANTI-CRAFFT COATING
- ASTM C-150 TYPE III GRAY CEMENT
- PC @ 28 DAYS = 7,000 PSI, USING SPIN CYLINDER TEST
- PC @ 28 DAYS = 5,000 PSI, USING ASTM C-31 CYLINDER TEST
- POLES MANUFACTURED PER ASTM C-1099-13 SPECIFICATIONS
- PROTECTIVE COAT EXPOSED P.C. WIRES AT POLE ENDS
- MODFE: POLE BOTTOM PREPARATION FOR FREEZING OR CORROSIVE COASTAL ENVIRONMENTS, SEE DOCUMENTATION
- MOD93: CORROSION INHIBITOR MIX MODIFICATION
- THE POLE DEPICTED ON THIS DRAWING IS DESIGNED TO WITHSTAND THE LOADS IMPARTED BY (1) ANTENNA SHOULD NOT EXCEED 47.50 FT. EPA, 190 LBS TOTAL MOUNTED AT THE TOP, (1) SINGLE CLAMP ARM ASSEMBLY (NOT TO EXCEED 8' OFFSET, 2,550 FT. EPA, 45 LBS EACH MOUNTED AT 26" A.G. WITH THE ARM HOLDING A SINGLE LUMINAIRE (NOT TO EXCEED 23 SQ. FT. EPA, 65 LBS EACH), (1) NO HANGING SIGN (NOT TO EXCEED 17.50 FT. EPA, 16 LBS EACH) CENTERED NO HIGHER THAN 7'-2" A.G., (1) 30" x 36" BANNER (NOT TO EXCEED 5,850 FT. EPA, 10 LBS EACH (20% LOAD IMPARTED) CENTERED NO HIGHER THAN 10'-0" A.G. AS DESIGNED ASCE 7-10 USING A 110 MPH WIND ZONE (Ss = 1.70 Ss-A-S29, RISK CATEGORY B, NON-BUILDING STRUCTURE, EXPOSURE C, SITE CLASS D, SURFACE ROUGHNESS C, NO HILL NOR ESCARPMENT CONSIDERED. PLEASE CONTACT & ADVISE MANUFACTURER IF THE INTENDED LOADING EXCEEDS THESE VALUES.

APPROVED BY _____ DATE _____

M-SQUARED WIRELESS
NEWPORT BEACH, CA
CBO6X09.6SPL POLE W/ 8' SINGLE CLAMP ARM ASSEMBLY

THIS DOCUMENT CONTAINS INFORMATION WHICH IS PROPRIETARY TO NATIONAL OILWELL VAREO. IT SHALL NOT BE REPRODUCED, USED OR DISCLOSED TO ANYONE WITHOUT THE PRIOR WRITTEN PERMISSION OF NATIONAL OILWELL VAREO.

Almeron DRAWN: K.B. DATE: 01/13/20
 SCALE: N.T.S. DWG. NO. 2001-019 REV -



DRAWN BY: KJ
 CHECKED BY: JED

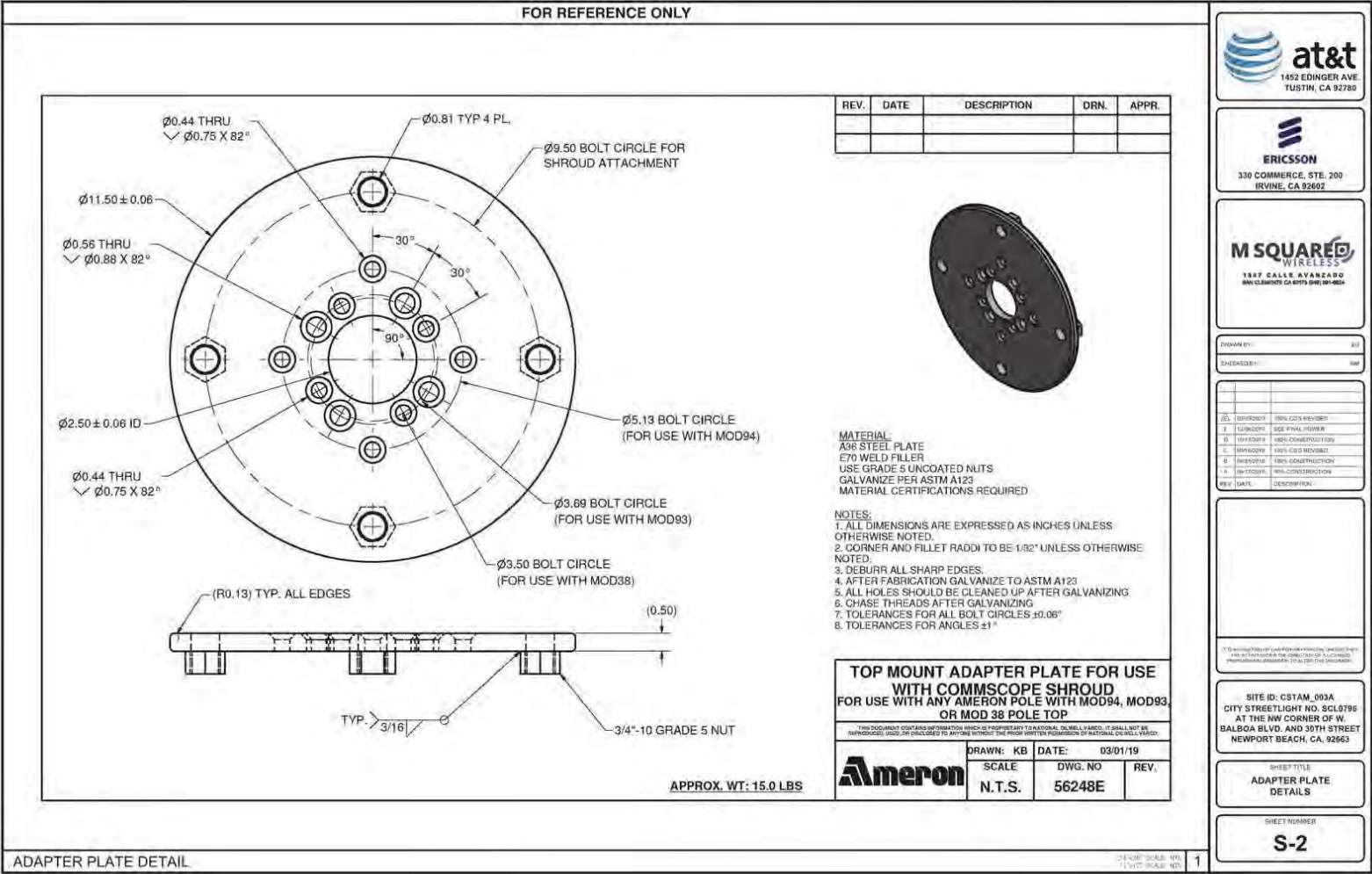
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6	01/13/20	ISSUED FOR PERMIT
7	01/13/20	ISSUED FOR PERMIT
8	01/13/20	ISSUED FOR PERMIT
9	01/13/20	ISSUED FOR PERMIT
10	01/13/20	ISSUED FOR PERMIT

1. THE POLE DETAIL IS FOR INFORMATION ONLY. THE POLE DETAIL IS NOT TO BE USED FOR CONSTRUCTION. THE POLE DETAIL IS FOR INFORMATION ONLY.

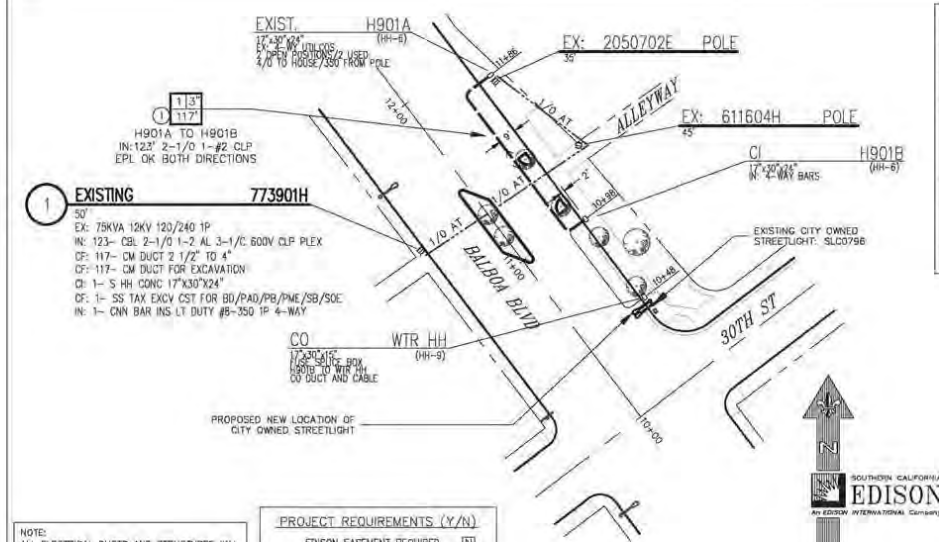
SITE ID: CSTM_003A
 CITY STREETLIGHT NO. SCL0798
 AT THE NW CORNER OF W
 BALBOA BLVD. AND 35TH STREET
 NEWPORT BEACH, CA, 92663

SHEET TITLE
POLE DETAILS

SHEET NUMBER
S-1



FOR REFERENCE ONLY



JOB SCOPE:

- WTR FOR AT&T SITE #CSTAM 03A.
- TRENCH MUST BE MIN. 5' FROM CURB FACE PER CITY STANDARD.
- TRENCH SHOWN 9' FROM CURB FACE TO AVOID PLANTERS IN STREET PER CUSTOMER.
- CONTRACTOR TO INSTALL H901B.
- CUSTOMER TO SUPPLY & INSTALL FUSE SPICE BOX (FSB) 17X30X15 FOR NON-METERED CELLULAR SERVICE.
- CUSTOMER TO SUPPLY & INSTALL C.O. DUCT & CABLE FROM FSB TO H901B.
- SCE TO ENERGIZE CUSTOMER OWNED CABLE UPON INSPECTION.
- CUSTOMER TO COORDINATE WITH CITY FOR REPLACEMENT OF CITY-OWNED STREETLIGHT.

AT&T CONTACT: TIRZAH STARR (602)-488-2700
TIRZAH@MSQUAREWIRELESS.COM

NOTE:
ALL ELECTRICAL DUCTS AND STRUCTURES WILL CONFORM TO GENERAL ORDER #123 (RULES FOR CONSTRUCTION OF UNDERGROUND ELECTRICAL SUPPLY AND COMMUNICATION PRESCRIBED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, JANUARY 2008).

WARNING:
THE EXCAVATOR MUST TAKE ALL STEPS NECESSARY TO AVOID CONTACT WITH UNDERGROUND FACILITIES WHICH MAY RESULT IN INJURY TO PERSONS OR DAMAGE TO FACILITIES IN THE AREA. THE INDICATED LOCATIONS OF EDISON UNDERGROUND FACILITIES AS PROVIDED ARE BELIEVED TO BE ACCURATE. HOWEVER, THE FINAL DETERMINATION OF EXACT LOCATIONS AND THE COST OF REPAIR TO DAMAGED FACILITIES IS THE RESPONSIBILITY OF THE EXCAVATOR.

SCE Inspection:
Contact SCE 48 Hours in advance for a Pre-Construction meeting and/or inspection.
Email: NDPFSC@SCE.COM

PROJECT REQUIREMENTS (Y/N)

EDISON EASEMENT REQUIRED [N]
PWRD 88 REQUIRED [Y]
UG CIVIL ONLY WORK ORDER [N]
PERMIT REQUIRED [Y]
PERMIT TYPE: LANE CLOSURE

OUTAGE DATE: TIME: OUTAGE REQUIRED [N]

TRAFFIC CONTROL REQUIRED [Y]

PEDEST. TRAFFIC CONTROL REQ'D [Y]

CONVEYANCE LETTER REQ'D [N]

ENVIRONMENTAL CLEARANCE REQ'D [N]

CSD 140 (TLM) REQ'D [Y]

UNDERGROUND SERVICE ALERT

Dial 811
Call USA
For Underground Locating
2 Working Days Before You Dig

T.L.M. DATA:

SIZE	KVA	DIST	% LOAD
EXIST. 75	100.4	59	133.8%
PROP. 75	101.4	60	135.2%

VOLTAGE DROP: 0.22
FLICKER FACTOR: N/A
PRI. CIRCUIT: SNEAD 12KV

DESIGNER 33 - HUNTINGTON BEACH PROJECT NO. 1861280	REG. WORKER HUNTER, YOLANDA B PHONE 626-484-6772	PLANNER SEFO, ALIE PHONE 949-274-1778	DESIGNER TIMMS, JON P
ASSOC DESIGN 1621173-LINE EXTENSION	ASSOC DESIGN THOMAS DUDE	ASSOC DESIGN PRODUCT-2	ASSOC DESIGN PRODUCT-3
CIRCUIT / VOLTAGE SNEAD 12KV	CIRCUIT CODE	PRODUCT-1	PRODUCT-2
SUB / PG NO. LAFAYETTE / B1	INVENTORY MAP 28-11D	S.P.A. NO.	PROPOSED CONSTRUCTION (LOCATION) AT&T SITE #213735 - CSTAM 03A 201 30TH ST NEWPORT BEACH, CA 92663
DATE 11/25/19	DESIGNED BY J.S.K.	CHECKED BY UTMS	DATE 12/10/20
APPROVED BY	CHECKED BY	DRAWN BY	PAX
SHEET 1 OF 3			
DESIGN/DRWG NO. 1210761_0.01			

FINAL POWER



DESIGNED BY: J.S.K.

CHECKED BY: J.S.K.

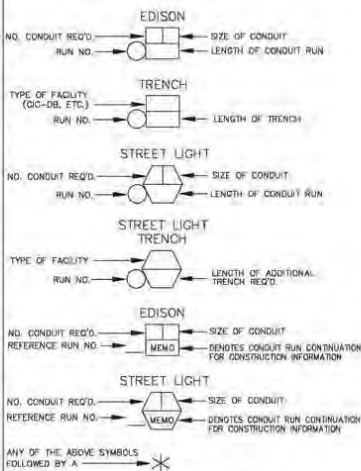
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3	12/10/20	ISSUE FOR REVIEW
4	12/10/20	ISSUE FOR REVIEW
5	12/10/20	ISSUE FOR REVIEW
6	12/10/20	ISSUE FOR REVIEW
7	12/10/20	ISSUE FOR REVIEW
8	12/10/20	ISSUE FOR REVIEW
9	12/10/20	ISSUE FOR REVIEW
10	12/10/20	ISSUE FOR REVIEW

SITE ID: CSTAM_03A
CITY STREETLIGHT NO. SCL0798
AT THE NW CORNER OF W
BALBOA BLVD. AND 30TH STREET
NEWPORT BEACH, CA 92663

SHEET TITLE
SCE FINAL DESIGN

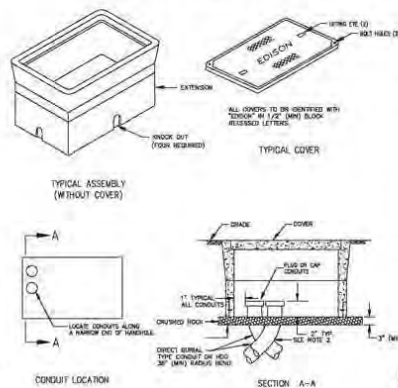
SHEET NUMBER
SCE-1

FOR REFERENCE ONLY

LEGEND OF CONDUIT SYMBOLS
(CONVENTIONAL U. G.)

DENOTES THE FOLLOWING:
DB CONDUIT WITHOUT ENCASUREMENT IS ACCEPTABLE FOR PORTIONS OF TRENCH WITH ONLY ONE OR TWO CONDUITS.
SEMI-ENCASUREMENT IS REQUIRED FOR PORTIONS OF TRENCH WITH ONLY THREE OR FOUR CONDUITS.
FULL ENCASUREMENT IS REQUIRED FOR MORE THAN FOUR CONDUITS.

11/18/19 5/25/2008

TYPICAL HANDHOLE INSTALLATION
SEE UGS HP 205

NOTES:
1. SEE UGS HP 205 FOR DIMENSIONS OF VARIOUS SIZE HANDHOLES AVAILABLE.
2. HANDS AND FEET MAY BE REDUCED TO LESS THAN 60° PROVIDING THE PROTECTED CENTER LINE OF THE CONDUIT CLEARS HANDHOLE OPENING.
3. TWO HOLD DOWN DEVICES TO BE SUPPLIED WITH EACH HANDHOLE.

CONNECTING TO EXISTING SCE STRUCTURES

- Per SCE requirements, customers are not allowed to enter, intercept or tie-in to existing SCE facilities: e.g., structures, equipment, multi-conduit runs/banks, or conductors. These facilities may be energized and the work will only be performed by SCE. Contact the appropriate SCE inspector to schedule an appointment. Customers may connect to an existing conduit stub without a SCE inspector present.
- Multi-conduit runs/banks are runs of conduit in close proximity to each other and other SCE facilities. A conduit stub is a single empty conduit stub that is not in close proximity to other SCE owned facilities. Refer to the work order map for details.
- Per OUGC/SCE's Rule 15 B.1.A and Rule 16 D.1.A, the customer will provide all necessary excavations (with the exception of excavation under pads and primary splice boxes), material (including conduit and structures) and encasement, to be utilized in the intercept/tie-in process.
- The customer must adhere to all applicable Cal-OSHA, local, city, state and federal regulations, (including, but not limited to, all necessary shoring and traffic control in place to perform the intercept/tie-in work by SCE's underground civil contractor(s)).
- Intercept/tie-in work must be coordinated with SCE's civil contractors through the Division Inspector/Inspector to limit measure of excavation(s). Customer is responsible for securing excavation(s).

DOB: 11/15/18

LEGEND CODE DEFINITIONS

- CD - CUSTOMER CONTRACTOR INSTALLED: MATERIALS FURNISHED AND INSTALLED BY APPLICANT AT EDISON'S EXPENSE AND ASL DESIGNED TO EDISON. (EXCEPTION: STREET LIGHT ELECTROLYSERS WILL BE INSTALLED BY EDISON'S CONTRACTOR)
- CO - CUSTOMER CONTRACTOR OWNED: MATERIALS FURNISHED, OWNED, AND MAINTAINED BY APPLICANT
- CF - CUSTOMER CONTRACTOR FURNISHED: MATERIALS FURNISHED AND INSTALLED BY APPLICANT AT APPLICANT'S EXPENSE THAT MAY BE DESIGNED TO EDISON.
- IN - INSTALL: MATERIALS FURNISHED AND INSTALLED BY APPLICANT IF APPLICANT INSTALLED PROJECT OR BY EDISON IF EDISON INSTALLED PROJECT. (EXCEPTION: FOR AN APPLICANT INSTALLED LINE EXTENSION, STATION NOS. MARKING BY EDISON ADJUNCT TO AN "IN" LEGEND CODE REPRESENTS MATERIALS TO BE PROVIDED BY APPLICANT AND INSTALLED BY EDISON IN ALL CASES REFER TO UGS 6205, PROJECT MATERIAL LIST BY ASSEMBLY WITHIN A SECTION.)
- MI - MEMO INSTALL: SAME AS IN-INSTALL
- MR - MEMO REMOVE: MATERIALS REMOVED BY EDISON
- RM - REMOVE: MATERIALS REMOVED BY EDISON
- SI - SHOULDER IN: MATERIALS FURNISHED AND INSTALLED BY EDISON FOR TEMPORARY CONSTRUCTION
- SR - SHOULDER REMOVE: MATERIALS REMOVED BY EDISON FOR TEMPORARY CONSTRUCTION
- TR - TRANSFER: EDISON LABOR REQUIRED TO TRANSFER EXISTING FACILITIES

L-2018-01-18

CONCRETE PRODUCTS

Precast concrete item complete with neck. Cover and inserts may be obtained from any of the following listed and approved manufacturers:

JENSEN PRECAST
14221 San Bernardino Ave., Fontana, Calif. 92335
Phone: (909) 350-4111
(800) 257-6100

OLDCASTLE PRECAST
10650 Hemlock Ave., Fontana, Calif. 92337
Phone: (909) 428-3700
(909) 826-3860

FOR HANDHOLE AND PULLBOX MANUFACTURERS, SEE UGS HP 200.

11/18/19 5/25/2008

DESIGNER 33 - HUNTINGTON BEACH	PROJECT NO. 1601280	PROJECT NAME 12763884	PROJECT CODE 12763884	PROJECT CODE 12763884	PROJECT CODE 12763884
PROJECT NO. 1601280	PROJECT NAME 12763884	PROJECT CODE 12763884	PROJECT CODE 12763884	PROJECT CODE 12763884	PROJECT CODE 12763884
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PROJECT NO. 1601280	PROJECT NAME 12763884	PROJECT CODE 12763884	PROJECT CODE 12763884	PROJECT CODE 12763884	PROJECT CODE 12763884

FINAL POWER



DRAWN BY: JGJ
CHECKED BY: JGJ

REV.	DATE	DESCRIPTION
1	11/18/19	ISSUED FOR PERMIT
2	05/25/20	ISSUED FOR CONSTRUCTION
3	05/25/20	ISSUED FOR CONSTRUCTION
4	05/25/20	ISSUED FOR CONSTRUCTION
5	05/25/20	ISSUED FOR CONSTRUCTION

SITE ID: CSTAM_003A
CITY STREETLIGHT NO. SCL0798
AT THE NW CORNER OF W
BALBOA BLVD. AND 30TH STREET
NEWPORT BEACH, CA 92663

SHEET TITLE
SCE FINAL DESIGN

SHEET NUMBER
SCE-2

FOR REFERENCE ONLY

CONSTRUCTION NOTES:

Unless otherwise specified in the working drawing, which forms a part of this specification, the Contractor/Developer shall furnish the following items of no cost to the Edison Company.

Southern California Edison Company has attempted to correctly show all existing utilities and substructures in the vicinity of the work, but does not guarantee there are no other substructures in the area.

Failure at SCS to show all substructures in their correct location will not be a basis for a claim for extra work, and the contractor shall be responsible for all damages to substructures whether shown or not.

- [illegible]

OWNER 33 - HUNTINGTON BEACH		INQUIRY PHONE	OWNER HUNTER, YOLANDA D		PLANNER PHONE	SEXO, JULIE		DESIGNER TIMMS, JON P.
PROJECT NO. SERVICE REQUEST 180 280		MST NO.		PROJECT-1 1621173-LINE EXTENSION		ASSOC DESIG 180 280		
ORDER # VOLTAGE SNEAD 12KV		THOMAS GUIDE		PROJECT-2		ASSOC DESIG 180 280		
SUB # / PG NO LAFAYETTE /B1		CIRCUIT CODE		PROJECT-3		ASSOC DESIG 180 280		
INVENTORY MAP 28-110		A.P.A. NO.		PROPOSED CONSTRUCTION LOCATION AT&T SITE #213735 - CSTAM 03A 201 30TH ST NEWPORT BEACH, CA 92663				
F 11/22/79		L 9/30		J 11/MS		S 5/443		
TYPE DATE APPROVED BY		CHECKED BY		DRAWN BY		SHEET		DESIGN/CHK NO.
		Southern California Edison Company		Cramby		3 ~ 3		1210761 0.01



ERICSSON
330 COMMERCE, STE. 200
IRVINE, CA 92602



DRAWN BY: E3

CHECKED BY:	DATE
-------------	------

REV	DATE	DESCRIPTION
E	12/06/2019	SCF FINAL POWER
D	10/17/2019	100% CONSTRUCTION
C	09/06/2019	100% CDS REVISED
B	08/12/2018	100% CONSTRUCTION
A	09/17/2018	80% CONSTRUCTION
REV	DATE	DESCRIPTION

THE UNIVERSITY OF CHICAGO PRESS
605 EAST 57TH STREET, CHICAGO, IL 60637
TEL: 773-707-3000 FAX: 773-707-0828
WWW.CHICAGO.PRESS.EDU

SITE ID: CSTAM_003A
CITY STREETLIGHT NO. SCL0796
AT THE NW CORNER OF W.
BALBOA BLVD. AND 30TH STREET
NEWPORT BEACH, CA, 92663

SHEET TITLE

SCE FINAL DESIGN

SCE FINAL DESIGN

SHEET NUMBER

SCE-3

AT&T Coverage Maps*

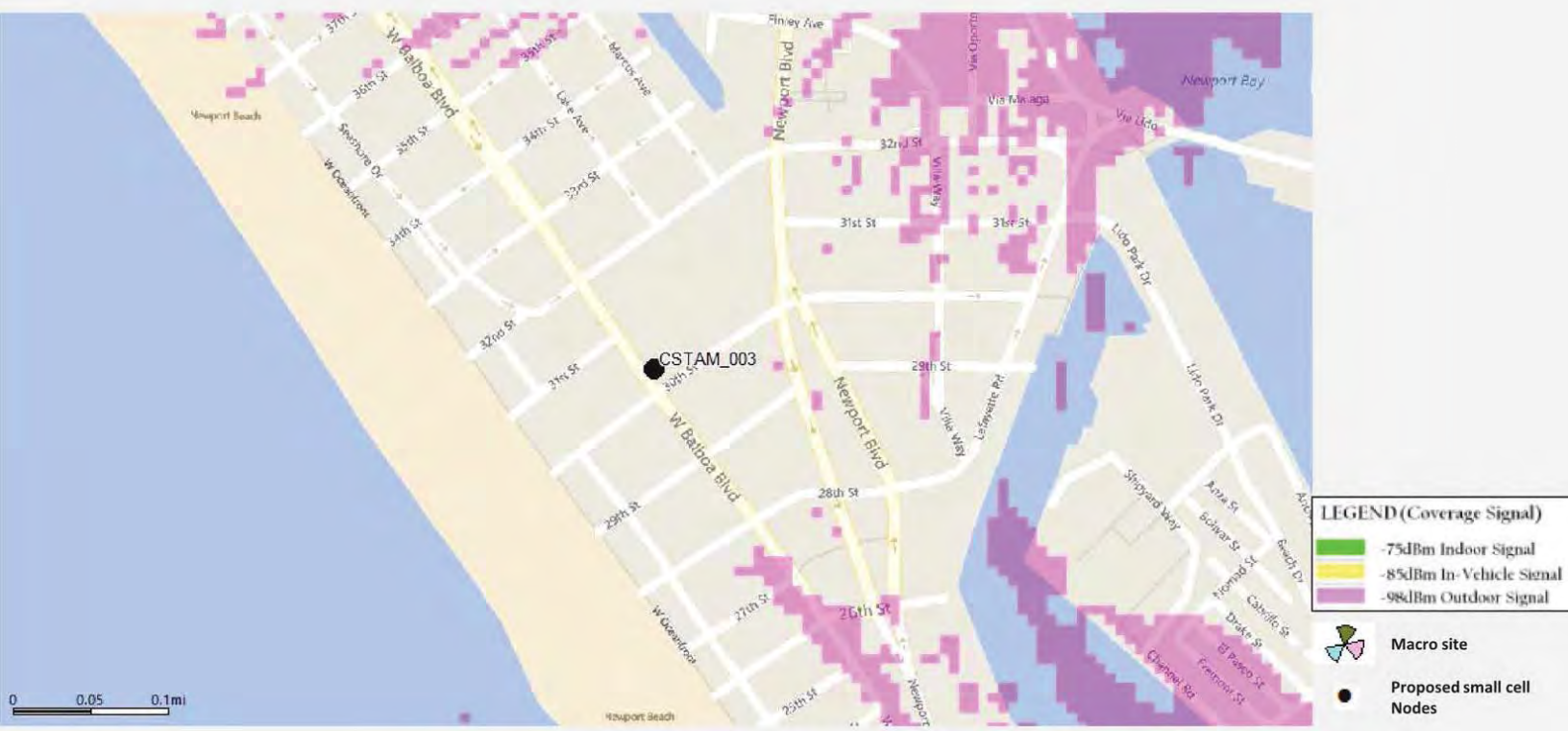
Small Cell node CRAN_RLOS_CSTAM_NODE_003

*

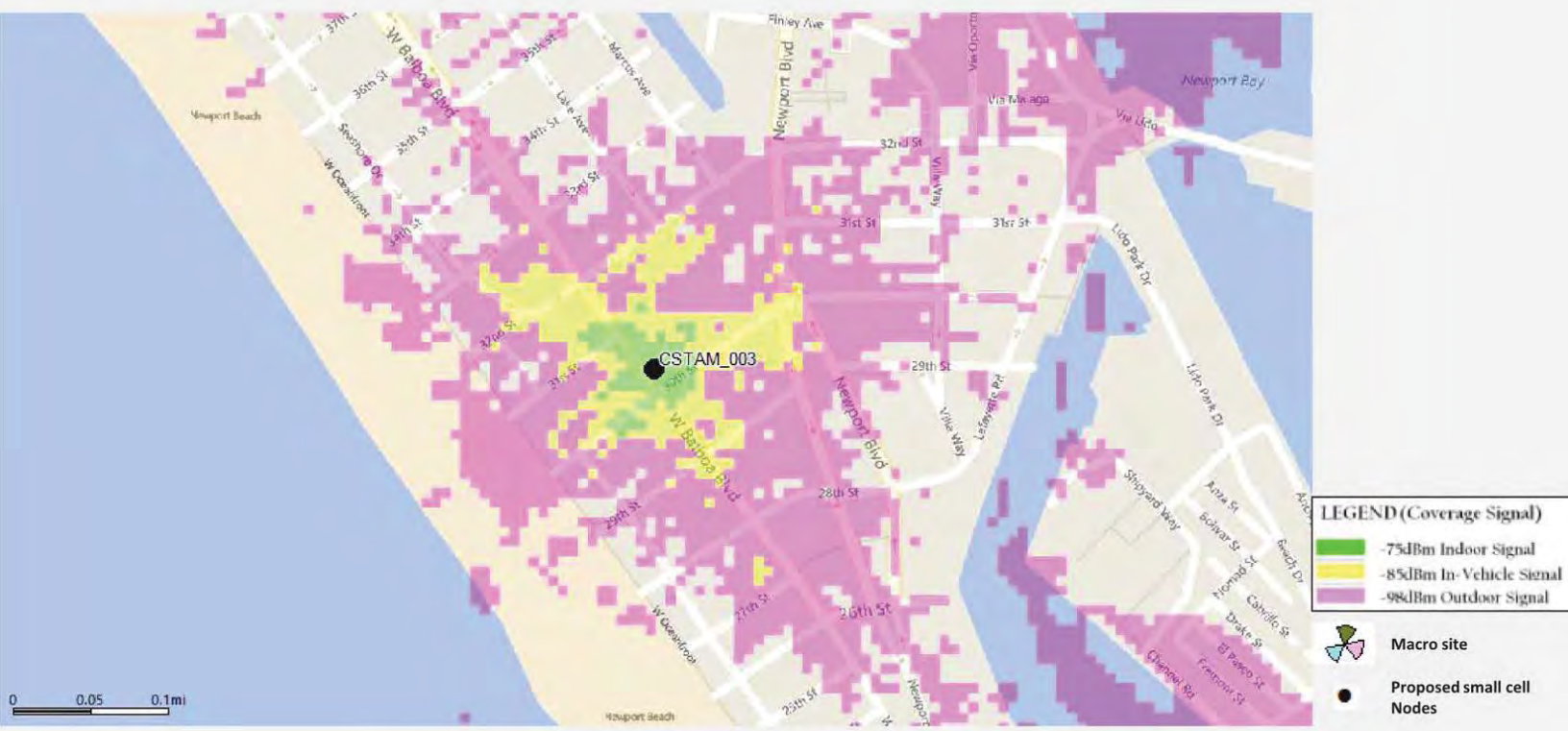
In its recent small cell deployment order, the FCC rejected the need for wireless providers to demonstrate a significant gap to support a wireless siting application. The FCC explained that a local government could effectively prohibit wireless service “not only by rendering a service provider unable to provide existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services. Thus, an effective prohibition includes materially inhibiting additional services or improving existing services.” So, such maps cannot be required. Nonetheless, to comply with the city’s application requirements, AT&T is submitting signal strength coverage maps that depict its wireless service coverage for LTE service at 1900 MHz as it exists now and as predicted after the small cell is installed and on air. Note, however, that the city’s requirement for these maps is inappropriate under applicable law and not relevant in any event because AT&T’s proposed facility provides capacity relief within the existing wireless network.



LTE 1900_Coverage without Small cell



LTE 1900_Coverage with Small cell





CRAN_RLOS_CSTAM_003
CSTAM 03A



City streetlight No. SCL0796 at the northwestern corner of W. Balboa Blvd. and 30th St., Newport Beach, CA 92663



VIEW 1 | LOOKING SOUTHEAST



CRAN_RLOS_CSTAM_003

CSTAM 03A



City streetlight No. SCL0796 at the northwestern corner of W. Balboa Blvd. and 30th St., Newport Beach, CA 92663



VIEW 2 | LOOKING NORTHEAST



CRAN_RLOS_CSTAM_003
CSTAM 03A



City streetlight No. SCL0796 at the northwestern corner of W. Balboa Blvd. and 30th St., Newport Beach, CA 92663



VIEW 3 | LOOKING NORTH

July 9, 2020, Planning Commission Item 4 Comments

These comments on a Newport Beach Planning Commission [agenda](#) item are submitted by:

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

Item No. 4. AT&T SMALL CELL SLC0796 APPEAL (PA2019-111)

It is gratifying to see staff acknowledge (pages 8, 9 and 97) that when they are the Coastal Zone, construction of these small cell installations on (replacement) streetlight poles requires a Coastal Development Permit – something not formerly approved for any of them by the Zoning Administrator.

This raises a question about the status of the several similar applications for which the ZA approved Minor Use Permits, only – including the one on Bayside Drive for which a call for review was scheduled as [Item No. 3](#) at the PC's June 4, 2020, meeting, but not heard due to the call for review having been filed one day late (the present appeal was Item 2 at the same meeting, but continued). Will those projects now also need CDP's from the ZA?

Particularly problematic without a CDP was the May 28, 2020 (ZA [Item 3](#)), approval of an installation on a streetlight in the approach to the Newport Island bridge, since the proposed construction will occur within less than 20 feet of coastal waters, which even under the Coastal Commission's Repair and Maintenance criteria in [14 CCR Section 13252](#) would likely disqualify it for a CDP exemption.

Regarding the present resolution:

1. In Section 2.1 (page 22): The Class 3 (New Construction or Conversion of Small Structures) CEQA exemption seems much more relevant than Class 2 (Replacement or Reconstruction). In fact, Class 2 does not seem applicable, since the new structure will *not* "have substantially the same purpose and capacity as the structure replaced." Although a portion of the existing facility is being replaced, it is fundamentally a conversion to accommodate and additional use. I would suggest the reference to Class 2 be deleted.
2. In Condition 11 (page 32), the reference to "43.57 feet above mean sea level using the North American Vertical Datum of 1988" needs to be clarified. "Above mean sea level" is not the same as NAVD88. The condition is either "43.57 feet above mean sea level" or "43.57 feet in the NAVD88 reference system." It cannot be both. Since it only creates confusion, I would suggest deleting the final parenthetical portion of the condition.¹

As to the appeal, although federal law may prohibit the City from denying the application based on residents' concerns about electromagnetic radiation, the request that the applicant be insured against possible future claims related to that seems reasonable – if, for no other reason, to ensure the applicant can fulfill its responsibility under Condition 34 (page 35) to indemnify the City.

¹ Page 132 indicates the ground level at the pole site is 8.82' AMSL, as does page 130. Although the latter confusingly certifies "the elevations shown hereon are Above Mean Sea Level, North American Vertical Datum 1988 (NAVD 88)," they appear to be AMSL. In creating Condition 11, someone has evidently added the promised 34' 9" (34.75') to the 8.82' AMSL to obtain 43.57' AMSL (an approximate elevation of 46.2' NAVD 88 per NOAA's [online VDATUM?](#)).



AT&T Small Cell SLC0796

Public right-of-way at the northwestern corner of
Balboa Boulevard and 30th Street



Planning Commission

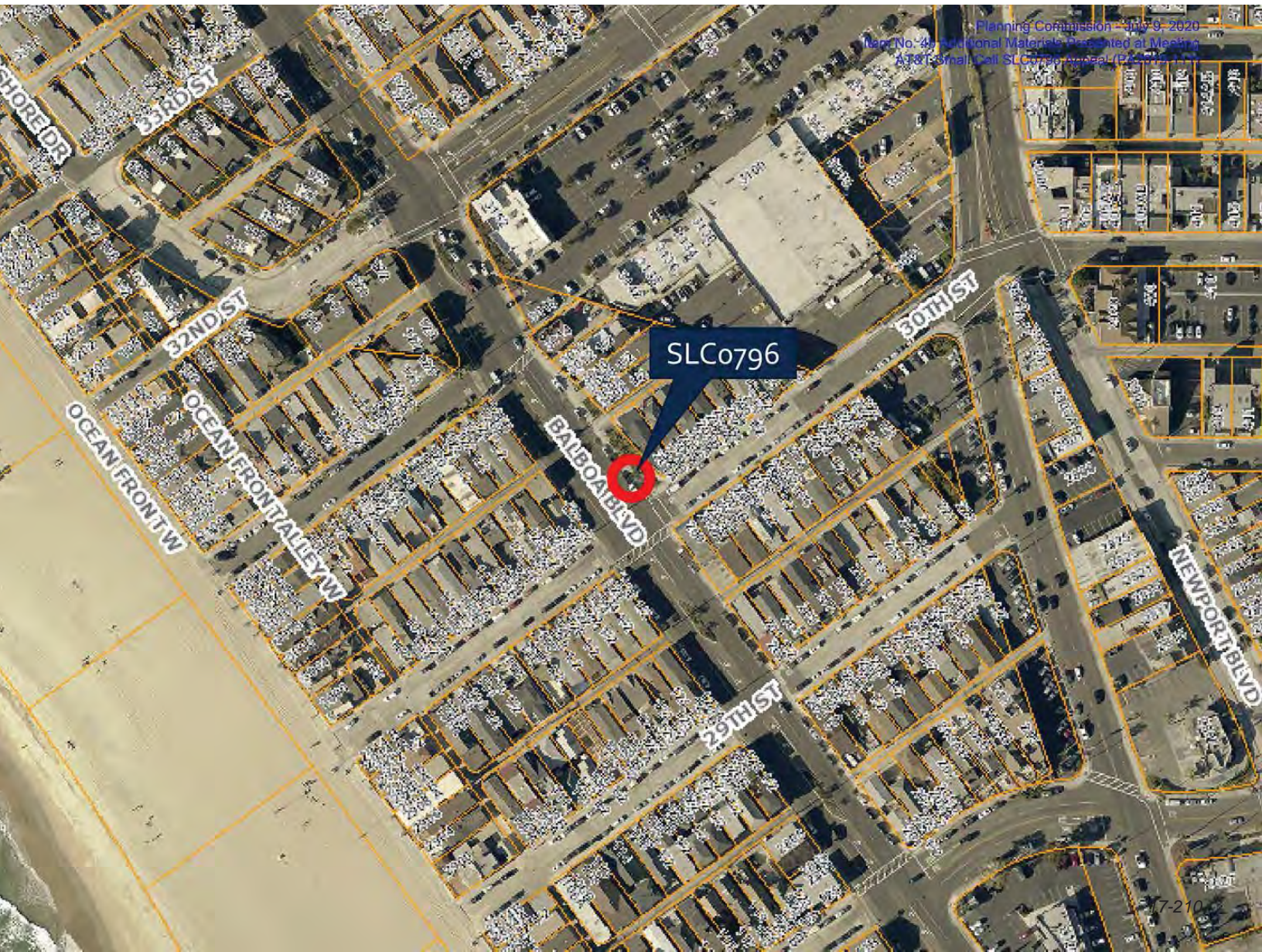
Public Hearing

July 9, 2020



Background

- **City's review limited by federal law**
 - Aesthetics
 - Land use
 - Environmental impacts
- **February 12, 2019, CC authorized MLA with New Cingular Wireless, LLC for use of City-owned streetlights**
- **April 16, 2020, Zoning Administrator approves MUP for installation on SLC0796**
- **April 28, 2020, appeal filed by Mark Pollock citing underlying issues with MLA**
- **June 4, 2020, pulled from PC agenda for additional analysis**

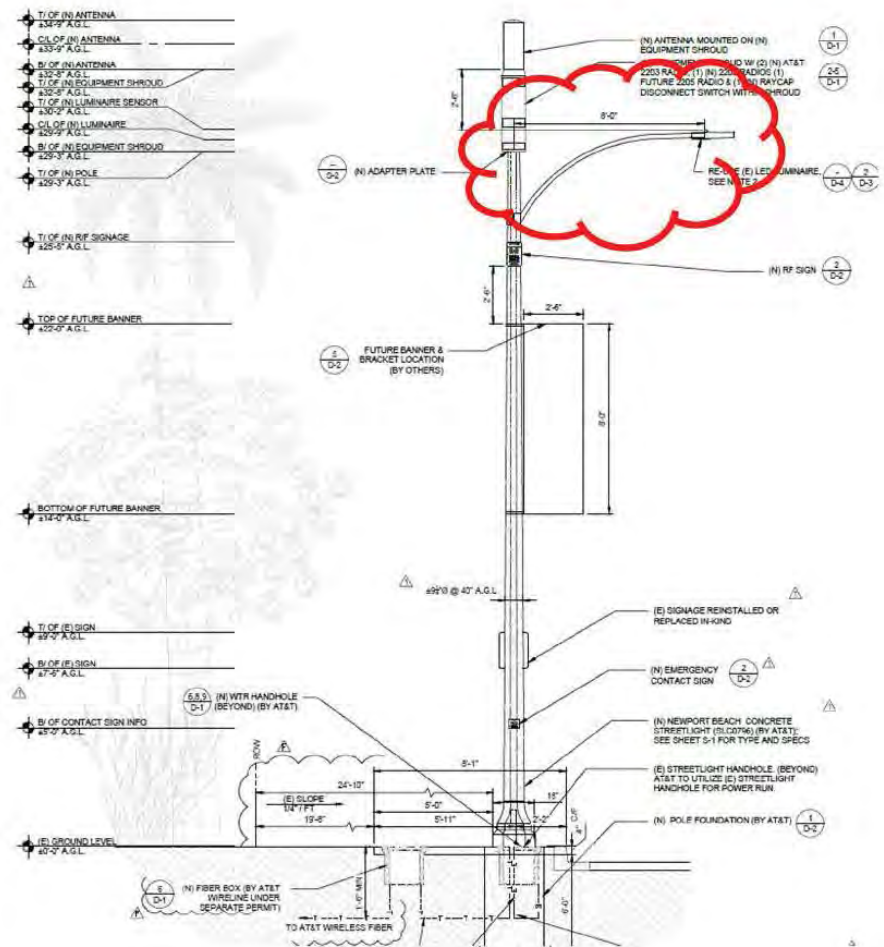






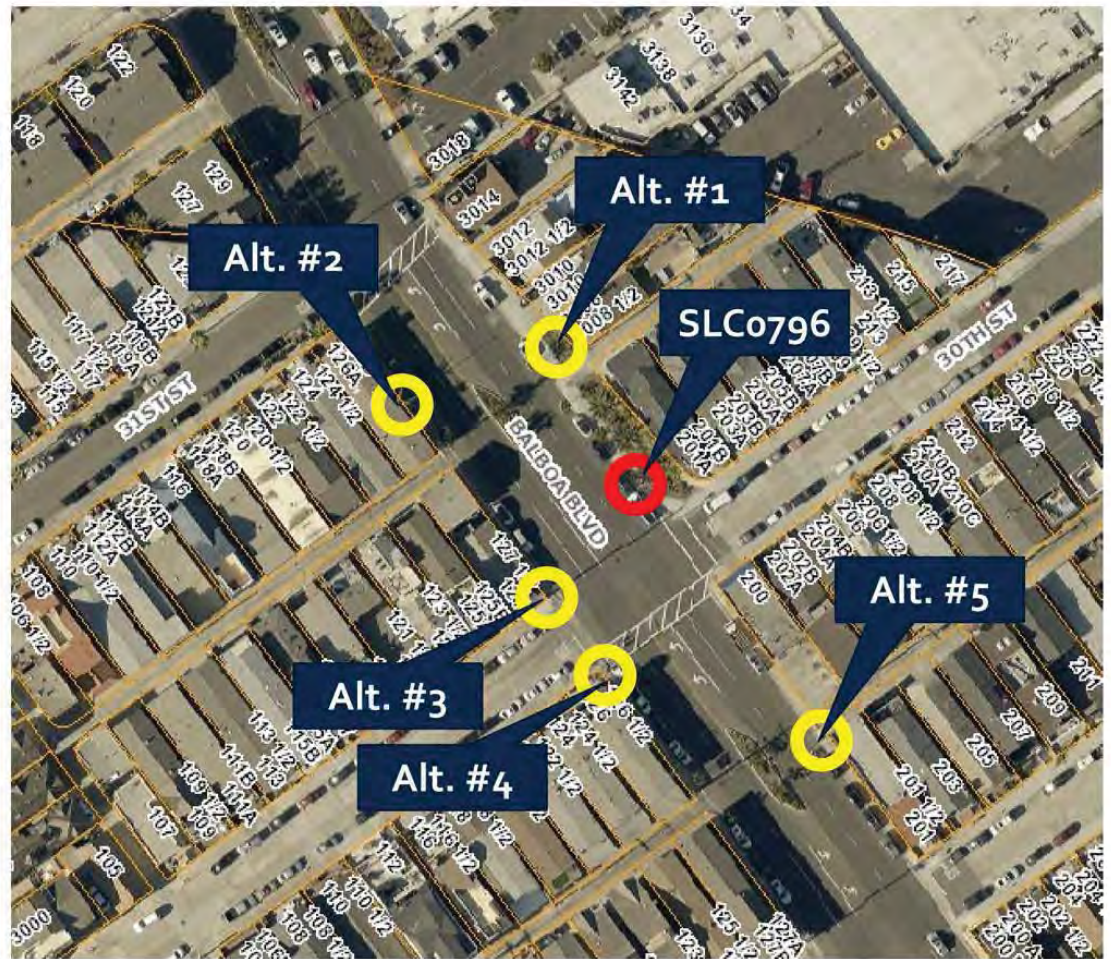
Request

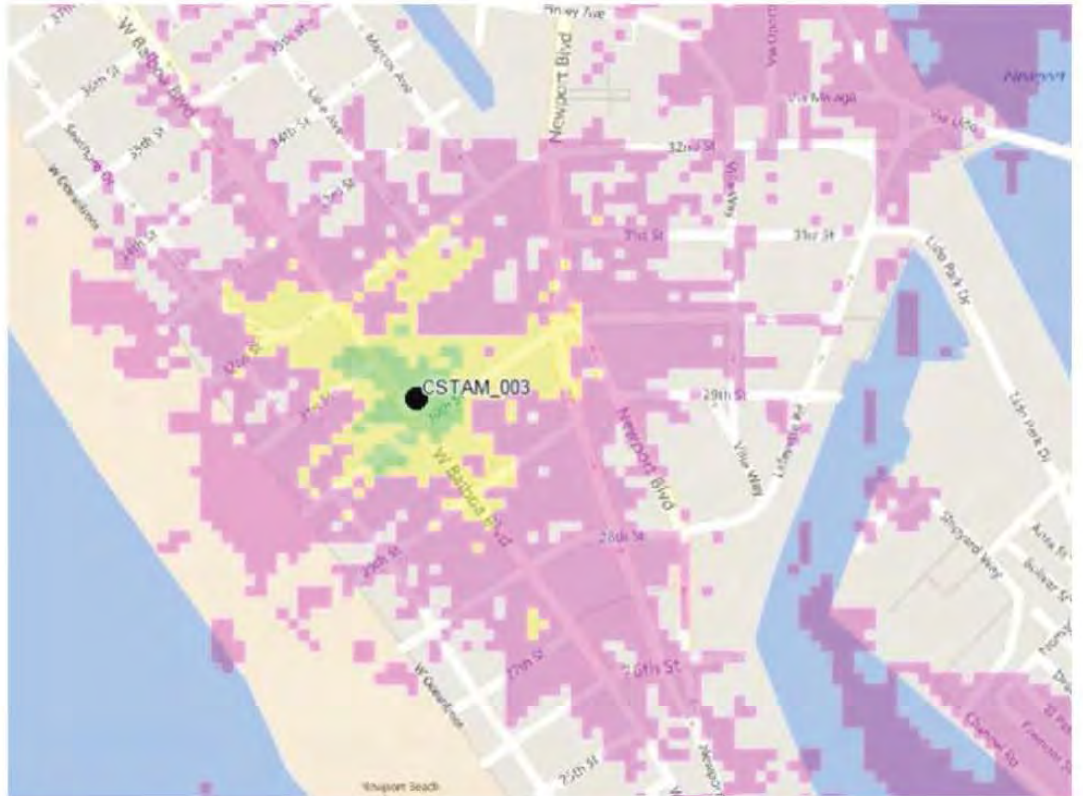
- Remove SLC0796
- Replace in same location
- Same luminaire height (light source)
- Height increase from 30'-2" to 34'-9"
- Antennas enclosed in screen
- Support equipment vaulted below grade
- Requires MUP for Class 3 Installation
- Also requires CDP





PROPOSED





PROPOSED

Findings

- ✓ **Consistent with LCP**
 - ✓ City-owned streetlight replacement
 - ✓ Not impeding access
 - ✓ Not impacting public view
 - ✓ Not impacting coastal resources
- ✓ **Consistent with ZC and GP**
 - ✓ Class 3 Installation
 - ✓ Minimized visual intrusion
- ✓ **Visual compatibility**
 - ✓ Blends with streetscape
 - ✓ Large parkway area
- ✓ **Complies with NBMC 20.49/21.49 standards**
 - ✓ <35 feet tall
 - ✓ Concealed within pole and underground
 - ✓ Alternative sites considered

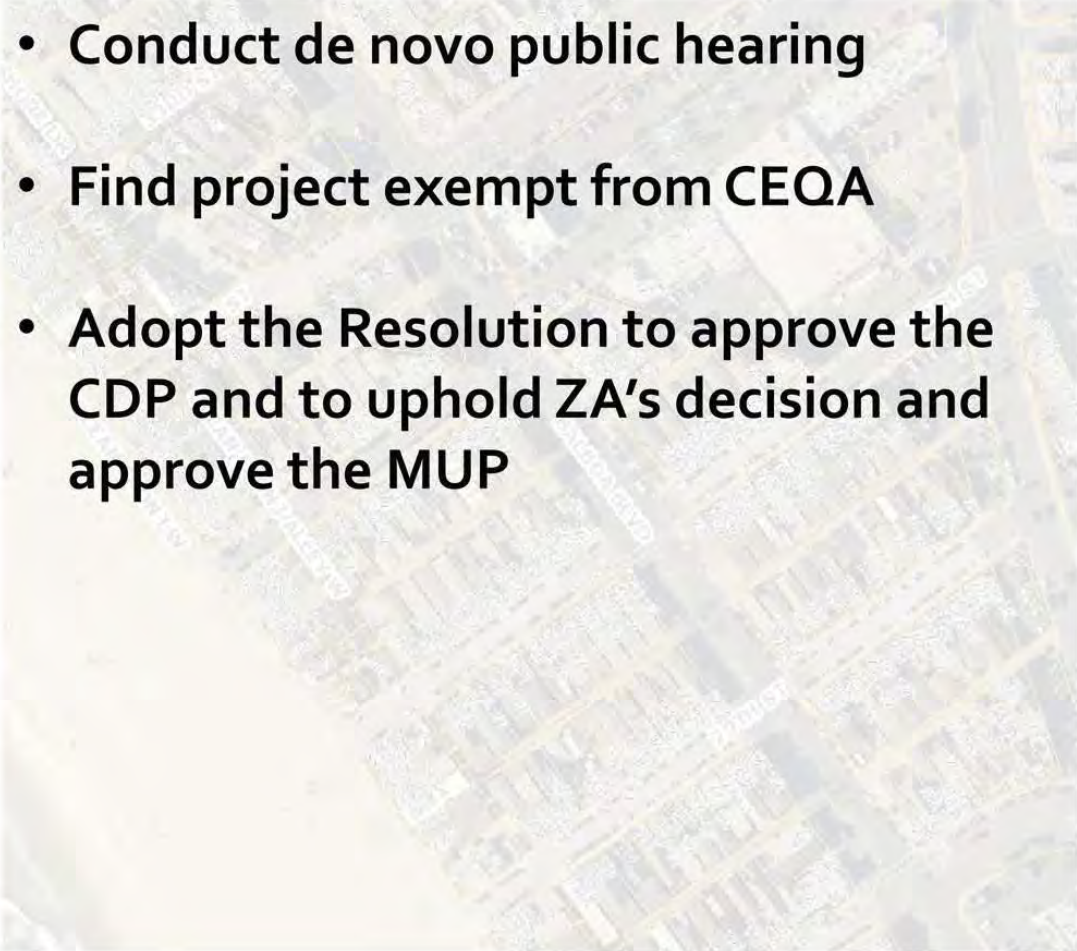


Conditions

- **COA#1 – Substantial conformance**
- **COA#3 – Comply with local, state and federal laws**
- **COA#5 – Replacement pole location**
- **COA#6 – Replacement pole design**
- **COA#7 – All equipment concealed**
- **COA#8 – All wiring concealed**
- **COA#11 – Height certification required**
- **COA#13 – Maintenance required**
- **COA#26 – Planning inspection required**
- **COA#36 – Traffic control plans**



Recommendation

- 
- **Conduct de novo public hearing**
 - **Find project exempt from CEQA**
 - **Adopt the Resolution to approve the CDP and to uphold ZA's decision and approve the MUP**



Contact

Benjamin M. Zdeba

949-644-3253

bzdeba@newportbeachca.gov

www.newportbeachca.gov



Questions?

AT&T and Small Cells

Enhancing our network to meet consumer demand today while preparing for the technologies and innovations of tomorrow.

Judy Woolen / AT&T External Affairs
Cory Autrey / Wireless Policy Group (AT&T Consultant)
Franklin Orozco / Ericsson (AT&T Consultant)

Small cells are critical to provide reliable wireless service

- 95% of Americans own a cellphone and 77% own a smartphone.¹
- More than 62% of American households rely on wireless as their primary means of communication.²
- **Public Safety:** 80% of all 911 calls originate from cell phones.³
- **Economic Development:** 98% of small businesses rely on wireless technology.⁴
- Residents use smartphones, tablets, laptops at home—all drive the need for reliable and expanded connectivity

1. <http://www.pewinternet.org/fact-sheet/mobile/>

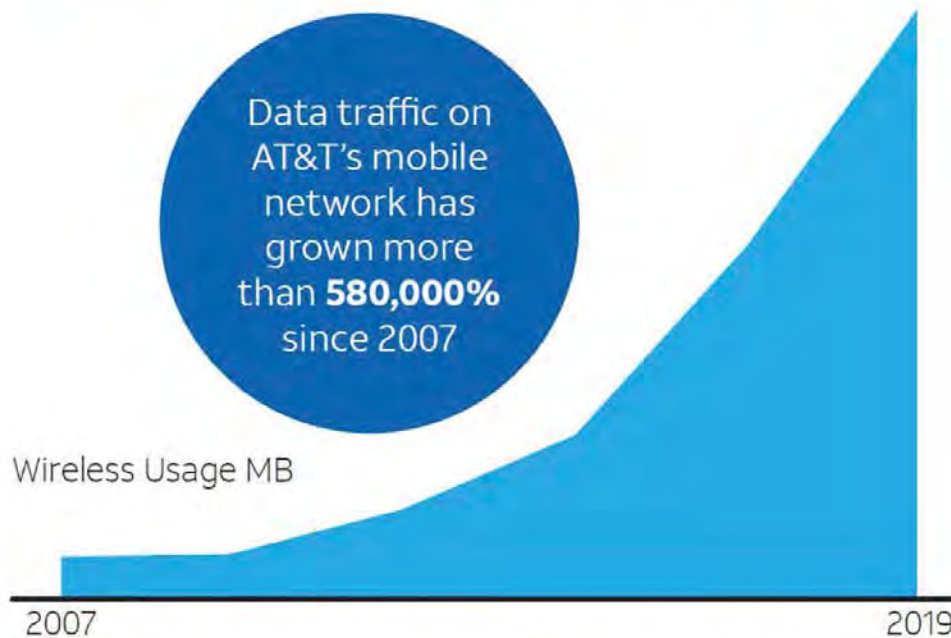
2. <https://www.cdc.gov/nchs/data/ohis/earlyrelease/wireless201605.pdf>

3. <https://www.nena.org/page/911Statistics>

4. https://about.att.com/innovationblog/2019/01/restaurant_industry_5g_updates.html

5. <https://smallbiztrends.com/2013/05/small-business-use-wireless.html>

What the demand looks like on AT&T's network:



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Small cells and public safety: Helping save lives



- **Better Calls:** Small cells provide better service by bolstering coverage and capacity.
- **Enhanced Network:** Relieves congestion that often occurs during an emergency.
- **Faster Data:** Allows for more information to be shared and accessed.
- New life saving capabilities:
 - Quickly download building floorplans or blueprints.
 - Enable video-intensive applications such as bomb squad robotic video.
 - Provide real-time traffic information to determine the fastest route to an emergency scene.

Network density must be upgraded to keep pace with surging demands for data.

Ways to Increase Wireless Network Density

- ① *Deploy more spectrum*
• Spectrum is **not readily available**



- ② *Improve spectrum efficiency*
• Repurposing existing spectrum
• e.g., reassigns 3G spectrum to 4G LTE



- ③ *Add more macro (cell sites) cells*
• Optimal for low density areas



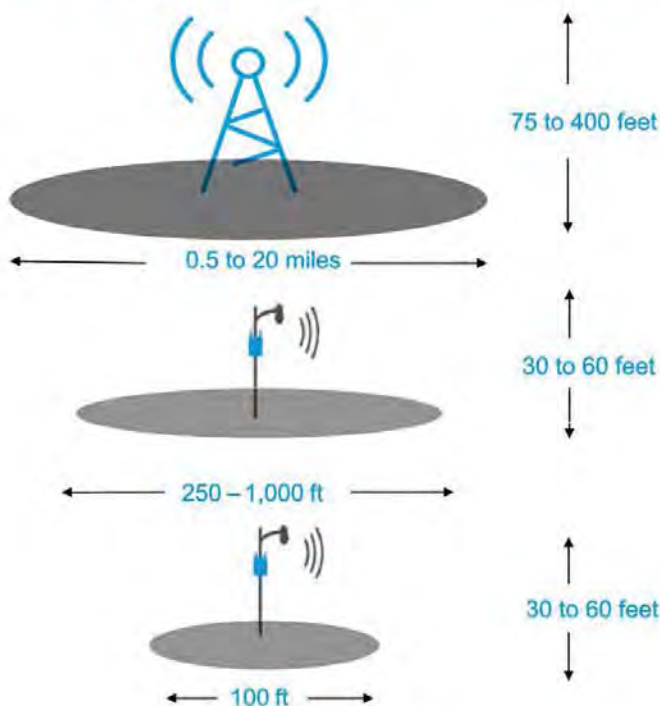
- ④ *Add more small cells*
• Offloads surrounding macro sites to reduce the need for new cell towers



Small cells are helping us keep up with rising consumer and business demand and prepare our network for the future.



The Footprint or Service Area of a Site is Determined By Height and By Frequency Band



Macrocell (4G LTE)

The common form factor for wireless communication. Higher height and lower frequencies used result in the larger service area.

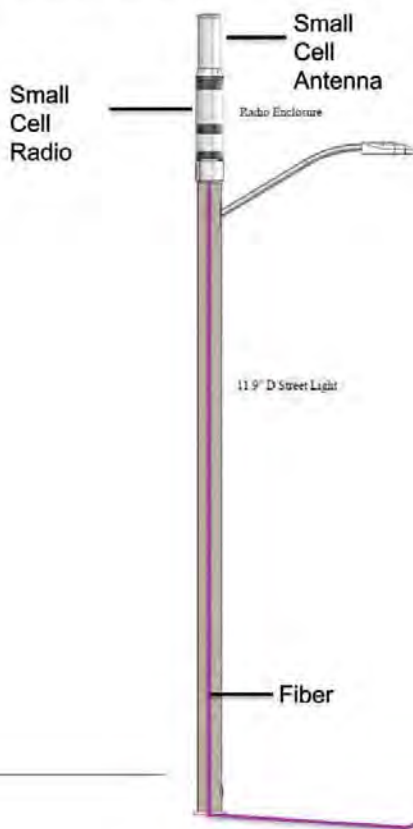
Current Small Cell (4G LTE)

Uses the same frequencies as macrocells, in addition to utilizing unlicensed spectrum. Due to lower height, footprint is smaller. Increases density or coverage in target areas.

Future Small Cell (5G)

Very high frequencies enabled by future 5G technology will result in a smaller footprint, but can be used to meet the exponential increased density demand. These frequencies are not used for wireless service today.

What is a Small Cell?



A New Network Architecture is Needed

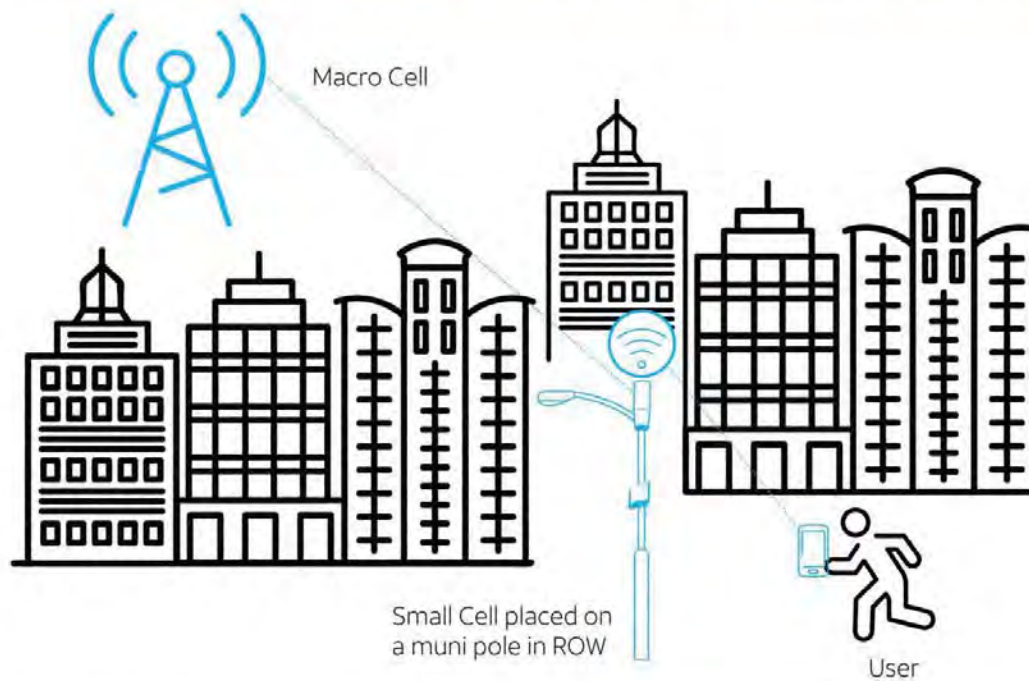
Small cells are **flexible, targeted** network solutions that cover a radius up to 250 – 1,000 feet and can be readily deployed to specific locations, including:

- Where customers are prone to experience connectivity issues
- Heavily populated areas that need more network density
- Areas that can't effectively be served by a traditional macro cell

This allows us to provide a better LTE experience today while also allowing us to prepare for the technologies of the future such as 5G, smart cities and new developments in the Internet of Things (IoT)

This photo depicts an example of what a small cell could look like. Actual size, shape and dimensions may vary by location.

Small cells help to bring the network “closer” to its users to deliver increased data density, faster connectivity speeds and an overall better wireless experience.



Radio Frequency (RF) Safety and Small Cells

- The Federal Communications Commission (FCC) has set strict safety standards for RF exposure across all wireless spectrum, including mmWave.
- Those regulations were developed by expert scientists and engineers after extensive reviews of scientific literature related to RF biological effects and supported by other federal agencies.
- Expert scientists and government agencies from organizations like the American Cancer Society, World Health Organization and FCC have stated repeatedly that wireless antennas operating in compliance with FCC regulations do not pose health concerns.
- AT&T has a rigorous Radio Frequency (RF) safety program to ensure compliance with FCC requirements.

Newport Beach and Small Cells

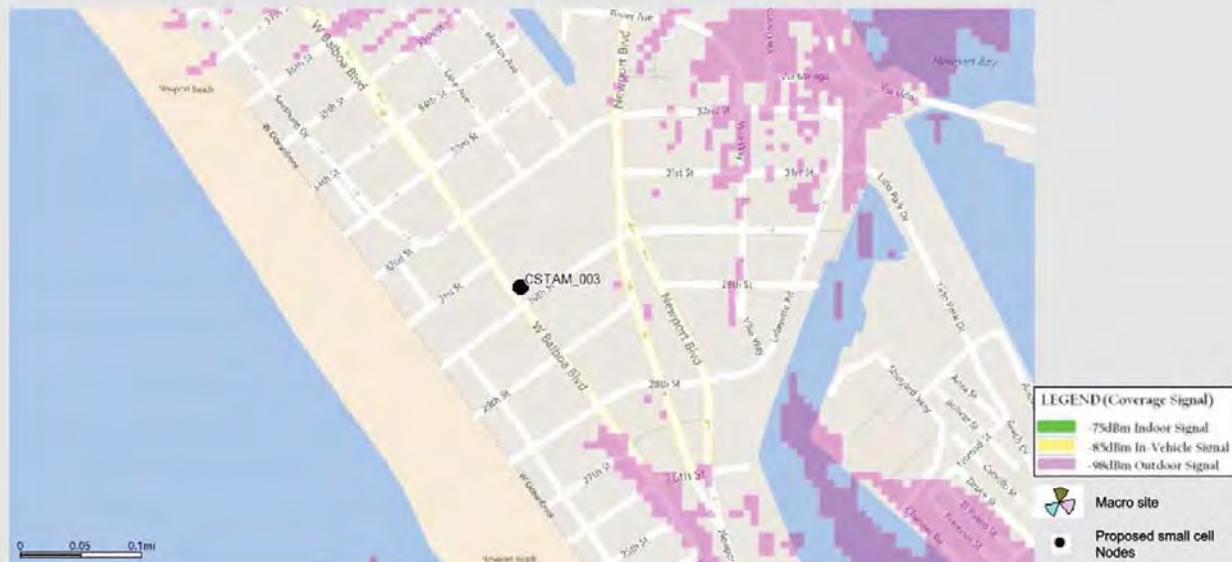
- AT&T/ New Cingular MLA approved by City Council February 2019 pertaining to use of City Street Lights for Small Cell.
- AT&T Mobility is the Manager of New Cingular Wireless PCS, LLC.
- AT&T MLA Approved Designs.



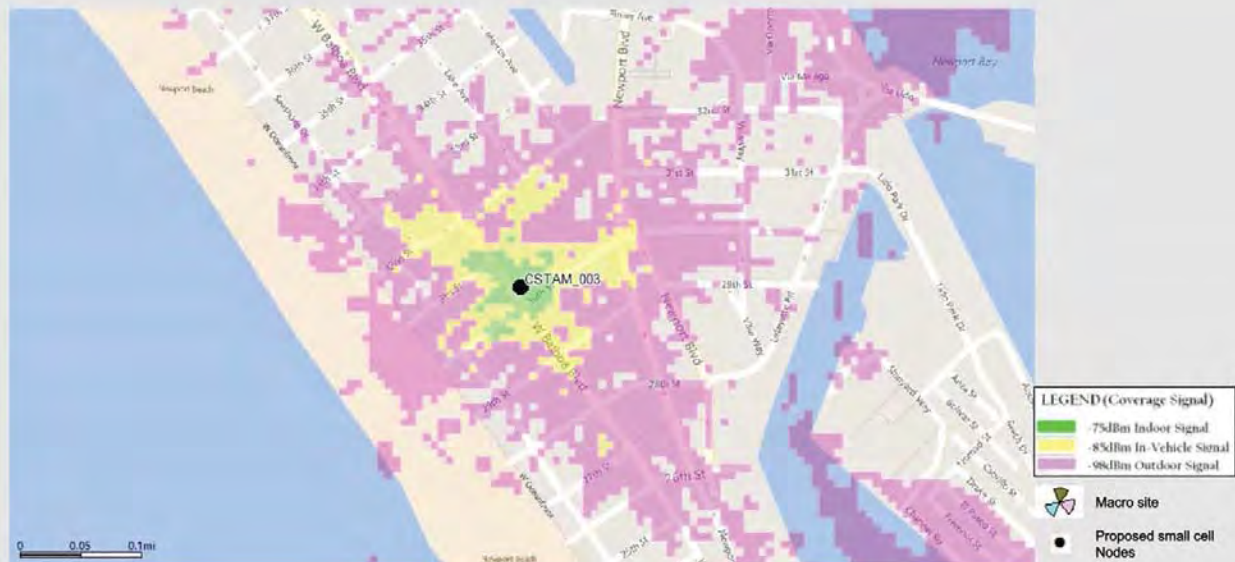
AT&T Small Cell Node Site ID: CRAN_RLOS_CSTAM_003 Alternative Sites Analysis

City streetlight No. SCL0796 located at the northwest corner of West Balboa Boulevard and 30th Street, Newport Beach.

LTE 1900_Coverage without Small cell



LTE 1900_Coverage with Small cell



Map of Small Cell Node CRAN_RLOS_CSTAM_003 and Alternative Sites



On this aerial map, AT&T's proposed Small Cell Node CSTAM_003 is designated by a red marker and the alternative sites are identified by yellow markers.

Small Cell Node CRAN_RLOS_CSTAM_003

Planning Commission - July 9, 2020
Item No. 4c Additional Materials Presented at Meeting
AT&T Small Cell SLC0796 Appeal (PA2019-111)



Proposed Node

City streetlight No. SLC0697 at the northwestern corner of West Balboa Blvd. and 30th Street.



- Design meets city code
- Existing palm trees and landscape buffer
- Available utilities
- Visually less intrusive

Alternative Site #1

Wood utility on West Balboa Blvd., north side of 30th Street.



- Exposed equipment on cross arm
- Difficult to screen
- Underground assessment district
- Visually more intrusive

Alternative Site #2

City streetlight No. SLC0767 west side of West Balboa Blvd., south of 31st Street



- Conflicts with existing overhead lines
- ADA requirements issues

Alternative Site #3

Wood utility on northwest of West Balboa Blvd and 30th Street.



- Exposed equipment on cross arm
- Difficult to screen
- Underground assessment district
- Visually more intrusive

Alternative Site #4

City streetlight No. SLC0768 southwest corner of West Balboa Blvd and 31st Street.



- Conflicts with existing overhead lines
- ADA requirements issues

Alternative Site #5

City streetlight No. SLC0766 west side of West Balboa Blvd, south of 30th Street



- Conflicts with existing overhead lines
- ADA requirements issues



Attachment G

Planning Commission Meeting Minutes from
July 9, 2020

**NEWPORT BEACH PLANNING COMMISSION MINUTES
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, JULY 9, 2020
REGULAR MEETING – 6:30 P.M.**

I. **CALL TO ORDER** – The meeting was called to order at 6:33 p.m.

II. **PLEDGE OF ALLEGIANCE** – The pledge was led by Commissioner Klaustermeier

III. **ROLL CALL**

PRESENT: Chair Peter Koetting (remote), Vice Chair Erik Weigand, Secretary Lee Lowrey, Commissioner Curtis Ellmore, Commissioner Sarah Klaustermeier, Commissioner Lauren Kleiman, Commissioner Mark Rosene

ABSENT: None

Staff Present: Community Development Director Seimone Jurjis, Deputy Community Development Director Jim Campbell, Assistant City Attorney Yolanda Summerhill, City Traffic Engineer Tony Brine, Senior Planner Ben Zdeba, Assistant Planner Patrick Achis, Assistant Planner Melinda Whelan, Administrative Support Specialist Clarivel Rodriguez, Administrative Support Technician Amanda Lee

IV. **ELECTION OF OFFICERS**

ITEM NO. 1 ELECTION OF OFFICERS

Summary:

The Planning Commission's adopted rules require the election of officers at its annual meeting, which occurs at the first meeting of July each year. Officers include the Chair, Vice Chair, and Secretary and they would serve for a one-year term.

Recommended Action:

1. Find this action not subject to the California Environmental Quality Act ("CEQA") pursuant to 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;
2. Nominate Planning Commission officers consisting of Chair, Vice Chair, and Secretary; and
3. Appoint the officers by majority approval of a motion either individually or as one motion for all positions.

Motion made by Commissioner Lowrey and seconded by Commissioner Kleiman to approve the nomination of Commissioner Weigand for Chair of the Planning Commission.

AYES: Koetting, Weigand, Lowrey, Ellmore, Klaustermeier, Kleiman, and Rosene

NOES:

ABSTAIN:

ABSENT:

Motion made by Chair Weigand and seconded by Commissioner Klaustermeier to approve the nominations of Commissioner Lowrey for Vice Chair and Commissioner Kleiman for Secretary of the Planning Commission.

AYES: Weigand, Lowrey, Ellmore, Klaustermeier, Kleiman, Koetting, and Rosene

NOES:

ABSTAIN:

ABSENT:

V. PUBLIC COMMENTS

Jim Mosher inquired whether an application for the second AT&T small cell installation recently approved by the Zoning Administrator will need to request a coastal development permit and whether Planning Commission meetings will continue in the current format after City Hall closes on July 13.

VI. REQUEST FOR CONTINUANCES

None

VII. CONSENT ITEMS**ITEM NO. 2 MINUTES OF JUNE 18, 2020**

Recommended Action: Approve and file

Motion made by Vice Chair Lowrey and seconded by Secretary Kleiman to approve the minutes of the June 18, 2020, meeting with the revisions suggested by Mr. Mosher.

AYES: Weigand, Lowrey, Kleiman, Ellmore, Klaustermeier, Koetting

NOES:

ABSTAIN: Rosene

ABSENT:

VIII. PUBLIC HEARING ITEMS**ITEM NO. 3 HOAG DEVELOPMENT AGREEMENT ONE-YEAR EXTENSION (PA2020-065)**

Site Location: 1 Hoag Drive

Summary:

The City and Hoag Memorial Hospital Presbyterian ("Hoag") entered into a Development Agreement ("Agreement") in 1994 to ensure the orderly development of the hospital over time. On July 23, 2019, the City Council approved a third amendment to extend the 25-year Term of the Agreement for an additional ten (10) years in exchange for certain community benefits provided by Hoag. Hoag has requested a fourth amendment to extend the Term of the Agreement for one (1) additional year in light of COVID-19-related impacts that have constrained their ability to plan for the future development of the hospital campus consistent with the amended Agreement. The Agreement grants Hoag the vested right to develop the hospital campus consistent with an extensive set of regulations and mitigation measures, all of which would remain unchanged by this proposed fourth amendment.

Recommended Action:

1. Conduct a public hearing;
2. Find all significant environmental concerns for the proposed project have been addressed in a previously certified Final Environmental Impact Report (EIR) and Supplemental EIR, and that the City of Newport Beach intends to use said document for the above noted project, and further that there are no additional reasonable alternative or mitigation measures that should be considered in conjunction with said project; and
3. Adopt Resolution No. PC2020-026 recommending City Council adoption of Development Agreement No. DA2020-003 amending Amended and Restated Development Agreement No. 5 to extend the Term of the Agreement by an additional one (1) year.

Commissioner Ellmore recused himself from the item as he serves on an advisory panel for Hoag Hospital.

Assistant Planner Patrick Achis reported Hoag Hospital requests a fourth amendment of the Development Agreement to extend the term by one year in light of COVID-related impacts constraining its ability to plan for development. Under the current Development Agreement, Hoag has the right to develop the hospital campus consistent with an extensive set of regulations and mitigation measures, none of which are affected by the proposed amendment. In 2019, the City Council approved an extension of the Development Agreement to

2029 in exchange for community benefits. With approval of the proposed amendment, the term would extend to 2030. Hoag intends to fully exercise the development allowances under the agreement and requires one additional year to account for COVID-19 complications and delays to planning and development.

In response to Commissioner Klaustermeier's question, Assistant Planner Achis advised that the terms relative to the public benefits will not be affected by the proposed amendment.

Commissioners Rosene and Klaustermeier and Vice Chair Lowrey disclosed no ex parte communications. Secretary Kleiman and Commissioner Koetting and Chair Weigand disclosed communications with the applicant's consultant.

Chair Weigand opened the public hearing.

Sanford Smith, Hoag Hospital Senior Vice President for Real Estate and Facilities, indicated the majority of planning work has been delayed in order to address the current COVID-19 crises.

In reply to Chair Weigand's inquiry, Mr. Smith related that elective procedures have been postponed and patients have avoided hospital services in response to the stay-at-home order. The hospital has focused on crisis response. Planning for the hospital campus has not been and will not be a focus for at least a year.

Jim Mosher, a member of the public, commented that if the applicant's consultant is a lobbyist and has not registered with the City, he should do so. Mr. Mosher questioned whether the public benefit provided in the Development Agreement should be amended to allow some flexibility in its use.

Chair Weigand did not believe renegotiation of Development Agreement terms is within the Planning Commission's purview.

Chair Weigand closed the public hearing.

Motion made by Commissioner Rosene and seconded by Commissioner Klaustermeier to approve the staff recommendation.

Substitute Motion made by Commissioner Koetting and seconded by Vice Chair Lowrey to approve a two-year extension of the Development Agreement Term.

Chair Weigand shared his opinion of the Development Agreement in light of the services Hoag Hospital provides to the City and the community.

The **Substitute Motion** was approved by the following vote:

AYES: Weigand, Lowrey, Kleiman, Klaustermeier, Koetting, Rosene

NOES:

RECUSED: Ellmore

ABSENT:

ITEM NO. 4 AT&T SMALL CELL SLC0796 APPEAL (PA2019-111)

Site Location: Public right-of-way, City Streetlight Number SLC0796, at the northwestern corner of Balboa Boulevard and 30th Street

Summary:

An appeal of the Zoning Administrator's decision on April 16, 2020, to approve a minor use permit allowing the installation of a small cell wireless facility on a City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on Balboa Boulevard and includes the following: (1) Removal and replacement of an existing City streetlight; (2) Installation of a small cell wireless facility that consists of four remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter antenna screening shroud. This equipment would be fixed to the top of the replaced streetlight pole for a maximum height of 34 feet, 9 inches. Support equipment will be in an adjacent below-grade

vault. Also included is the review of a coastal development permit pursuant to Newport Beach Municipal Code (NBMC) Section 21.49.020(B).

Recommended Action:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the State CEQA (California Environmental Quality Act) Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment and the exceptions to the Class 3 exemption under Section 15300.2 do not apply; and
3. Adopt Resolution No. PC2020-018 approving Coastal Development Permit No. CD2020-052 and affirming the decision of the Zoning Administrator approving Minor Use Permit No. UP2019-030 with the attached Findings and Conditions.

Senior Planner Ben Zdeba reported small cell is new technology that is being deployed globally. The City's review is largely limited by federal law to primarily aesthetics, land use, and environmental impacts. The Planning Commission cannot consider safety and health hazards due to radio frequency emissions when making its decision. The City Council authorized a Master License Agreement (MLA) for use of City-owned streetlights, including the proposed streetlight. On April 16, 2020, the Zoning Administrator approved applications for this facility and a second facility. Mark Pollock filed an appeal on April 28, 2020, and cited underlying issues with the MLA. On June 4, the Planning Commission continued a hearing of this item to allow further analysis of the need for a coastal development permit. Applications for two additional facilities will return to the Zoning Administrator for coastal development permits.

Senior Planner Zdeba continued that the Zoning Administrator referred the application for a coastal development permit for facility SLC0796 to the Planning Commission for hearing with the appeal as a single project. The proposed location is adjacent to an unusually large parkway area adjacent to a residential district. The entire neighborhood is zoned residentially except for one parcel zoned visitor serving commercial where a laundromat is located. The location on the wider thoroughfare of Balboa Boulevard will limit obstructions to the transmission of signals. The existing streetlight will be replaced with a similar streetlight, but the height of the streetlight pole will increase from 30 feet 2 inches to 34 feet 9 inches. Antennas will be enclosed in a screening shroud atop the streetlight, and all support equipment will be vaulted below grade. The height of the proposed luminaire or light source will remain the same as the existing luminaire and other luminaires along City streets. The applicant considered five alternative sites and determined they are infeasible or inferior to the proposed site. Based on the applicant's coverage maps, the proposed facility will improve coverage. Staff found that the facility will not impede access, impact public view or coastal resources; is consistent with the Zoning Code and General Plan; is visually compatible; and complies with Title 20 and Title 21 standards. Staff has prepared several conditions of approval that address conformance with the submitted design and plans and compliance with State and Federal laws.

In answer to Commissioner Rosene's queries, Senior Planner Zdeba was unsure if the City maintains the landscape area or if the City has a maintenance agreement with the adjacent property owner. Assistant City Attorney Yolanda Summerhill advised that the MLA pertains to real property management rather than land use. Staff has confirmed that insurance requirements contained in the MLA have been met.

In response to Chair Weigand's inquiries, Senior Planner Zdeba indicated discussion of a potential refund of the appeal fee could occur outside the meeting. The Planning Commission may include a recommendation for a refund in its decision. The new fire station is likely outside the coverage area of the proposed facility.

Chair Weigand explained that regardless of the appeal, the application would have returned to the Zoning Administrator for a coastal development permit. Perhaps Commissioners will consider waiving the appeal fee.

In reply to Secretary Kleiman's question, Assistant City Attorney Summerhill explained that the Commission may make the appropriate findings to uphold the Zoning Administrator's decision and should take public testimony.

Secretary Kleiman expressed concern about the Planning Commission's ability to consider the issues raised in the appeal.

All Commissioners disclosed no ex parte communications.

The Planning Commission recessed to allow staff to address technical issues with the audio and visual system.

After the technical issues were resolved, Chair Weigand opened the public hearing.

Cory Autrey, applicant's representative, shared statistics regarding use of cell phones and wireless services and data usage. Network density must be upgraded to keep pace with surging demands for data. Small cells cover a radius up to 250 to 1,000 feet; provide increased data density and faster connectivity speeds; and comply with strict standards for radio frequency (RF) exposure.

Franklin Orozco, applicant's consultant, stated the small cell facility will increase network capacity to better handle traffic generated by residents and visitors. The palm trees adjacent to the proposed site will soften the appearance of the facility. The applicant found placing a facility in alternative sites is not feasible because utility poles at some sites are subject to future undergrounding; shrouding (screening) a facility on a utility pole is difficult; and the limited sidewalk space around streetlights at alternative sites will not comply with Americans with Disabilities Act (ADA) requirements.

In reply to Vice Chair Lowrey's inquiry, Mr. Orozco indicated the small cell facility supports 4G LTE technology, and 5G technology will require modification of the shroud.

Mark Pollock, appellant's representative, explained that the appeal is based on issues regarding liability, insurance coverage, and indemnity such that the City could be held responsible in the event of a catastrophe. Municipal Code Section 20.49.080 requires a telecom company to obtain an MLA and a minor use permit. The City's MLA is with New Cingular Wireless PCS, LLC. The MLA does not mention AT&T. The certificate of insurance checklist submitted for the project lists the insured as AT&T. AT&T is not an entity. The manager of New Cingular Wireless is AT&T Mobility Corporation, which is not registered to do business in the state of California. AT&T Mobility Corporation has no legal right to request a permit. If AT&T wishes to apply for a permit, it should enter into an MLA under its corporate name. Twelve corporations and 18 LLCs using the name AT&T and one corporation and eight LLCs using the name AT&T Mobility are registered with the State of California. AT&T should identify which entity is applying for a permit and which entity has signed an MLA. Condition of Approval No. 34 requires the applicant to indemnify the City. If the applicant is a nonexistent dba, the indemnity is worthless. New Cingular Wireless should provide proof of general liability insurance that lists the City of Newport Beach as an additional insured. The City cannot consider electromagnetic field (EMF) emissions in approving the application, but it can consider EMF emissions when requiring insurance.

In response to Commissioner Koetting's questions, Mr. Pollock indicated the appellant wishes to remain anonymous as allowed by the Municipal Code. He reported he has no pending appeals based on this issue in any other cities. He has expressed this issue in a letter to the Public Works Director in the City of Napa in a separate matter.

Mr. Autrey advised that AT&T has provided all necessary documentation that shows the relationship between AT&T Mobility and New Cingular Wireless and AT&T Incorporated as the parent company. The signing authority for the MLA outlined the relationship between New Cingular and AT&T. AT&T's insurance coverage does not contain an exclusion for EMF exposures. New Cingular self-insures pollution liability exposures and has provided a certificate of self-insurance.

Assistant City Attorney Summerhill related that New Cingular is an entity with AT&T and would be subject to the MLA.

In answer to Secretary Kleiman's queries, Mr. Pollock stated the appellant resides in the City of Newport Beach and in the neighborhood where the facility is proposed. He was not aware of any plans or intentions the appellant may have to appeal any other decisions on this applicant's projects.

In response to Chair Weigand's inquiries, Senior Planner Zdeba reported Verizon's small cell installations provide a public benefit of coverage for the City's public safety departments, and that exempts Verizon from minor use

permit and coastal development permit requirements. Assistant City Attorney Summerhill stated the City's indemnifications are typically identical for all agreements. Community Development Director Seimone Jurjis advised that he was involved in the negotiations with AT&T regarding the MLA. Because MLAs are more of a template, he believed the City's MLAs with AT&T and Verizon are substantially the same with some nuanced differences. The indemnification and liability provisions of the two MLAs are substantially the same. The City Council did not focus on liability when discussing the MLAs. The Council is not considering amendments to the MLAs unless one of the carriers proposes an amendment. The Planning Commission's decision may be appealed to the City Council or the California Coastal Commission.

Jim Mosher noted a Planning Commission denial of a coastal development permit cannot be appealed to the Coastal Commission. He inquired whether the applicant considered the rooftops of commercial buildings in the Pavilion Shopping Center as alternative sites.

Mr. Autrey explained that the ideal location for small cell facilities is the public right-of-way because the consistent height of streetlights and utility poles provides service to the most people. Private property options do not fulfill technical requirements for small cell facilities.

In reply to Chair Weigand's question, Mr. Autrey indicated a macro cell is a larger facility that propagates service over a larger area. Most dense residential areas do not have sites that can be zoned for macro cells. Small cell technology will benefit residential areas by providing the needed capacity and net density.

Chair Weigand closed the public hearing.

Secretary Kleiman believed the appeal fee is nominal compared to the time and resources staff has devoted to the appeal. The appellant's purpose for filing the appeal has been fulfilled in that the City is aware of the appellant's concerns. The City Attorney's Office will ensure the City is fully protected.

Commissioner Klaustermeier remarked that large corporations operate under different entities. In answer to her query, Assistant City Attorney Summerhill indicated the Real Property Department will ensure compliance with the terms of the MLA.

Motion made by Secretary Kleiman and seconded by Commissioner Klaustermeier to (1) find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the State CEQA (California Environmental Quality Act) Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3; and (2) adopt Resolution No. PC2020-018 approving Coastal Development Permit No. CD2020-052 and affirming the decision of the Zoning Administrator approving Minor Use Permit No. UP2019-030 with the proposed Findings and Conditions.

AYES: Weigand, Lowrey, Kleiman, Ellmore, Klaustermeier, Koetting, and Rosene

NOES:

ABSTAIN:

ABSENT:

ITEM NO. 5. SHELL SERVICE STATION CAR WASH ADDITION (PA2016-093)
Site Location: 1600 Jamboree Road

Summary:

A general plan amendment and conditional use permit to construct an automated car wash in conjunction with an existing service station. A general plan amendment is requested to increase the maximum floor area limit for the site by 1,100 square feet to accommodate the proposed car wash. A conditional use permit is requested to allow the addition of the proposed car wash. This item was continued from the November 8, 2018, Planning Commission hearing. If approved, this Conditional Use Permit would supersede Use Permit No. UP2011-028.

Recommended Action:

1. Conduct a public hearing;

2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
3. Adopt Resolution No. PC2020-022 recommending City Council approval of General Plan Amendment No. GP2018-001 and Conditional Use Permit No. UP2016-025.

Assistant Planner Melinda Whelan reported the site is located at the corner of Jamboree Road and San Joaquin Hills Road and within the Big Canyon Planned Community. The site was designed for a service station and has been operated at the site since 1970. In 2014, the use permit was amended to allow expansion of the convenience store and to add an Alcoholic Beverage Control (ABC) license. The applicant proposes an addition for a car wash. A General Plan amendment is needed to increase the maximum allowed floor area for the site to accommodate the structure. The applicant seeks relief from the 30-foot front yard setback requirement. The area adjacent to the right-turn lane acts more as a rear yard than a front yard, and the right-turn lane does not provide access to the site. Guidelines within the Municipal Code recommend car wash services be located toward the rear of sites to accommodate proper queuing and circulation. In September 2018, the Planning Commission considered this application and continued the item so that the applicant could conduct additional public outreach and improve the design to mitigate potential noise impacts to nearby residential neighborhoods.

Assistant Planner Whelan further reported the applicant has reduced the proposed hours of operation and added two wing walls for sound attenuation. The applicant proposes 13 onsite parking spaces; required parking for the site is seven spaces. The triangular shape of the site prevents relocation of the car wash without affecting the existing onsite circulation and access to gas pumps. The wing walls will act as noise barriers to the adjacent residences and the plan provides landscape areas facing the right-turn lane. The residences nearest the site are located 115 feet and 120 feet away from the proposed car wash. An updated noise study found the projected noise levels generated by a car wash without wing walls would be below the maximum allowed daytime limit at the most sensitive locations. The addition of wing walls would further reduce projected noise levels. Proposed conditions of approval will require the project to meet the design requirements of the noise study, including the exterior vacuum location and reduced hours of operation.

All Commissioners disclosed ex parte communications with the applicant's consultant; Chair Weigand disclosed communications with nearby residents; and Commissioner Koetting disclosed communications with a nearby resident.

In response to Commissioner Koetting's inquiries, Assistant Planner Whelan advised that staff considered relocating the car wash closer to the convenience store, but it would negatively affect circulation and access to gas pumps. The wing walls will be constructed in compliance with sound attenuation requirements. They will be masonry walls. Staff considered the triangular shape of the lot, the site being surrounded by streets, guidelines recommending the location of car wash services at the rear of parcels, the intent to apply the 30-foot setback to street frontages that provide access to the site, and lack of access to the site from the turn lane as factors in support of granting a reduction in the setback. The existing trees should be maintained on the site, and the applicant proposes additional landscaping along the perimeter of the site.

In reply to Commissioner Ellmore's queries, Assistant Planner Whelan indicated the City Traffic Engineer's standard requirement for car wash queues is five vehicles. City Traffic Engineer Tony Brine explained that a sixth car would extend beyond the queuing lane and block the end parking stall. A total of eight vehicles could queue for the car wash without impacting traffic on Jamboree Road. Signage directing queuing has not been proposed.

Chair Weigand opened the public hearing.

Steve Rosansky, applicant's representative, shared photos of the site. The plans now include 10-foot wall extensions to mitigate noise, additional plantings behind the car wash, and relocation of the trash enclosure. The entrance and exit doors for the car wash will be made of plexiglass and canvas. The car wash queue will accommodate five vehicles. Seven parking spaces will be located along the right-turn lane, and six spaces will be located in front of the convenience store. Vacuums and air and water service have been relocated to the area in front of the convenience store to reduce noise for residents. The applicant originally proposed hours of operation of 6:00 a.m. to 11:00 p.m. and has modified the hours to 7:00 a.m. to 10:00 p.m. He shared a video of a similar car wash in operation with closing doors to demonstrate noise generated by the car wash. The maximum allowed

daytime noise level is 55 Decibels (dBA), and noise levels projected for all receptor sites were less than 40 dBA. Projected noise levels for the vacuums were approximately 30 dBA. The applicant offered the homeowners' association funding for additional landscaping along the berm, but the homeowners' association declined the offer. He described the design differences between the car washes at the Chevron service station and the Shell station and his outreach efforts with the homeowners' association, Park Newport, and residents. The existing trees and planter at the rear of the property will remain. The trees will be protected during construction. Relocating the car wash closer to the convenience store will result in relocation of the delivery entrance to the convenience store, obstructions to gas pump access, and changes in circulation. Signage directing vehicles to queuing areas for the car wash can be installed. The applicant agrees to the proposed conditions of approval.

In answer to Commissioner Koetting's inquiries, Mr. Rosansky indicated relocation of the hydrogen station has not been considered but would be a huge expense. A car wash takes approximately 5 minutes to complete. The similar car wash shown in the video is located in Irvine. A condition of approval can be added to require functioning doors on the car wash. Ahmad Ghaderi, project engineer, reported the car wash will be constructed of blocks with a sheet-metal cover. The wing walls will be constructed of blocks. The length and height of the walls meet the acoustical requirements of the noise analysis.

Marilyn Brewer, Canyon Mesa, advised that the gas station and convenience store have created loud and unanticipated noises. Noise travels differently from the site and impacts the neighborhood to a greater degree. The car wash cannot be relocated because the site is fully utilized.

Michael Klaus, Big Canyon HOA, opposed the applicant's request for a variance from the setback. Building a car wash between the service station and residences will cause sound levels to exceed 55 dBA. The project will negatively impact residents' quality of life and real estate values.

Paul Geary, Canyon Mesa, expressed concerns about the lack of a demonstrated need for a car wash and the financial impact of the project on residences. Two car washes are already located within a half mile of the site. He urged the Planning Commission to deny the application.

Helga Meyer, 33 Rue Fontainebleau, opposed the project because the car wash will add to existing traffic noise, traffic in the queue will generate pollution, the project will reduce real estate values and residents' ability to enjoy their homes.

Chrissy Cruze, 3 Rue Fontainebleau, shared issues caused by the development of a nearby apartment complex and increased noise generated by the expansion of the convenience store.

Gerald Giannini, Rue Fontainebleau, believed the proposed car wash does not adequately mitigate sound and requested the Planning Commission deny the application. The car wash shown in the video does not operate as depicted. His sound measurements at the car wash were considerably higher than projected in the noise study.

Leonard Simon, 37 Rue Fontainebleau, opposed the project. The metal sheathing would amplify noise. The project will increase traffic, noise, and pollution. Canyon Mesa should be considered an environmentally sensitive area such that the CEQA exemption is not allowed. The hydrogen facility is a safety issue.

Mark Coleman, 34 Rue Fontainebleau, discussed the lack of need for an additional car wash. The automated car wash will not create jobs. The project will damage the value of properties in Canyon Mesa. Reducing the setback indicates the property is already over-built.

Gerald Giannini read a letter from David Kuhn, 30 Rue Fontainebleau, who adamantly opposed the project because a service station is incompatible and not harmonious with a residential development and approving additional development on the site does not consider the cumulative effects of prior modifications to the site.

James Sanders, 4 Rue Fontainebleau, related his difficulty selling his home even after price reductions. Residents do not want the extra noise and traffic that is generated by the service station.

Lynn Swain, 7 Rue Marseille, strongly opposed the project and noted properties in Canyon Mesa have not sold after years on the market and significant price reductions. Realtors have opined regarding the detrimental impacts of noise and traffic on real property sales.

An unidentified speaker read a letter from Lynda Bentall, 38 Rue Fontainebleau, who opposed the project because it will increase noise, light, and traffic.

An unidentified speaker read a letter from Chris Alevizos, 32 Rue Fontainebleau, who believed granting the reduced setback would decrease the value of his real property and increase noise.

Skip Wilson, 9 Rue Fontainebleau, listed the properties for sale in the neighborhood, the number of days on the market for each, and price reductions for each and attributed the lack of sales to the noise generated from the Shell station.

Carl Swain, 7 Rue Marseille, emphasized previous comments regarding the need for a car wash; adverse effects on property values; increased noise, glare, and light intrusion; differences between the car wash depicted in the video and in reality; and detrimental and cumulative effects of noise on homeowners.

Mr. Rosansky advised that no noise complaints have been filed against the Shell station. The Newport Center car wash has been proposed for redevelopment. Based on his internet research, a total of six car washes are located in Newport Beach. The Shell station, built in 1970, has modified its business model to stay current with the times. A service station's profit is derived from additional services, not the sale of gasoline. The applicant leases the property for a substantial rent amount. Modification of a use permit is common. The Municipal Code does not require a business owner to live in Newport Beach. The video of the car wash is intended to demonstrate use of the doors and the noise level. Conditions of approval for the Chevron car wash do not require entry and exit doors. The sound study shows that sound generated by the car wash will be insignificant compared to the existing ambient noise.

Mr. Ghaderi reiterated that the construction will be block walls and ceiling with a sheet-metal cladding that matches the convenience store.

Mike Holritz, acoustical engineer, reported noise is cumulative. Adding 40 dB to an existing 60 dB noise level results in a noise level of 60.4 dB. CEQA's level of significance for noise is an increase of 3 dB. If noise levels increase 3 dB, noise must be mitigated. Adding noise from the car wash to the existing ambient noise increased noise levels by less than 1 dB.

Deputy Community Development Director Jim Campbell clarified that the City's CEQA significance criteria for noise is exceeding the Noise Ordinance. Typically, a noise increase of less than 3 dBA is not perceptible to persons of normal sensitivity. The information suggests the car wash will not exceed the Noise Ordinance and, therefore, the noise attributable to the project would not have a significant effect.

Chair Weigand closed the public hearing.

Commissioner Rosene remarked that the doors on the Quail Hill car wash are not operational. The Quail Hill car wash generates significantly less noise than the Chevron car wash. The street noise on Rue Fontainebleau today is loud. The applicant is willing to close the car wash if the doors are not operational. Perhaps the applicant would be willing to change the hours of operation. Locating the vacuums and air and water service in front of a dedicated parking space seems odd, and they should be relocated elsewhere or removed from the site. He expressed interest in possibly adding the wall along the setback line.

Chair Weigand reopened the public hearing.

In reply to Commissioner Ellmore's queries, Mr. Rosansky reported the applicant owns approximately 50 service stations, nine of which have car washes. Fred Kim, business owner, advised that he has acquired the car washes rather than constructing them. The car washes are busiest during the morning and evening commute times. The number of cars using the car wash after sunset decreases drastically. At this location, business is slow on Saturday and even slower on Sunday.

Commissioner Koetting noted changes between the 2018 and 2020 projects are two 10-foot screening walls, hours of operation, and funding for additional vegetation on the slope. In driving around the City, he found 12 car washes. He questioned staff's rationale for proposing Condition of Approval No. 29 requiring the use of recycled water only if it is economically feasible. He agreed that the proposed location for vacuums and air and water service is odd. He expressed his position that the car wash is inappropriate, in the wrong location, and unnecessary.

Chair Weigand indicated there should be a condition of approval requiring the applicant to maintain the car wash doors. In response to his questions, Deputy Community Development Director Campbell reported the service station regulations provide different setbacks for different features. A car wash must be set back 30 feet from a public street. Staff administratively approved the installation of the hydrogen station at the site previously. Chair Weigand remarked that the hydrogen station could generate more noise than the car wash.

Mr. Holritz clarified that each wall is 16 feet high and 10 feet long. The length of the walls can be extended, which will provide some additional noise reduction. The scenario considering noise bouncing off the walls back to the residences was not analyzed because noise levels were already below the City's noise standards. Noise will bounce off a flat wall, but that type of reflection will not significantly increase the noise level. To minimize the echo, the wall will be constructed with split-based block and covered with landscaping.

Chair Weigand closed the public hearing.

Commissioner Klaustermeier commented that the concern is noise, and no evidence in the acoustical report indicates the car wash will add significant noise or increase the ambient noise level. The ambient noise is caused by vehicular and aircraft traffic. The applicant has addressed some concerns and has agreed to some mitigation design features.

Commissioner Koetting stated the request for a 15-foot reduction in the 30-foot setback leads him to believe the site is not appropriate for the use. Too many facilities are being crammed onto the site. He could not make the findings to approve the project.

Motion made by Commissioner Koetting to deny the application. The motion failed for lack of a second.

At Commissioner Klaustermeier's request, Deputy Community Development Director Campbell explained that the service station regulations require a 30-foot setback to public streets for car washes. The applicant requests a 15-foot reduction of the setback. The Planning Commission may reduce the setback with the findings contained in the resolution and it is not a Variance application.

Commissioner Ellmore could support approval of the application with amendments to reduce the hours of operation to 7:00 a.m. to 8:00 p.m. and to require signage regarding queuing and closure of the car wash doors while a car is being washed.

Commissioner Rosene proposed removal of the vacuums.

Chair Weigand reopened the public hearing.

Mr. Rosansky, on behalf of the applicant, agreed to conditions of approval regarding signage and functioning doors for carwash operations. After discussion with the applicant, the applicant agreed to remove the vacuums and requested hours of operation of 7:00 a.m. to 8:30 p.m.

Chair Weigand closed the public hearing.

Motion made by Chair Weigand and seconded by Commissioner Ellmore to approve the staff recommendation with amendments to require signage for queuing, to require functioning doors for and during operation of the car wash, to remove the vacuums entirely, and to limit the hours of operation of the carwash to 7:00 a.m. to 8:30 p.m.

Commissioner Koetting reiterated residents' concerns about noise, environmental issues, property values, no job creation, and no tax revenues and his concern about the reduction of the setback.

The motion passed by the following vote:

AYES: Weigand, Lowrey, Kleiman, Ellmore, Klaustermeier, and Rosene
 NOES: Koetting
 ABSTAIN:
 ABSENT:

IX. STAFF AND COMMISSIONER ITEMS

ITEM NO. 6 MOTION FOR RECONSIDERATION

None

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.

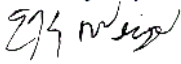
Deputy Community Development Director Campbell reported the second meeting of the Housing Element Update Advisory Committee (HEUAC) is scheduled for July 15, 2020, at 6:00 p.m. in the Council Chambers. The Planning Commission's agenda for the July 23, 2020, meeting contains three items.

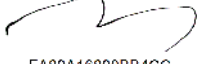
ITEM NO. 8 REQUESTS FOR EXCUSED ABSENCES

None

X. ADJOURNMENT – 10:45 p.m.

The agenda for the July 9, 2020, Planning Commission meeting was posted on Thursday, July 02, 2020, at 12:15 p.m. in the Chambers binder, on the digital display board located inside the vestibule of the Council Chambers at 100 Civic Center Drive, and on the City's website on Thursday, July 02, 2020, at 11:30 a.m.

DocuSigned by:

 1B11FE6C7A05461...
 Erik Weigand, Chairman

DocuSigned by:

 FA89A16800BB4CC...
 Lauren Kleiman, Secretary

Attachment H

Project Renderings and Plans



CRAN_RLOS_CSTAM_003
CSTAM 03A



City streetlight No. SCL0796 at the northwestern corner of W. Balboa Blvd. and 30th St., Newport Beach, CA 92663





CRAN_RLOS_CSTAM_003

CSTAM 03A



City streetlight No. SCL0796 at the northwestern corner of W. Balboa Blvd. and 30th St., Newport Beach, CA 92663



VIEW 2 | LOOKING NORTHEAST



CRAN_RLOS_CSTAM_003

CSTAM 03A



City streetlight No. SCL0796 at the northwestern corner of W. Balboa Blvd. and 30th St., Newport Beach, CA 92663



VIEW 3 | LOOKING NORTH

129 17-257

NATIONWIDE SURVEYING INC.

NOVEMBER 18, 2019

1-A ACCURACY CERTIFICATION
AT&T CRAN_RLOS_CSTAM_003

DATE OF SURVEY: NOVEMBER 15, 2019
 SITE NAME: CRAN_RLOS_CSTAM_003
 TYPE: STREET LIGHT
 SITE ADDRESS: CITY STREETLIGHT No.SCL0796
 AT THE NORTHWESTERN CORNER
 OF WEST BALBOA BOULEVARD
 AND 30TH STREET

I hereby certify that the latitude and longitude of the following areas are as follows:

GEOGRAPHIC COORDINATES:
(NORTH AMERICAN DATUM 1983)

	LATITUDE	LONGITUDE	
EXISTING STREET LIGHT POLE:	33° 36' 49.94" N	117° 55' 53.96" W	(NAD 83)
	33.613872	-117.931656	(NAD 83)

I further certify that the elevations shown hereon are Above Mean Sea Level, North American Vertical Datum 1988 (NAVD 88).

ELEVATIONS (NAVD 88)

GROUND ELEVATION @ EXISTING STREET LIGHT POLE LOCATION = 8.82 FEET A.M.S.L.
 TOP ELEVATION OF EXISTING STREET LIGHT POLE = 36.10 FEET A.M.S.L.
 TOP ELEVATION OF EXISTING STREET LIGHT SENSOR (HIGHEST POINT) = 38.98 FEET A.M.S.L.

MEASURE HEIGHTS

HEIGHT OF EXISTING STREET LIGHT POLE = 27'-3" A.G.L.
 HEIGHT OF EXISTING STREET LIGHT SENSOR (HIGHEST POINT) = 30'-2" A.G.L.

The horizontal accuracy for the Latitude and Longitude is ± 5 feet.The vertical accuracy for the Elevation is ± 1 feet.The measured height of the features located is ± 1 foot.

The Geographic Coordinates are based upon the State Plane Coordinate System of 1983 (NAD 83), California Zone 6 and were established by static GPS Post Processing method, utilizing NGS GPS Monuments.

The Smartnet North America C.O.R.S. "CALK"

Elevation = 366.53 Feet (NAVD 88).




 CHARLES L. SCOTT III, PLS
 LS 8742 EXP. 12/31/2020



NATIONWIDE SURVEYING INC. 15520 WARREN ROAD RIVERSIDE CALIFORNIA 92508 909.841.4235

1-A ACCURACY CERTIFICATION



DRAWN BY:  JJ
 CHECKED BY:  JJ

REV	DATE	DESCRIPTION
1	02/01/2020	FINAL CONSTRUCTION
2	12/02/2019	ISSUE FINAL/POWER
3	10/13/2019	ISSUE CONSTRUCTION
4	09/02/2019	ISSUE CONSTRUCTION
5	08/01/2019	ISSUE CONSTRUCTION
6	07/11/2019	ISSUE CONSTRUCTION

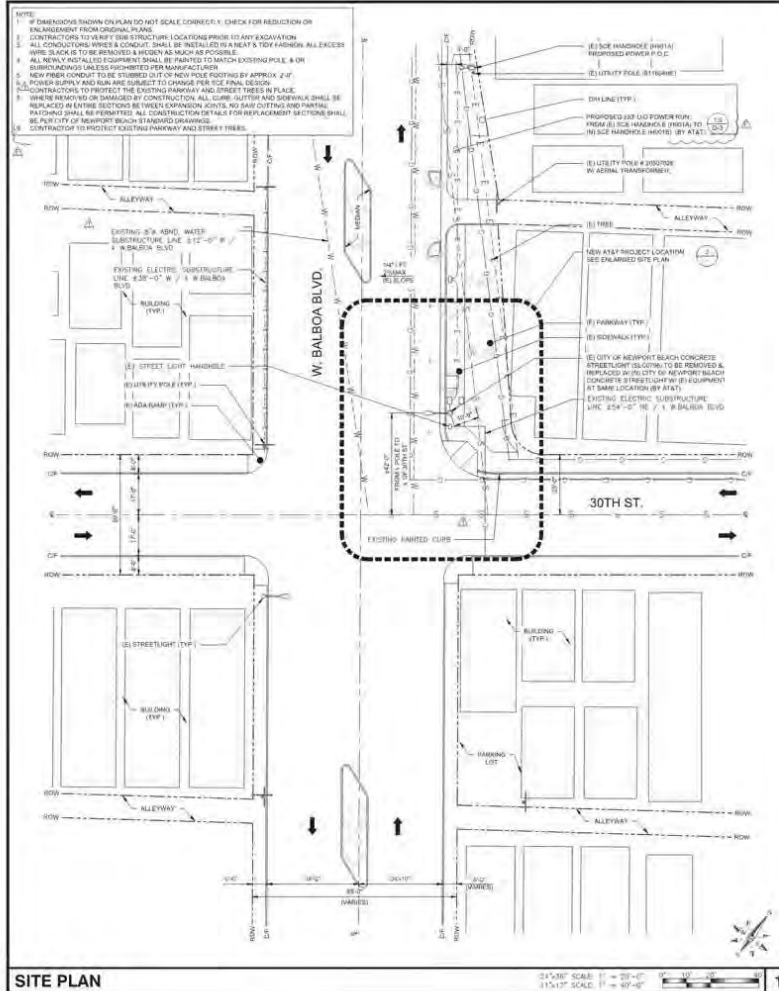
1-A ACCURACY CERTIFICATION
 AT&T CRAN_RLOS_CSTAM_003

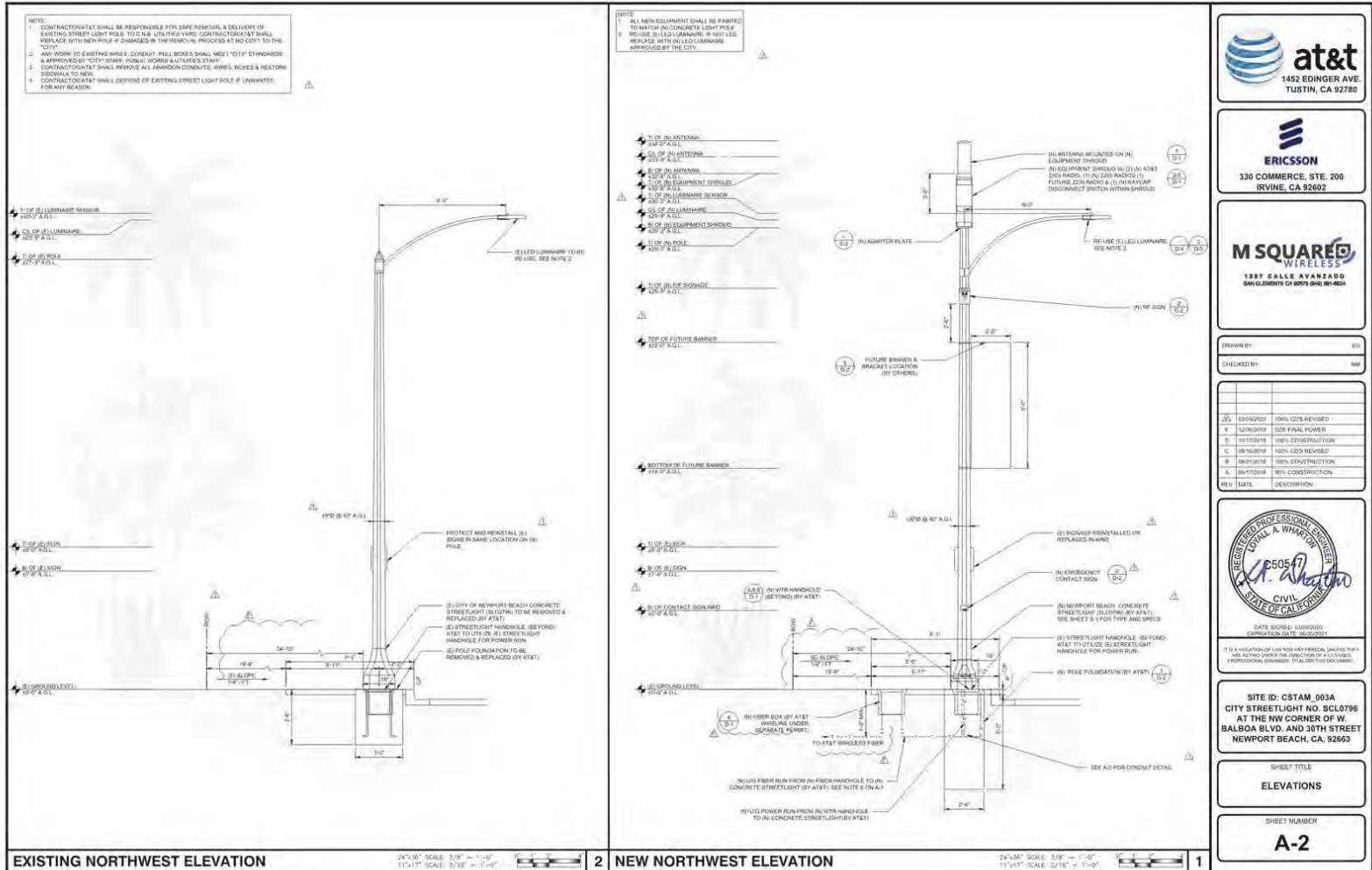
SITE ID: CSTAM_003A
 CITY STREETLIGHT NO. SCL0796
 AT THE NW CORNER OF W
 BALBOA BLVD. AND 30TH STREET
 NEWPORT BEACH, CA 92663

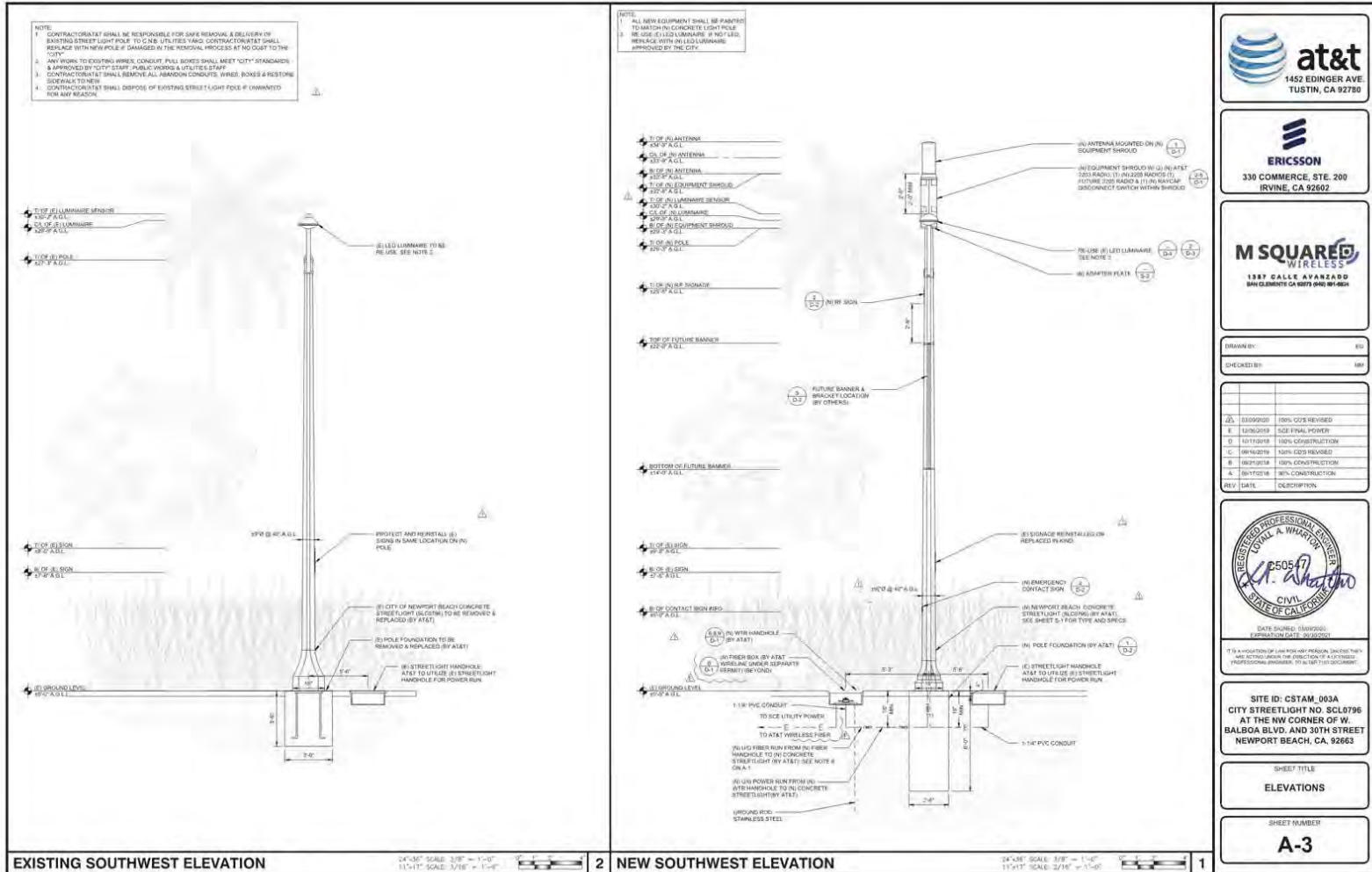
SHEET TITLE
 1-A ACCURACY
 CERTIFICATION

SHEET NUMBER
 T-2

GN-1









PROPOSED SITE LOCATION LOOKING NORTHWEST

24"x36" SCALE: NTS
11"x17" SCALE: NTS

1452 EDINGER AVE.
TUSTIN, CA 92780

330 COMMERCE, STE. 200
IRVINE, CA 92602

1587 CALLE AVANZADO
SAN CLEMENTE CA 95051 (PH) 951-8634

DRAWN BY: EIG

CHECKED BY: MBI




REV	DATE	DESCRIPTION
A	03/09/2020	100% CDS REVISED
B	12/06/2019	SIZE FINAL POWER
D	10/17/2019	100% CONSTRUCTION
C	09/16/2019	100% CDS REVISED
B	08/21/2018	100% CONSTRUCTION
A	08/17/2018	10% CONSTRUCTION

IT IS A VIOLATION OF LAW FOR ANY PERSON, UNLESS THEY ARE LICENSED UNDER THE CERTIFICATION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

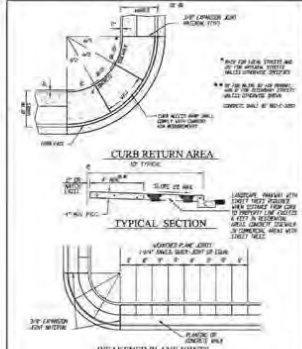
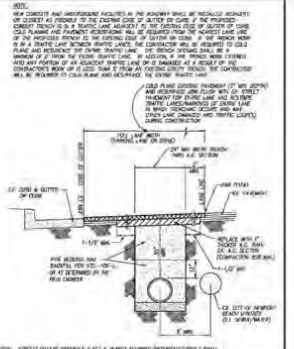
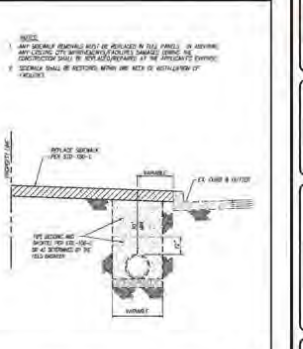
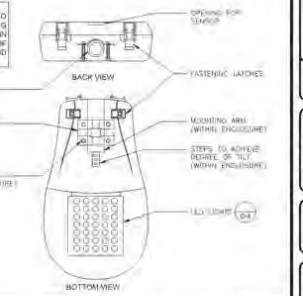
SITE ID: CSTAM_003A
CITY STREETLIGHT NO. SCL0796
AT THE NW CORNER OF W
BALBOA BLVD. AND 30TH STREET
NEWPORT BEACH, CA. 92663

SHEET TITLE
SITE IMAGE

SHEET NUMBER
A-4

<p>AVAILABLE FROM EXCEL SIGN AND DECAL http://www.wetonsigns.com/home.php?cal=1135 AND CLICK ON AT&T PH: 510-651-0445 N01-DC-16 1"x6" NOTICE DECAL "For 1 Foot Distance" VINYL DECAL WITH ADHESIVE BACKING</p>  <p>NOTICE</p> <p>RF energy emitted by this device may exceed the FCC's general public exposure limits. Stay at least 1 foot away from the device. Call 800-638-2622 for help if you need access within 1 foot.</p> <p>Place 3 NOTICE sticker at the bottom of the front of the radome of each antenna.</p>	<p>OMNI ANTENNA DISCLAIMER LABEL 14"x36" SCALE: NTS 11"x11" SCALE: NTS</p> <p>7</p> <p>ERICSSON - RADIO 2205 14"x36" SCALE: NTS 11"x11" SCALE: NTS</p> <p>4</p>	<p>GALTRONICS OMNI ANTENNA 14"x36" SCALE: NTS 11"x11" SCALE: NTS</p> <p>1</p>	 <p>1452 EDINGER AVE. TUSTIN, CA 92780</p>  <p>330 COMMERCE, STE. 200 IRVINE, CA 92602</p> <p>M SQUARED WIRELESS</p> <p>1887 CALLE AVANZADO SAN JOSE, CA 95131-5401</p> <p>DESIGNED BY: JST CHECKED BY: MJS</p> <p>REV. DATE DESCRIPTION</p> <p>DESIGNED BY: JST CHECKED BY: MJS</p> <p>REV. DATE DESCRIPTION</p>
<p>SCE UN-METERED FUSED PANEL 14"x36" SCALE: NTS 11"x11" SCALE: NTS</p> <p>8</p>	<p>RAYCAP DISCONNECT 14"x36" SCALE: NTS 11"x11" SCALE: NTS</p> <p>5</p>	<p>ERICSSON - RADIO 2203 14"x36" SCALE: NTS 11"x11" SCALE: NTS</p> <p>2</p>	<p>DATE DATED: 11/10/2019 PREPARED BY: JST</p> <p>SITE ID: CSTM_003A CITY STREETLIGHT NO. SCL0796 AT THE NW CORNER OF W BALBOA BLVD. AND 35TH STREET NEWPORT BEACH, CA 92663</p> <p>SHEET TITLE DETAILS</p> <p>SHEET NUMBER D-1</p>
<p>AT&T MOBILITY FUSED DISCONNECT 14"x36" SCALE: NTS 11"x11" SCALE: NTS</p> <p>9</p>	<p>HANDHOLE 14"x36" SCALE: NTS 11"x11" SCALE: NTS</p> <p>6</p>	<p>EQUIPMENT SHROUD 14"x36" SCALE: NTS 11"x11" SCALE: NTS</p> <p>3</p>	



 <p>SIDEWALK DETAIL</p> <p>CITY OF NEWPORT BEACH PUBLIC WORKS DEPARTMENT</p> <p>STANDARD: STD-105-L</p>	<p>TYPES OF PAVEMENT REPLACEMENT</p> <ol style="list-style-type: none"> 1. PAVEMENT REPLACEMENT IN PORTLAND CEMENT CONCRETE PAVEMENT SHALL BE FULL DEPTH RECONSTRUCTION. REPAIRS SHALL BE LIMITED TO THE WIDTH OF THE EXISTING PAVEMENT AND SHALL BE MATCHED TO THE EXISTING PAVEMENT. 2. PATCHES IN PORTLAND CEMENT CONCRETE PAVEMENT SHALL BE PLACED IN LOTS NOT TO EXCEED 4" THICK. 3. PATCHES IN ASPHALT CONCRETE PAVEMENT SHALL BE PLACED IN LOTS NOT TO EXCEED 4" THICK. 4. PATCHES IN ASPHALT CONCRETE PAVEMENT SHALL BE PLACED IN LOTS NOT TO EXCEED 4" THICK. 5. PATCHES IN ASPHALT CONCRETE PAVEMENT SHALL BE PLACED IN LOTS NOT TO EXCEED 4" THICK. <p>TRENCH RESURFACING</p> <p>CITY OF NEWPORT BEACH PUBLIC WORKS DEPARTMENT</p> <p>STANDARD: STD-105-L-B</p>	 <p>ROADWAY TRENCH DETAIL</p> <p>CITY OF NEWPORT BEACH PUBLIC WORKS DEPARTMENT</p> <p>STANDARD: STD-105-L-C</p>	 <p>PARKWAY TRENCH DETAIL</p> <p>CITY OF NEWPORT BEACH PUBLIC WORKS DEPARTMENT</p> <p>STANDARD: STD-105-L-D</p>	<p>at&t 1452 EDINGER AVE. TUSTIN, CA 92780</p> <p>ERICSSON 330 COMMERCE, STE. 200 IRVINE, CA 92602</p> <p>MSQUARED WIRELESS 1887 CALLE AVANZADO SAN JOSE, CA 95128</p> <p>DESIGNED BY: [Signature] CHECKED BY: [Signature]</p> <p>DATE: 05/05/17 SCALE: 1/4" = 1'-0"</p>
<p>SIDEWALK DETAIL</p> <p>1/4" = 1'-0" SCALE: 1/4" = 1'-0"</p> <p>7</p>	<p>TRENCH RESURFACING</p> <p>1/4" = 1'-0" SCALE: 1/4" = 1'-0"</p> <p>5</p>	<p>ROADWAY TRENCH</p> <p>1/4" = 1'-0" SCALE: 1/4" = 1'-0"</p> <p>3</p>	<p>PARKWAY TRENCH</p> <p>1/4" = 1'-0" SCALE: 1/4" = 1'-0"</p> <p>1</p>	<p>1</p>
<p>NOT USED</p> <p>1/4" = 1'-0" SCALE: 1/4" = 1'-0"</p> <p>8</p>	<p>NOT USED</p> <p>1/4" = 1'-0" SCALE: 1/4" = 1'-0"</p> <p>6</p>	<p>NOT USED</p> <p>1/4" = 1'-0" SCALE: 1/4" = 1'-0"</p> <p>4</p>	 <p>LUMINAIRE ATTACHMENT</p> <p>CITY OF NEWPORT BEACH PUBLIC WORKS DEPARTMENT</p> <p>STANDARD: STD-105-L-E</p>	<p>NOT USED</p> <p>1/4" = 1'-0" SCALE: 1/4" = 1'-0"</p> <p>2</p>



at&t
1452 EDINGER AVE.
TUSTIN, CA 92780



330 COMMERCE, STE. 200
IRVINE, CA 92602



DRAWN BY: 83

CHANGED BY: LAW

A	03/09/2020	100% CO'S REVISED
B	12/06/2019	SQE FINAL POWER
D	10/17/2018	100% CONSTRUCTION
C	09/16/2019	100% CO'S REVISED
B	08/21/2018	100% CONSTRUCTION
A	06/17/2018	80% CONSTRUCTION
REV	DATE	DESCRIPTION

IT IS A VIOLATION OF LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

SITE ID: CSTAM_003A
CITY STREETLIGHT NO. SCL0796
AT THE NW CORNER OF W.
BALBOA BLVD. AND 30TH STREET
NEWPORT BEACH, CA, 92663

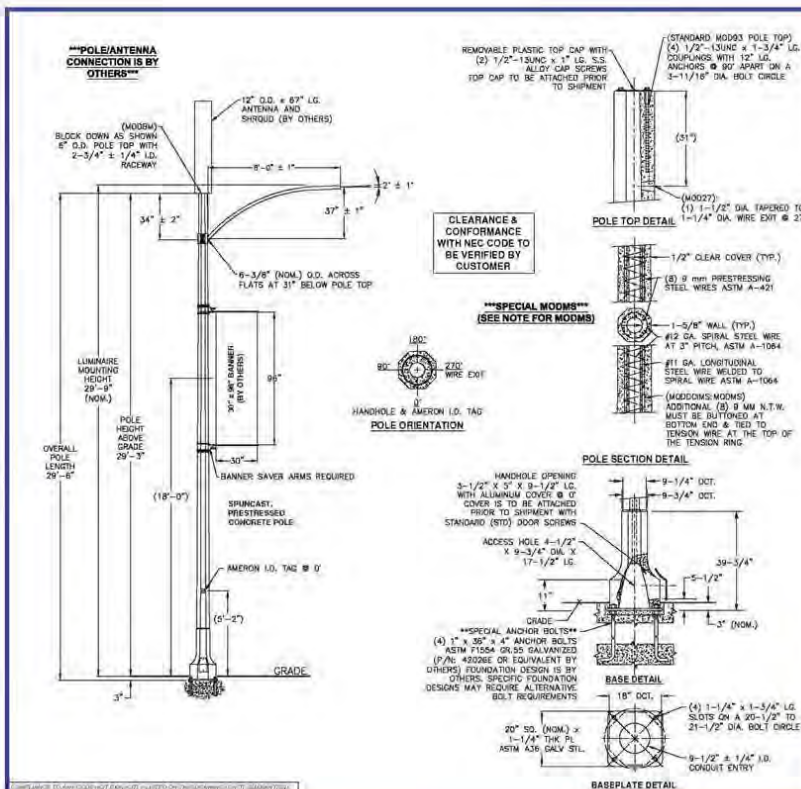
SHEET TITLE

LUMINAIRE SPECS

SHEET NUMBER

D-4

FOR REFERENCE ONLY



REV.	DATE	DESCRIPTION	DRN.	APPR.

"F" LEVEL CONFIG CODES			
OPTION CLASS	ENTRY	INFO.	
COATING	I		
HH COVER	43014		
DOR SCRS	STD		
MISC. MOD	MODFE	NOTE 7	

POLE DESIGNATION	POLE HEIGHT ABOVE GRADE	OVERALL POLE LENGTH	BOLT CIRCLE	BASE O.D.	ULTIMATE G.L. MOMENT (ft. lbs.)	POLE WEIGHT (lbs.)
STANDARD BUSH	29'-3"	29'-6"	21"	18"	43,600	1,650

() POLES REQUIRED, (P/N: TBD) EACH WITH:
 (1) SINGLE 8" STEEL CLAMP ON ARM ASSEMBLY (P/N: TBD)
 (1) PLASTIC TOP CAP (P/N: 43685EA)
 (2) 5.5 BANDS BANNER ARM ASSEMBLY (P/N: BASPL30PROA)
 (4) 1" X 36" X 4" GR 55 ANCHOR BOLTS (P/N: 42028E)


[illegible]

APPROVED BY _____ DATE _____

M-SQUARED WIRELESS
NEWPORT BEACH, CA

CBO6X09.6SPL POLE W/ 8' SINGLE CLAMP ARM ASSEMBLY

THIS DOCUMENT CONTAINS INFORMATION WHICH IS PROPRIETARY TO NATIONAL OILWELL VARCO. IT SHALL NOT BE REPRODUCED, USED OR DISCLOSED TO ANYONE WITHOUT THE PRIOR WRITTEN PERMISSION OF NATIONAL OILWELL VARCO.

	DRAWN: K.B. DATE: 01/13/20	
	SCALE: N.T.S.	DWG. NO. 2001-019

POLE DETAIL



at&t
1452 EDINGER AVE.
TUSTIN, CA 92780



ERICSSON
330 COMMERCE, STE. 200
IRVINE, CA 92602

M SQUARE
WIRELESS
1387 CALLE AVANZADO
SAN CLEMENTE CA 95073 (949) 301-8824

DRAWN BY:	EL
CHECKED BY:	SM

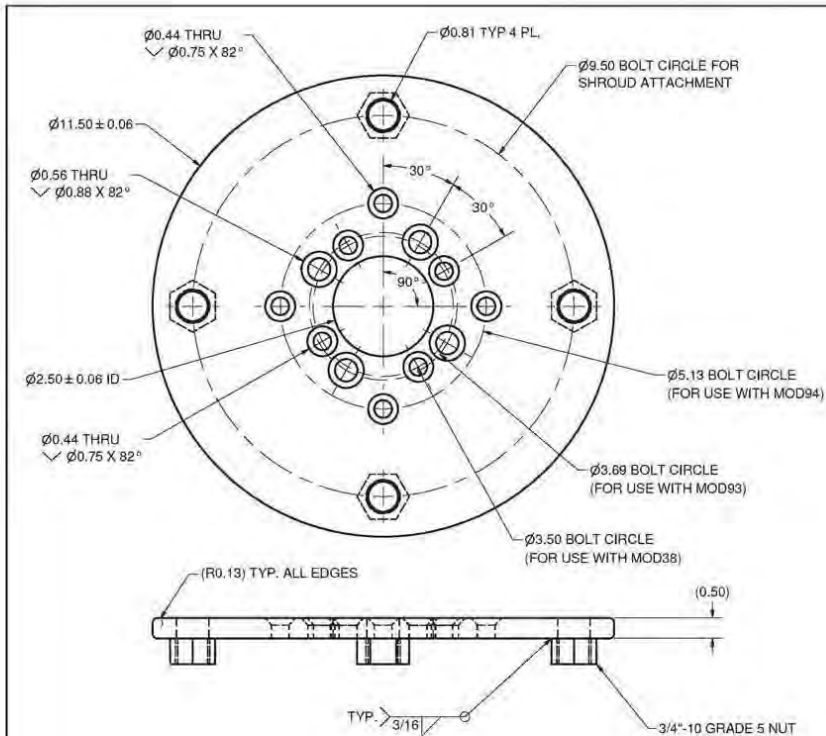
[illegible]

SITE ID: CSTAM_003A
CITY STREETLIGHT NO. SCL0796
AT THE NW CORNER OF W.
BALBOA BLVD. AND 30TH STREET
NEWPORT BEACH, CA. 92663

SHEET TITLE
POLE DETAILS

SHEET NUMBER
S-1

FOR REFERENCE ONLY



APPROX. WT: 15.0 LBS

REV.	DATE	DESCRIPTION	DRN.	APPR.



MATERIAL:
A36 STEEL PLATE
E70 WELD FILLER
USE GRADE 5 UNCOATED NUTS
GALVANIZE PER ASTM A123
MATERIAL CERTIFICATIONS REQUIRED

NOTES:

1. ALL DIMENSIONS ARE EXPRESSED AS INCHES UNLESS OTHERWISE NOTED.
2. CORNER AND FILLET RADIUS TO BE $1/32"$ UNLESS OTHERWISE NOTED.
3. DEBURR ALL SHARP EDGES.
4. AFTER FABRICATION GALVANIZE TO ASTM A123
5. ALL HOLES SHOULD BE CLEANED UP AFTER GALVANIZING
6. CHASE THREADS AFTER GALVANIZING
7. TOLERANCES FOR ALL BOLT CIRCLES $\pm 0.06"$
8. TOLERANCES FOR ANGLES $\pm 1^\circ$

**TOP MOUNT ADAPTER PLATE FOR USE
WITH COMMSCOPE SHROUD**
FOR USE WITH ANY AMERON POLE WITH MOD94, MOD93,
OR MOD 38 POLE TOP

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Ameron	DRAWN: KB	DATE: 03/01/19	
	SCALE N.T.S.	DWG. NO 56248E	REV.



ERICSSON
COMMERCE, STE. 200
IRVINE, CA 92602



100

DESIGNED BY:	10/1
CHECKED BY:	10/1

REV	DESCRIPTION
1	100% CO2 REVERSED
2	100% FINAL POWER
3	100% COMPLETION
4	100% CO2 REVERSED
5	100% COMPLETION
6	100% COMPLETION
7	100% COMPLETION
8	100% COMPLETION
9	100% COMPLETION
10	100% COMPLETION
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97	100% COMPLETION
98	100% COMPLETION
99	100% COMPLETION
100	100% COMPLETION

THE FOLLOWING TABLE OF CONTENTS IS FOR THE 1997-1998 YEARBOOK OF THE AMERICAN SOCIETY OF CLIMATE AND THE ATMOSPHERE. THE CONTENTS OF THE YEARBOOK ARE SUBJECT TO CHANGE WITHOUT NOTICE.

SITE ID: CSTAM_003A
CITY STREETLIGHT NO. SCL0795
AT THE NW CORNER OF W.
BALBOA BLVD. AND 30TH STREET
NEWPORT BEACH, CA. 92663

SHEET TITLE
ADAPTER PLATE
DETAILS

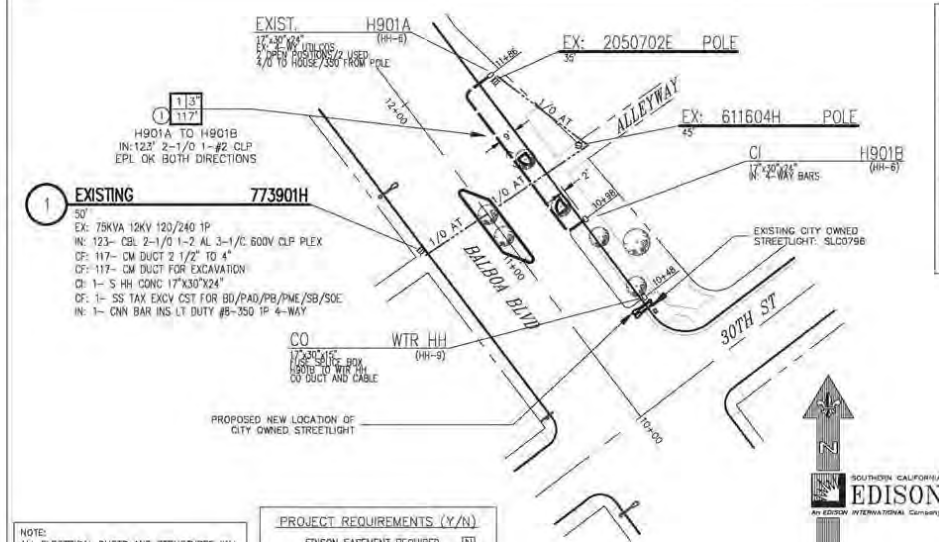
SHEET NUMBER

S-2

ADAPTER PLATE DETAIL

24'x36" SCALE: 1/8"=1'-0"	1
11'x17" SCALE: 1/8"=1'-0"	

FOR REFERENCE ONLY



JOB SCOPE:

- WTR FOR AT&T SITE #CSTAM 03A.
- TRENCH MUST BE MIN. 5' FROM CURB FACE PER CITY STANDARD.
- TRENCH SHOWN 9' FROM CURB FACE TO AVOID PLANTERS IN STREET PER CUSTOMER.
- CONTRACTOR TO INSTALL H901B.
- CUSTOMER TO SUPPLY & INSTALL FUSE SPICE BOX (FSB) 17X30X15 FOR NON-METERED CELLULAR SERVICE.
- CUSTOMER TO SUPPLY & INSTALL C.O. DUCT & CABLE FROM FSB TO H901B.
- SCE TO ENERGIZE CUSTOMER OWNED CABLE UPON INSPECTION.
- CUSTOMER TO COORDINATE WITH CITY FOR REPLACEMENT OF CITY-OWNED STREETLIGHT.

AT&T CONTACT: TIRZAH STARR (602)-488-2700
TIRZAH@MSQUAREWIRELESS.COM

NOTE:
ALL ELECTRICAL DUCTS AND STRUCTURES WILL CONFORM TO GENERAL ORDER #123 (RULES FOR CONSTRUCTION OF UNDERGROUND ELECTRICAL SUPPLY AND COMMUNICATION PRESCRIBED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, JANUARY 2008).

WARNING:
THE EXCAVATOR MUST TAKE ALL STEPS NECESSARY TO AVOID CONTACT WITH UNDERGROUND FACILITIES WHICH MAY RESULT IN INJURY TO PERSONS OR DAMAGE TO FACILITIES IN THE AREA. THE INDICATED LOCATIONS OF EDISON UNDERGROUND FACILITIES AS PROVIDED ARE BELIEVED TO BE ACCURATE. HOWEVER, THE FINAL DETERMINATION OF EXACT LOCATIONS AND THE COST OF REPAIR TO DAMAGED FACILITIES IS THE RESPONSIBILITY OF THE EXCAVATOR.

SCE Inspection:
Contact SCE 48 Hours in advance for a Pre-Construction meeting and/or inspection.
Email: NDPFSC@SCE.COM

PROJECT REQUIREMENTS (Y/N)

EDISON EASEMENT REQUIRED [N]
PWRD 88 REQUIRED [Y]
UG CIVIL ONLY WORK ORDER [N]
PERMIT REQUIRED [Y]
PERMIT TYPE: LANE CLOSURE

OUTAGE DATE: _____ TIME: _____
OUTAGE REQUIRED [N]
TRAFFIC CONTROL REQUIRED [Y]
PED. TRAFFIC CONTROL REQ'D [Y]
CONVEYANCE LETTER REQ'D [N]
ENVIRONMENTAL CLEARANCE REQ'D [N]
CSD 140 (TLM) REQ'D [Y]

UNDERGROUND SERVICE ALERT

Dial 811
Call USA
For Underground Locating
2 Working Days Before You Dig

T.L.M. DATA:

SIZE	KVA	DIST	% LOAD
EXIST. 75	100.4	59	133.8%
PROP. 75	101.4	60	135.2%

VOLTAGE DROP: 0.22
FLICKER FACTOR: N/A
PRI. CIRCUIT: SNEAD 12KV

DESIGNER 33 - HUNTINGTON BEACH PROJECT NO. 1861280	REG. WORKER HUNTER, YOLANDA B PHONE 626-484-6772	PLANNER SEFO, ALIE PHONE 949-274-1778	DESIGNER TIMMS, JON P
ASSOC DESIGN 1621173-LINE EXTENSION	MSR NO. THOMAS DUDE	PRODUCT-1 PRODUCT-2	ASSOC DESIGN
CIRCUIT / VOLTAGE SNEAD 12KV	CIRCUIT CODE	PRODUCT-3	ASSOC DESIGN
SUB / PG NO. LAFAYETTE / B1	INVENTORY MAP 28-11D	S.P.A. NO.	
PROPOSED CONSTRUCTION (LOCATION) AT&T SITE #213735 - CSTAM 03A 201 30TH ST NEWPORT BEACH, CA 92663			
DATE 11/25/19	DESIGNED BY J.S.K.	CHECKED BY UTMS	DATE 11/25/19
APPROVED BY	DRAWN BY	PAGE	SHEET
Southern California Edison Company			1 OF 3

FINAL DESIGN
APPROVED FOR CONSTRUCTION



DESIGNED BY: [blank]
CHECKED BY: [blank]

REV	DATE	DESCRIPTION
1	11/25/19	ISSUE FOR CONSTRUCTION
2	11/25/19	ISSUE FOR CONSTRUCTION
3	11/25/19	ISSUE FOR CONSTRUCTION
4	11/25/19	ISSUE FOR CONSTRUCTION
5	11/25/19	ISSUE FOR CONSTRUCTION

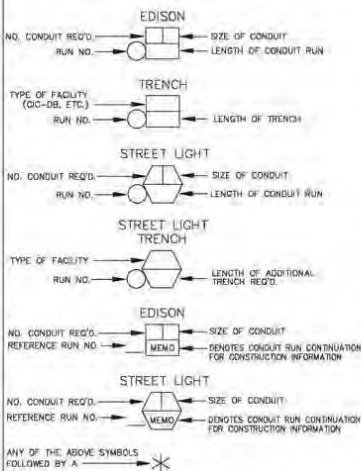
SITE ID: CSTAM_03A
CITY STREETLIGHT NO. SCL0798
AT THE NW CORNER OF W BALBOA BLVD. AND 30TH STREET NEWPORT BEACH, CA 92663

SHEET TITLE
SCE FINAL DESIGN

SHEET NUMBER
SCE-1

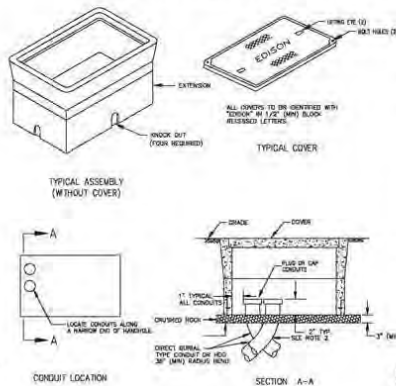
FINAL POWER

FOR REFERENCE ONLY

LEGEND OF CONDUIT SYMBOLS
(CONVENTIONAL U. G.)

DENOTES THE FOLLOWING:
DB CONDUIT WITHOUT ENCASUREMENT IS ACCEPTABLE FOR PORTIONS OF TRENCH WITH ONLY ONE OR TWO CONDUITS.
SEMI-ENCASUREMENT IS REQUIRED FOR PORTIONS OF TRENCH WITH ONLY THREE OR FOUR CONDUITS.
FULL ENCASUREMENT IS REQUIRED FOR MORE THAN FOUR CONDUITS.

11/19/19 5/25/2008

TYPICAL HANDHOLE INSTALLATION
SEE UGS HP 205

NOTES:
1. SEE UGS HP 200 FOR DIMENSIONS OF VARIOUS SIZE HANDHOLES AVAILABLE.
2. HANDS AND FEET MAY BE REDUCED TO LESS THAN 60° PROVIDING THE PROTECTED CENTER LINE OF THE CONDUIT CLEARS HANDHOLE OPENING.
3. TWO HOLD DOWN DEVICES TO BE SUPPLIED WITH EACH HANDHOLE.

CONNECTING TO EXISTING SCE STRUCTURES

- Per SCE requirements, customers are not allowed to enter, intercept or tie-in to existing SCE facilities: e.g., structures, equipment, multi-conduit runs/banks, or conductors. These facilities may be energized and the work will only be performed by SCE. Contact the appropriate SCE inspector to schedule an appointment. Customers may connect to an existing conduit stub without a SCE inspector present.
- Multi-conduit runs/banks are runs of conduit in close proximity to each other and other SCE facilities. A conduit stub is a single empty conduit stub that is not in close proximity to other SCE owned facilities. Refer to the work order map for details.
- Per OUPC/SCE's Rule 15 B.1.A and Rule 16 D.1.A, the customer will provide all necessary excavations (with the exception of excavation under pads and primary splice boxes), material (including conduit and structures) and encasement, to be utilized in the intercept/tie-in process.
- The customer must adhere to all applicable Cal-OSHA, local, city, state and federal regulations, (including, but not limited to, all necessary shoring and traffic control in place to perform the intercept/tie-in work by SCE's underground civil contractor(s)).
- Intercept/tie-in work must be coordinated with SCE's civil contractors through the Division Inspector/Inspector to limit measure of excavation(s). Customer is responsible for securing excavation(s).

DOB: 11/15/18

LEGEND CODE DEFINITIONS

- CD - CUSTOMER CONTRACTOR INSTALLED: MATERIALS FURNISHED AND INSTALLED BY APPLICANT AT EDISON'S EXPENSE AND ASL DESIGNED TO EDISON. (EXCEPTION: STREET LIGHT ELECTROLYTERS WILL BE INSTALLED BY EDISON'S CONTRACTOR)
- CO - CUSTOMER CONTRACTOR OWNED: MATERIALS FURNISHED, OWNED, AND MAINTAINED BY APPLICANT
- CF - CUSTOMER CONTRACTOR FURNISHED: MATERIALS FURNISHED AND INSTALLED BY APPLICANT AT APPLICANT'S EXPENSE THAT MAY BE DESIGNED TO EDISON.
- IN - INSTALL: MATERIALS FURNISHED AND INSTALLED BY APPLICANT IF APPLICANT INSTALLED PROJECT OR BY EDISON IF EDISON INSTALLED PROJECT. (EXCEPTION: FOR AN APPLICANT INSTALLED LINE EXTENSION, STATION NOS. MARKING BY EDISON ADJUNCT TO AN "IN" LEGEND CODE REPRESENTS MATERIALS TO BE PROVIDED BY APPLICANT AND INSTALLED BY EDISON IN ALL CASES REFER TO UGS 6205, PROJECT MATERIAL LIST BY ASSEMBLY WITHIN A SECTION.)
- MI - MEMO INSTALL: SAME AS IN-INSTALL
- MR - MEMO REMOVE: MATERIALS REMOVED BY EDISON
- RN - REMOVE: MATERIALS REMOVED BY EDISON
- SI - SHOULDT IN: MATERIALS FURNISHED AND INSTALLED BY EDISON FOR TEMPORARY CONSTRUCTION
- SR - SHOULDT REMOVE: MATERIALS REMOVED BY EDISON FOR TEMPORARY CONSTRUCTION
- TR - TRANSFER: EDISON LABOR REQUIRED TO TRANSFER EXISTING FACILITIES

L-010-100-100

CONCRETE PRODUCTS

Precast concrete item complete with neck. Cover and inserts may be obtained from any of the following listed and approved manufacturers:

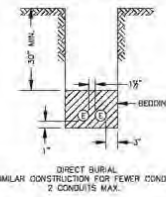
JENSEN PRECAST
14221 San Bernardino Ave., Fontana, Calif. 92335
Phone: (909) 350-4111
(800) 257-6100

OLDCASTLE PRECAST
10650 Hemlock Ave., Fontana, Calif. 92337
Phone: (909) 428-3700
(800) 826-3860

FOR HANDHOLE AND PULLBOX MANUFACTURERS, SEE UGS HP 200.

11/19/19 5/25/2008

DESIGNER 33 - HUNTINGTON BEACH	PROJECT NO. 1601280	PROJECT NAME 12763884	PROJECT CODE 1621175-LINE EXTENSION	ASSOC. DESIGN THOMAS GUSE
INVENTORY MAP 25-11D	APR. NO.	PROPOSED CONSTRUCTION (LOCATION)	AT&T SITE#213735 - CSTAM 03A	ASSOC. DESIGN LAFAYETTE/BI
DATE 11/25/19	BY J.B.O.	CHECKED BY J.B.O.	DRAWN BY J.B.O.	PAX # 51440
TYPE F	DATE 11/25/19	APPROVED BY J.B.O.	CHECKED BY J.B.O.	SHEET 2 of 3
Southern California Edison Company				DESIGN/WORK NO. 1210761_0.01

TYPICAL CONDUIT BANK SECTION
SEE UGS CD 120

TIE-IN MADE INTO A SECONDARY HANDHOLE
If PVC conduit is used, their bend installation may be made by the customer with prior SCE approval. Customer not to remove handhole cover. If metallic conduit is used or handhole cover needs to be removed, a SCE Qualified Person must be present.



DRAWN BY: J.B.O.
CHECKED BY: J.B.O.

REV.	DATE	DESCRIPTION
1	05/25/2008	100% CONSTRUCTION
2	05/25/2008	100% CONSTRUCTION
3	05/25/2008	100% CONSTRUCTION
4	05/25/2008	100% CONSTRUCTION
5	05/25/2008	100% CONSTRUCTION

SITE ID: CSTAM_003A
CITY STREETLIGHT NO. SCL0798
AT THE NW CORNER OF W
BALBOA BLVD. AND 30TH STREET
NEWPORT BEACH, CA 92663

SHEET TITLE
SCE FINAL DESIGN

SHEET NUMBER
SCE-2

FINAL POWER

CONSTRUCTION NOTES:
Unless otherwise specified in the working drawing, this Contractor/Developer shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities. The Contractor/Developer shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities. The Contractor/Developer shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities.

- [illegible]

DISTRICT 33 - HUNTINGTON BEACH		POL. MGR. HUNTER, TOLAN D 626-484-6772		PLANNER SEXO, JULIE 949-274-1778		DESIGNER TIMMS, JON P.	
PROJECT NO. SERVICE REQUEST 1801280 12/7/83/964		NEST NO. THOMAS GUIDE		PRODUCT-1 1121173-LINE EXTENSION		ASSOC DESIGN ASSOC DESIGN	
CREDIT / VOLTAGE SINEAD / 12KV		PROJECT-2					
SUB / FIDV LAFAYETTE / B1		PROJECT-3				ASSOC DESIGN	
INVENTORY MAP 2B-11D		J.P. NO.		PROPOSED CONSTRUCTION LOCATION: AT&T SITE#213735 - CSTAM D3A 201 30TH ST NEWPORT BEACH, CA 92663			
F 11/29/79		J3500		JTIMMS		51440	
TYPE DATE APPROVED BY		CHECKED BY		DRAWN BY		SHEET	
Southern California Edison Company						3 3 1210761 0.01	



at&t
1452 EDINGER AVE
FURNAL, CA 95020



ERICSSON
330 COMMERCE, STE. 200
IRVINE, CA 92602

M SQUARE
WIRELESS
1387 CALLE AVANZADO
SAN CLAYTON, CA 92079 (619) 281-9024

DATE: 01/01/2019	10% CO2 REVISED
E 12/01/2019	SEE FINAL FORM
D 10/10/2019	100% COMPLETION
C 09/01/2019	100% CO2 REVISED
B 08/12/2018	100% CONSTRUCTION
A 07/01/2018	90% CONSTRUCTION
REV DATE DESCRIPTION	

IT IS A CONDITION OF SALE FOR THE PURCHASE OF THE
 ABOVE-DESCRIBED GOODS THAT THE PURCHASER SHALL
 BE RESPONSIBLE FOR THE PAYMENT OF ALL TAXES AND
 DUTIES IN CONNECTION WITH THE IMPORTATION OF THE
 GOODS INTO THE UNITED STATES OF AMERICA.

SITE ID: CSTAM_003A
CITY STREETLIGHT NO. SCL0795
AT THE NW CORNER OF W.
BALBOA BLVD. AND 30TH STREET
NEWPORT BEACH, CA, 92663

SHEET TITLE

SCE FINAL DESIGN

SHEET NUMBER
SCE-3



